



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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**DIN:20251171MN000818026**

**PREAMBLE**

A	फ़ाइल संख्या/ File No.	:	VIII/10-24/SVPIA-B/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-24/SVPIA-B/O&A/HQ/2025-26 dated 21.08.2025
C	मूलआदेश संख्या/ Order-In-Original No.	:	<b>162/ADC/SRV/O&amp;A/HQ/2025-26</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>18.11.2025</b>
E	जारी करने की तारीख/ Date of Issue	:	<b>18.11.2025</b>
F	द्वारा पारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<b>Shri Govind Singh Chouhan ,</b> S/o Shri Kesar Singh Chouhan, Passport No. C2216225, Village Vada Gorap, PO Katisor via Punjpur, The Aspur, Dungarpur, Rajasthan – 314038
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**BRIEF FACTS OF THE CASE:**

On the basis of passenger profiling of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a passenger **Shri Govind Singh Chouhan**, aged 38 years, S/o Shri Kesar Singh Chouhan, having Indian Passport No. C2216225 residing at Village Vada Gorap PO Katisor via Punjpur, The Aspur, Dungarpur, Rajasthan-314038, arriving on **01.03.2025** from Air Arabia Flight No. 3L-111 from Abu Dhabi to Ahmedabad, at the arrival Hall of the SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 01.03.2025**.

**2.** Whereas, the passenger was questioned by the AIU officers as to whether he was carrying any dutiable/contraband goods in person or in his baggage, to which he denied. The officers informed the passenger that a search of his baggage as well as his personal search was to be carried out and gave him an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passenger desired to be searched in presence of a gazetted customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the officers. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the passenger removed metallic objects from his body/clothes such as mobile, wallet etc. and kept them in a plastic tray placed on the table. The said passenger then passed through the DFMD Machine and no beep sound was heard in the DFMD machine indicating there was nothing objectionable/dutiable on his body/clothes. Further, during the scanning of one of the baggages, some dark black coloured images were seen on the X-Ray Screen, indicating that there might be some Gold items in the bag. Therefore, the said bag was opened and checked thoroughly. During the checking of bag 03 Scrub Cream Boxes are found and on opening them 37 assorted Gold cut bars were recovered.

**2.1** Thereafter, the AIU officer called the Govt. Approved Valuer Shri Kartikey Vasantrai Soni and informed him that 37 assorted Gold cut bars had been recovered from Shri Govind Singh Chouhan, who had arrived on 01.03.2025 by Air Arabia Flight No. 3L-111 from Abu Dhabi to Ahmedabad at Terminal-2 of SVPIA Ahmedabad and that he needed to come to the Airport for examination and valuation. Thereafter, the Government Approved Valuer reached at the Airport and was introduced to the passenger as well as to the panchas. The Government approved valuer weighs the said gold items and informed that the gross weight of said items was 700.00 grams. The photograph of the same is as under:



**2.2** The Government Approved valuer further vide his **Certificate No. 1692/2024-25 dated 01.03.2025**, certified that the gold cut bars, weighing **700.00 Grams** (Net Weight) is having purity 999.0/24Kt. and is having **Market Value of Rs.61,22,200/-** (Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only) and **Tariff Value**

**Rs.56,94,098/-**-(Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only), which has been calculated as per the Notification No. 12/2025-Customs (N.T.) dated 28.02.2025 (Gold) and Notification No. 19/2024-Customs (N.T.) dated 21.02.2025 (Exchange Rate). He submitted his valuation report to the AIU Officers. The valuation report provided by the said Govt. Approved Valuer is summarized as under:

Sr No	Item	Pcs.	Net weight	Purity	Market Value	Tariff Value
1	Assorted Gold cut bars	37	700Grams	999.0/24Kt	Rs.61,22,200/-	Rs.56,94,098/-

3. The method of testing and valuation used by the valuer 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 the valuer and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. The following documents produced by the passenger were withdrawn under the Panchnama dated 01.03.2025:

- i. Copy of Passport No. C2216225 issued at Vadagorap, Rajasthan on 04.02.2025 & valid up to 03.02.2035.
- ii. Boarding pass of Air Arabia Flight No. 3L-111 from Abu Dhabi to Ahmedabad.

#### **SEIZURE OF THE ABOVE GOLD CUT BARS:-**

4. The said 37 assorted Gold cut bars totally weighing 700 grams having purity of 999.0/24Kt. were carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said 37 assorted Gold cut bars totally weighing 700 grams having purity 999.0/24Kt. and having Market Value of Rs.61,22,200/- (Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only) and Tariff Value Rs.56,94,098/- (Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only), were placed under seizure vide Seizure Memo dated 01.03.2025 issued under the provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject 37 assorted Gold cut bars are liable for confiscation under Section 111 of the Customs Act, 1962.

#### **STATEMENT OF SHRI GOVIND SINGH CHOUHAN:**

5. Statement of Shri Govind Singh Chouhan was recorded under Section 108 of the Customs Act, 1962 on 01.03.2025, wherein he inter alia stated that his personal details like name, address and family details as mentioned in the statement are true and correct and that he is studied up to 9<sup>th</sup> standard and can read, write and speak Hindi & English language. His monthly income is Rs. 80,000/-.

5.1 He had travelled abroad many times. This time he travelled to Kuwait on 15.04.2024, and came back on 01.03.2025 by Air Arabia Flight No. 3L-111 from Abu Dhabi to Ahmedabad. He arranged his air tickets from savings.

5.2 The gold was not purchased by him. The gold (concealed in the scrub cream boxes) was handed over to him by a person named Kishor Singh who also works in Kuwait. The said gold was supposed to be handed over to an unknown person once he would exit the Airport. For the same some handsome amount of money was to be given to the passenger. Contact details of the unknown person to whom the gold was to be handed over was not shared with him.

5.3 He had never carried any gold item before this and have never indulged in any smuggling activity in the past.

5.4 He was aware that smuggling of gold without payment of Custom duty is an offence. He was well aware about concealed cut gold bars in the scrub cream box but did not make any declaration to evade the Custom duty. He opted for the green channel so as to attempt to smuggle the gold without paying the Custom duty.

### **SUMMATION:**

**6.** The above said 37 assorted Gold cut bars having purity 999.0/24Kt. weighing 700 grams recovered from Shri Govind Singh Chouhan was allegedly attempted to be smuggled into India, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the 37 assorted Gold cut bars was attempted to be smuggled by Shri Govind Singh Chouhan, were liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said 37 assorted Gold cut bars having purity 999.0/24Kt. weighing 700 grams having Market Value of Rs.61,22,200/- and Tariff Value of Rs.56,94,098/- along with its packing material used to conceal the said items, was placed under seizure under the provision of Section 110(1) and 110(3) of the Customs Act, 1962 vide Seizure memo Order dated 01.03.2025.

**6.1** Further, the offence committed by the passenger was a punishable offence under section 135(1)(a) & (b) of the Customs Act, 1962 and therefore he was liable to be arrested u/s 104 of the Customs Act, 1962. Accordingly, after getting due authorization from the Hon'ble Pr. Commissioner of Customs, Ahmedabad, the passenger Shri Govind Singh Chouhan having Passport No. C2216225 was arrested on 01.03.2025 at 16:05 hours, in terms of Section 104 of the Custom Act, 1962 for committing offences punishable under section 135 of the Customs Act, 1962. Thereafter, the arrested person was released on bail subject to fulfillment of conditions, in terms of Circular No. 38/2013-Cus dated 17/09/2013.

### **7. LEGAL PROVISIONS RELEVANT TO THE CASE:**

#### **Foreign Trade Policy 2015-20, as amended and Foreign Trade (Development and Regulation) Act, 1992**

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20 as amended, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited

under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

**The Customs Act, 1962:**

7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.

7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property;

7.7 As per Section 2(33) of Customs Act 1962, 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.

7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

7.11 As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

7.12 Section 111. Confiscation of improperly imported goods, etc.:

*The following goods brought from a place outside India shall be liable to confiscation:-*

*(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*

*(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*

- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*
- (n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;*
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*
- (p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

7.13 Section 112. Penalty for improper importation of goods etc.:

any person,

- (a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
- (b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

**7.14 Section 119.** *Confiscation of goods used for concealing smuggled goods: Any goods used for concealing smuggled goods shall also be liable to confiscation.*

**Explanation :** *In this section, "goods" do not include a conveyance used as a means of transport.*

7.15 As per Section 123 of Customs Act 1962,

- (1) *where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-*
  - (a) *in a case where such seizure is made from the possession of any person -*
    - (i) *on the person from whose possession the goods were seized; and*
    - (ii) *if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
  - (b) *in any other case, on the person, if any, who claims to be the owner of the goods so seized.*
- (2) *This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

7.16 All dutiable goods imported into India by a passenger in his baggage are classified under CTH 9803.

**Customs Baggage Rules and Regulations:**

7.17 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

7.18 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

**Notifications under Foreign Trade Policy and the Customs Act, 1962:**

7.19 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.

7.20 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

**Condition no. 41 of the Notification:**

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c ) is taken delivery of

from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

**8.** From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22Kt.) was restricted as per DGFT notification and import was permitted only by nominated agencies. Further, it appears that import of goods whereas it is allowed subject to certain conditions are to be treated as prohibited goods under section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. As such import of gold is not permitted under Baggage and therefore the same is liable to be held as prohibited goods.

**9. CONTRAVENTION AND VIOLATION OF LAWS:**

It therefore appears that:

- (a) The passenger **Shri Govind Singh Chouhan** had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India by any way concerned in carrying, removing, depositing, harboring, keeping, concealing, or in any manner dealing with the said 37 assorted Gold cut bars having purity 999.0/24K.t weighing 700.00 Grams having Market Value of Rs.61,22,200/- (Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only) and Tariff Value of Rs.56,94,098/- (Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only).
- (b) The said 37 assorted Gold cut bars were found concealed in 03 Scrub Cream Boxes carried by the passenger in his baggage and same were not declared to the Customs on his arrival. The passenger indulged himself in the instant case of smuggling of gold with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Thus, the element of mensrea appears to have been established beyond doubt. Therefore, the said 37 assorted Gold cut bars weighing 700.00 grams of purity 999.0/24Kt. by Shri Govind Singh Chouhan by way of concealment and without declaring it to the Customs 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.
- (c) By not declaring the value, quantity and description of the goods, the said passenger violated the provision of Baggage Rules, 2016, read with the Section

77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

- (d) The passenger has failed to produce the purchase documents of the said gold bar and custom duty payment documents/proof has also not been submitted by the passenger for the same.
- (e) The improperly imported 37 assorted Gold cut bars by the passenger and without declaring it to the Customs, are thus liable for confiscation under Section 111 of the Customs Act, 1962.
- (f) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- (g) Shri Govind Singh Chouhan by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (h) As per Section 123 of Customs Act 1962, the burden of proving that the 37 assorted Gold cut bars weighing 700 grams of having purity 999.0/24 Kt and having Market Value of Rs.61,22,200/-(Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only) and Tariff Value of Rs.56,94,098/-(Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only), found concealed with the passenger, without declaring it to the Customs, is not smuggled goods, is upon the passenger.

**10.** Accordingly, a Show Cause Notice vide F. No. VIII/10-24/SVPIA-B/O&A/HQ/2025-26 dated 21.08.2025 was issued to the Noticee i.e. **Shri Govind Singh Chouhan**, aged 38 years, S/o Shri Kesar Singh Chouhan, having Indian Passport No. C2216225, residing at Village Vada Gorap PO Katisor via Punjpur, The Aspur, Dungarpur, Rajasthan - 314038, as to why:

- (i) 37 assorted gold cut bars, having purity 999.0/24Kt., weighing **700.00 grams** (Net Weight) and having the Market Value of **Rs.61,22,200/-(Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only)** and Tariff value as **Rs.56,94,098/-(Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only)**, found concealed in **03 scrub cream boxes**, recovered from the baggage of Shri **Govind Singh Chouhan** who arrived from Abu Dhabi to Ahmedabad on 01.03.2025 by Air Arabia Flight No. 3L-111, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 01.03.2025 and Seizure Memo Order dated 01.03.2025, 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 **Shri Govind Singh Chouhan** , under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove;

#### **DEFENSE REPLY AND RECORD OF PERSONAL HEARING:**

**11.** The noticee has submitted his written submission vide letter dated **28.08.2025** through Shri Rishikesh Mehra, Advocate and Authorized Representative wherein he denied all the allegation against his client made under the SCN. He said that it was true that his client had brought 37 assorted Gold Cut Bars, weighing 700.00 gram having purity of 24Kt of Rs.56,94,098/-(tariff value) was placed under seizure. The statement recorded under Section 108 of the Customs Act 1962 was given under fear

and duress of being arrested. The statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in the impugned SCN. From the facts and submissions narrated above, the gold is neither prohibited nor restricted, hence the goods in question are not liable for confiscation under section 111(d),111(i),111(l) and 111(m) of the Customs Act, 1962. The noticee is also not liable for penal action under section 112 of the Customs Act,1962.

**11.1** He submitted that his client **Shri Govind Singh Chouhan**, residing at Village Vada Gorap PO Katisor via Punjpur, The Aspur, Dungarpur, Rajasthan-314038; it was true that he had brought 37 assorted Gold Cut Bars, weighing 700.00 Grams having purity of 24Kt. of Rs.56,94,098/- (Tariff Value) was placed under seizure. His client was coming back to India from Kuwait and purchased Gold from Kuwait, for his personal and for his family use. He submitted that gold is not prohibited item and his client is NRI Residing at Kuwait since 2016, having **Civil Id Card No.286121510177**, that he is doing job as cook in hotel of Kuwait, which was incorporated during the Statement, He submitted that his client is an NRI, he is eligible passenger coming to India more than **six months stay** at abroad eligible passenger to bring gold on payment of duty @ 06% and other taxes (**as per Notification No: 12/2012-CUS dated 17/03/2012**). Meanwhile, The Noticee also produced Bills of Gold in the name of the Noticee showing the legitimate purchase from **(1) AL Qadr Gold & Precious metals wholesale Co. Weighing 102.00 Grams Invoice No. 4684 dated 13/02/2025 (2) AL Najma Daulia Gold Jewellery, Weighing 100.00 Grams Invoice No. 70704 dated 13/02/2025 (3) AL Qadr Gold & Precious metals wholesale Co. Weighing 104.00 Grams Invoice No. 4689 dated 15/02/2025 (4) AL Najma Daulia Gold Jewellery, Weighing 100.00 Grams Invoice No. 70869 dated 17/02/2025 (5) AL Qadr Gold & Precious metals wholesale Co. Weighing 104.00 Grams Invoice No. 4745 dated 24/02/2025 (6) AL Qadr Gold & Precious metals wholesale Co. Weighing 104.00 Grams Invoice No. 4770 dated 27/02/2025 (7) AL Najma Daulia Gold Jewellery, Weighing 103.00 Grams Invoice No. 71354 dated 27/02/2025** at Kuwait, which is not taken on record at any stage of Investigation. He, further submitted that the statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in present case. The gold cut bars were hidden due to safety purpose, as he was having the fear of Loot/Theft; as he travel from Ahmedabad to Dungarpur around 200KM to his native by Road through, Jeep and Bus, he have to travelled through Tribal belt were many cases of loot/theft /Highway Robbery and murder cases are booked as per police Record, hence the question of concealment does not arise., gold is not prohibited, as he was first time brought the gold along with him was unable to declare it, due to ignorance of Customs law/Rules. As he has orally declared but nobody has bothered to help him to file the declaration form, as noticee was in the airport premises, reference is invited to instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed. He stated that the noticee is NRI Residing at Kuwait last 9 years, that his client is cook in hotel of Kuwait, he brought gold bar for his personal use and purchased by himself from (1) AL Qadr Gold & Precious metals wholesale Co. Weighing 102.00 Grams Invoice No. 4684 dated 13/02/2025 (2) AL Najma Daulia Gold Jewellery, Weighing 100.00 Grams Invoice No. 70704 dated 13/02/2025 (3) AL Qadr Gold & Precious metals wholesale Co. Weighing 104.00 Grams Invoice No. 4689 dated 15/02/2025 (4) AL Najma Daulia Gold Jewellery, Weighing 100.00 Grams Invoice No. 70869 dated 17/02/2025 (5) AL Qadr Gold & Precious metals wholesale Co. Weighing 104.00 Grams Invoice No. 4745 dated 24/02/2025 (6) AL Qadr Gold & Precious metals wholesale Co. Weighing 104.00

Grams Invoice No. 4770 dated 27/02/2025 (7) AL Najma Daulia Gold Jewellery, Weighing 103.00 Grams Invoice No. 71354 dated 27/02/2025 for his family from his hardworking and personal savings. also, reference is invited to **Notification No. 12/2012-CUS dated 17.03.2012**. He submitted that the Noticee is an Illiterate Person and he study up to 9<sup>th</sup> stander he is not known the what is written in the panchnama and statement which he was only asked the general questions about his family, he was forced to sign in fear of arrest, he simply signed the papers. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of fine, re-export of goods or as per the procedure laid down under the Customs Act, 1962.

**11.2.** He further submitted that the statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interiliac stated that the gold was brought by Noticee the said gold Bars from his personal savings and hardworking earned money from Kuwait at the material time he was carrying the bill in this regard, but prior to his declaration he was intercepted and resulting in booking of the case; as carrying of gold without payment of duty means smuggling as per the impugned SCN. It is therefore, very clear, that the goods in question clearly belongs to the noticee. Moreover, the noticee had repeatedly requested the officers to release the gold on payment of duty, fine and penalty, but the same fell on the deaf ears. However, a copy of Invoice in the name of noticee, which was produced/recover from noticee; was not incorporated at any were during the panchanama, but to during statement u/s 108, shows noticee's is the legitimate purchaser of gold. Noticee has produced the gold bill. The noticee does not know what is written in panchnama as well as statement has been recorded in English, he was an Illiterate Person and he study up to 9<sup>th</sup> stander he is not known the what is written in the panchnama and statement which he was only asked the general questions about his family, he was forced to sign in fear of arrest, he simply signed the papers. It may also be reiterated that the instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed.

**11.3** He further stated that the Department has stressed upon declaration to be filed upon section 77 of the Customs Act, 1962 and which has not been filled by the noticee on his arrival in India; moreover, the airlines staff had neither bothered to provide the customs declaration form nor the same was handed during the time of disembarkation. The declaration form, if provided would have been definitely filed before the authorities and necessary duty payment would have been made without any difficulty; that the statement taken under section 108 of the Customs Act, 1962 was given under duress and fear of being arrested and the threat was given by the officers as such; furthermore the same would have been immediately retracted after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

**11.4.** The noticee had made very clear on dated 01.03.2025 that the seized goods belonged to him but to no avail and the officers were hell bent on booking a case against him i.e. the noticee. had been given some more time, he would have definitely after discussing with officers filed a declaration as required under law. It is not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage. In addition to para of the said SCN, it has been stated as to why penalty should not be imposed upon his under section 112 of the Customs Act, 1962. The noticee has not acquired possession of or in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any

goods which he knows or has reason to believe are liable to confiscation under section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Also penalty has been proposed under section 112 of the Customs Act, 1962. It may be stated that the noticee is not a repeated offender that he has simply failed to declare the gold in the declaration.

**11.5.** He further submitted that the statement taken under section 108 of the Customs Act, 1962 was given under duress and fear of being arrested and the threat was given by the officers and also not allowed to read and not allowed to write in his own handwriting which he knows very well as Gujrati such; furthermore, the same would have been immediately retracted after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law. It is further submitted that the statement was recorded under duress and threat and the statement recorded is not sustainable as can be seen from the below mentioned provisions of section 138B of the Customs Act, 1962. He further relied on the judgment of Hon'ble Supreme Court of India in case of Noor Aga v/s State of Punjab wherein Hon'ble Court stated as:

*There is another aspect of the matter which cannot also be lost sight of. A search and seizure or an arrest made for the purpose of proceeding against a person under the Act cannot be different only because in one case the authority was appointed under the Customs Act and in the other under another. What is relevant is the purpose for which such arrest or search and seizure is made and investigation is carried out. The law applicable in this behalf must be certain and uniform.*

Even otherwise Section 138B of the 1962 Act must be read as a provision containing certain important features, namely:

- (a) There should be in the first instance statement made and signed by a person before a competent custom official.*
- (b) It must have been made during the course of enquiry and proceedings under the Customs Act.*

Only when these things are established, a statement made by an accused would become relevant in a prosecution under the Act. Only then, it can be used for the purpose of proving the truth of the facts contained therein. It deals with another category of case which provides for a further clarification. Clause (a) of sub-section (1) of Section 138B deals with one type of persons and clause (b) deals with another. The Legislature might have in mind its experience that sometimes witnesses do not support the prosecution case as for example panch witnesses and only in such an event an additional opportunity is afforded to the prosecution to criticize the said witness and to invite a finding from the court not to rely on the assurance of the court on the basis of the statement recorded by the Customs Department and for that purpose it is envisaged that a person may be such whose statement was recorded but while he was examined before the court, it arrived at an opinion that his statement should be admitted in evidence in the interest of justice which was evidently to make that situation and to confirm the witness who is the author of such statement but does not support the prosecution although he made a statement in terms of Section 108 of the Customs Act. We are not concerned with such category of witnesses. Confessional statement of an accused, therefore, cannot be made use of in any manner under Section 138B of the Customs Act. Even otherwise such evidence is considered to be of weak nature.

Article 20 (3) of the Indian Constitution. Clause (3) of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself. It is a protection against such compulsion resulting in his giving evidence against himself.

**11.6** He submitted that his client cannot be penalized under section 112 as the department has no evidence proving that he in any way has done any of the action enumerated above in the manner alleged contrary to the provisions of the Customs Act, 1962. It has been consistently held by the Hon'ble Courts, Tribunals and Revisionary Authority of Govt. of India that if the import of commodities is not completely banned, Gold is not prohibited then such commodities or articles could be released on redemption fine. Further, he submitted there is a plethora of Judgements both for and against the release of gold seized in Customs Cases. A combined reading of all the cases with specific reference to the policy/Rules in vogue at the relevant times, will show that depending on circumstances of each case in hand and the profile of the person involved, the goods in question may become "Prohibited" which are otherwise not listed in the prohibited categories. However, despite the goods being prohibited the same can be released or re-exported in the discretion of the Adjudicating Authority, which discretion has to be exercised as per the canons laid down by the Hon. Apex Court as discussed above. He submitted following case law in his defense:-

**1. Yakub Ibrasher Yousuf 2011(263) ELT-685(Tri.Mum) and subsequently 2014-TIOL-277-Cestst-Mum**

*The Hon Tribunal while allowing redemption of gold not declared before Customs held: -*

*Redemption Fine- option of- Option of redemption has to be given to person from whose possession impugned goods are recovered. – On the facts of the case option of redemption fine allowed to person who illicitly imported gold with a view to earn profit by selling it, even though she had not claimed its ownership - Section 125 of Customs Act 1962. [para5.6]*

**2. Shaikh Jameel Pasha Vs Govt. Of India 1997(91) ELT277(AP)**

*The Hon. High Court of Andhra Pradesh in the above case, while deciding the Scope of section 125 to allow redemption of gold brought by passenger unauthorisedly held that:*

*Redemption Fine –Customs– Gold in the form other than ornaments imported unauthorisedly– Option to pay fine lieu of confiscation to be given to the importer in terms of the second part of section 125(1) of Customs Act, 1962, goods being otherwise entitled to be imported on payment of duty,*

**3. Kadar Mydeen V/s Commissioner of Customs (Preventive), West Bengal 2011(136) ELT 758): -**

Gold brought as a baggage by the appellant not declared – Confiscation under section 111(d) of the Customs Act, 1962 sustainable- However, option given to appellant to redeem the same on payment of a fine of Rs.1.5 lakhs Section 125 ibid.

4. Order No: 426/04 issued vide File No: 380/57/8 2004-RA Cus dated 21.9.2004 passed by the Revisionary Authority, Government of India, upholding the order of the Commissioner of Customs (Appeals) Mumbai Airport order redemption of the non-declared seized gold imported by an eligible passenger on payment of fine, penalty and duty. Latest judgement of the Revisionary Authority, New Delhi are also enclosed herewith which is self-explanatory:

Further, he submitted the latest RA Orders: -

1. Order No: 73/2020-Cus (Wz)/Asra/Mumbai Dt. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)
2. Order No: 58/2020-Cus (Wz)/Asra/Mumbai Dt. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)

3. Order No: 61/2020-Cus(Wz)/Asra/Mumbai Dt. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
4. Order No: 126/2020 Cus(Wz)/Asra/Mumbai Dt. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Poket Case granted RF, PP)
5. Order No: 123-124/2020-Cus(Wz)/Asra/Mumbai Dt.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.
6. 2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.
7. Order No: 20/2021-Cus(Wz)/Asra/Mumbai Dt. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)
8. Order No: 954/2018-CUS(Wz)/Asra/Mumbai Dt. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)
9. Order No: 29/2018-Cus(Wz)/Asra/Mumbai Dt. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)
10. Order No: 140/2021 Cus(Wz)/Asra/Mumbai Dt. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF,PP)
11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).
12. Order No: 245/2021-Cus(Wz)/Asra/Mumbai Dt. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
13. Order No: 214/2021-Cus(Wz)/Asra/Mumbai Dt. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
14. Order No: 10/2019-Cus(Wz)/Asra/Mumbai Dt. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)
16. Order No. 243 & 244/2022-Cus(Wz)/Asra/Mumbai Dt 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)
17. Order No. 282/2022-Cus(Wz)/Asra/Mumbai Dt. 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).
18. Order No. 287/2022-Cus(Wz)/Asra/Mumbai Dt 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).
19. Order No. 282/2022-Cus(Wz)/Asra/Mumbai Dt 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)

20. Order No. 284/2022-CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 In C/A Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)
21. Order No. 314/2022-Cus(Wz)/Asra/Mumbai Dt 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)
22. Order No. 56/2023-Cus(Wz)/Asra/Mumbai Dt 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)
23. Order No. 10/2019-Cus(Wz)/Asra/Mumbai Dt 30.09.2019 in C/A Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)
24. Order No. 404 & 405/2023-Cus(Wz)/Asra/Mumbai Dt 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)
25. Order No. 349/2022-Cus(Wz)/Asra/Mumbai Dt 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)
26. Order No. 395-396/2023-Cus(Wz)/Asra/Mumbai Dt 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
27. Order No. 352/2022-Cus(Wz)/Asra/Mumbai Dt 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
28. Order No. 309/2022-Cus(Wz)/Asra/Mumbai Dt 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
29. Order No. 380/2022-Cus(Wz)/Asra/Mumbai Dt 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
30. Order No. 516-517/2023-Cus(Wz)/Asra/Mumbai Dt 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)
31. Order No. 786/2023-Cus(Wz)/Asra/Mumbai Dt 25.10.2023 In C/A Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
32. Order No. 885/2023-Cus(Wz)/Asra/Mumbai Dt 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
33. Order No. 883/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
34. Order No. 907-909/2023-Cus(Wz)/Asra/Mumbai Dt 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
35. Order No. 899/2023-Cus(Wz)/Asra/Mumbai Dt 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
36. Order No. 898/2023-Cus(Wz)/Asra/Mumbai Dt 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

37. Order No. 880-882/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
38. OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
39. OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023 IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
40. Order No. 961/2023-Cus(Wz)/Asra/Mumbai Dt 29.12.2023 in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
41. Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)
42. Order No. 830-831/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

Further, he submitted the case law wherein NRI passenger had been allowed release of goods in lieu of RF and PP.

1. Order no: 404-405/2023-Cus (Wz) /Asra/Mumbai/ Dt. 30.03.2023 in C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Huzefa Khuzefa Mamuwala (2. Shri Shabbir Ranijiwala (10 Pieces of Gold Bars 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
2. Order no: 58/2020-Cus(Wz)/Asra/Mumbai/ Dt. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Shabbir Taherally Udaipurwala (Gold weighing 466.640 grams Concealed Re-Export Nee Case granted RF, PP)
3. Order no: 605/2023-Cus (Wz) /Asra/Mumbai/ Dated. 22.08.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Hitesh laxmichand gagani (1 Gold kada and 1 gold chain 350.890 grams Concealed Re-Export Nee Case granted RF, PP)
4. Order no: 61/2020-Cus (Wz) /Asra/Mumbai/ Dated. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Basheer Mohammed Mansuri (10 Pieces of Gold Bars 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
5. Order In Original No: JC/PK/ADJN/381/2021-22 Date Of Order 31.03.2022 And Date of Issue 12.04.2022 Joint Commissioner Of customs CSMI Airport Mumbai V/s Ms. Rashmi Satish Mandelia (3 Gold Biscuits (Bars) 349.000 Concealed Concealed Re-Export Nee Case granted RF, PP)
6. Order no: 280/2022-Cus (Wz) /Asra/Mumbai/ Dated. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Priyal Sanjay Chokshi (3 Pieces of crude Gold Bangles 140.00 Grams Concealed Re-Export Case granted RF, PP)
7. Order no: 281/2022-Cus (Wz) /Asra/Mumbai/ Dated. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP)
8. Order no: 389/2023-Cus (Wz) /Asra/Mumbai/ Dated. 29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 700.00 grams Concealed Re-Export Nee Case granted RF, PP)

9. Order no: 65/2023-Cus (Wz) /Asra/Mumbai/ Dated. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP)
10. Order no: 402/2022-Cus (Wz) /Asra/Mumbai/ Dated. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP)
11. Order no: 349/2022-Cus (Wz) /Asra/Mumbai/ Dated. 29.11.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Kakali Sardar (8 Gold Bangles 2 Gold Rings 550.000 Grams Concealed Re-Export granted on RF, PP)
12. OIA No. AHD-CUSTM-000-APP-082-25-26 Dated 18.06.2025 In c/a Mr. Ramesh Chandra Patel V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)
13. OIA No. AHD-CUSTM-000-APP-083-25-26 Dated 18.06.2025 In c/a Mr. Lokesh Kalal V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)
14. OIA No. AHD-CUSTM-000-APP-088-25-26 Dated 19.06.2025 In c/a Mr. Kesari Singh V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)
15. OIA No. AHD-CUSTM-000-APP-103-25-26 Dated 25.06.2025 In c/a Mr. Zaidkhan Qayyumkhan Pathan V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)

It has also been held by the Hon'ble CESTAT: That there may be consistency in the approach of the adjudicating authorities while deciding similar issues. Reliance in this regard is placed on the decision rendered in the case of Copier Company Vs Commissioner of Customs, Chennai (2007 (218) ELT- 142 (Tribunal) order of the lower authority for the gold/absolutely: -"The word prohibited" occurring in sub-section-(1) above and the word prohibition' occurring in section 111(d) have to be construed on similar considerations as 'Prohibition' has been held to include (restriction' vide Shaikh Mohd. Omer (Supra). The word 'Prohibited' occurring in section 125(1) can also be understood in the sense of 'restricted'.

It would follow that in the case of second-hand photo-copiers restricted for import, the adjudicating authority, may, in its discretion, consider allowing the importer/owner of the goods to redeem the same against payment of fine. In exercising this discretion, the authority may take the relevant factors into account. We are of the view that these factors must be relatable to the goods in question. For instance, if the goods are unconditionally prohibited from importation, reasons for claiming redemption. On the other hand, if the goods are conditionally prohibited from importation (i.e. no importation without specific licence), the importer owner may claim redemption of easier grounds. In the instant case, absolute confiscation which has its roots in the provisions of section 125(1) of the Customs Act,1962. For the reasons already recorded, we set aside the impugned orders and allow these appeals by way of remand directing the Commissioner to fine the appellants, can option to redeem the goods under section 125 of the Customs Act,1962, against payment of a reasonable fine which shall be determined after shearing the party."

Further, he relied upon the judgments in cases as: -

- In the case of **Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.)** the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.

- A. Rajkumari vs CC (Chennai) 2015(321) ELT540(Tri-Chennai) In this case redemption of absolutely confiscated gold was allowed against reasonable in despite the fact that 70(Seventy) gold bars (10 Tolas each) were found concealed in the Air Conditioner brought by the passenger. This case was also affirmed by the Hon. Apex Court vide 2015(321) ELTA 207 (SC). Therefore, what transpires from this recent judgement of the Hon. Supreme Court (Supra) is that even in case of clever (ingenious) concealment of gold, the option of redemption under section 125 of Customs Act 1962 can be exercised to secure ends of Justice. The ratio of this judgement is squarely applicable to the present case. Relying on the latest judgments in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been on redemption Fine and personal Penalty.

Further, *relying on the latest judgements in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been released on redemption Fine and personal Penalty:-*

- High Court of Judicature at Allahabad Sitting at Lucknow, in Civil Misc Review Application No. - 156 of 2022 in case of Sri Rajesh Jhamatmal Bhat and Another
- Rajasthan High Court, Manoj Kumar Sharma S/o Late Shri ... vs Union of India on 17 February, 2022

He further submitted that the statement was recorded under duress and threat and that he had never on the previous occasion brought any gold or for that matter any offending goods while he travelled to India. Department has been unable to show that the noticee did travel on occasions with offending goods. This being the first instance on him entire life, he may be pardoned of the consequences just because he failed to seek timely directives from the customs officials at the airport. This prayer before the authority may be taken into consideration for causing justice and arriving at a favorable decision against the noticee. He submitted that his client has been accused of carrying goods himself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from his person which would remotely indicate his involvement in a transaction in the nature of smuggling. He further states that the goods may be released to his client at the earliest even provisionally for which his client is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN. It is also craved that if the same is not possible to release the gold on payment of fine and penalty, orders for Re-Export may be given too, for which his client is ready to pay penalty too and requested for a personal hearing in the matter.

**11.7** To follow the principle of natural justice, personal hearing in the matter was fixed on 29.09.2025, 10.10.2025 and 10.11.2025. Shri Rishikesh Mehra, Advocate and Authorized Representative appeared for the personal hearing on 10.11.2025 on behalf of his client i.e. Shri Govind Singh Chouhan. He re-iterated his written submission dated 14.10.2025. The Noticee came from Abu Dhabi to India and Gold Bars brought not in commercial quantity. He has produced the Bills of purchase gold. The noticee is NRI and residing at Kuwait since 2016. He is an eligible passenger and illiterate person was unable to declare goods due to ignorance of Customs Rules and regulations. Reference is invited under Circular No. 09/2001-Cus Dated 22.02.2001. He Requested to re-export the goods on payment of fine and penalty. He has relied on order of OIA NO. AHD/CUSTOM-000-APP-088-25-26 DT. 25.06.2025 In case of Mr. Zaidkhan Qayyumkhan Pathan Vs. Additional Commissioner of Customs, Ahmedabad in which Commissioner (A), Ahmedabad has

re-export was granted. He, further, requested to take lenient view in the matter and allow to release the gold on payment of duty and fine and penalty.

### **DISCUSSION AND FINDINGS:**

**12.** I have carefully gone through the facts of the case. The Noticee had submitted his written submission through his Advocate and Authorized Representative, Sh. Rishikesh Mehra on dated 14.10.2025. The noticee has availed the opportunity of personal hearing granted to him on 10.11.2025 and reiterated the written submission dated 14.10.2025 in the personal hearing. Accordingly, I take up the case for adjudication on the basis of evidences available on record and submission made by the noticee during the personal hearing.

**13.** In the instant case, I find that the main issue to be decided is whether the gold cut bars, weighing 700.00 grams (Net Weight) is having purity 999.0/24 Kt. and is having Market Value of Rs.61,22,200/-(Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only) and Tariff Value Rs.56,94,098/-(Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only), seized vide Seizure Memo/Order dated 01.03.2025 under Panchnama proceedings dated 01.03.2025 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.

**14.** I find that the Panchnama has clearly drawn out the fact that on the basis of specific intelligence regarding carrying restricted/prohibited goods, the officers of AIU intercepted Shri Govind Singh Chouhan while he was attempting to exit through green channel without making any declaration. On being asked whether he had anything which required any declaration, he denied however on frisking and during the baggage scanning, some dark black coloured images were seen on the X-Ray Screen, indicating that there might be some Gold items in the bag. Therefore, the said bag was opened and checked thoroughly. During the checking of bag, 03 scrub cream boxes were found and on opening them 37 assorted gold cut bars were recovered. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the 37 assorted Gold cut bars and informed that the total weight of the said gold bar comes to 700.00 Grams having purity 999.0/24Kt. which were hidden/concealed, inside the 03 scrub cream boxes. Further, the Govt. Approved Valuer informed that the total Market Value was Rs.61,22,200/- and Tariff Value of the said gold bar was Rs.56,94,098/- and. The details of the Valuation of the said assorted gold cut bars are tabulated as below:

Name of passenger	Details of gold Items	PCS	Certificate no.	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
Shri Govind Singh Chouhan	Gold recovered from the 03 scrub cream boxes	37	1692/2024-25	700	999.0 24Kt	61,22,200/-	56,94,098/-

**15.** Under his submission, the noticee alleged that the statement recorded on 01.03.2025 was not voluntary and the same was recorded under duress and fear of arrest. In this regard, I find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. The offence committed was admitted by the noticee in his statement recorded on 01.03.2025 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has

evidentiary value under the provision of law. I find from the content of the statement dated 01.03.2025 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard and an afterthought, as I also not find any retraction filed by the noticee. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and he signed them after verifying the correctness of the facts, in full presence of mind. I find that the noticee has not submitted any documentary evidence to substantiate his claim that the statements were obtained under duress or threat of arrest. A retraction of a statement recorded under Section 108 of the Customs Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence, however the noticee has failed to submit any such documentary evidences which clearly indicates a calculated step to just mislead the proceedings. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him.

Further, the noticee alleged that he was asked to sign the statements and other documents without being allowed to read or understand their contents. He also claimed that he is an illiterate person and studied upto 9<sup>th</sup> standard only and not well-versed in English language, whereas all the documents signed by him were in English and as per statement, he accepted that he can read, write and speak Hindi & English language, which contradicts his claim that he is not well-versed in the language. This contradiction renders his claim unconvincing and appears to be a deliberate attempt to mislead the adjudicating authority. The contention that the statements were obtained under duress and fear of arrest is clearly an afterthought and a strategic move to derail or misguide the adjudication process. On going through the records of the case, I find that in his voluntarily tendered statement, he disclosed detailed information about his profession, his family details and education background. I find that the statement of Shri Govind Singh Chouhan contain specific and intricate details, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statements. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statement in question. It is on the record that the noticee has tendered his statement voluntarily under Section 108 of the Customs Act, 1962. In view of the above, I find that the statement given by noticee under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. In support of my view, I relied on the following judgements:

- (i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that ***evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.***
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "*Statement recorded by a Customs Officer under Section 108 is a valid evidence*"
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that "*It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962*"
- (iv) *There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as*

- held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that **"Confessional Statement corroborated by the Seized documents admissible even if retracted."**
- (vi) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:  
*Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.*
- (vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323( SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "
- (viii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:  
*Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily. When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*
- (ix) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:  
*"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is*

*not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."*

*(emphasis supplied)*

(x) Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30.**

**16.** I find that the noticee has alleged in his submission that the instruction mentioned under Circular No: 9/2001-Cus dated 22.02.2001 was not followed. He further alleged that he had declared the gold orally but the same was not considered and as per Notification No. 12/2012-CUS dated 17.03.2012 and being an NRI, he is an eligible passenger to bring the gold into India which was purchased by him for personal use and from his hard-earned money. In this regard, I have carefully gone through the instruction mentioned in the Circular No. 09/2001-Cus dated 22.02.2001 and procedure for procurement of gold as mentioned in the Notification No. 12/2012-Cus dated 17.03.2012. I find that Circular No. 09/2001-Cus dated 22.02.2001 laid down the procedure/guidelines regarding verification and to stop unscrupulous passengers from bringing goods in commercial quantities. The circular discussed about the oral declaration specifically for the passenger who approach the "Red Channel" and filed Oral declaration (OD) on the Disembarkation Card, however, in the instant case, the noticee has not filed any Disembarkation card and tried to exit through Green Channel without making any declaration. The noticee had opted for the Green Channel for customs clearance without declaring the aforesaid items in the customs declaration form as required for the goods which was in his possession. Therefore, the allegation of the noticee of not following the instruction of the said circular is far from the truth and not creditworthy.

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India. It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

I also take note that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC

(HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

**16.1.** Further, as per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that as per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a value cap of Rs.50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. Further, the Board has also issued instructions for compliance by "eligible passenger" and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

**16.2.** A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold item having total weight 700.00 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that he wanted to clear the gold clandestinely without payment of eligible custom duty. In this connection, I also refer to Boards instructions issued vide F.No.495/6/97-Cus.VI dated 6-5-96 and reiterated in letter F.No.495/19/99-Cus.VI dated 11.4.2000 wherein it was clearly stated that the import of goods (gold in the instant case) in commercial quantities would not be permissible within the scope of the Baggage Rules, **even on payment of duty**. From the above findings and guidelines, it is crystal clear that the noticee does not fall under the ambit of "eligible passenger" to bring the gold as claimed by him in his submission. Further, the manner of recovery of gold clearly indicates that the concealment was not only ingenious but also premediated. The noticee also admitted to possession, carriage, non-declaration, concealment and recovery of gold. I find that find that every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. Therefore, the allegation of noticee that instruction under Circular No. 09/2001-Cus dated 22.02.2001 and Notification No. 12/2012-Cus dated 17.03.2012 was not followed is frivolous.

**17.** I find under submission that the noticee mentioned that it was his first time to bring the gold and due to ignorance of Customs Laws, he was unable to declare the same before authority. The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. **Hon'ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that ignorance of law is no**

**excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)].** Further, he alleged that no declaration form was provided to him by airline staff and if same was provided he would surely declare the same. In this regard, I find that the noticee himself stated in his written submission that he worked in abroad since 2016 and a frequent flier. Therefore, being a frequent flier, the plea that due to ignorance of law, he was unable to declare the same is appears false and not creditworthy. It is clear case of non-declaration with an intent to smuggle the gold. The plea taken by noticee seems not credit worthy as if he wants to declare the same, he may approach the airline staff at the time of journey and asked for the baggage declaration form, and also he may use the "Athithi App" for declaration which is available for the passenger in public domain. Being a frequent flier, making excuse of not providing declaration form, merits no consideration. Also, the panchnama narrates the fact that the impugned foreign origin gold was not declared by the noticee on his own and also not declared even after asking by the officers and it was recovered only after deep examination of the baggage of the noticee. Also, in his voluntary statement he admitted that he did not make any declaration before the authority and also not inclined to do so.

In view of the non-declaration and the fact of having admitted carriage and possession of the impugned gold, it was established that the noticee had failed to declare the gold bar to the customs as required under Section 77 of the Customs Act, 1962. It was therefore evident that the noticee intended to evade duty as he had not made true and correct declaration of the dutiable goods possessed by him. Moreover, the noticee had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel. Thus, it is proved that noticee 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 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 in terms of Section 123 of the Customs Act, 1962.

**18.** Further, he alleged that the gold is not fall under the "Prohibited goods". With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following: -

*"Further, Section 2(33) of the Act defines "Prohibited Goods" as under: - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with."* From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to

certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in *Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others* [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated the said contention and held thus:- "... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition.

Further, in case of *Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai* [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (i.e. the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."*

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of *Kiran Juneja Vs. Union of India & Ors.* has held that "A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". Relying on the ratio of the above judgments state above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, ibid.

**19.** Further, it was alleged by the noticee that it was not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage. He further contended that he was not allowed to declare the gold. In this regard, I find that, the noticee was carrying a very large quantity of gold in form of 37 assorted gold cut bars which had been concealed inside the 03 scrub cream boxes placed in his luggage bag and had not declared the same to the Customs. Even after interception, when the noticee was asked about the possession of any gold or dutiable items, he had stoically denied that he was carrying any gold. The noticee had not declared the huge quantity of gold in his possession in the Customs declaration form. The noticee had not filed a true declaration to the Customs and had clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The noticee had cleverly and innovatively concealed the huge quantity of gold inside the motor of mixer blender which reveals his mindset to smuggle the goods and evade the duty. The quantum of gold and the manner of attempting to smuggle indicates that the same was

for commercial use. The method used by the noticee can be termed ingenious, as he had successfully passed through the security of the overseas departing airport and also tried of removing the same clandestinely at the arrival airport. The mode of concealment was clever and premediated and just to hoodwink the customs officers. The noticee did not intend to declare the gold in his possession to Customs. Had he not been intercepted, the noticee would have gotten away with such a large quantity of gold. I find that this kind of act of noticee abusing the liberalized facilitation process for genuine passengers and same should be dealt with firmly and deterrents available in the law are required to be strictly enforced in the instant case. Accordingly, I find that the confiscation of the gold is therefore justified and the noticee had rendered himself liable for penalty for his omissions and commissions.

**20.** I find that the noticee has clearly accepted that he had not declared the gold in form of 37 assorted gold cut bars concealed inside the 03 scrub cream boxes, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement he submitted that the gold was not purchased by him. The gold (concealed in the scrub cream boxes) was handed over to him by a person named Kishor Singh who also works in Kuwait. The said gold was supposed to be handed over to an unknown person once he would exit the Airport. For the same some handsome amount of money was to be given to the passenger. Contact details of the unknown person to whom the gold was to be handed over was not shared with him. But in his written submission dated 14.10.2025, he mentioned that the gold was purchased by him from his hard-earned money and purchased the gold from Abu Dhabi and submitted copy of bill/invoice. Under his submission, he alleged that the gold was purchased by him and at the time of interception, he had produced the purchase bill but same was not taken into record and officers booked a case against him. On contrary, from the documents available on record, I find that at the material time, he confessed in his statement that he did not want to declare the gold before the authority and try to remove the same clandestinely without payment of eligible customs duty. Therefore, the contention made in submission that he was having bill with him and about to declare the same and before that a case was made against him, is not tenable and afterthought.

**20.1** Further, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that “in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt”. And “Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold **as well as duty being paid in the foreign currency**, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them”. From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Moreover, for instance, if I agree with the contention of the noticee that he was inclined to declare the gold and wanted to pay the applicable duty on the said gold, but he was not allowed to do so, however, on other hand he had no foreign convertible exchange with him at the time of arrival to pay the duty as per the conditions stipulated vide Notification No. 12/2012-Cus dated 17.03.2012, which is confirmed by him in his written submission also. Therefore, the contention of noticee that he wanted to declare the said gold and accordingly wants to pay the duty on that

is an afterthought. Merely claiming that the gold was purchased by him only on basis of invoice which itself submitted at later stage at the time of written submission without any authenticity and without any other supporting documentary evidences viz, bank transactions details, source of money etc. which proves that the gold was purchased in legitimate way for his personal use, does not make him owner. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee 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. As 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 in terms of Section 123 of Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence in his written submission which proves that the gold was purchased in legitimate way and for bonafide personal use. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold was purchased by him is not tenable on basis of no documentary evidence.

**21.** From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24Kt having 999.0 purity weighing 700.00 grams, in form of 37 assorted gold cut bars concealed by the noticee inside the 03 scrub cream boxes, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 700.00 grams, seized under panchnama dated 01.03.2025 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By secreting the 37 assorted gold cut bars concealed inside the 03 scrub cream boxes and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. *The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.* It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that he has **involved himself in carrying, keeping, concealing and dealing with the impugned goods** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**22.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e. Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six

months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Further, the noticee has not fulfilled the conditions prescribed for the eligible passenger to carry the gold in terms of Notification No. 50/2017-Customs, dated 30.06.2017. Therefore, the said improperly imported gold weighing 700.00 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**23.** It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to smuggle the gold and to evade payment of Customs duty applicable thereof. The records before me shows that the passenger/noticee did not choose to declare the prohibited goods and opted green channel for customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. The cylindrical shape thick gold bar weighing 700.00 grams of 24Kt./999.0 purity, having total Market Value of **Rs.61,22,200/-**(Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only) and Tariff Value **Rs.56,94,098/-**(Rupees Fifty Six Lakh Ninety Four Thousand Ninety Eight only) concealed inside the 03 scrub cream boxes, was placed under seizure vide panchnama dated 01.03.2025. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by way of concealing and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

**24.** Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, alongwith defense submission. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. For instance, the case law of Dhanak Ramji vs. UOI[2010(252)ELT A102(SC)] relied upon by the noticee does not apply to the present case as the aspect of ingenious concealment of gold was not the issue in the cited case and same is distinguishable. In the similar manner the noticee has referred the case law of A. Rajkumari vs. CC, Chennai[2015(321)ELT 540(Tri-Chen)] to draw the conclusion that the impugned gold could be released on imposition of redemption fine and also stated that the Supreme Court had affirmed the order vide its order reported at [2015(321)ELT A207(SC)]. However, the Hon'ble Supreme Court has dismissed the appeal of the revenue without going into the merits only on grounds of delay and same is also distinguishable. Further, the noticee has referred the case law of Manoj Kumar Sharma S/o Late Shri ... vs Union of India dated 17.02.2022 High Court of Judicature for Rajasthan (D.B. Civil Writ Petition No. 12001/2020) in his defense. On going through the said judgment, I find that Hon'ble High Court of Rajasthan had correctly held that the goods were liable for confiscation and the matter was remanded back to revisional authority for imposition of fine, that the petitioner may pay to avoid the absolute confiscation of seized gold. I find that the noticee has submitted various case law in his written submission just to make his submission bulky without referring their facts and circumstances. I am of the view

that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, *I find that judgments relied upon by the noticee, is not squarely applicable in the instant case.* In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Merely claiming the ownership without any documentary backing, is not proved that the goods purchased in legitimate way and belonged to the noticee. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the noticee did not want to declare the said 37 assorted gold bars and tried to remove it clandestinely, to evade payment of customs duty. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of *Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)]* *that the option to release 'Prohibited goods' on redemption fine is discretionary.* In the case of *Raj Grow Impex (Supra)*, the Hon'ble Supreme Court has held that *"that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration."* Hon'ble Delhi High Court has, in case of *Raju Sharma [2020(372) ELT 249 (Del.)]* held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive."* Also, the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as: -

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

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

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

**24.2.** 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.

**24.3.** 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).*

**24.4** 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.*

**24.5.** 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”.

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

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

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

**25.** In present case after considering all the facts and submissions of the case, I find that there is deliberate act of violation by the noticee by not making mandatory declaration in terms of Section 11 of Customs Act, 1962, Section 77 of Customs Act, 1962 and also contravened Para 2.20 of Foreign Trade Policy read with Baggage Rule, 2016. I find that noticee had failed to produce any material evidence and explanation as to how the finances were arranged to buy the gold. A passenger found in possession of gold in bullion form worth of **Rs.61,22,200/-** then his purpose & intention cannot be other than avoidance of payment of duty and legal obligations laid down for import of gold in India under Customs Act, 1962 and any other law for the time being in force. The impugned gold was in standard form and was concealed inside 03 scrub cream boxes which were recovered during baggage scanning. The concealment was done in a pre-mediated and ingenious manner which was hard to detect during the routine check and surveillance. Accordingly, on the basis of above discussion and findings, the gold weighing 700.00 grams of 24Kt./999.0 purity in form of 37 assorted gold bars, found concealed inside the 03 scrub cream boxes, is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 700.00 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act,1962;**

**26.** Further, the noticee has requested for allowing the said seized gold bar for re-export. Before, further discussion, I would like to reproduce the provisions envisaged under Section 80 of the Act as:

*“Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name”.*

**26.1** On a plain reading section, it appears that a declaration under Section 77 is pre-requisite condition for detention/re-export in terms of Section 80ibid. Hon’ble Allahabad High Court has, in case of Deepak Bajaj [2019 (365) ELT 695 (All.)] held that

a declaration under Section 77 is a sine qua non for allowing re-export under Section 80. In this case, the noticee had made no written declaration in respect of the subject gold. The noticee denied of having gold with him during investigation at airport and 37 assorted gold bars were recovered only after thorough checking of the passenger as well as his luggage. The main issue in the case is the manner in which the impugned gold was being brought into country. The noticee had deliberately concealed the gold ingeniously in form of 37 assorted gold bars in 03 scrub cream boxes and did not incline to declare the same before the Customs Authority. Thus, taking into account the facts on record and the serious, grave, novel and bold modus operandi opted by the noticee to brought the gold, it is very evident that the intention of the noticee was to remove the gold clandestinely without making payment of duty by escaping from the eyes of officers. Further, Hon'ble Delhi High Court has, in case of Jasvir Kaur vs. UOI [2019(241)ELT 521 (Del.)] held that re-export "cannot be asked for as a right-----". The passenger cannot be given a chance to try his luck and smuggle gold into country and if caught he should be given permission to re-export. Therefore, the option under Section 80 of the Act would not be applicable to him. Therefore, the request for re-export is not accorded as per the provisions.

**27.** In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea is established beyond doubt on the basis of documents available on the records and discussion. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute". 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 noticee attempted to smuggle the said gold weighing 700.00 grams, having purity 999.0/24Kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act" and covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. Therefore, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

**28. Accordingly, I pass the following Order:**

#### O R D E R

- i. I order **absolute confiscation** of 37 assorted gold bars, having purity 999.0/24Kt., weighing 700.0 Grams and having the Market Value of **Rs.61,22,200/-(Rupees Sixty One Lakh Twenty Two Thousand Two Hundred only)** and Tariff Value as **Rs.56,94,098/-(Fifty Six Lakh Ninety Four Thousand Ninety Eight only)**, recovered from 03 scrub cream boxes

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carried by the passenger, Shri Govind Singh Chouhan, placed under seizure under panchnama proceedings dated 01.03.2025 and Seizure Memo Order dated 01.03.2025 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. 15,50,000/-** (Rupees Fifteen Lakhs Fifty Thousand Only) on **Shri Govind Singh Chouhan** under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

**29.** Accordingly, the Show Cause Notice No. VIII/10-24/SVPIA B/O&A/HQ/2025-26 dated 21.08.2025 stands disposed of.

(Shree Ram Vishnoi)  
Additional Commissioner  
Customs, Ahmedabad

**DIN:20251171MN0000818026**

**F. No. VIII/10-24/SVPIA-B/O&A/HQ/2025-26**

**Date:18.11.2025**

By SPEED POST A.D.

**To,**  
**Shri Govind Singh Chouhan,**  
**S/o Shri Kesar Singh Chouhan,**  
**Village Vada Gorap, PO Katisor via Punjpur,**  
**The Aspur, Dungarpur, Rajasthan – 314038**

Copy to: -

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