OIO No: /ADC/SRV/O&A/HQ/2025-26
F. No: VIII/10-18/SVPIA-D/O&A/HQ/2025-26

प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
"सीमा शुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380009.
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DIN:20251271MN000000E579

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-18/SVPIA-D/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-18/SVPIA-D/O&A/HQ/2025-26 dated 09.10.2025
C	मूलआदेश संख्या/ Order-In-Original No.	:	**176/ADC/SRV/O&A/HQ/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**05.12.2025**
E	जारी करने की तारीख/ Date of Issue	:	**05.12.2025**
F	द्वारा पारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	**Shri Bapulal Prajapati,** S/o Shri Dhana Prajapati, Village-Anjana, Post-Anjana, Tehsil-Garhi, Banswara, Rajasthan-327032
(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:

On the basis of specific intelligence of AIU officer, the passenger namely **Shri Bapulal Prajapati,** Aged 44 years (DOB: 28.01.1981), S/o Shri Dhana Prajapati holding an Indian Passport Number No. V5156593, residing at:- Village-Anjana, Post-Anjana, Tehsil-Garhi, Banswara, Rajasthan-327032, who arrived from Kuwait to SVPI Airport, Ahmedabad by Flight No. 6E-1244 of Indigo Airlines on 16.04.2025 (Seat No. 7E) was intercepted by the officers of AIU, SVPI Airport, Ahmedabad that he was carrying gold in any form. Accordingly, a thorough personal search of the passenger and examination of his baggage were conducted in the presence of two independent witnesses. The entire procedure was duly documented under a Panchnama dated 16.04.2025.

2. The passenger Shri Bapulal Prajapati was carrying checked in baggage i.e. two bags, one

brown Carton, one gray coloured trolley bag and one blue coloured hand bag. The AIU officer asks him if he has anything to declare to the Customs, in reply to which he denies. Not being satisfied with the reply of the passenger, the AIU officer informs the said passenger that he along with his accompanied officers would be conducting his personal search.

The AIU officers offer their personal search to the passenger, but the passenger denies saying that he is having full trust on the AIU officers. Now, the AIU officer asks the passenger whether he want to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger give his consent to be searched in front of the Superintendent of Customs.

The AIU officers asked to the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal-2 building, after removing all metallic objects from his body/clothes. The passenger readily removes all the metallic objects such as Mobile, Wallet, etc. and keep it in a plastic tray and pass through the DFMD machine. However, no beep sound is heard indicating there is nothing objectionable/dutiable on his body/clothes.

Thereafter the AIU officers scan all his baggage of the passenger in the X-Ray baggage scanning machine, which is installed near Green Channel at Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad and decided to check his baggage thoroughly. On scanning of Grey Coloured Trolly Bag, some dark black coloured image was seen on the X-Ray Screen, indicating that there might be some gold items in the Trolley Bag.

Therefore, the Grey Trolley Bag was opened and items inside the bags were checked thoroughly. During the checking of Grey Coloured Trolley Bag, 01 Gold Cut Bar was found concealed in packet of almond which was further wrapped in yellowish green polythene. The image of the same is as under:

2.1 Thereafter, the AIU officer called the Government Approved Valuer Shri Kartikey Vasantrai Soni at around 09:15 A.M. on 16.04.2025 and informed him that 01 Gold Cut Bar was recovered from a passenger and he was required to come to the office of the AIU situated at SVPI Airport, Ahmedabad for valuation and to ascertain the purity of the 01 Gold Cut Bar recovered from the passenger. In reply, the Government Approved Valuer Shri Kartikey Vasantrai Soni informs the officer that he will be coming to the SVPIA Airport to ascertain the same.

2.2 Thereafter, at around 03:00 P.M. on 16.04.2025 Mr. Kartikey Vasantrai Soni, Government Approved Valuer comes at the Airport and the officer introduces him to the panchas as well as the passenger. The officers give the 01 Gold Cut Bar recovered from the passenger to the Govt. Valuer. After weighing the said 01 Gold Cut Bar in his weighing scale, Mr. Kartikey Vasantrai Soni informs that the 01 Gold Cut Bar recovered from the said passenger are weighing **167.100 grams.** Photograph of the same is as under:

3. The valuer Shri Kartikey Vasantrai Soni started testing of the gold for its purity and valuation, the valuer Shri Kartikey Vasantrai Soni confirms that the said 01 Gold Cut Bar is made of pure gold having purity 999.0/24kt. Shri Kartikey Vasantrai Soni vide Certificate No. 080/2025-26 dated 16.04.2025 certified that the 01 Gold Cut Bar recovered from the pax Shri Bapulal Prajapati is having purity 999.0/24kt, having Market Value of Rs.16,43,429/- (Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value as Rs.14,93,393/- (Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only).

3.1 Further, the valuer Shri Kartikey Vasantrai Soni calculated the value of these gold items as per the Notification No. 24/2025-Customs (N.T.) dated 15.04.2025 (gold) and Notification No. 24/2024-Customs (N.T.) dated 16.04.2025 (exchange rate). The calculation of total Market Value based on the unit Market Value of gold @ 98350 per 10 grams (999.0/24Kt) and the calculation of total Tariff Value based on the Tariff Value of gold prevailing at the time of valuation @ 89371.20 Rs. per 10 grams (999.0 24Kt) are as given below:

Sr. No	Name of passenger	Certificate No. & Date	Details of Items	Net weight in grams	Purity	Market value (Rs.)	Tariff Value (Rs.)
1	Shri Bapulal Prajapati	080/2025-26 Dt. 16.04.2025	01 Gold Cut Bar	167.100	999.00 /24Kt	16,43,429/-	14,93,393/-

4. SEIZURE OF THE ABOVE GOLD:

The AIU Officer informed the panchas as well as the passenger Shri Bapulal Prajapati that 01 Gold Cut Bar having purity of 999.0/24kt recovered from the said passenger was attempted to be smuggled to India with intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the AIU officers having a reasonable belief that the aforesaid 01 Gold Cut Bar is being attempted to be smuggled by the said passenger and are liable for confiscation as per the provisions of Customs Act, 1962; hence, the aforesaid 01 Gold Cut Bar was placed under Seizure vide order dated 16.04.2025 issued under the provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject Gold items are liable for confiscation under Section 111 of the Customs Act, 1962**.**

5. STATEMENT OF SHRI BAPULAL PRAJAPATI:

Statement of Shri Bapulal Prajapati was recorded on 16.04.2025 wherein he inter alia stated as under:

5.1 He gave his personal details like name, address, profession, family details and education etc.

5.2 His date of birth is 28.01.1981. He studied upto 6th class in Anjana, Rajasthan. He can speak, read and understand Hindi language. His Aadhar Card No. 3590 0010 3028. His E-mail ID is prajapatbapulal8@gmail.com. He doesn't have any bank account. He lived with his wife & 03 children at the above address i.e. Village-Anjana, Post-Anjana, Tehsil-Garhi, Banswara, Rajasthan-327032. He is working as a Mistry of color/paint in Kuwait. His monthly income is approximately Rs. 40,000/-.

5.3 He has perused the Panchnama dated 16.04.2025 drawn at Arrival Hall of Terminal-2 of SVPI Airport, Ahmedabad and he stated that he has been present during the entire course of the said panchnama and he agreed with the contents of the said Panchnama. In token, he put his signature on every page of the panchnama.

5.4 On being asked about purchased 01 Gold Cut Bar which were recovered during the Panchnama proceeding on 16.04.2025 at SVPI Airport, Ahmedabad, Shri Bapulal Prajapati stated that he had carried 01 Gold Cut Bar concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him, when he arrived at Terminal-II of SVPI Airport Ahmedabad from Kuwait vide Indigo Flight No. 6E-1244, on 16.04.2025. He did this to evade payment of customs duty without declaring the same to the customs and illicitly clear the same through Green Channel.

5.5 On being asked about purchase of 01 Gold Cut Bar found from his possession and to whom the consignment of Gold supposed to be handover after reached Ahmedabad Airport, Shri Bapulal Prajapati stated that the said 01 Gold Cut Bar was given to him by unknown person who is staying in Kuwait and he was supposed to be handed over the said 01 Gold Cut

Bar to unknown person outside the airport who would contact him on call.

5.6 On being asked to provide the contact details of the person from Kuwait who give him 01 Gold Cut Bar & the person from Ahmedabad Airport to whom he handed over the said 01 Gold Cut Bar, Shri Bapulal Prajapati stated that he doesn't know both the persons and he has no further details of both these persons.

5.7 On being asked about consideration or amount he receive for the smuggling of 01 Gold Cut Bar into India, Shri Bapulal Prajapati stated that he was asked that the person who was going to collect the 01 Gold Cut Bar would pay the lump sum amount for carried the 01 Gold Cut Bar into India but they did not clearly tell him the amount which they will going to pay him.

5.8 Shri Bapulal Prajapati stated that this is first time when he carried gold to India and he never indulged in any smuggling activity in the past.

5.9 Shri Bapulal Prajapati stated that he was aware that smuggling of gold without payment of Customs duty is an offence. He was aware of the concealed gold in the form of 01 Gold Cut Bar but he did not make any declarations in this regard to evade the Customs duty. He has opted for green channel so that he can attempt to smuggle the gold without paying customs duty.

5.10 From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 1998, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 01 Gold Cut Bar weighing 167.100 grams having purity 999/24Kt Total weight 167.100 grams and having Market Value of Rs.16,43,429/-(Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value as Rs. 14,93,393/- (Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only), recovered from Shri Bapulal Prajapati who had arrived from Kuwait to SVPI Airport, Ahmedabad by Indigo Flight No. 6E-1244 on 16.04.2025 (Seat No. 7E) at the arrival Hall of the SVPIA, Ahmedabad.

5.11 Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules, and for these reasons alone it cannot be considered as a bonafide baggage under the Customs Baggage Rules 1998. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items i.e. 01 Gold Cut Bar weighing 167.100 grams having purity 999/24Kt because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 167.100 Grams recovered from Shri Bapulal Prajapati, was attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 167.100 Grams is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 167.100 Grams recovered from Shri Bapulal Prajapati, who had arrived from Kuwait to SVPI Airport, Ahmedabad by Indigo Flight No. 6E-1244 on 16.04.2025 (Seat No. 7E) at the arrival Hall of the SVPIA, Ahmedabad were placed under seizure vide Panchanama dated 16.04.2025 and Seizure order dated 16.04.2025 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. SUMMATION:

The aforementioned proceedings indicate that Shri Bapulal Prajapati had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold i.e. 01 Gold Cut Bar weighing 167.100 grams having purity 999/24Kt having Market Value of Rs.16,43,429/- (Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value of Rs.14,93,393/- (Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure vide seizure memo dated 16.04.2025.

7. LEGAL PROVISIONS RELEVANT TO THE CASE:

Foreign Trade Policy 2015-20 and Foreign Trade (Development and Regulation) Act, 1992

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

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.

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.

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

The Customs Act, 1962:

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

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

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;

7.3 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

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

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

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

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

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

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded

at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

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

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

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

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

7.9 Section 112. Penalty for improper importation of goods etc.: any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

7.10 As per Section 123 of Customs Act 1962,

(1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

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

Customs Baggage Rules and Regulations:

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

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

Notifications under Foreign Trade Policy and The Customs Act, 1962:

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

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

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of

integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

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

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

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

9. <u>CONTRAVENTION AND VIOLATION OF LAWS:</u>

It therefore appears that:

(i) **Shri Bapulal Prajapati** had attempted to smuggle/improperly import Gold i.e. 01 Gold Cut Bar weighing 167.100 grams having purity 999/24 KT concealed in packet of almond which is further wrapped in yellowish green polythene which is kept in Grey Trolley Bag carried by him having Market Value of Rs. 16,43,429/- (Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value of Rs. 14,93,393/- (Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only.) with a 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. The unknown passenger(s)/person(s) had knowingly and intentionally smuggled the said gold concealed in packet of almond which is further wrapped in yellowish green polythene

which is kept in Grey Trolley Bag carried by the passenger on his arrival from Kuwait to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1244 dated 16.04.2025 Seat No. 7E at Terminal -2, SVPIA Ahmedabad on 16.04.2025 with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by **Shri Bapulal Prajapati**, by way of concealed in packet of almond which is further wrapped in yellowish green polythene which is kept in Grey Trolley Bag carried by him and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. **Shri Bapulal Prajapati** 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, as amended.

(ii) **Shri Bapulal Prajapati**, by not declaring the 01 Gold Cut Bar concealed in packet of almond which is further wrapped in yellowish green polythene which is kept in Grey Trolley Bag carried by the passenger, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(iii) The improperly imported/smuggled gold i.e. 01 Gold Cut Bar by **Shri Bapulal Prajapati**, concealed in packet of almond which is further wrapped in yellowish green polythene which is kept in Grey Trolley Bag carried by the passenger before arriving from Kuwait to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1244 dated 16.04.2025 Seat No. 7E at Terminal -2, SVPIA Ahmedabad on 16.04.2025, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(l) and 111(m) read with Section 2(22), 2(33), 2(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(iv) **Shri Bapulal Prajapati**, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.

(v) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold items totally weighing 167.100 grams concealed in packet of almond which is further wrapped in yellowish green polythene which is kept in Grey Trolley Bag carried by **Shri Bapulal Prajapati** who arrived from Kuwait to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1244 dated 16.04.2025, Seat No. 7E at Terminal -2, SVPIA Ahmedabad on 16.04.2025 are not smuggled goods, is upon Shri Bapulal Prajapati, who is the Noticee in this case.

10. Accordingly, a Show Cause Notice vide F. No. VIII/10-18/SVPIA-D/O&A/HQ/2025-26 dated 09.10.2025 was issued to the Noticee i.e. **Shri Bapulal Prajapati** S/o Shri Dhana Prajapati, residing at Village-Anjana, Post-Anjana, Tehsil-Garhi, Banswara, Rajasthan-327032, as to why:

(i) 01 Gold Cut Bar weighing 167.100 grams having purity 999/24Kt. having Market Value of **Rs.16,43,429/-**(Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value of **Rs.14,93,393/** (Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only), recovered from **Shri Bapulal Prajapati** which have been placed under seizure under panchnama proceedings dated 16.04.2025 and Seizure Memo Order dated 16.04.2025, should not be confiscated under the provision of section under the provision of Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.

(ii) Penalty should not be imposed upon **Shri Bapulal Prajapati** under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

DEFENSE REPLY AND RECORD OF PERSONAL HEARING:

11. The noticee has submitted his written submission vide letter dated **14.10.2025** through Shri Rishikesh Mehra, Advocate and Authorized Representative wherein he denied all the allegation against his client made under the SCN. He said that it was true that his client had brought 01 Cut Gold Bar, weighing 167.100 gram having purity of 24Kt of Rs.14,93,393/- (Tariff Value) was placed under seizure. The statement recorded under Section 108 of the

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

11.1 He submitted that his client **Shri Bapulal Prajapati,** S/o Shri Dhana Prajapati**,** residing at Village-Anjana, Post-Anjana, Tehsil-Garhi, Banswara, Rajasthan-327032; it was true that he had brought 01 Cut Gold Bar, weighing 167.100 Grams having purity of 24Kt. of Rs.14,93,393/- (Tariff Value) was placed under seizure. His client was coming back to India from Kuwait and purchased Gold from Kuwait, for his personal and for his family use. He submitted that gold is not prohibited item and his client is NRI Residing at Kuwait since 2015, having **Civil Id Card No.281012807665**, that he is doing job as Mistry of Color/ Paint at Kuwait, which was incorporated during the Statement, He submitted that his client is an NRI, he is eligible passenger coming to India more than **six months stay** at abroad eligible passenger to bring gold on payment of duty @ 06% and other taxes **(as per Notification No: 12/2012-CUS dated 17/03/2012)** he is eligible passenger. Meanwhile, The Noticee also produced Bills of Gold in the name of the Noticee showing the legitimate purchase from **(1) AL Najma Daulia Gold Jewellery Weighing 71.270 Grams Invoice No. 53115 Dated 07.02.2024 (2) AL-Najma Daulia Gold Jewellery Weighing 96.00 Grams Invoice No. 74286 Dated 15.04.2025** at Kuwait, which is not taken on record at any stage of Investigation. The statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in present case. The gold cut bars was hidden due to safety purpose, as he was having the fear of Loot/Theft; as he travel from Ahmedabad to Banswara around 260KM to his native by Road through, Jeep and Bus, he have to travelled through Tribal belt were many cases of loot/theft /Highway Robbery and murder cases are booked as per police Record, hence the question of concealment does not arise., gold is not prohibited, as he was first time brought the gold along with him was unable to declare it, due to ignorance of Customs law/Rules. As he has orally declared but nobody has bothered to help him to file the declaration form, as noticee was in the airport premises, reference is invited to instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed. The noticee is NRI Residing at **Kuwait** since last 10 years**,** that my client is Mistry Work at Kuwait, he brought gold bar for his personal use and purchased by himself from **(1) AL Najma Daulia Gold Jewellery Weighing 71.270 Grams Invoice No. 53115 Dated 07.02.2024 (2) AL-Najma Daulia Gold Jewellery Weighing 96.00 Grams Invoice No. 74286 Dated 15.04.2025** for his family from his hardworking and personal savings. also reference is invited to **Notification No. 12/2012-CUS dated 17.03.2012.** Noticee is an Illiterate Person and he study up to 10th stander he is not known the what is written in the panchnama and statement which he was only asked the general questions about his family, he was forced to sign in fear of arrest, he simply signed the papers. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of fine, re-export of goods or as per the procedure laid down under the Customs Act, 1962.

11.2. He further submitted that the statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interiliac stated that the gold was brought by Noticee the said gold Bars from his personal savings and hardworking earned money from Kuwait at the material time he was carrying the bill in this regard, but prior to his declaration he was intercepted and resulting in booking of the case; as carrying of gold without payment of duty means smuggling as per the impugned SCN. It is therefore, very clear, that the goods in question clearly belongs to the noticee. Moreover, the noticee had repeatedly requested the officers to release the gold on payment of duty, fine and penalty, but the same fell on the deaf ears. However, a copy of Invoice in the name of noticee, which was produced/recover from noticee; was not incorporated at any were during the Panchanama, but to during statement u/s 108, shows noticee's is the legitimate purchaser of gold. Noticee has produced the gold bill. The noticee does not know what is written in panchnama as well as statement has been recorded in English, he was an Illiterate Person and he study up to 6th stander he is not known

the what is written in the panchnama and statement which he was only asked the general questions about his family, he was forced to sign in fear of arrest, he simply signed the papers. It may also be reiterated that the instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed.

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

11.4. The noticee had made very clear on dated 16.04.2025 that the seized goods belonged to him but to no avail and the officers were hell bent on booking a case against him i.e. the noticee. had been given some more time, he would have definitely after discussing with officers filed a declaration as required under law. It is not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage. In addition to para of the said SCN, it has been stated as to why penalty should not be imposed upon his under section 112 of the Customs Act, 1962. The noticee has not acquired possession of or in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Also penalty has been proposed under section 112 of the Customs Act, 1962. It may be stated that the noticee is not a repeated offender that he has simply failed to declare the gold in the declaration.

11.5. He further submitted that the statement taken under section 108 of the Customs Act,1962 was given under duress and fear of being arrested and the threat was given by the officers and also not allowed to read and not allowed to write in his own handwriting which he knows very well as Gujrati such; furthermore, the same would have been immediately retracted after knowing the Department's statement under the provisions of section 108 of the Customs Act,1962, hence the same is contrary to law. It is further submitted that the statement was recorded under duress and threat and the statement recorded is not sustainable as can be seen from the below mentioned provisions of section 138B of the Customs Act,1962.

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

He further relied on the judgment of Hon'ble Supreme Court of India in case of Noor Aga v/s State of Punjab wherein Hon'ble Court stated as:

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

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

(a) There should be in the first instance statement made and signed by a person before a competent custom official.

(b) It must have been made during the course of enquiry and proceedings under the Customs Act.

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

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

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

*1**. Yakub Ibrasher Yousuf 2011(263) ELT-685 (Tri. Mum) and subsequently 2014-TIOL-277-Ceststt-Mum:** The Hon Tribunal while allowing redemption of gold not declared before Customs held: -*

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

*2. **Shaikh Jameel Pasha Vs Govt. Of India 1997(91) ELT277(AP):** The Hon. High Court of Andhra Pradesh in the above case, while deciding the Scope of section 125 to allow redemption of gold brought by passenger unauthorisedly held that: -*

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

3. **Kadar Mydeen V/s Commissioner of Customs (Preventive), West Bengal 2011(136) ELT 758)**: -Gold brought as a baggage by the appellant not declared – Confiscation under section 111(d) of the Customs Act,1962 sustainable- However, option given to appellant to redeem the same on payment of a fine of Rs.1.5 lakhs Section 125 ibid.

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

Further, he submitted the latest RA Orders: -

1. Order No: 73/2020-Cus (Wz)/Asra/Mumbai Dt. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)

2. Order No: 58/2020-Cus (Wz)/Asra/Mumbai Dt. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)

3. Order No: 61/2020-Cus(Wz)/Asra/Mumbai Dt. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)

4. Order No: 126/2020 Cus(Wz)/Asra/Mumbai Dt. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar.

   (Concealment in Jeans Poket Case granted RF, PP)

5. Order No: 123-124/2020-Cus(Wz)/Asra/Mumbai Dt.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.

6. 2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.

7. Order No: 20/2021-Cus(Wz)/Asra/Mumbai Dt. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)

8. Order No: 954/2018-CUS(Wz)/Asra/Mumbai Dt. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)

9. Order No: 29/2018-Cus(Wz)/Asra/Mumbai Dt. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)

10. Order No: 140/2021 Cus(Wz)/Asra/Mumbai Dt. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF,PP)

11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).

12. Order No: 245/2021-Cus(Wz)/Asra/Mumbai Dt. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)

13. Order No: 214/2021-Cus(Wz)/Asra/Mumbai Dt. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)

14. Order No: 10/2019-Cus(Wz)/Asra/Mumbai Dt. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).

15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)

16. Order No. 243 & 244/2022-Cus(Wz)/Asra/Mumbai Dt 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)

17. Order No. 282/2022-Cus(Wz)/Asra/Mumbai Dt. 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).

18. Order No. 287/2022-Cus(Wz)/Asra/Mumbai Dt 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).

19. Order No. 282/2022-Cus(Wz)/Asra/Mumbai Dt 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)

20. Order No. 284/2022-CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 In C/A Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)

21. Order No. 314/2022-Cus(Wz)/Asra/Mumbai Dt 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)

22. Order No. 56/2023-Cus(Wz)/Asra/Mumbai Dt 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)

23. Order No. 10/2019-Cus(Wz)/Asra/Mumbai Dt 30.09.2019 in C/A Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)

24. Order No. 404 & 405/2023-Cus(Wz)/Asra/Mumbai Dt 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniiwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)

25. Order No. 349/2022-Cus(Wz)/Asra/Mumbai Dt 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)

26. Order No. 395-396/2023-Cus(Wz)/Asra/Mumbai Dt 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)

27. Order No. 352/2022-Cus(Wz)/Asra/Mumbai Dt 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)

28. Order No. 309/2022-Cus(Wz)/Asra/Mumbai Dt 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)

29. Order No. 380/2022-Cus(Wz)/Asra/Mumbai Dt 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

30. Order No. 516-517/2023-Cus(Wz)/Asra/Mumbai Dt 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)

31. Order No. 786/2023-Cus(Wz)/Asra/Mumbai Dt 25.10.2023 In C/A Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

32. Order No. 885/2023-Cus(Wz)/Asra/Mumbai Dt 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

33. Order No. 883/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

34. Order No. 907-909/2023-Cus(Wz)/Asra/Mumbai Dt.12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

35. Order No. 899/2023-Cus(Wz)/Asra/Mumbai Dt 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

36. Order No. 898/2023-Cus(Wz)/Asra/Mumbai Dt 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

37. Order No. 880-882/2023-Cus(Wz)/Asra/Mumbai Dt.05.12.2023 in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad.(Gold Case granted RF, PP)

38. OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

39. OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023 IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

40. Order No. 961/2023-Cus(Wz)/Asra/Mumbai Dt 29.12.2023 in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

41. Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)

42. Order No. 830-831/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

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

1. Order no: 404-405/2023-Cus(Wz)/Asra/Mumbai/ Dt.30.03.2023 in C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Huzefa Khuzefa Mamuwala (2. Shri Shabbir Ranijiwala (10 Pieces of Gold Bars 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)

2. Order no: 58/2020-Cus(Wz)/Asra/Mumbai/ Dt. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Shabbir Taherally Udaipurwala (Gold weighing 466.640 grams Concealed Re-Export Nee Case granted RF, PP)

3. Order no: 605/2023-Cus(Wz)/Asra/Mumbai/Dated.22.08.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Hitesh Laxmichand Gagani (1 Gold kada and 1 gold chain 350.890 grams Concealed Re-Export Nee Case granted RF, PP)

4. Order no: 61/2020-Cus (Wz) /Asra/Mumbai/ Dated. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Basheer Mohammed Mansuri (10 Pieces of Gold Bars 1166.700 grams Concealed Re-Export Nee Case granted RF, PP

5. Order In Original No: JC/PK/ADJN/381/2021-22 Date Of Order 31.03.2022 And Date of Issue 12.04.2022 Joint Commissioner Of customs CSMI Airport Mumbai V/s Ms. Rashmi Satish Mandelia (3 Gold Biscuits (Bars) 349.000 Concealed Concealed Re-Export Nee Case granted RF, PP)

6. Order no: 280/2022-Cus (Wz) /Asra/Mumbai/ Dated. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Priyal Sanjay Chokshi (3 Pieces of crude Gold Bangles 140.00 Grams Concealed Re-Export Case granted RF, PP)

7. Order no: 281/2022-Cus (Wz) /Asra/Mumbai/ Dated. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP)

8. Order no: 389/2023-Cus(Wz)/Asra/Mumbai/Dated.29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 167.100 grams Concealed Re-Export Nee Case granted RF, PP)

9. Order no: 65/2023-Cus (Wz) /Asra/Mumbai/ Dated. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP)

10. Order no: 402/2022-Cus (Wz) /Asra/Mumbai/ Dated. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP)

11. Order no: 349/2022-Cus (Wz) /Asra/Mumbai/ Dated. 29.11.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Kakali Sardar (8 Gold Bangles 2 Gold Rings 550.000 Grams Concealed Re-Export granted on RF, PP)

12. OIA No. AHD-CUSTM-000-APP-082-25-26 Dated 18.06.2025 In c/a Mr. Ramesh Chandra Patel V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)

13. OIA No. AHD-CUSTM-000-APP-083-25-26 Dated 18.06.2025 In c/a Mr. Lokesh Kalal V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)

14. OIA No. AHD-CUSTM-000-APP-088-25-26 Dated 19.06.2025 In c/a Mr. Kesari Singh V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)

15. OIA No. AHD-CUSTM-000-APP-103-25-26 Dated 25.06.2025 In c/a Mr. Zaidkhan Qayyumkhan Pathan V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)

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

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

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

- In the case of **Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.)** the Hon'ble Supreme Court has held that the goods can be released to the passenger on

redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.

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

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

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

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

PERSONAL HEARING:

11.7 To follow the principle of natural justice, personal hearing in the matter was fixed on 25.11.2025. Shri Rishikesh Mehra, Advocate and Authorized Representative appeared for the personal hearing on 25.11.2025 on behalf of his client i.e. Shri Bapulal Prajapati. He re-iterated his written submission dated 14.10.2025. The Noticee came from Kuwait to India and 01 Cut Gold Bar brought not in commercial quantity. He has produced the Bills of purchase gold. He is an eligible passenger and illiterate person was unable to declare goods due to ignorance of Customs Rules and regulations. Reference is invited under Circular No. 09/2001-Cus Dated 22.02.2001. He Requested to pay duty and penalty. He has relied on order of OIA NO. AHD/CUSTM-000-APP-088-25-26 Dated 25.06.2025 In case of Mr.Zaidkhan Qayyumkhan Pathan Vs. Additional Commissioner of Customs, Ahmedabad in which Commissioner(A), Ahmedabad has re-export was granted. He, further, requested to take lenient view in the matter and allow to release the gold on payment of duty and fine and penalty.

DISCUSSION AND FINDINGS:

12. I have carefully gone through the facts of the case. The Noticee had submitted his written submission through his Advocate and Authorized Representative, Sh. Rishikesh Mehra on dated 14.10.2025. The noticee has availed the opportunity of personal hearing granted to him on 25.11.2025 and reiterated the written submission dated 14.10.2025 in the personal hearing. Accordingly, I take up the case for adjudication on the basis of evidences available on record and submission made by the noticee during the personal hearing.

13. In the instant case, I find that the main issue to be decided is whether the 01 Gold Cut

Bar, weighing 167.100 grams (Net Weight) is having purity 999.0/24Kt. and is having Market Value of Rs.16,43,429/- (Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value as Rs.14,93,393/- (Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only), seized vide Seizure Memo/Order dated 16.04.2025 under Panchnama proceedings dated 16.04.2025 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of specific intelligence regarding carrying restricted/prohibited goods, the officers of AIU intercepted Shri Bapulal Prajapati while he was attempting to exit through green channel without making any declaration. On being asked whether he had anything which required any declaration, he denied however on frisking and during the scanning of Grey Coloured Trolly Bag, some dark black coloured image was seen on the X-Ray Screen, indicating that there might be some gold items in the Trolley Bag. Therefore, the said Grey Coloured Trolly Bag was opened and items inside the bags are checked thoroughly. During the checking of Grey Coloured Trolley Bag, 01 Gold Cut Bar was found concealed in packet of almond which was further wrapped in yellowish green polythene. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the 01 Cut Gold Bar and informed that the total weight of the said gold bar comes to 167.100 Grams having purity 999.0/24Kt. which were hidden/concealed, inside the brown carton. Further, the Govt. Approved Valuer informed that the total Market Value was Rs.16,43,429/- and Tariff Value of the said gold bar was Rs.14,93,393/-. The details of the Valuation of the said assorted gold cut bars are tabulated as below:

Name of passenger	Details of gold Items	Pcs	Certificate no. & date	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
Shri Bapulal Prajapati	Gold Cut Bar	01	80/2024-25 Dt. 16.04.2025	167.100	999.0 24Kt	16,43,429/-	14,93,393/-

15. Under his submission, the noticee alleged that the statement recorded on 16.04.2025 was not voluntary and the same was recorded under duress and fear of arrest. In this regard, I find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. The offence committed was admitted by the noticee in his statement recorded on 16.04.2025 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. I find from the content of the statement dated 16.04.2025 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard and an afterthought, as I also not find any retraction filed by the noticee. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and he signed them after verifying the correctness of the facts, in full presence of mind. I find that the noticee has not submitted any documentary evidence to substantiate his claim that the statements were obtained under duress or threat of arrest. A retraction of a statement recorded under Section 108 of the Customs Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence, however the noticee has failed to submit any such documentary evidences which clearly indicates a calculated step to just mislead the proceedings. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him.

Further, the noticee alleged that he was asked to sign the statements and other documents without being allowed to read or understand their contents. He also claimed that he is an illietare person and studied upto 6th standard only and not well-versed in English language. The contention that the statements were obtained under duress and fear of arrest is clearly an afterthought and a strategic move to derail or misguide the adjudication process. On going through the records of the case, I find that in his voluntarily tendered statement, he disclosed detailed information about his profession, his family details and education background. I find that the statement of Shri Bapulal Prajapati contain specific and intricate

details, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statements. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statement in question. It is on the record that the noticee has tendered his statement volutarily under Section 108 of the Customs Act, 1962. In view of the above, I find that the statement given by noticee under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. In support of my view, I relied on the following judgements:

(i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that ***evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA***.

(ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that *"Statement recorded by a Customs Officer under Section 108 is a valid evidence."*

(iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that *"It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"*

(iv) *There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion* as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.

(v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that ***"Confessional Statement corroborated by the Seized documents admissible even if retracted."***

(vi) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.

(vii) The Hon'ble Apex Court in the case of Badaku Joti Savant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed."

(viii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:
Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient

materials are available to corroborate such evidence. ***As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily.*** *When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

(ix) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."

(emphasis supplied)

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

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

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in

India. It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

I also take note that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

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

16.2. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold item having total weight 167.100 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that he wanted to clear the gold clandestinely without payment of eligible custom duty. In this connection, I also refer to Boards instructions issued vide F.No.495/6/97-Cus.VI dated 6-5-96 and reiterated in letter F.No.495/19/99-Cus.VI dated 11.4.2000 wherein it was clearly stated that the import of goods (gold in the instant case) in commercial quantities would not be permissible within the scope of the Baggage Rules, **even on payment of duty**. From the above findings and guidelines, it is crystal clear that the noticee does not fall under the ambit of "eligible passenger" to bring the gold as claimed by him in his submission. Further, the manner of recovery of gold clearly indicates that the concealment was not only ingenious but also premediated. The noticee also admitted to possession, carriage, non-declaration, concealment and recovery of gold. I find that find that every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. Therefore, the allegation of noticee that instruction under Circular No. 09/2001-Cus dated 22.02.2001 and Notification No. 12/2012-Cus dated 17.03.2012 was not followed is frivolous.

17. I find under submission that the noticee mentioned that it was his first time to bring the gold and due to ignorance of Customs Laws, he was unable to declare the same before authority. *The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.* ***Hon'ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that ignorance of law is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]***. Further, he alleged that no declaration form was provided

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

In view of the non-declaration and the fact of having admitted carriage and possession of the impugned gold, it was established that the noticee had failed to declare the gold bar to the customs as required under Section 77 of the Customs Act,1962. It was therefore evident that the noticee intended to evade duty as he had not made true and correct declaration of the dutiable goods possessed by him. Moreover, the noticee had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to 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.

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

"Further, Section 2(33) of the Act defines "Prohibited Goods" means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with." From the aforesaid definition, it can be stated that *(a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods;* and (b) *this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with.* This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in *Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111(d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955.* The Court negatived the said contention and held thus: *"... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words,*

all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition.

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

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

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

19. Further, it was alleged by the noticee that it was not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage. He further contended that he was not allowed to declare the gold. In this regard, I find that, the noticee was carrying gold in form of 01 Gold Cut Bar concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him and had not declared the same to the Customs. Even after interception, when the noticee was asked about the possession of any gold or dutiable items, he had stoically denied that he was carrying any gold. The noticee had not declared the 01 Cut Gold Bar in his possession in the Customs declaration form. The noticee had not filed a true declaration to the Customs and had clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. *The noticee had cleverly and innovatively concealed the 01 Cut Gold Bar which was* concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him *which reveals his mindset to smuggle the goods and evade the duty. The quantum of gold and the manner of attempting to smuggle indicates that the same was for commercial use. The method used by the noticee can be termed ingenious, as he had successfully passed through the security of the overseas departing airport and also tried of removing the same clandestinely at the arrival airport. The mode of concealment was clever and premediated and just to hoodwink the customs officers. The noticee did not intend to declare the gold in his possession to Customs. Had he not been intercepted, the noticee would have gotten away with such a large quantity of gold. I find that this kind of act of noticee abusing the liberalized facilitation process for genuine passengers and same should be dealt with firmly and deterrents available in the law are required to be strictly enforced in the instant case. Accordingly, I find that the confiscation of the gold is therefore justified and the noticee had rendered himself liable for penalty for his ommissions and commissions.*

20. I find that the noticee has clearly accepted that he had not declared the gold in form of 01 Cut Gold Bar concealed in packet of almond, which was further wrapped in yellowish green polythene, which was kept in Grey Trolley Bag carried by him, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement he submitted that the gold was not purchased by him. The gold (concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him) was handed over to him by unknown person at Kuwait. The said gold was supposed to be handed over to an unknown person once he would exit the Airport. Contact details of the unknown person to whom the gold was to be handed over was not shared with him. But in his written submission dated 14.10.2025, he mentioned that the gold was purchased by him from his hard-earned money and purchased the gold from Kuwait and submitted copy of bill/invoice. Under his submission, he alleged that the gold was purchased by him and at the time of interception, he had produced the purchase bill but same was not taken into record and officers booked a case against him. On contrary, from the documents

available on record, I find that at the material time, he confessed in his statement that he did not want to declare the gold before the authority and try to remove the same clandestinely without payment of eligible customs duty. Therefore, the contention made in submission that he was having bill with him and about to declare the same and before that a case was made against him, is not tenable and afterthought.

20.1 Further, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that *"in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt".* And *"Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold* ***as well as duty being paid in the foreign currency****, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them"*. From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Moreover, for instance, if I agree with the contention of the noticee that he was inclined to declare the gold and wanted to pay the applicable duty on the said gold, but he was not allowed to do so, however, on other hand he had no foreign convertible exchange with him at the time of arrival to pay the duty as per the conditions stipulated vide Notification No. 12/2012-Cus dated 17.03.2012, which is confirmed by him in his written submission also. Therefore, the contention of noticee that he wanted to declare the said gold and accordingly wants to pay the duty on that is an afterthought. *Merely claiming that the gold was purchased by him only on basis of invoice which itself submitted at later stage at the time of written submission without any authenticity and without any other supporting documentary evidences viz, bank transactions details, source of money etc. which proves that the gold was purchased in legitimate way for his personal use, does not make him owner*. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. As gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence in his written submission which proves that the gold was purchased in legitimate way and for bonafide personal use. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold was purchased by him is not tenable on basis of no documentary evidence.

21. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24Kt. having 999.0 purity weighing 167.100 grams, in form of 01 Cut Gold Bar concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him, while arriving from Kuwait to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 167.100 grams, seized under panchnama dated 16.04.2025 liable for confiscation, under the provisions of Sections 111(d),,111(l) and 111(m) of the Customs Act, 1962. By secreting the 01 Cut Gold Bar concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. *The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.* It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that he has ***involved himself in carrying, keeping, concealing and dealing with the impugned goods*** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

22. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e. Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended* and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017-Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days*. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Further, the noticee has not fulfilled the conditions prescribed for the eligible passenger to carry the gold in terms of Notification No. 50/2017-Customs, dated 30.06.2017. Therefore, the said improperly imported gold weighing 167.100 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

23. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to smuggle the gold and to evade payment of Customs duty applicable thereof. The records before me shows that the passenger/noticee did not choose to declare the prohibited goods and opted green channel for customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. The 01 cut gold bar weighing 167.100 grams of 24Kt./999.0 purity, having total Market Value of Rs.16,43,429/-(Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and Tariff Value as Rs.14,93,393/-(Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only) concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him, was placed under seizure vide panchnama dated 16.04.2025. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by way of concealing and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

24. Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, alongwith defense submission. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. *For instance, the case law of Dhanak Ramji vs. UOI[2010(252)ELT A102(SC)] relied upon by the noticee does not apply to the present case as the aspect of ingenious concealment of gold was not the issue in the cited case and same is distinguishable*. In the similar manner *the noticee has referred the case law of A. Bapulal Prajapatii vs. CC, Chennai[2015(32l)ELT 540(Tri-Chen)) to draw the conclusion that the impugned gold could be released on imposition of redemption fine and also stated that the Supreme Court had affirmed the order vide its order reported at [2015(32l)ELT A207(SC)]. However, the Hon'ble Supreme Court has dismissed the appeal of the revenue without going into the merits only on grounds of delay and same is also distinguishable*. Further, the noticee has referred the case law of *Manoj Kumar Sharma S/o Late Shri ... vs Union of India dated 17.02.2022 High Court of Judicature for Rajasthan (D.B. Civil Writ Petition No. 12001/2020) in his defense. On going through the said judgment, I find that Hon'ble High Court of Rajasthan had correctly held that the goods were liable for confiscation and the matter was remanded back to revisional authority for imposition of fine, that the petitioner may pay to avoid the absolute*

confiscation of seized gold. I find that the noticee has submitted various case law in his written submission just to make his submission bulky without referring their facts and circumstances. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)],* it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, *I find that judgments relied upon by the noticee, is not squarely applicable in the instant case.* In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Merely claiming the ownership without any documentary backing, is not proved that the goods purchased in legitimate way and belonged to the noticee. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the noticee did not want to declare the said 01 Cut Gold Bar and tried to remove it clandestinely, to evade payment of customs duty. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] *that the option to release 'Prohibited goods' on redemption fine is discretionary*. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that *"that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.*". Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive."* Also, the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as: -

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

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

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

24.2. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the

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

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

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

24.4 The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. Sinnasamy 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –

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

24.5. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

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

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

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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****."*

25. In present case after considering all the facts and submissions of the case, I find that there is deliberate act of violation by the noticee by not making mandatory declaration in terms of Section 11 of Customs Act, 1962, Section 77 of Customs Act, 1962 and also contravened Para 2.20 of Foreign Trade Policy read with Baggage Rule, 2016. I find that noticee had failed

to produce any material evidence and explanation as to how the finances were arranged to buy the gold. A passenger found in possession of gold in bullion form worth of **Rs.16,43,429/-** then his purpose & intention cannot be other than avoidance of payment of duty and legal obligations laid down for import of gold in India under Customs Act, 1962 and any other law for the time being in force. The impugned gold was in standard form and was concealed inside brown carton which were recovered during baggage scanning. The concealment was done in a pre-mediated and ingenious manner which was hard to detect during the routine check and surveillance. Accordingly, on the basis of above discussion and findings, the gold weighing 167.100 grams of 24Kt./999.0 purity in form of 01 Cut Gold Bar, found concealed in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by him, is therefore, liable to be **confiscated absolutely**. **I therefore hold in unequivocal terms that the gold weighing 167.100 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act,1962;**

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

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

26.1 On a plain reading section, it appears that a declaration under Section 77 is pre-requisite condition for detention/re-export in terms of Section 80ibid. *Hon'ble Allahabad High Court has, in case of Deepak Bajaj [2019 (365) ELT 695 (All.)]] held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80*. In this case, the noticee had made no written declaration in respect of the subject gold. The noticee denied of having gold with him during investigation at airport and 01 Cut Gold Bar was recovered only after thorough checking of the passenger as well as his luggage. The main issue in the case is the manner in which the impugned gold was being brought into country. The noticee had deliberately concealed the gold ingeniously in form of 01 Cut Gold Bar in packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag and did not incline to declare the same before the Customs Authority. Thus, taking into account the facts on record and the serious, grave, novel and bold modus operandi opted by the noticee to brought the gold, it is very evident that the intention of the noticee was to remove the gold clandestinely without making payment of duty by escaping from the eyes of officers. *Further, Hon'ble Delhi High Court has, in case of Jasvir Kaur vs. UOI [2019(241) ELT 521 (Del.)]* ***held that re-export "cannot be asked for as a right--------. The passenger cannot be given a chance to try his luck and smuggle gold into country and if caught he should be given permission to re-export."***. Therefore, the option under Section 80 of the Act would not be applicable to him. Therefore, the request for re-export is not accorded as per the provisions.

27. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea is established beyond doubt on the basis of documents available on the records and discussion. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that *"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute"*. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold weighing 167.100 grams, having purity 999.0/24Kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping,

concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under *"does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act" and covered under Section 112(a) of the Customs Act, 1962* and *Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962*. Therefore, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act,1962 and I hold accordingly.

28. Accordingly, I pass the following Order:

O R D E R

i. **I order Absolute Confiscation of 01 Cut Gold Bar**, having purity 999.0/24Kt., weighing 167.100 Grams and having the **Market Value of Rs.16,43,429/-**(Rupees Sixteen Lakh Forty-Three Thousand Four Hundred Twenty-Nine Only) and **Tariff Value as Rs.14,93,393/-**(Rupees Fourteen Lakh Ninety-Three Thousand Three Hundred Ninety-Three Only), recovered from packet of almond which was further wrapped in yellowish green polythene which was kept in Grey Trolley Bag carried by the passenger, **Shri Bapulal Prajapati**, placed under seizure under panchnama proceedings dated 16.04.2025 and Seizure Memo Order dated 16.04.2025 under the provisions of Section 111(d), 111(l) and 111(m) of the Customs Act,1962;

ii. **I impose a Penalty of Rs.4,00,000/-** (Rupees Four Lakhs Only) on **Shri Bapulal Prajapati** under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-18/SVPIA-D/O&A/HQ/2025-26 dated 09.10.2025 stands disposed of.

Digitally signed by
Shree Ram Vishnoi
Date: 05-12-2025
18:44:03

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN: 20251271MN000000E579
F. No. VIII/10-18/SVPIA-D/O&A/HQ/2025-26 **Date:05.12.2025**

By RPAD/E-Mail/ Notice Board/Other Legally Permissible Mode

To,

Shri Bapulal Prajapati,
S/o Shri Dhana Prajapati,
Village-Anjana, Post-Anjana, Tehsil-Garhi,
Banswara, Rajasthan-327032

Copy to:

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