प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-16/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-167/SVPIA-B/O&A/HQ/ 2024-25 Dated: 18.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**258/ADC/SRV/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**18.02.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**18.02.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Smt. Sonalben Bhadreshbhai Karia,** Rushikesh Park 2, Rail Nagar, Rajkot, Gujarat - 360001
(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

Smt. Sonalben Bhadreshbhai Karia, (hereinafter referred to as the said "passenger/ Noticee"), residing at Rushikesh Park 2, Rail Nagar,

Rajkot, Gujarat - 360001 holding an Indian Passport Number No. X9143028, arrived by Emirates Flight No. EK538 from Dubai to Ahmedabad and her boarding pass bearing Seat No.31A, at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one female passenger namely Smt. Sonalben Bhadreshbhai Karia, who arrived by Emirates Flight No. EK538 on 22.03.2024 came from Dubai at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad is suspected to be carrying smuggled gold either in her baggage or concealed in her clothes/ body and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 22.03.2024 in presence of two independent witnesses for passenger's personal search and examination of her baggages.

2. The AIU Officers asked about her identity, Smt. Sonalben Bhadreshbhai Karia identied herself by his Passport No. X9143028, who travelled by Emirates Flight No. EK538 from Dubai to Ahmedabad and her boarding pass bearing Seat No. 31A, after she had crossed the Green Channel at the Ahmedabad International Airport. In the presence of the panchas, the AIU Officers asked Smt. Sonalben Bhadreshbhai Karia if she has anything to declare to the Customs, to which she denied the same politely. The Lady officer of AIU offered her personal search to the passenger, but the passenger denied and said that she had full trust on her. Now, the officer asked the passenger whether she wanted to be checked in front of an Executive Magistrate or Lady Superintendent of Customs, in reply to which she gave the consent to be searched in front of the Lady Superintendent of Customs.

2.1 The AIU Officers, in presence of the panchas, asked Smt. Sonalben Bhadreshbhai Karia to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects she was wearing on her body/ clothes. Thereafter, the passenger readily removed the metallic substances from her body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked her to pass through the Door Frame Metal Detector

(DFMD) machine and while she passing through the DFMD Machine, no beep sound/ alert was generated. Thereafter, the AIU Officers in presence of panchas, asked the passenger whether she has concealed any substance in her body, to which she replied in negative. Then, after thorough interrogation by the Officers, in presence of panchas, the passenger did not confess that she has carried any high valued dutiable goods. The Officers under the reasonable belief that the said passenger carried some high valued dutiable goods by way of concealing it in her body parts and on sustained interrogation Smt. Sonalben Bhadreshbhai Karia confessed that she carried gold in semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her. She was taken to the AIU room opposite belt no. 2 of arrival hall, Terminal 2 by the Officer. In presence of the Panchas the AIU Officers recovered semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her.

2.2 Thereafter, the AIU officer called the Government Approved Valuer and informed him that semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans recovered from a passenger and the passenger has informed that it is gold in semisolid/ paste form and hence, he needs to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officer that the testing of the said material is only possible at his workshop as gold has to be extracted from such semisolid substance consisting of gold and chemical mix form by melting it and also informed the address of his workshop. As such, the AIU Officers along with the passenger and the panchas visited the Shop No. 301, Golden Signature, Behind Ratnam Complex, Near National Handloom, C.G. Road, Ahmedabad - 380 006, where the officers introduced Shri Soni Kartikey Vasantrai, the Government Approved Valuer to the panchas, as well as the passenger. After weighing the said semi-solid substance consisting of gold & chemical mix on his weighing scale, Shri Kartikey Vasantrai Soni provided detailed primary verification report of semi-solid substance and informed that the semi-solid substance consisting of gold & chemical mix covered with transparent plastic contain semi solid substance consisting of Gold & chemical mix having Gross weight as

provided below: The Officers took the photograph of the same which is as under:

2.3 Thereafter, the Government approved valuer led the panchas, officers and the passenger to the furnace which is located inside his business premises. The Government approved valuer started the process of converting the semi-solid substance consisting of gold & chemical mix covered with transparent plastic recovered from the passenger, into solid gold after removing the transparent plastic, was put into the furnace and upon heating item it turned into mixture of gold like material and put it in a furnace. After some time taken out of furnace and poured in a bar shaped plate and after cooling for some time it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer took the weight of the said golden coloured bar which is derived from **561.58** Grams semisolid substance consisting of gold and chemical mix, in presence of panchas, the passenger and the AIU Officers. After completing the procedure, the Government approved valuer confirmed vide Valuation Certificate No.1581/2023-24 dtd. 22.032024 **(RUD -02)** that the semi-solid substance consisting of Gold and Chemical mix, recovered from Smt. Sonalben Bhadreshbhai Karia, one gold bar weighing **475.98** grams having purity 999.0/24 Kt., having market

value of **Rs.32,12,389/-** (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of **Rs.27,74,487/-** (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only). The value of the gold bar has been calculated as per the Notification No. 22/2024-Customs (N.T.) dated 15.03.2024 (gold) and Notification No. 18/2024-Customs (N.T.) dated 07.03.2024 (exchange rate). He submits his valuation report to the AIU Officers.

The details of the valuation of the said gold bar are tabulated as below:

Sl. No.	Name of the Passenger	Details of Items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Smt. Sonalben Bhadreshbhai Karia	Gold bar	1	475.98	999.0 24 Kt	32,12,389	27,74,487

The Photographs of the net weight of the pure gold is as under:-

2.4 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and officers. All were satisfied and agreed with the testing and valuation Certificate dated 22.03.2024 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the Passenger put their dated signature on the said valuation certificate.

3. The following documents produced by the passenger Smt. Sonalben Bhadreshbhai Karia were withdrawn under the Panchnama dtd. 22.03.2024:

(i) Copy of Passport No. X9143028.

(ii) Boarding pass of Emirates Flight No. 6E1478 from Dubai to Ahmedabad dated 22.03.2024 having seat No.31A.

4. Thereafter, the AIU officers asked in the presence of the panchas, to produce the identity proof documents of the passenger and the passenger produced the identity proof documents which have been verified and confirmed by the AIU officers and found correct.

5. Accordingly, the said gold bar having purity 999.0/24 Kt. weighing 475.98 grams, derived from semi-solid substance consisting of Gold and Chemical mix, recovered from Smt. Sonalben Bhadreshbhai Karia, having market value of Rs.32,12,389/- (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of Rs.27,74,487/- (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only), which were attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962, was seized vide Panchnama dated 22.03.2024, vide Seizure Memo dated 22.03.2024 issued from F. No. VIII/10-378/ AIU/B/2023-24 dated 22.03.2024, under the provisions of Section 110(1) & (3) of the Customs Act, 1962 and accordingly the same was liable for confiscation as per the provisions of the Customs Act, 1962 read with Rules and Regulation made thereunder.

6. A statement of Smt. Sonalben Bhadreshbhai Karia was recorded under Section 108 of the Customs Act, 1962 on 22.03.2024**,** wherein she inter-alia stated that -

(i) Her name, age and address stated above is true and correct. She is a house wife.

(ii) She is living with her Husband and two daughters. Her husband is salesman in Anchor Company.

(iii) She visited Dubai for the first time for the purpose of search of job on 19.03.2024. In Dubai She met one, Shri Satishbhai who booked her hotel room and also her return flight ticket. Satishbhai asked her to carry the semi solid substance consisting of gold & chemical mix weighing 475.98 grams from Dubai to India. On 21.03.2024 he handed over the semi solid substance consisting of gold & chemical mix to her which she concealed in the waist line of

my jeans and asked her to hand over the same to someone at Ahmedabad Airport.

(iv) She knows bringing of gold or handing and taking over of the gold in an illegal way is an offence.

(v) She stated that she has never indulged in any smuggling activity in the past. This is the first time she has carried this kind of gold and chemical mix substance.

(vi) On arrival at SVPI Airport at Ahmedabad at about 03:15 AM she was intercepted by AIU Officers when she tried to exit through green channel with one brown color handbag and one black trolley bag. During her personal search and interrogation by the AIU Officer, she confessed that she has hidden semi solid substance consisting of gold & chemical mix having gross weight 561.580 grams. The said mix paste was taken by the officers to the govt. approved Valuer, who in my presence tested and reported that the gold bar is having weight 475.98 grams, having market value of Rs.32,12,389/- (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of Rs. 27,74,487/- (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only). The said gold bar was seized by the officers under Panchnama dated 22.03.2022 under the provision of the Customs Act, 1962. She stated that she has been present during the entire course of the Panchnama dated 22.03.2022 and she confirms the events narrated in the said panchnama drawn on 22.03.2022 at Terminal -2, SVPI Airport, Ahmedabad. In token of its correctness, she has put her dated signature on the said Panchnama.

(vii) She stated above this gold and chemical mix substance does not belongs to her so she was to hand over this to another person.

7. The above said gold bar having purity 999.0/ 24 Kt. weighing 475.98 grams, derived from semi-solid substance consisting of Gold and Chemical mix, recovered from Smt. Sonalben Bhadreshbhai Karia, having market value of Rs.32,12,389/- (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of Rs.27,74,487/- (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only), was attempted to be smuggled into India with an intent to evade payment of Customs duty by way semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her, which was clear violation of the provisions of the Customs Act, 1962.

Thus, on a reasonable belief that the Gold bar totally weighing 475.98 Grams which were attempted to be smuggled by Smt. Sonalben Bhadreshbhai Karia is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 475.98 grams which was derived and concealed in semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her, were placed under seizure under the provisions of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 22.03.2024, issued from F. No. VIII/10-378/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

8. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions.—*In this Act, unless the context otherwise requires,—*

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

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(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;

(39) "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;"

II) Section11A – Definitions *-In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage.—*The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

IV) "Section 110 – Seizure of goods, documents and things.— *(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

V) "Section 111 – Confiscation of improperly imported goods, etc.–*The following goods brought from a place outside India shall be liable to confiscation:-*

(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;
(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
(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;
(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;"

VI) "Section 119 – Confiscation of goods used for concealing smuggled goods–*Any goods used for concealing smuggled goods shall also be liable to confiscation."*

VII) "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 know or has reason to believe are liable to

confiscation under Section 111,
shall be liable to penalty.

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) "Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, 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."*

II) "Section 3(3) - *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."*

III) "Section 11(1) - *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."*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *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.*

Contravention and violation of laws:

9. It therefore appears that:

(a) The passenger had dealt with and actively indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar weighing 475.98 grams, derived from semi-solid substance consisting of Gold and Chemical mix, recovered from Smt. Sonalben Bhadreshbhai Karia, having market value of Rs.32,12,389/- (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of Rs.27,74,487/- (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only), not declared to the Customs. The passenger opted green channel to exit the Airport 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. Therefore, the improperly imported 475.98 Grams of gold bar of purity 999.0/ 24 Kt. by the passenger, which was concealed in semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her, without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

(b) By not declaring the value, quantity and description of the goods imported by her, 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 the Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold bar by the passenger, Smt. Sonalben Bhadreshbhai Karia, which was concealed in semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) 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.

(d) Smt. Sonalben Bhadreshbhai Karia, by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.

(e) As per Section 123 of the Customs Act, 1962, the burden of

proving that the said gold bar weighing 475.98 grams, derived from semi-solid substance consisting of Gold and Chemical mix, recovered from Smt. Sonalben Bhadreshbhai Karia, having market value of Rs.32,12,389/- (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of Rs.27,74,487/- (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only), which was concealed in semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her, without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee, Smt. Sonalben Bhadreshbhai Karia.

10. Therefore, Show cause notice F. No: VIII/10-167/SVPIA-B/O&A/HQ/2024-25 dated 18.07.2024 has been issued to **Smt. Sonalben Bhadreshbhai Karia**, Rushikesh Park 2, Rail Nagar, Rajkot, Gujarat - 360001 as to why:

(i) One Gold Bar weighing **475.98** grams, derived from semi-solid substance consisting of Gold and Chemical mix, recovered from Smt. Sonalben Bhadreshbhai Karia, having market value of **Rs.32,12,389/-** (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of **Rs.27,74,487/-** (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only) which was concealed in semi-solid substance consisting of gold & chemical mix covered with transparent plastic, was placed under seizure under panchnama proceedings dated 22.03.2024 and Seizure Memo Order dated 22.03.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) The packing material i.e. transparent plastics in which semi-solid substance consisting of gold & chemical mix were wrapped placed under seizure on the reasonable belief that the same was used for packing and concealment of the above-mentioned gold bar which was attempted to be smuggled into India in violation of Section 77, Section 132 and Section 135, of the

Customs Act, 1962, seized under Panchnama dated 22.03.2024 and Seizure memo order dated 03.02.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and

(iii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense Reply and Personal Hearing:

11. Smt. Sonalben Bhadreshbhai Karia has filed her written submission dated 29.07.2024 received on 10.01.2025 through her advocate Shri Rishikesh J Mehra, wherein he denies the allegation made in the SCN. He mentioned that it was true that she had brought Gold weighing 475.980 grams covered with transparent plastic concealed inside waist line of the jeans worn by her. He submitted that the statement under Section 108 of Customs Act, 1962 was recorded 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. He submitted that gold is neither prohibited nor restricted, hence the goods in question is not liable for confiscation under section 111(d),111(i) ,111(l) and 111(m) of the Customs Act, 1962 and also not liable for penal action under section 112 of the Customs Act,1962. He submitted that gold was purchased by her from Dubai and bill was produced at the time of interception, however same was not incorporated at any stage. The gold was purchased for herself and for her family. He submitted that this was her first instance of bringing gold by his client and due to ignorance of Customs Rules, she was unable to declare the same before Customs Authorities, however, she has orally declared the same as per the instructions as stipulated under Circular No: 9/2001-Cus dated 22.02.2001. He mentioned that 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. Accordingly, the seized goods 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. He mentioned that the gold was purchased by his client from "AL Karamah Goldsmith weighing 500.00 Grams" but prior to her

declaration before customs, she was intercepted and resulting in booking a case.

He submitted that his client does not know what was written in panchnama as well as statement, as both has been recorded in English, and she studied up to 6th standard in Gujarati Medium. She was forced to sign in fear of arrest, so she simply signed the papers. In the matter, instructions as stipulated under Circular No: 9/2001-Cus dated 22.02.2001 was not followed.

He mentioned 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 she knows very well 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. 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 submitted that the gold is not fall under the prohibited category and can be released on payment of redemption fine and placed reliance on judgments as under:-

- ***Yakub Ibrasher Yousuf 2011(263) ELT-685(Tri.Mum) and subsequently 2014-TIOL-277-CESTST-MUM***
- ***Shaikh Jameel Pasha Vs Govt. Of India 1997(91) ELT277(AP)***
- **KADAR MYDEEN V/s Commissioner of Customs (Preventive), West Bengal 2011(136) ELT 758)**

And also relied on the orders passed by Revision Authority as:-

- **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)**
- **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)**

- **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)**
- **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)**
- **Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.**
- **2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.**
- **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.)**
- **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.)**
- **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.)**
- **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)**
- **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).**
- **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)**
- **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)**
- **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).

- **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)**
- **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)**
- **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).**
- **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).**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**

- **Order No. 404 & 405/2023 CUS(WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniiwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**

- **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)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**
- **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)**

  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 <u>Shri Lookman Mohamed Yusuf V/S. CC- Amedabad, (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)</u>
- **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)

- 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.

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 state that the goods may be released at the earliest even provisionally for which they are 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 may be given too, for which the noticee is ready to pay penalty too and requested for a personal hearing in the matter.

12. To follow the principle of natural justice, personal hearing in the matter were fixed on 03.01.2025 & 16.01.2025. Shri Rishikesh Mehra, Advocate and Authorized Representative appeared for the personal hearing on 16.01.2025 on behalf of his client i.e Smt. Sonalben Bhadreshbhai Karia. He submitted the written submission dated 29.07.2024 and re-iterated the same. He submitted that gold was purchased by his client from her personal saving and money borrowed from her friends. This is first time she brought the seized gold. Due to ignorance of the law the gold was not declared by his client. He submitted that the gold is not in the list of prohibited goods and also the gold is not in commercial quantity and was not concealed. He further submitted that his client is ready to pay applicable customs

duty, fine and penalty and requested for release of seized gold. He requested to take lenient view and allow to release the gold on payment of fine and penalty. He has nothing more to add.

Discussion and Findings:

13. I have carefully gone through the facts of this case, written submission and the record of Personal Hearing.

14. In the instant case, I find that the main issue to be decided is whether the Gold Bar weighing 475.98 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 27,74,487/- and market value of Rs. 32,12,389/- derived from semi-solid substance consisting of gold & chemical mix covered with transparent plastic concealed in waist of jeans which was recovered from the noticee and seized, under Panchnama dated 22.03.2024 and seizure memo order dated 22.03.2024, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the passenger is liable for penal action under the provisions of Section 112 of the Act; Similarly whether the packing material is liable to be confiscated under Section 119.

15. I find that the panchnama has clearly drawn out the fact that the noticee was intercepted when she was exiting the green channel without any declaration to the Customs at the Red channel and on basis of passenger profiling, personal search of the noticee and her baggage was conducted. While passenger passed through Door Frame Metal Detector (DFMD), no sound was heard which indicated that she was not carrying anything metallic. The passenger was politely asked if she had anything declarable to Customs, in reply to which she replied in negative. on sustained interrogation Smt. Sonalben Bhadreshbhai Karia confessed that she carried gold in semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her. She was taken to the AIU room opposite belt no. 2 of arrival hall, Terminal 2 by the Officer. In presence of the Panchas and the AIU Officers, recovered semi solid substance consisting of gold & chemical mix covered with transparent plastic concealed inside waist line of the jeans worn by her. It is also on record that the government approved valuer after weighing the said semi solid substance consisting of gold & chemical mix covered with transparent

plastic and informed that the total weight of the said goods was 561.580 grams. Thereafter, on completion of the procedure, Government Approved Valuer, issued Valuation Certificate No: 1581/2023-24 dtd. 22.03.2024 and certified that a 24Kt gold bar weighing 475.98 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 27,74,487/- and market value of Rs. 32,12,389/- was derived from Semi solid paste containing gold and chemical mix. The said gold bar was seized, under Panchnama dated 22.03.2024 and seizure memo order dated 22.03.2024, in the presence of the passenger and Panchas.

I also find that the said Gold weighing 475.98 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 27,74,487/- and market value of Rs. 32,12,389/- derived from gold paste recovered from the noticee and seized under Panchnama dated 22.03.2024 carried by the noticee appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. The offence committed was admitted by the noticee in her statement recorded on 22.03.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered her 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. Under their submission, I find that the noticee has stated that the statement was given under duress and threat of being arrest and statement was recorded in English and she did not know what was written in the statement and she was forced to sigh that and not allowed to write in his own handwriting. I find from the content of the statement dated 22.03.2024 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. It is on the record the noticee has requested the officer to type the statement on her behalf on computer and same was recorded as per her say and put her signature on the Statement. Further, I find from the content of statement that the statement was tendered by her voluntarily and willingly without any threat, coercion or duress and same was explained to her in Hindi. She clearly admitted in her statement that the gold was not purchased by her and someone else gave the gold in semi solid

form which was concealed by her in waist line of jeans. The offence committed is admitted by the noticee in her statement recorded on 22.03.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered their 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. The judgments relied upon in this matter as follows:-

- 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 evidences"
- 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"
- 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.
- 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."
- 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, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA"

Moreover, the allegation made in the SCN was not based merely on the basis of Statement, rather the noticee has not provided any documentary evidences which support their claim on Gold during the investigation. I also find that the said Gold Bar weighing 475.980 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 27,74,487/- and

market value of Rs. 32,12,389/- derived from gold in form of gold paste in semi solid form recovered from the passenger and seized, under Panchnama dated 22.03.2024 carried by the passenger appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. It is on record that the said concealed gold was carried by her and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

16. I find under submission that the noticee mentioned that due to ignorance of Customs Laws, she 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.* It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the notice had kept the gold in form of gold paste concealed in waist line of jeans, which was in her possession and failed to declare the same before the Customs Authorities on their arrival at SVPIA, Ahmedabad. *The case of smuggling of gold in form of paste concealed in waist line of jeans and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved*. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as 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 proof 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.

I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted/refuted the facts detailed in the panchnama during the

course of recording her statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. Moreover, in her statements, she has clearly admitted that one person named Satishbhai whom she met at Dubai had given the gold in semi solid paste form and asked to carry the same in India and same not purchased by her and was not belonged to her but same were carried by her and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

17. Under her submission, I find that the noticee has mentioned that the gold was purchased by her from Dubai from "AL Karamah Goldsmith Weighing 500.00 grams" and at the time of interception, she had purchase bill with her but prior to declaration, officers booked a case against her. On contrary, from the documents available on record, I find that at the material time, she confessed in her statement that the gold was not her and was given by someone else for carrying the same and also admitted that she had not declared the said gold on his arrival to the Customs authorities. Therefore, the contention made in submission that gold was purchased by her and she was about to declare the same, is not tenable and afterthought. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the gold paste which was in her possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold in form of paste concealed in waist line of jeans and recovered from her possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20.

18. From the facts discussed above, it is evident that the noticee had carried gold weighing 475.980 grams, while arriving from Dubai to

Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24Kt/999.00 purity totally weighing 475.980 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold in form of semi sold paste concealed in waist of jeans and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

19. It is seen that the noticee had not declared any goods to Customs and specifically had not declared the said gold paste 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. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold by way of concealment in waist of jeans by the noticee without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the Gold Bar weighing 475.980 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 27,74,487/- and market value of Rs.32,12,389/- derived from semi solid paste recovered from the noticee and seized, under Panchnama dated 22.03.2024 and seizure memo order dated 22.03.2024 is liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealment of gold in form of paste in transparent pouch concealed in waist of jeans, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying,

keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same was liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/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 and she 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. Therefore, the said improperly imported gold weighing 475.980 grams concealed by her, 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 475.980 grams, having

Tariff Value of Rs.27,74,487/- and Market Value of Rs.32,12,389/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 22.03.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using such modus of concealing the gold, it is observed that the noticee was fully aware that the import of said goods is offending in nature.

21. I find that the Noticee confessed of carrying the said gold of 475.980 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. 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 noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

22. It is quite clear from the above discussion that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the willful intention to smuggle the impugned goods. The said gold bar weighing 475.980 grams, having Tariff Value of Rs.27,74,487/- and Market Value of Rs.32,12,389/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 22.03.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and

Regulations made under it, the noticee had attempted to remove the said gold bar weighing 475.980 grams, by deliberately not declaring the same by her on arrival at airport with the willful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 475.980 grams, was recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in semi solid paste form concealed in waist of jeans. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

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. 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. 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 submission of invoice/bill copy without any documentary backing, is not proved that the goods purchased in legitimate way and further, I noticed from the submitted invoice that the invoice just carry name of seller and not mentioned any address of the seller and others detail like any legitimate number issued by the U.A.E Government, mode of payment done by the purchaser, therefore, bill is not appeared genuine. 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 manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in semi solid paste form concealed in waist of jeans, with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 475.980 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in her statement dated 22.03.2024 stated that she has carried the said gold by concealment to evade payment of Customs duty. ***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.***

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

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

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]

26. 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.

27. 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).

28. 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.

29. 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".

30. 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."*

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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**."*

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 475.980 grams (derived from semi solid paste concealed in waist of jeans), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 475.980 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962**.

32. 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 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.* In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bar

weighing 475.980 grams having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 475.980 grams, carried by her. She has agreed and admitted in his statement that she travelled from Dubai to Ahmedabad with the said gold in paste form concealed in waist of jeans. Despite her knowledge and belief that the gold carried by her 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 of 475.980 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

O R D E R

(i) I order **absolute confiscation** of One Gold Bar weighing **475.980** grams, derived from semi-solid substance consisting of Gold and Chemical mix, having market value of **Rs.32,12,389/-** (Rupees Thirty-two lakh Twelve thousand Three hundred and eighty-nine only) and having tariff value of **Rs.27,74,487/-** (Rupees Twenty-seven lakh Seventy-four thousand Four hundred and eighty-seven only) which was covered with transparent plastic concealed in waist line of jeans and placed under seizure under panchnama proceedings dated 22.03.2024 and Seizure Memo Order dated 22.03.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) I order absolute confiscation of packing material i.e. transparent plastics used for packing and concealment of seized gold vide seizure order under Panchnama proceedings both dated 22.03.2024, under the provisions of Section 119 of the Customs Act, 1962;

(iii) I impose a penalty of Rs.8,00,000/- (Rupees Eight Lakh Only) on **Smt. Sonalben Bhadreshbhai Karia** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-167/SVPIA-B/O&A/HQ/2024-25 dated 18.07.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 18-02-2025 18:48:03

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-167/SVPIA-B/O&A/HQ/2024-25 Date:18.02.2025
DIN: 20250271MN000000EC4D

BY SPEED POST AD

To,
Smt. Sonalben Bhadreshbhai Karia,
Rushikesh Park 2, Rail Nagar,
Rajkot, Gujarat - 360001.

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy 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.
6. Guard File.