

OIO No: 11/ADC/SRV/SRT-AIRPT/2025-26
F. No. VIII/26-44/AIU/CUS/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

सीमा शुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380009.

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DIN: 20250771MN0000469790

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/26-44/AIU/CUS/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/26-44/AIU/CUS/2024-25 dated 17.03.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	11/ADC/SRV/SRT-AIRPT/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	15.07.2025
E	जारी करने की तारीख/ Date of Issue	:	15.07.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner,
G	आयातक/यात्री का नाम और पता / Name and Address of Importer / Passenger	:	Ms. Saloni Jignesh Varaiya, 703, Triveni Apartment, Timaliyawad, Nanpura, Surat City, 395001, Gujarat
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी 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 ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

Ms. Saloni Jignesh Varaiya (hereinafter referred to as the "Passenger/Noticee"), aged 34 years (DOB: 16.11.1991), holding an Indian passport bearing No. Z6483236, addressed at 703, Triveni Apartment, Timaliyawad, Nanpura, Surat City, 395001, Gujarat, India, arrived at Surat International Airport on 22.12.2024 from Bangkok in Air India Express Flight No. IX-177 dated 22.12.2024.

2. Whereas, based on information gathered by profiling the arriving passengers, Ms. Saloni Jignesh Varaiya was suspected to be carrying high value dutiable/prohibited goods in-person or in the baggage, who was intercepted by the officers of the Air Intelligence Unit (AIU) (hereinafter referred to as the "officers"), in the presence of the panchas under the Panchnama proceedings dated 22/23.12.2024, near the green channel of the arrival Hall of the International Terminal of International Airport, Surat. The passenger was found to carry two bags, one grey trolley bag of the brand "PRIORITY" and one black backpack of the brand "LUTTUOLANG". The officers asked the passenger whether she had anything to declare, which the passenger denied. The officers informed the passenger that they would conduct a personal search and a detailed examination of her baggage. The officers offered their search to the passenger, but the passenger politely denied it. Thereafter, the officers asked the passenger whether she wanted to be searched in the presence of the Executive Magistrate or the Superintendent (Gazetted Officer) of Customs. In reply, the passenger consented to be searched before the Superintendent of Customs. The Customs officer and the passenger entered the room meant for Baby Care, located in the arrival area, for frisking purposes. During the frisking of the passenger, it was noticed that she was wearing blue (denim) jeans pants, and the waistline of the jeans pants worn by the passenger was abnormally thick/swollen, indicating some fillings inside them. Hence, the passenger was asked to change her jeans pants and hand over the same for further examination in the scanner. The passenger changed and handed over the same to the officer for examination. Thereafter, the jeans pant was passed through the XBIS scanner machine in the arrival hall of Surat International Airport in the presence of the passenger and panchas. While scanning, a dark image, indicating the presence of some high-density metallic object like gold in the waistline area, was seen in the monitor attached to the scanner machine. The waistline was cut from the remaining jeans and a belt-shaped white pouch, approximately 20 inches long, containing some paste-like material recovered from jeans pants. The said pouch was weighed in the weighing machine, weighing 732.21 grams.

3. Afterwards, the officers passed her luggage through the XBIS scanner machine and thoroughly checked it after withdrawing its contents. However, nothing objectionable or prohibited goods were found.

4. Whereas, the officers, in the presence of the panchas and the passenger, called Shri Vikasraj Juneja, Government Approved Valuer, at Surat International Airport. The Customs officer informed him about the recovery of the belt-shaped white pouch, appearing to be gold, from the passenger, and Shri Vikasraj Juneja requested the officers to proceed to Shri Ambica Touch Refinery for ascertaining the quantity and nature of metal present inside the belt-shaped white pouch recovered from the jeans of the passenger. At Shri Ambica Touch Refinery, the material melted in the furnace, and gold in nugget form, weighing 549.950 gms,

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was obtained along with some ash remains. The gold nugget obtained was kept in a pouch and packed in a green envelope. Thereafter, the Customs officer again contacted the Government-approved Valuer, Shri Vikasraj Juneja, and requested him to come to Surat International Airport for examination, purity certification, and valuation of the said gold nugget. Shri Vikasraj Juneja arrived at Surat International Airport around 01:00 AM on 23.12.2024. After examining and weighing the said gold nugget, Shri Vikasraj Juneja certified it as 24-carat gold, weighing a total of 549.950 grams, with a market value of Rs. 42,95,522/- and a tariff value of Rs. 40,63,581/- as per Notification No. 85/2024-Customs (NT) dated 13.12.2024 and Exchange Rate Notification No. 13/2024 dated 20.12.2024. Subsequently, Shri Vikasraj Juneja issued a valuation certificate dated 23.12.2024/01. The officers then took custody of the said gold nugget weighing 549.950 grams.

5. Then, the above-mentioned 24 kt gold nugget weighing 549.950 gms, recovered from the passenger namely Ms. Saloni Jignesh Varaiya, was placed under seizure under the provisions of Section 110 of the Customs Act 1962 along with the Blue jeans pants worn by the passenger vide Seizure order dated 23.12.2024 under Panchnama proceedings dated 22-23.12.2024, on a reasonable belief that the said gold was smuggled into India and was liable for confiscation under provisions of the Customs Act, 1962.

6. The following documents were withdrawn from the passenger for further investigation:

- Copy of Boarding Pass, from Bangkok to Surat, of Air India Express Flight No. IX-177 dated 22.12.2024, Seat No. 6A, PNR No. A59JVV.
- Copy of Passport No. Z6483236 issued at Bangkok on 27.04.2022 and valid up to 26.04.2032. Her address as per passport was 703, Triveni Apartment, Timaliyawad, Nanpura, Surat City, 395001, Gujarat, India.

7. Further, a statement of the passenger, i.e. Ms. Saloni Jignesh Varaiya, was recorded on 23.12.2024 under Section 108 of the Customs Act, 1962, wherein she inter alia stated:-

- that she was residing at Plot No. 703, Triveni Apartment, Timaliyawad, Nanpura, Surat City, 395001, Gujarat, India, and then she was staying at Watercliff Narathiwas, Gali No. 24, Bangkok, Thailand, for the past 9 years with her husband; that she was a housewife and looked after her family; that she had studied until B.Com.; and that she could read, write, and understand English, Gujarati, and Hindi languages;
- that she was shown and explained the panchnama dated 22/23.12.2024, drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat. Since it was in English and after understanding the same, she had put her dated signature on the panchnama as a token of acceptance of the facts stated therein;
- that she had bought the gold, in paste form, from a person in Bangkok; that she did not know the name and whereabouts of the said person; that she had bought the gold to sell in India for earning some profit and had kept the gold in paste form concealed in the waistband of her jeans; that

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she did not declare the said gold because she was aware that importing gold without paying customs duty was an offense, and she was aware of the requirement to declare said gold before Customs; that no other person was involved in the matter, and she had solely bought these goods to sell in India for earning some profit;

- That after clearing immigration procedures, she collected her baggage, and during checkout, Customs intercepted her, and further procedures, as stated in Panchnama dated 22/23.12.2024, were carried out.

8. LEGAL PROVISIONS RELEVANT TO THE CASE

- a)** As per para 2.27 of Foreign Trade Policy 2023, “Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.”
- b)** 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.”
- c)** 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.”
- d)** 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 the Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”
- e)** 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 the Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.”
- f)** As per Section 2(3) of the Customs Act, 1962 – “baggage” includes unaccompanied baggage but does not include motor vehicles.
- g)** As per Section 2(22), of the Customs Act, 1962, the definition of 'goods' includes-
 - a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and

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e. any other kind of movable property;

- h)** 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 the Act or any other law for the time being in force, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”
- i)** 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.”
- j)** As per Section 77 of the Customs Act 1962-“the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.”
- k)** As per Section 110 of the Customs Act, 1962-“if the proper officer has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods.”
- l)** Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under the Act or any other law for the time being in force shall be liable to confiscation under section 111 (d) of the Customs Act 1962.
- m)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.
- n)** 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 are liable to confiscation under Section 111 (j) of the Customs Act 1962.
- o)** As per Section 112 of the Customs Act 1962-“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, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”
- p)** As per Section 119 of the Customs Act 1962, any goods used for concealing smuggled goods shall also be liable for confiscation.
- q)** As per Section 123 of the Customs Act 1962 (Burden of proof in certain cases)
 - (1) where any goods to which the section applies are seized under the 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) The 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.

- r) As per Regulation 3 of the Customs Baggage Declaration Regulations, 2013- “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.”
- s) As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold in any form, other than monetary gold and silver in any form, is amended from ‘Free’ to ‘Restricted’; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

9. CONTRAVENTION AND VIOLATION OF LAWS:

Whereas, from the above, it appeared that:

- (a) Ms. Saloni Jignesh Varaiya had actively involved herself in the instant case of smuggling of gold into India. The said passenger had improperly imported gold of 24 kt in the form of paste concealed inside a belt-shaped white pouch weighing 549.950 gms, having a market value of Rs. 42,95,522/- and tariff value of Rs. 40,63,581/-, without declaring it to the Customs, by way of concealment in person. She concealed the gold in the form of paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by her with a deliberate and mala fide intention to smuggle the said gold into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The gold improperly imported by her with commercial considerations without declaration before the proper officer of Customs could not be treated as bona fide household goods or personal effects. Ms. Saloni Jignesh Varaiya had thus contravened the Foreign Trade Policy 2023, 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
- (b) By not declaring the value, quantity and description of the goods imported by her, the said passenger had violated the provision of the Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, further read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c) The gold improperly imported by the passenger, Ms. Saloni Jignesh Varaiya by concealing the same in-person without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j)

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read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962. Further, the Jeans Pants seized vide seizure order dated 23.12.2024 were also liable for confiscation under Section 119 of the Customs Act, 1962.

(d) Ms. Saloni Jignesh Varaiya, by her above-described acts of omission and commission on her part by concealing the gold in the form of paste inside a belt-shaped white pouch in the waistline of the Jeans pants, had rendered herself liable to penalty under Section 112(b) of the Customs Act, 1962.

(e) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold, weighing 549.950 grams, having market value of 42,95,522/- and tariff value of Rs. 40,63,581/-, without declaring it to the Customs, were not smuggled goods, was upon the passenger, i.e. Ms. Saloni Jignesh Varaiya.

10. Therefore, a Show Cause Notice bearing F. No. VIII/26-44/AIU/CUS/2024-25 dated 17.03.2025 was issued to Ms. Saloni Jignesh Varaiya calling upon her to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 within thirty days from the receipt of the notice as to why:-

(i) The recovered 24 carat gold nugget weighing 549.950 gms., having market value of Rs. 42,95,522/- (Rupees Forty Two Lakh Ninety Five Thousand Five Hundred Twenty Two only) and its tariff value Rs. 40,63,581/- (Rupees Forty Lakh Sixty Three Thousand Five Hundred Eighty One only), seized vide Seizure Order dated 23.12.2024 under panchnama dated 22/23.12.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;

(ii) The Blue colour jeans pants seized vide Seizure Order dated 23.12.2024 under panchnama dated 22/23.12.2024 should not be confiscated under Section 119 of the Customs Act, 1962;

(iii) A penalty should not be imposed upon her under Section 112(b) of the Customs Act, 1962.

11. DEFENCE REPLY

In the Show Cause Notice issued to the noticee, she was asked to submit a written reply/defence submission to the notice within the stipulated time. This office has received a defence submission dated 20.05.2025 to the instant Show Cause Notice from the noticee wherein she has reiterated the contents of the Show Cause Notice and has, inter alia, submitted or contended as follows:

(i) She is a housewife from Surat but presently resides in Bangkok with her husband; she is not well-versed in legal matters. She had purchased the seized gold with her lifetime savings of hard-earned money and carried it for her personal use, making jewellery for her use and consumption; she was advised to carry the gold in paste form, which might not attract attention to ensure safety & security; she requested to consider it as mitigating factor in her favour.

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- (ii) She is not a carrier or habitual offender carrying dutiable goods to evade the duty applicable; the quantity of the gold is not humongous; her solitary mistake may be condoned and pardoned.
- (iii) She has requested and **humbly plead with folded hands that considering the quantity of the gold under seizure, leniency may be shown by exercising discretion in her favour and it may not be confiscated absolutely and she may be allowed to clear the gold on payment of applicable customs duty and redemption fine as deemed fit** in the facts and circumstances of the case. In this regard, she has relied upon the following case laws:
- (a) SMT. JHANSI RANI reported as 2025 (2) TMI 30-MADRAS HIGH COURT.*
- (b) SHRI LOOKMAN MOHAMED YUSUF VERSUS C.C. -AHMEDABAD reported as 2024 (1) TMI 1219 - CESTAT AHMEDABAD*
- (iv) The SCN wrongly proposes a penalty on her under Section 112(b), *ibid*; considering the language of clause (b) of Section 112, it applies in case where the noticee had acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the goods. **All these acts can be done post-importation.** The section provides penalty to take care of actions in relation to the goods after/post clearance of the imported goods as held by the *Hon'ble CESTAT in the case of V. Lakshmipathy Vs Commissioner of Customs, Cochin [2003 (1) TMI 331 – CESTAT Bangalore = 2003 (153) ELT 640 (Tri Bang)]*. In this case, the gold was seized before clearance. Therefore, she was not concerned with acquiring possession of or in any way about carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the impugned goods post their clearance. That being the situation, **the noticee has not done any of the acts mentioned in Section 112(b) of the Act in relation to the impugned goods after/post their clearance on importation and hence the noticee is not liable to penalty under Section 112(b) of the Act.**
- (v) The noticee has further submitted that it has been held recently in the case of *Jorabhai Valabhai Rabari Desai and Premabhai Jethabhai Attiya Patel reported as 2021 (7) TMI 1199 - CESTAT AHMEDABAD* that it is evident from a plain reading of Section 112(b) of the Customs Act, 1962, which uses the expressions **“which he knows or has reason to believe are liable to confiscation under Section 111”**, that penalty under this section can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the said penalty. The facts of the case do not reveal any such element of mens rea or conscious knowledge qua the noticee. Therefore, the proposal to impose the penalty on the noticee under Section 112(b) of the Customs Act 1962 is not justified.
- (vi) The noticee reiterates that she never knew or had any reason to believe that the impugned goods were liable to confiscation under Section 111 in any manner; therefore, she is not liable to penalty under Section 112(b) of the Customs Act, 1962.

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- (vii) The noticee has further submitted that from the language of Section 112(b) it is clear that for imposition of penalty under this clause on a person, involved in carrying, removing, keeping, concealing etc. of goods, which are to be held liable for confiscation under Section 111, the knowledge or reason to believe on the part of the person about the liability of the goods for confiscation is necessary and the burden to prove its existence would be on the Revenue as held by Hon'ble CESTAT in the case of *Green Express Transport Service [2010 (257) ELT 441 (Tri – Del)]*. Thus, the department has squarely failed to discharge that burden. The proposal for the said penalty, therefore, remains unsubstantiated.
- (viii) The noticee did not acquire possession of or was in no way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the impugned goods which she knew or had reason to believe were liable to confiscation under Section 111. There is nothing in the SCN which even remotely alludes to the noticee doing any of the actions **mentioned in clause (b) of Section 112, and hence, a penalty under clause (b) of Section 112 cannot be imposed on her.**
- (ix) The noticee prayed that the facts & the circumstances of the matter may be considered and appreciated in their entirety and justice may be rendered. She has further requested that the gold under seizure be released.

12. RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, opportunities to be heard in person were granted to the noticee to appear for a personal hearing in virtual mode on 10.06.2025 and 24.06.2025. Shri Dineshkumar K. Indrodia (Authorised representative of the noticee), a consultant, appeared for the personal hearing on 24.06.2025 in virtual mode. He reiterated the arguments made in their earlier defence submission dated 20.05.2025 and emphasised the case laws cited therein. He further requested to take a lenient view in the matter.

13. DISCUSSION AND FINDINGS

I have carefully examined the facts of the case, the documents relied upon, the defence submission made by the noticee, and the applicable legal provisions. Accordingly, I proceed to adjudicate the matter based on the evidentiary material and records available on file.

14. In the instant case, I find that the main issues to be decided are as follows: whether;

- (i) The recovered 24 carat one gold nugget weighing 549.950 gms., having market value of Rs. 42,95,522/- (Rupees Forty Two Lakh Ninety Five Thousand Five Hundred Twenty Two only) and its tariff value Rs. 40,63,581/- (Rupees Forty Lakh Sixty Three Thousand Five Hundred Eighty One only), seized vide Seizure Order dated 23.12.2024 under *panchnama* dated 22/23.12.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 or otherwise;

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- (ii) The blue colour jeans pants seized vide seizure order dated 23.12.2024 under *panchnama* dated 22/23.12.2024 should be confiscated under Section 119 of the Customs Act, 1962 or otherwise;
- (iii) A penalty should be imposed upon Ms. Saloni Jignesh Varaiya under Section 112(b) of the Customs Act, 1962 or otherwise.

15. I find that the *panchnama* has revealed that the passenger, i.e. Ms. Saloni Jignesh Varaiya, had arrived at Surat International Airport on 22.12.2024 from Bangkok by Air India Express Flight No. IX-177. Based on passenger profiling, she was intercepted near the green channel by AIU officers under *Panchnama* proceedings dated 22/23.12.2024, on suspicion of carrying dutiable or prohibited goods. She was carrying one grey trolley bag and one black backpack and denied having any goods to declare. Upon frisking in the presence of a Superintendent of Customs, it was observed that the waistline of her jeans was unusually thick. She was asked to change and hand over the jeans, which were then scanned in the presence of *panchas*. The scanner revealed a dark image in the waistline. On cutting open the area, a belt-shaped pouch containing paste-like material was recovered, weighing 732.21 grams. While her baggage showed no contraband, the pouch was taken to Shri Ambica Touch Refinery, which yielded a 24-carat gold nugget weighing 549.950 grams. The gold was valued at Rs. 42,95,522 (Market value) and Rs. 40,63,581 (Tariff value), as certified by Government Approved Valuer Shri Vikasraj Juneja. The gold nugget and the jeans were seized under Section 110 of the Customs Act, 1962, on the reasonable belief of smuggling.

16. Further, I find that a statement by Ms. Saloni Jignesh Varaiya was recorded on 23.12.2024 under Section 108 of the Customs Act, 1962, in which she stated she resided at Plot No. 703, Triveni Apartment, Timaliyawad, Nanpura, Surat, and had been living in Bangkok, Thailand, for the past nine years with her husband. She was a housewife and had studied up to B.Com., with proficiency in English, Hindi, and Gujarati. She confirmed that the *Panchnama* dated 22/23.12.2024, prepared by Customs officers at Surat International Airport, was read and explained to her in English, and she signed it after understanding its contents. She admitted to having purchased gold, in paste form, from an unknown person in Bangkok, intending to sell it in India for profit. She further confessed that she had concealed the gold weighing 549.950 gms, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by her and did not declare it upon arrival, despite knowing that importing undeclared gold without paying customs duty was an offence. She further stated that no one else was involved and that she acted alone. Furthermore, she said that after clearing immigration, she was intercepted by Customs officers during checkout, and that the subsequent proceedings were as recorded in the said *Panchnama*. She has categorically admitted to the offence and acknowledged her liability under the Customs Act, 1962.

17. Further, I find that the noticee has never retracted her aforesaid statement dated 23.12.2024, and the offence committed by the passenger is admitted by her in her statement. Therefore, I consider her statement material evidence in this case and for that I rely on the following rulings from various courts, which have underscored the evidentiary value of statements recorded under Section 108 of the Customs Act, 1962:

- The Hon'ble Apex Court in the case of ***Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)*** has held that the statement made under

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Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner, inculcating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962, can be used as substantive evidence in connecting the applicant with the act of contravention.

- In the **Collector of Customs, Madras, and Ors vs. D. Bhoormull- 1983 (13) ELT 1546(S.C.)** case, the **Hon'ble Supreme Court has held that** the Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records, as well as other documents, are to be evaluated, and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** **Hon'ble Supreme Court held** that the statement made before the Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

In light of the judgments cited above, I am inclined to regard the noticee's statement as material evidence in this case. The statement has sufficient evidentiary value to demonstrate that the passenger, intercepted by the Customs officers on 23.12.2024, had attempted to smuggle the gold weighing 549.950 grams, in the form of paste, concealed inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee, into India.

18. Further, I find that the noticee has submitted a defence submission dated 20.05.2025 to the Show cause notice currently under adjudication. Further, Shri Dineshkumar K. Indrodia (Authorised representative of the noticee), a consultant, appeared for the personal hearing on 24.06.2025, wherein he reiterated their submission dated 20.05.2025, and emphasised the case laws cited therein. In the following paragraphs, I shall proceed to undertake a critical analysis of the arguments advanced by the noticee in her defence submission wherein the noticee has submitted/contended as under:

18.1 I find the plea advanced by the noticee, Ms. Saloni Jignesh Varaiya, that the seized gold was purchased from her lifetime savings for personal use and intended to be made into jewellery, is not tenable given the clear evidentiary findings and her own categorical admissions. The gold was intentionally concealed in paste form inside the waistline of her jeans, a method commonly adopted to evade detection. She has expressly admitted, under Section 108 of the Customs Act, 1962, that she was aware of the requirement of declaration and the legal prohibition against import of gold without payment of customs duty. Her assertion that she is a housewife and not well-versed in legal procedures does not absolve her of liability, especially when she undertook a sophisticated concealment method inconsistent with a bona fide personal import. Furthermore, her claim of personal use is contradicted by her own admission that she had purchased the gold from an unidentified individual in Bangkok for resale in India with a motive of earning some financial profit. The concealment, non-declaration, and intention to earn profit from the sale of gold clearly indicate that the act committed by the noticee was a case of wilful smuggling in violation of the

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Customs Act, 1962. Based on the foregoing, I am of the opinion that there are no mitigating factors that would justify any leniency in this case.

18.2 Further, I find that the plea of the noticee that she is not a habitual offender or carrier of dutiable goods and that the quantity of gold is not substantial is devoid of merit and not supported by the facts on record. I note that the gold recovered, weighing 549.950 grams and valued at Rs. 42,95,522/-, was found ingeniously concealed in paste form within the waistline of the jeans worn by the noticee, a concealment method typically adopted in cases of deliberate smuggling. The noticee, in her voluntary statement recorded under Section 108 of the Customs Act, 1962, admitted to having procured the said gold in Bangkok for resale in India for earning profit and further acknowledged her awareness that such import without declaration and payment of duty constitutes an offence under Indian Customs law. These facts clearly reveal an intentional and conscious violation of the provisions of the Customs Act, 1962. The assertion that it was a solitary mistake does not hold ground because of the clear intent and manner of concealment. The smuggling attempt was not incidental or casual but premeditated. Accordingly, I am of the view that her request for pardon or leniency cannot be accepted, as the act attracts the provisions of Sections 77 and 111 of the Customs Act, 1962.

18.3 Further, I find that her request for leniency and release of the seized gold on payment of duty and fine is unsustainable. The investigation establishes that Ms. Varaiya had deliberately concealed gold in paste form within the waistline of her jeans and intentionally failed to declare the same upon arrival, despite being fully aware of her obligation under the Customs Act, 1962. Her admission that the gold was brought for commercial gain and her conscious effort to evade Customs procedures indicate a clear case of smuggling as defined under the law. Such premeditated actions undermine the Customs framework and revenue protection. In the interest of upholding the law and deterring similar violations in future, I am constrained to reject her plea for leniency. Therefore, in view of the foregoing, I firmly conclude that the confiscation of the gold under Section 111 of the Customs Act, 1962, is warranted, and the request to release the goods on payment of duty and fine is not justified in the present circumstances.

18.4 Further, I find that the argument raised by the noticee that Section 112(b) applies only post-clearance is misconceived. It is essential to highlight that the clause penalizes **any person concerned in "carrying, keeping, concealing" or otherwise dealing with goods liable to confiscation**. The act of concealing gold in paste form within jeans to avoid detection falls squarely within the ambit of "concealing" and "carrying" as envisaged in the Section. Therefore, I am of the considered view that the offence commenced at the time of importation and continued until its eventual detection by the Customs authorities. Further, it is a well-settled legal position that an act of smuggling is complete upon the clandestine importation of goods, regardless of whether the goods have cleared Customs formalities. In view of the foregoing, I reasonably conclude that the conduct of the noticee attracts the imposition of a penalty under Section 112(b) of the Customs Act, 1962.

18.5 Further, I find that the noticee's contention that *mens rea* is absent is rebutted by the noticee's admission under Section 108, wherein she unequivocally stated that she concealed the gold to sell it in India and did not declare the same, being fully aware that such import without duty payment is an offence. This establishes explicit knowledge and intent, fulfilling the ***mens rea***

requirement under Section 112(b). I am of the view that the deliberate concealment technique and evasive behaviour at Customs reinforce her conscious involvement in the act. Therefore, the attempt made by the noticee to claim innocence is thus contradicted by her recorded statement and the manner of concealment, leaving no doubt about her awareness and intent to evade legal duty.

18.6 Further, I find that the noticee's plea that she had no knowledge or reason to believe that the goods were liable to confiscation is untenable. She has not only admitted to purchasing the gold in paste form from an unknown individual abroad, but has also acknowledged ingeniously concealing it in her jeans pants and knowingly bypassing the declaration. These acts reflect deliberate evasion and precise knowledge of illegality. The claim of ignorance stands negated by the sophistication of concealment and her conscious decision to attempt clearance through the Green Channel. Hence, I believe that the provisions laid down under Section 112(b) are satisfied in this case.

18.7 Further, I find the contention raised by the noticee that the burden to prove the noticee's knowledge or intent lies with the Department to be legally incorrect, as this case falls within the scope of Section 123 of the Customs Act, 1962. This section explicitly states that the burden of proof rests on the person from whom the goods are seized when such goods are notified under the provision. It is known that Gold is a notified item under Section 123, and once it is recovered under suspicious circumstances, such as being in paste form, concealed in the waistband of clothing, and recovered during personal frisking, the law presumes it is smuggled unless the noticee proves otherwise. In this case, I observe that the noticee had neither produced lawful import documents nor denied in her voluntary statement recorded under Section 108 that she had purchased the gold from an unknown person in Bangkok and concealed it to sell for profit in India. Therefore, I am conclusively led to the determination that the Department is not required to prove *mens rea* or the illicit origin of the goods, as per the statutory framework. The noticee has failed to rebut the presumption provided under the law. Accordingly, I am of the view that the evidence on record strongly supports the charge, and therefore, the proposal to impose a penalty under Section 112(b) of the Customs Act, 1962 is justified and well-founded.

18.8 Further, I find the noticee's request for sympathetic consideration, while noted, cannot override the statutory mandate where the offence is established. Smuggling of gold using concealment methods poses a serious threat to economic security and revenue collection. The facts demonstrate a deliberate and pre-planned act to smuggle gold. Her plea must be assessed against the gravity of the offence and the legal framework governing such violations. Accordingly, the seized gold is liable for absolute confiscation, and the penalty proposed is justified in law and fact.

18.9 Further, I find that the noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing the release of gold on payment of the redemption fine/penalty, along with the defence submission. I believe that conclusions in those cases may be correct, but they cannot be applied universally without considering each case's complex realities and specific facts. Those decisions were made in different contexts, with other 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 must always be considered. 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. In the present case, the manner of concealment is clever, conscious and premeditated. The quantity and type of gold used for commercial purposes is an ingenious attempt to smuggle the impugned gold brazenly.

19. Further, I find that the noticee had neither questioned the manner of the *panchnama* proceedings at the material time nor controverted the facts detailed in the *panchnama* while recording her statement. Every procedure conducted during the *panchnama* by the officers was well-documented and made in the presence of the *panchas* and the noticee. Upon going through her statement dated 23.12.2024, I find that the facts and evidence on record establish that Ms. Saloni Jignesh Varaiya wilfully attempted to smuggle gold into India by concealing the same in the waistline of her jeans in paste form, without declaring it before the Customs authorities. I notice that her voluntary statement under Section 108 of the Customs Act, 1962, reveals that she had procured the gold from an unknown person in Bangkok and had intended to sell it in India for profit. She has also admitted awareness that non-declaration and import of gold without duty payment constitutes an offence. Her deliberate concealment and admission of intent confirm her culpability under the Customs Act. I find it pertinent to mention here that the noticee, in her voluntary statement, has categorically admitted that she had intentionally refrained from declaring the said gold before the Customs authorities with the deliberate intention of clearing the same illicitly and evading payment of applicable Customs duty. She has further acknowledged her awareness of the fact that smuggling of gold without payment of Customs duty constitutes an offence under the Customs law. I find that such willful non-declaration and conscious attempt to evade duty on the part of the noticee amounts to a clear contravention of the Baggage Rules, 2016 and provisions of the Customs Act, 1962, and thereby conclusively establishes her culpability in the commission of an act of smuggling.

20. Further, I find that the noticee has confessed in her voluntary statement dated 23.12.2024 that she had not declared the said gold weighing 549.950 grams, of 24 kt extracted from the paste concealed inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee to the Customs authorities. Based on the foregoing discussion, I am satisfied to affirm that it is a clear case of non-declaration with an intent to smuggle the gold into India. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the said gold before the Customs Authorities on her arrival at Surat International Airport, Surat. I find that in her statement, she has admitted to having purchased gold, in paste form, from an unknown person in Bangkok, with

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the intention to sell it in India for profit. She has concealed the gold weighing 549.950 grams, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee and did not declare it upon arrival, despite knowing that importing undeclared gold without paying customs duty was an offence. Therefore, in view of the foregoing, it is sufficiently proven that this is a case of smuggling of gold along with non-declaration of the carried goods before Customs authorities with an intent to evade payment of Customs duty. Additionally, it is proved beyond doubt that the passenger has violated Section 77 by failing to make a declaration to customs and Section 79 by improperly importing or smuggling 549.950 grams of 24 kt gold, extracted from the paste concealed inside a belt-shaped white pouch in the waistline of the jeans pants worn by the noticee under the Customs Act 1962. Furthermore, the said import was not for bona fide use, and therefore, the passenger has violated Rule 11 of the Foreign Trade Regulation Rules 1993 and Paragraph 2.27 of the Foreign Trade Policy 2023. I find it pertinent to highlight that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, lies on the person from whose possession the goods have been seized which the noticee has failed to establish.

21. Further, I find it pertinent to note that, for the purpose of Customs clearance of arriving international passengers, a two-channel system is in place—namely, the Green Channel for passengers not carrying dutiable or prohibited goods, and the Red Channel for those carrying such goods. All arriving passengers are mandatorily required to make a truthful and accurate declaration of the contents of their baggage in accordance with the applicable Customs regulations. **I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in her 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 she tried to exit through the Green Channel which shows that the noticee was attempting to evade the payment of applicable customs duty. Further, I would also like to draw attention to the definition of **“eligible passenger”** provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned that - “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. It is appropriate to point out that in the instant case, the noticee did not declare the gold before customs authorities, and the said import of gold was also for non-bona fide purposes. Therefore, the said improperly imported gold weighing 549.950 gms, of 24 kt extracted from the paste inside a belt-shaped white pouch by the passenger, without declaring it to the Customs authorities on arrival in India, cannot be treated as bona fide household goods or personal effects. I unequivocally conclude that the noticee has thus contravened the provisions governing the lawful import of gold, as stipulated under the Foreign Trade Policy, 2023, and has thereby violated the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the said Act.”.

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22. After reviewing the foregoing, I find it conclusively proved that by the above acts of contravention, the passenger/noticee has rendered gold weighing 549.950 grams, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee, having total tariff value of Rs. 40,63,581/- and market value of Rs. 42,95,522/-, seized vide Seizure order dated 23.12.2024 under *Panchnama* proceedings dated 22/23.12.2024 liable to confiscation under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. By adopting the modus of concealing the gold weighing 549.950 gms, of 24 kt in the waistline of the Jeans pants worn by the noticee and without declaring to the Customs on arrival in India, it is evident that the noticee was fully aware that the import of said goods was offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare it to the Customs on her arrival at the airport to clear it illicitly without payment of Customs duty. It also stands established that she has involved herself in carrying, keeping, concealing, and dealing with the impugned goods in a manner in which she knew or had reasons to believe that they were liable to confiscation under the Customs Act. The commission of the above act has thus made the impugned goods fall within the ambit of '**smuggling**' as defined under Section 2(39) of the Act. It is therefore proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962, making her liable for a penalty under Section 112 of the Customs Act, 1962.

23. Further, I find that the noticee has confessed to carrying gold which she had attempted to clear illicitly from Surat International Airport by concealing it weighing 549.950 grams, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee and without declaring it to the Customs Authorities and thereby violating the Para 2.27 of the Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "**prohibited goods**" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import has thus acquired the nature of being prohibited goods, given Section 2(33) of the Act.

24. Further, I find that gold is not on the list of prohibited items, but the import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in unambiguous terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfillment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, who was trying to smuggle the same, was not eligible to bring or import gold into India in her baggage. The gold recovered was found concealed in the form of paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee and was kept undeclared with the

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intention of smuggling the same and evading payment of customs duty. By adopting this modus, it is proved beyond doubt that the goods are offensive and therefore prohibited from their importation. Here, the conditions for the lawful import of gold have not been fulfilled by the passenger.

25. Given the foregoing discussions and evidentiary material on record, I hold that the manner of concealment and the circumstances surrounding its importation unequivocally establish that the said gold was brought into India by the noticee in a clandestine manner, for extraneous consideration, in furtherance of a smuggling operation. The gold weighing 549.950 gms, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee and deliberately not declared before the Customs authorities with the intent to illicitly clear the same and evade payment of lawful Customs duty, is liable for **absolute confiscation** under the provisions of the Customs Act, 1962. Therefore, in the instant case, **I am not inclined to use my discretion to give an option to redeem the gold on payment of the redemption fine, as envisaged under Section 125 of the Act.** In this context, I would like to reinforce my standing by placing my reliance on the cases as follows:

25.1 In the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]**, the Hon'ble 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 Samyanathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

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

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

25.3 In this case, 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 that -

"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

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by authority to deny release, is in accordance with law- Interference by Tribunal is against law and unjustified-

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

25.4 In the case of **Abdul Kalam Ammangod Kunhamu [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 vide Order No. 17/2019-Cus., dated 7-10-2019 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 10-5-1993 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”.

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

“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 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.”

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*“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.**”*

26. Given the facts of the present case before me and the judgments and rulings cited above, 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 the licit import of the gold weighing 549.950 gms, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee. I find that the noticee admitted to having purchased gold, in paste form, from an unknown person in Bangkok, with the intention to sell it in India for profit. She has concealed the gold weighing 549.950 grams, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee and did not declare it upon arrival, despite knowing that importing undeclared gold without paying customs duty was an offence. Thus, the noticee failed to discharge the burden placed on her in Section 123. Further, upon a careful examination of the SCN, the *Panchnama* and the statement of the noticee, I am satisfied to affirm that the manner adopted for concealment of gold is **‘highly ingenious’** in nature, as the noticee concealed the

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gold in paste form inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee with an intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold nugget weighing 549.950 grams of 24 kt extracted from the gold paste concealed, recovered from the noticee, is liable to be **confiscated absolutely. I hold in unequivocal terms that the gold nugget weighing 549.950 grams, placed under seizure vide Panchnama proceedings dated 22/23.12.2024, would be liable to absolute confiscation under Section 111(d), 111(i) and 111(j) of the Act.** I also find the blue colour jeans pants used for smuggling of gold, seized vide Seizure Order dated 23.12.2024 under *panchnama* dated 22/23.12.2024 liable for confiscation under Section 119 of the Customs Act, 1962.

27. Further, I find that the passenger had involved herself in the act of smuggling of gold weighing 549.950 grams, of 24 kt extracted from the paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee. Further, it is a fact that the passenger/noticee has travelled from Dubai to Surat with the impugned gold concealed in the form of paste despite knowing that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. 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*' on behalf of noticee is established as the noticee ingeniously concealed the gold in the form of paste inside a belt-shaped white pouch in the waistline of the Jeans pants worn by the noticee, which shows her mala fide intention to evade the detection from the Authority and removing it illicitly from Surat Airport without payment of duty. Accordingly, while determining the quantum of penalty in the present case, I deem it appropriate to consider the *ratio decidendi* laid down by the **Hon'ble Supreme Court in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa**, wherein the Hon'ble Apex Court observed, "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." In the instant case, I find it irrefutably established that the gold was concealed and not declared to the Customs authorities with the sole intention of evading payment of Customs duty. The records available on file indicate that the noticee, upon arrival from a foreign destination, wilfully opted for clearance through the Green Channel without declaring the prohibited/dutiable goods in her possession and thereby deliberately circumvented the mandatory disclosure requirements with the wilful intent to smuggle the impugned goods. The noticee carried gold through ingenious concealment and attempted to evade the customs duty by not declaring the 24kt gold weighing 549.950 grams to earn profit thereon. I find that non-declaration at the time of import is considered an act of omission on her part. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knew or had reason to believe was liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the noticee is liable for penal action under Section 112(b) of the Customs Act, 1962, and I hold accordingly.

28. Accordingly, in the exercise of the powers vested in me as the Adjudicating Authority, I hereby issue the following order:

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ORDER

- (i) I order **absolute confiscation** of the recovered **one 24 carat Gold Nugget weighing 549.950 grams**, having market value of **Rs.42,95,522/-** (Rupees Forty-Two Lakh Ninety-Five Thousand Five Hundred Twenty-Two only), seized vide Seizure Order dated 23.12.2024 under *panchnama* dated 22/23.12.2024, under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962.
- (ii) I order **absolute confiscation** of the **blue colour jeans pants** seized vide Seizure Order dated 23.12.2024 under *panchnama* dated 22/23.12.2024 under Section 119 of the Customs Act, 1962.
- (iii) I impose **a penalty of Rs.11,00,000/- (Rupees Eleven Lakhs only)** on Ms. Saloni Jignesh Varaiya under the provisions of Section 112(b)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice F. No. VIII/26-44/AIU/CUS/2024-25 dated 17.03.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner

BY SPEED POST AD/E.MAIL/WEBSITE

F.No.VIII/26-44/AIU/CUS/2024-25

Date:15.07.2025

DIN: 20250771MN0000469790

To,
Ms. Saloni Jignesh Varaiya,
703, Triveni Apartment, Timaliyawad,
Nanpura, Surat City, 395001, Gujarat

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy/Assistant Commissioner of Customs (TRC), Ahmedabad.
3. The Superintendent (Recovery)/(Warehouse), Customs, Surat International Airport.
4. The System In-Charge, Customs, H.Q., Ahmedabad, for uploading on the official website (via email)
5. Guard File