



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

“सीमाशुल्कभवन ,”पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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**PREAMBLE**

A	फाइलसंख्या/ File No.	:	VIII/10-269/SVPIA-C/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-269/SVPIA-C/O&A/HQ/2024-25 Dated: 31.03.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	<b>73/ADC/SRV/O&amp;A/2025-26</b>
D	आदेशतिथि/ Date of Order-In-Original	:	<b>30.06.2025</b>
E	जारीकरनेकीतारीख/ Date of Issue	:	<b>30.06.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<b>Smt. Kajal Devi, Wife of Shri Sanjay Kumar ,</b> 96/1, Sundar Nagar, Jaisinghpura, Shekhawatan, Jaipur-302027, State –Rajasthan, India.
(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 इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**Brief facts of the case**

On the basis of passenger profiling and suspicious movement of the passenger, the Air Intelligence Unit (AIU) Officers, SVPIA, Customs Ahmedabad, intercepted a female passenger named Smt. Kajal Devi, Wife

of Shri Sanjay Kumar (D.O.B. 29.03.1976) (hereinafter referred to as the said "passenger/Noticee"), residing at 96/1, Sundar Nagar, Jaisinghpura, Shekhawatan, Jaipur, Rajasthan-302027 (address as per passport), holding an Indian Passport No. X9836531, arriving from Dubai (DXB) to Ahmedabad (AMD) on 19.10.2024 via Spice Jet Flight No. SG-16 (Seat No. 5A), at the arrival hall of the Terminal-2 of SVPIA, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings thereof were recorded under the Panchnama dated 19.10.2024.

2. Whereas, the passenger was questioned by the AIU Officers as to whether she was carrying any contraband/dutiable goods in person or in baggage to which she denied. The Officers asked/ informed the passenger that a search of her baggage as well her personal search was to be carried out and give her an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the Passenger desired to be searched in presence of a gazetted Customs officer. Before commencing the search, the female officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the Officers.

**2.1** Thereafter, the AIU officers then asked the passenger to put her baggage in the X-Ray baggage scanning machine, installed near Green Channel at Arrival Hall, Terminal-II, SVPI Airport, Ahmedabad. The Officers found nothing objectionable in the baggage. The passenger, Smt. Kajal Devi was then asked 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 her body/ clothes. The passenger readily kept her mobile in a plastic tray and passed through the DFMD machine. During DFMD, strong beep sound was heard in the metal detector machine indicating the presence of some objectionable/ dutiable items on her body/ clothes. Further, during personal search/ detailed frisking of the passenger, 2 gold chains were recovered from her neck hidden below her clothes, 2 gold bangles were recovered from her hand hidden below her clothes and 2 gold anklets recovered from her leg that were concealed under her grey coloured socks that she was wearing (one in

each leg). All these items recovered from the passenger, prima facie, appeared to be made of gold having purity 24 Carat.

**2.2** Thereafter, the AIU Officer called the Government Approved Valuer and informed him that two gold chains, two gold bangles and two gold anklets have been recovered from the passenger and that he needed to come to the Airport for verification, examination and valuation of the recovered items. After some time, one male person arrived at the office of AIU located at the Arrival Hall of Terminal-2 of SVPI Airport. The officers introduced him to the Panchas and the passenger, as Shri Kartikey Soni Vasantrai, Government Approved Valuer. Then, the Government Approved Valuer weighed the recovered items i.e. two chains, two bangles and two anklets and after testing the same, the Valuer vide his report No.1076/2024-25 dated 19.10.2024 confirmed that the said items are made of pure gold having purity 999.0/24 Kt. Photographs of the same are as under :







3. After completion of the procedure, the Government Approved Valuer vide its report No. 1076/2024-25 dated 19.10.2024 confirmed that total weight of the gold items (02 gold bangles, 02 gold chain & 02 gold anklet) recovered from the passenger, Smt. Kajal Devi is 210.700 gms and are having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety-One Thousand Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousand Six Hundred and Fifty-Two only). The details of the gold recovered, as per the certificate No.1076/2024-25 dated 19.10.2024 are as under :

S.No.	Name of passenger	Details of gold Items	Certificate no.	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Smt. Kajal Devi	02 gold Bangles	1076/24-25	50.0	999.0 24Kt	401400/-	360383/-
		02 gold chains		60.7		487300/-	437504/-
		02 gold anklets		100.0		802800/-	720765/-
		Total		210.700		1691500/-	1518652/-

4. Thus, as per the Certificate No. 1076/2024-25 dated 19.10.2024, issued by the Government Approved Valuer, the items recovered are of pure gold, having purity 999.0/24 Kt., weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms and are having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only), which has been calculated as per the Notification No. 66/2024-Customs (N.T.) dated

15.10.2024 (Gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (Exchange Rate). The calculation of the market value is based on the unit market value of gold @80280 per 10 gms (999.0/24 Kt) and the calculation of the total tariff value is based on the tariff value of gold @72076.50 Rs. Per 10 gram (999.0/24 Kt) prevailing at the time of valuation.

**Seizure of the above Gold items:**

5. The recovered gold items i.e. two Gold bangles weighing 50.00 gms, two gold chains weighing 60.700 gms and two gold ankles weighing 100.00 gms that have been recovered from passenger which were concealed by her beneath her clothes, without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of “Smuggled Goods” and stand liable for confiscation under the Customs Act, 1962. Therefore, the said gold items totally weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms having purity 999 and having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only) were placed under seizure vide Order dated 19.10.2024 issued under the provisions of Section 110(1) and (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.

**Statement of Smt. Kajal Devi :**

6. Statement of Smt. Kajal Devi was recorded on 19.10.2024, wherein she inter alia mentioned her personal details like name, address and family details in the statement and that she was educated up to class 10<sup>th</sup>. She also stated that she is a housewife and lives with her husband at Jaipur. That his husband is a shopkeeper and monthly income from the shop is only Rs.10,000/-. She has two sons who are living out of India. Regarding her present visit, on being asked, she stated that she had gone to Dubai to meet her sons who have settled there and returned to India on 19.10.2024 via Spice Jet Flight No. SG-16 and the tickets for the present trip were purchased by her son through the travel agent.

6.1 She further stated that the gold jewellery recovered from her possession and seized by the Customs Officers belong to her and that the said jewellery was purchased by her from Dubai. She also stated that these

gold items were brought by her by way of concealing/ hiding the same under the clothes that she was wearing, so as to evade payment of Customs duty. These gold items were then seized by the officers under Panchnama dated 19.10.2024, under the provisions of the Customs Act, 1962.

**6.2** She was also aware that import of gold by way of concealment and evasion of duty is an offence and that she knowingly did not make any declaration on her arrival and opted for green channel, as to attempt to smuggle the gold without payment of customs duty.

**6.3** She perused the Panchnama dated 19.10.2024 and stated that the facts narrated therein are true and correct.

**6.4** From the investigation conducted in the case, it appears that the aforesaid gold jewellery was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as the quantity of gold brought by the passenger is more than the permissible limit allowed to a passenger under the Baggage Rules and as per the conditions of Notification 50/2017-Customs dated 30.06.2017, it appears that the passenger did not fall under the ambit of eligible passenger to import the gold. Hence, it cannot be considered as a Bonafide baggage under the Customs Baggage Rules, 2016. 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. two Gold Bangles weighing 50.00 gms, two Gold Chains weighing 60.700 gms and two gold anklets weighing 100.00 gms, totally weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms having purity 999.00/24 Kt. and having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only). Instead, the same were ingeniously hidden under the clothes she was wearing, 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 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms recovered from Smt. Kajal Devi, were 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 210.700 grams

( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms recovered from Smt. Kajal Devi, who had arrived from Dubai to SVPI Airport, Ahmedabad by Spice Jet Flight No. SG-16 on 19.10.2024 at the arrival Hall of the SVPIA, Ahmedabad were placed under seizure vide Panchanama dated 19.10.2024 and Seizure order dated 19.10.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold items are liable for confiscation.

**Summation:**

7. The aforementioned proceedings indicates that Smt. Kajal Devi had attempted to smuggle the aforesaid gold items into India and thereby rendered the aforesaid gold items having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under seizure vide Order dated 19.10.2024 issued under the Provisions of Section 110(1) and (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.

**8. Legal provisions relevant to the case:**

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

8.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, as amended only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid

passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

- 8.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 8.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under subsection (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.
- 8.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

**The Customs Act, 1962:**

- 8.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 8.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;
  - (b) stores;
  - (c) baggage;
  - (d) currency and negotiable instruments; and
  - (e) any other kind of movable property;
- 8.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 8.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 8.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law



for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*permission;*

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

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

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

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

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

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

#### 8.13 Section 112. Penalty for improper importation of goods etc.:

*any person,*

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

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

#### 8.14 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.*

- 8.15 All dutiable goods imported into India by a passenger in the baggage are classified under CTH 9803.

**Customs Baggage Rules and Regulations:**

- 8.16 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.
- 8.17 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 bon-fide 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.

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

- 8.18 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.
- 8.19 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:**

OIO No:73/ADC/SRV/O&A/2025-26  
F. No. VIII/10-269/SVPIA-C/O&A/HQ/2024-25

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.

**8.20.** 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.

**Contravention and violation of laws:**

**09.** It therefore appears that:

- (i) Smt. Kajal Devi had attempted to smuggle/improperly import gold items i.e. two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, totally weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms having purity 999.00/24 Kt. and having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only), found concealed under the clothes worn by her (the passenger), with a deliberate intention to evade 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 said passenger, **Smt. Kajal Devi** had knowingly and intentionally smuggled the said gold items i.e. two Gold Bangles weighing 50.000 gms, Two Gold Chains weighing 60.700 gms and Two gold Anklets weighing 100.00 gms, totally weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, by ingeniously concealing the same under the clothes worn by her, on her arrival from Dubai to Ahmedabad on 19.10.2024 by Spice Jet Flight No. SG-16 (Seat No. 5A) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by **Smt. Kajal Devi**, by way of concealment under the clothes worn by her and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. **Smt. Kajal Devi** 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) **Smt. Kajal Devi** by not declaring the gold brought by her in the form of gold jewellery, i.e. two Gold Bangles weighing 50.00 gms, Two Gold Chains weighing 60.700 gms and two gold anklets weighing 100.00 gms, totally weighing 210.700 grams ( consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms having purity 999.00/24 Kt. that was found concealed under the clothes worn by her, 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 by **Smt. Kajal Devi**, in the form of two Gold Bangles weighing 50.00 gms, Two Gold Chains weighing 60.700 gms and two gold anklets weighing 100.00 gms, totally weighing 210.700 grams (consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, having purity 999.00/24 Kt., found concealed under the clothes worn by her, before arriving from Dubai to SVPI Airport, Ahmedabad, on 19.10.2024 via Spice Jet Flight No. SG-16 (Seat No. 5A) at Terminal -2, SVPIA Ahmedabad on 19.10.2024, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (iv) **Smt. Kajal Devi** by the above-described acts of omission/commission and/or abetment has rendered himself 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 210.700 grams (consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, found concealed under the clothes worn by the passenger, **Smt. Kajal Devi** who arrived from Dubai via Spice jet Flight No. SG-16 (Seat No. 5A) at Terminal -2, SVPIA Ahmedabad on 19.10.2024 are not smuggled goods, is upon **Smt. Kajal Devi**, who is the Noticee in this case.

**10.** Therefore, a Show cause notice F.No: VIII/10-269/SVPIA-C/O&A/HQ/2024-25 dated 31.03.2025 has been issued to Smt. Kajal Devi, W/o Shri Sanjay Kumar (D.O.B. 29.03.1976), residing at 96/1, Sundar Nagar, Jaisinghpura, Shekhawatan, Jaipur-302027 as to why:

- (i) The gold items i.e. two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, totally weighing 210.700 grams (consisting of two

Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms having purity 999.00/24 Kt. and having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only), found ingeniously concealed under the clothes worn by the passenger, **Smt. Kajal Devi**, who arrived from Dubai to Ahmedabad on 19.10.2024 by Spice Jet Flight No. SG-16, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 19.10.2024 and Seizure Memo Order dated 19.10.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) Penalty should not be imposed upon the **Smt. Kajal Devi**, under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

### **Defense Reply and Personal Hearing:**

**11.** Smt. Kajal Devi has filed her written submission dated 16.06.2025 through her advocate Shri Rishikesh J Mehra, wherein he denies the allegation made in the SCN against her client Smt. Kajal Devi. He mentioned that it was true that she had brought 02 gold bangles weighing 50.0 grams, 02 gold chain weighing 60.70 grams and 02 gold anklets weighing 100.0 grams. He submitted that the statement recorded under Section 108 of the Customs Act, 1962 was given under fear and duress of being arrested, therefore, the same was not true and for the reasons it cannot be relied too true for purpose of invoking violation as alleged in the SCN.

He submitted that the gold jewellery is neither prohibited nor restricted, therefore, the said jewellery is not liable for confiscation under Section 111 of Customs Act, 1962. He submitted that his client has purchased the said jewellery while returning from Dubai and bill was produced at the time of interception but the said bill was not incorporated at any stage. The said gold jewellery was brought for her personal use or for her family. Due to ignorance of law, she was not able to declare the same before customs. He submitted that his client has orally declared the same in terms of Circular No. 09/2001-Cus dated 22.02.2001 but same was not considered and same was not followed by the officer.

He further, submitted that his client cannot be penalized under section 112 as the department has no evidence for proving that she 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, then such commodities or articles could be released on redemption fine.

He submitted that there is plethora of judgments wherein release of gold has been allowed on payment of redemption fine or allowed re-export on payment of redemption fine.

He further submitted that in her statement also, she submitted that the gold jewellery was purchased from her personal saving and hardworking earned money from Dubai from "Tora Bullion Jewellery" under invoice no. HO-243128 dated 18.10.2024. Therefore, the goods in question clearly belongs to the noticee. He submitted that she does not know what was written in Panchnama and Statement as both were recorded in English as she is unable to read and write English. He submitted that no declaration form was provided to his client neither by customs officer nor by Airline staff. He submitted that his client has retracted after knowing what was written in the Statement.

He further submitted that his client is not a repeated offender and she just failed to declare the gold jewellery in the declaration form. He submitted that his client was not allowed to read the statement and also not allowed to write in her own handwriting as she known Hindi very well. He submitted that the statement recorded under duress and threat is not sustainable under Section 138B of Customs Act, 1962 and for that he relied upon the judgment of Hon'ble Supreme Court in case of Noor Aga Vs. State of Punjab. He submitted that penalty under Section 112 of Act cannot be imposed on his client as Department has failed to prove that his client any way has done any action contrary to the provision of Act.

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.

*In this connection, following case laws are submitted to show that The gold in the illegal custody of Customs is liable to be released on redemption fine: -*

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

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

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

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

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

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

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

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

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

Further, he submitted the latest RA Orders:-

- 1.** Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)

2. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)
3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Poket Case granted RF, PP)
5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.
6. 2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.
7. Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)
8. Order No: 954/2018 CUS(WZ)/ASRA/MUMBAI DT. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)
9. Order No: 29/2018 CUS(WZ)/ASRA/MUMBAI DT. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)
10. Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF,PP)
11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s

OIO No:73/ADC/SRV/O&A/2025-26  
F. No. VIII/10-269/SVPIA-C/O&A/HQ/2024-25

Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).

12. Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
13. Order No: 214/2021 CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
14. Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI DT. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)
16. Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)
17. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).
18. Order No. 287/2022 CUS(WZ)/ASRA/MUMBAI DT 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).
19. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)



20. Order No. 284/2022 CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 in c/a Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)
21. Order No. 314/2022 CUS(WZ)/ASRA/MUMBAI DT 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)
22. Order No. 56/2023 CUS(WZ)/ASRA/MUMBAI DT 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)
23. Order No. 10/2019 CUS(WZ)/ASRA/MUMBAI DT 30.09.2019 in c/a Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)
24. Order No. 404 & 405/2023 CUS(WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)
25. Order No. 349/2022-CUS(WZ)/ASRA/MUMBAI DT 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)
26. Order No. 395-396/2023-CUS(WZ)/ASRA/MUMBAI DT 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
27. Order No. 352/2022-CUS(WZ)/ASRA/MUMBAI DT 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
28. Order No. 309/2022-CUS(WZ)/ASRA/MUMBAI DT 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
29. Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs,

- CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
30. Order No. 516-517/2023-CUS(WZ)/ASRA/MUMBAI DT 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)
  31. Order No. 786/2023 CUS(WZ)/ASRA/MUMBAI DT 25.10.2023 in c/a Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
  32. Order No. 885/2023 CUS(WZ)/ASRA/MUMBAI DT 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
  33. Order No. 883/2023 CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
  34. Order No. 907-909/2023 CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
  35. Order No. 899/2023 CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
  36. Order No. 898/2023-CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
  37. Order No. 880-882/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
  38. OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
  39. OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023 IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

40. Order No. 961/2023-CUS(WZ)/ASRA/MUMBAI DT 29.12.2023 in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
41. Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)
42. Order No. 830-831/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

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

- In the case of **Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.)** the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.
- A Rajkumari Vs. CC (Chennai) 2015 (321) ELT 540 (Tri-Chennai)
- Judgment of Hon'ble High Court of Allahabad in the matter of Sri Rajesh Jhamatmal Bhat and another Vs. Commissioner of Customs, Lucknow
- Judgment of Rajasthan High Court in case of Manoj Kumar Sharma S/o Late Shri..... Vs. Union of India (17.02.2022)

He further submitted that the statement was recorded under duress and threat and that she had never on the previous occasion brought any gold. Department has been unable to show that the noticee did travel on occasions with offending goods. This being the first instance on her entire life, she may be pardoned of the consequences just because she 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 further states that the goods may be released to his client at the earliest even provisionally for which his client is ready to give bond or pay

customs duty amount as ordered against the goods mentioned in the said SCN. It is also craved that if the same is not possible to release the gold on payment of fine and penalty, orders for Re-Export may be given too, for which his client is ready to pay penalty too and requested for a personal hearing in the matter.

**12.** To follow the principle of natural justice, personal hearing in the matter were fixed on 06.06.2025 and 19.06.2025. Smt. Kajal Devi herself alongwith Shri Rishikesh Mehra, Advocate and Authorized Representative appeared for the personal hearing on 19.06.2025. The authorized representative re-iterated his written submission dated 19.06.2025. He produces Vakalatnama to represent the case. He requested to attend the personal hearing in person instead of video conferencing. He submitted his client children's who lived in Dubai, gifted the said jewellery to her. He submitted the copy of bill in the name of his client. He submitted that gold is not prohibited item and jewellery was not concealed ingeniously, as she wore the same during her journey. Due to ignorance of law, she was unable to file declaration form as she brought the jewellery first time with her. He requested to take lenient view in the matter and allow to release the gold on redemption fine and submitted various case law alongwith written submission wherein gold was released on redemption fine.

**Discussion and Findings:**

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

**14.** In the instant case, I find that the main issue to be decided is whether the Gold items i.e. two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, totally weighing 210.700 grams (consisting of two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms having purity 999.00/24 Kt. and having the Market Value of Rs.16,91,500/- (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as Rs.15,18,652/- (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only) concealed under the clothes worn by the noticee, Smt. Kajal Devi and seized, under Panchnama dated 19.10.2024 and seizure memo order dated 19.10.2024, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the noticee is liable for penal action under the provisions of Section 112 of the Act or not;.

**15.** I find that the panchnama has clearly drawn out the fact that the noticee was intercepted on the basis of passenger profiling and suspicious movement and while she was trying to exit through the green channel without any declaration to the Customs at the Red channel. Thereafter, personal search of the noticee alongwith her baggages was conducted in presence of two independent panchas. After, denial of anything dutiable goods with her, the officers asked her to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the passenger removed metallic objects from her body/ clothes such as mobile etc. and passed through the DFMD, while passing through a strong beep sound was heard indicating the presence of some objectionable/ dutiable items on her body/ clothes. Thereafter, during personal search/ detailed frisking of the noticee, 2 gold chains, 2 gold bangles and 2 gold anklets were recovered which were concealed by her under her clothes, worn by her. All these items recovered from the passenger, prima facie, appeared to be made of gold having purity 24 Carat.

I find that the offence committed by her was admitted in her statement recorded on 19.10.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered her statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. Under her submission, she alleged that the statement was given under duress and threat of being arrest and statement was recorded in English; that being an illiterate person, she did not know what was written in the statement; that she was forced to sign the statement and not allowed to write in her own handwriting. In this regard, I find from the content of the statement dated 19.10.2024 wherein she clearly admitted that the Statement was given voluntarily without any threat, coercion or duress and true to the fact 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 regarding statement being given under duress and threat. It is on the record that the noticee had requested the officer to type the statement on her behalf on computer and same was recorded as per her say. After explaining in the Hindi to her and on being reading and understanding the same she signed the same with her dated signature. I also find that the statement was tendered by her voluntarily and willingly without any threat, coercion or duress and same was explained to her in Hindi also. She clearly mentioned that she can read, write and understand English and Hindi language.

I find from the statement that she was studied upto 10<sup>th</sup> Standard, therefore, the allegation that she did not know what was written/typed in Statement as same was in English and being illiterate she was not able to understand what was written, does not hold ground on the fact that she was studied upto 10<sup>th</sup> Standard and have acquired basic understanding of English. Moreover, she admitted that she can read, write and understand English. She clearly admitted that she did not make any declaration intentionally as she wants to clear the gold without payment of Customs Duty. To support my view, I put reliance on the mentioned rulings in this matter as follows:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that “Statement recorded by a Customs Officer under Section 108 is valid evidence”
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that “It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962”
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon’ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that “Confessional Statement corroborated by the Seized documents admissible even if retracted.”
- Hon’ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [ Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA”

Moreover, the allegation made in the SCN was not based merely on the basis of Statement, rather the noticee was not submitted any documentary evidences which support her claim on Gold during the investigation. I also find that the said gold weighing 210.700 grams (consisting of two Gold



Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two gold anklets weighing 100.00 gms) of 999.00/24 Kt. purity having Tariff Value of Rs. 15,18,652/- and market value of Rs. 16,91,500/- found in possession of noticee and seized, under Panchnama dated 19.10.2024 carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of Customs Act, 1962. It is on record that the said gold items were concealed and carried by her without following the prescribed rules and provisions and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020 as amended.

**16.** Under her submission, she mentioned that import of gold jewellery neither prohibited nor restricted, therefore, the said jewellery is not liable for confiscation under Section 111 of Customs Act, 1962.

In this regard, I find that Rules envisaged under Baggage Rules, 2016, are very crystal-clear. The expression “personal effect” is defined in Rule 2(i)(vi) of the Baggage Rules, 2016 which is as:-

**Rule 2. Definitions. -**

(1) In these rules, unless the context otherwise requires,-

(i) "Annexure" means Annexure appended to these rules;

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(vi) ***"personal effects" means things required for satisfying daily necessities but does not include jewellery.***

Further, Rule 3 (a) and Rule 3(b) of Baggage Rules, 2016, discusses the duty-free clearance of *“used personal effects and travel souvenirs”* only and *“articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger.”*

Further, Rule 5 of Baggage Rules, 2016, stipulates that *“A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.”*

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On conjoint reading of above provisions, it is evident that jewellery is not included as articles of personal effect. The said Rules read with Annexure I makes it clear that gold or silver ornaments upto a value of Rs.50,000/- (Rupees Fifty Thousand only) worn in person or carried on person are allowed as duty free on arrival. I find that in the instant case, the value of the gold ornaments worn by noticee exceeded Rs.50,000/- (Rupees Fifty Thousand only), which makes it incumbent on the part of the noticee to have made proper declaration under Customs Baggage Declaration Regulations, 2013 read with Baggage Rules 2016 and discharged the duty liability

. These Rules apply to all passengers including tourist coming to India. These Rules are clear, leaving no scope for any ambiguity and confusion. Therefore, the gold ornament/jewellery worn by the noticee comes under ambit of definition of "Baggage" as prescribed under Section 2(33) of Customs Act, 1962. If the value of gold and silver ornaments brought or having in possession of any passenger, exceeded the value under the Rules, it is obligatory on part of noticee to make appropriate declaration. However, in the instant case, I find no declaration under Section 77 of Customs Act, 1962 was given by the noticee. Therefore, the contention of noticee that jewellery is not restricted item, appears not tenable.

Regarding the Prohibition for importation of gold, I find that Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following:-

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

be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated the said contention and held thus:- "... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. **From the said judgment of the Apex Court, it is amply clear that the goods are to be treated as 'prohibited' if there is failure to fulfil the conditions/restrictions imposed by the Government on such import or export. In this case, I find that the noticee had tried to remove the impugned good i.e. 02 gold bangles, 02 gold chain and 02 gold anklets all weighing 210.700 grams, by way of concealment and without declaring before Customs to evade the payment of Duty. Accordingly, the good brought by the noticee falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

Further, Hon'ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I Vs. Samynathan Murugesan [2009 (247) E.L.T 21 (Mad.)] relied on the definition of 'Prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003 (155) ELT 423(SC)] and has also held as under:-

*“in view of meaning of the word “prohibition” as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold the imported gold was ‘prohibited goods’ since the respondent is not eligible passenger who did not satisfy the conditions”*

**17.** I find 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.

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 1 kg 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.

**18.** 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.

**19.** 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 to 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. In the instant case, none of the above-mentioned conditions for import of gold, satisfied by the noticee, which makes the gold items prohibited and subsequently, fall under ambit of “Smuggling” goods provided under Section 2(39) of Customs Act, 1962.

**20.** I find under submission that the noticee mentioned that due to ignorance of Customs Laws, she was unable to declare the same before authority. The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. I also placed reliance on decision of Hon’ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others wherein it was 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.)]. It is clear case of non-declaration with an intent to smuggle the gold and to evade the payment of duty. I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted/refuted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers was well

documented and made in the presence of the panchas as well as the noticee. *Therefore, in view of above discussion and findings, the smuggling of gold in form of jewellery items included 02 gold bangles, 02 gold chain and 02 gold anklets concealed under garments and non-declaration of gold jewellery in order to evade payment of Customs duty is conclusively proved.* Thus, it is proved that noticee violated the provisions of Section 77 and Section 79 of the Customs Act, 1962 by importing the gold items which were 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 amended. Under her submission, it was submitted that she had retracted the statement after knowing the content of statement. In this regard, I find no such retraction filed by the noticee before any authority; therefore, the allegation is just afterthought and merit no credence. Further, I find that gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of the Customs Act, 1962.

**21.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013, which was also admitted in her statement that she was not willing to declare the same in order to clear it illicitly without discharging the applicable duty.* I find that she was trying to exit through Green Channel without making any declaration of the goods found in her possession, clearly indicates her intention of not declaring the goods deliberately and to evade the payment of eligible customs duty which was required to be paid on such imports. 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. From the details of the journey undertaken by the noticee from India to Dubai and Dubai to India, I find that the noticee has not qualified as “eligible passenger” as she was not staying abroad for the prescribed/stipulated period of time as prescribed in the Notification. It is also observed that the imports were also over and above the prescribed limit and for non-bonafide purposes. Therefore, the said improperly imported gold weighing 210.700 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20, as amended and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, evidently proved that by the above acts of contravention, the noticee has rendered the said gold weighing 210.700 grams, having Tariff Value of Rs.15,18,652/- and Market Value of Rs.16,91,500/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 19.10.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using such modus of concealing the gold, it is observed that the noticee was fully aware that the import of said goods is offending in nature.

**22.** Under her submission, she claimed the ownership on the said gold by stating that the gold in form of jewellery was purchased by her from shop at Dubai named “Tora Bullion Jewellery” under invoice no. HO-243128 dated 18.10.2024 and same was produced at the time of interception also, but was not considered. During the personal hearing, she claimed that said gold jewellery were purchased by her sons and gifted to her.

In this regard, I find that the noticee in her voluntary statement clearly admitted that she intentionally not declared the gold items with an intention to remove them clandestinely to evade the payment of custom duty. Even after asking by the officer, she denied of having any dutiable goods which attracts payment of duty. Only after passing through the DFMD machine, the said gold items recovered, which were concealed by the noticee under her garments. Therefore, the claim of noticee that the bill was produced at the time of interception is not creditworthy and

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**23.** I note that Section 123 of the Customs Act, 1962, deals with the burden of proof in certain cases, specifically when goods are seized under the Act on the suspicion of being smuggled. I hereby reproduce Section 123 of the Customs Act, 1962 as : -

**Section 123. Burden of proof in certain cases. -**

*1 [(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, 2 [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

As per the provision of Section 123 of the Act, the burden of proving that the seized gold items are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods were seized. In the instant case, the onus, for proving that the seized gold items weighing 210.700 grams are not smuggled one and only bonafide house-hold goods, lie on noticee from whose possession the gold was recovered and seized on 19.10.2024.

Further, I find from the certificate submitted by the Government Approved Value, that the gold was of purity of 999.0/24kt, which is not in conformity with locally available gold but similar to gold generally smuggled from foreign countries. I note that it is a well-established fact that 24-karat gold, due to its high purity, is extremely malleable and lacks the structural strength typically required for finished jewellery, especially items like bangles, anklets and chains that are expected to withstand wear and pressure and not used in Indian customs/tradition. Merely submitting the copy of invoice/bill which was also not appear genuine and without any documentary backing viz. bank statement, does not justified the ownership

on the gold and also not proved that the goods were purchased in legitimate way. The noticee has miserably failed to show the procurement and the possession of the gold by way of any legal document. Thus, the noticee has failed to discharge the burden placed on her in terms of Section 123. I am of the view that when there is a prima facie case of smuggling, for which, action for confiscation is taken, such proceedings taken should be allowed, to reach its logical end, and not to be stifled, by any provisional release and accordingly the plea of noticee regarding provisional release of gold is not considered on the basis of above discussion and findings. I placed reliance on the decision of Hon'ble Kerala High Court in case of Abdul Razak Vs. UOI - 2012 (275) ELT 300 (Ker.) wherein the Hon'ble Court held that ***“appellant cannot claim provisional release of goods on payment of redemption fine and duty, as a matter of right.”***

**24.** From the above discussion and findings, it is concluded that the seized gold jewellery on which the noticee claimed to be the owner without any valid documents of purchase, is treated as 'prohibited goods' and failed to prove that the said gold jewellery was purchased in legitimate way and by necessary implication the seized gold items falls under the definition of 'smuggled goods', and further hold that the seized goods are liable for confiscation under Section 111, whereby goods which are imported or attempted to be imported contrary to any prohibition imposed by or under the Act or any other law for the time being in force, would be liable for confiscation. In this context, I would like to reinforce my standing by placing my reliance on the view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia wherein the Hon'ble Court in a very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. The said gold jewellery weighing 210.700 grams, which were recovered from her possession, and were kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the noticee concealed the said gold in form of bangles, anklets and chains concealed under garments worn by her. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the noticee.

**25.** Further, I find that the Noticee has quoted and relied on various case

laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, alongwith defense submission. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. In the present case, the manner of concealment being clever, conscious and pre-meditated. The quantity and type of gold being for commercial use, this being a clever attempt to brazenly smuggle the impugned gold.

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. By merely submission of invoice/bill copy (which itself not appears genuine), without any documentary support viz. Bank transaction details, does not sufficient to prove that the goods were purchased in legitimate way. Further, from the SCN, Panchnama and Statement, I find that the noticee was not willing to declare the said gold bangles, anklets and chains and tried to remove them clandestinely, to evade payment of customs duty. Therefore, I hold that the said gold items weighing 210.700 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of

Customs duty is liable for absolute confiscation. ***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.***

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

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

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

**27.** 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.

**28.** 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).*

**29.** 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.*

**30.** 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”.

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

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

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

**32.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold jewellery weighing 210.700 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold jewellery weighing 210.700 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.**

**33.** The noticee has requested for allowing the said seized gold jewellery 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".*

**33.1** I find that Section 80 of the Act does allow re-export of goods but the important point to be seen is as to whether there has been a true declaration of the goods on arrival. In the present case, I find that the noticee had not requested for re-export of the seized Gold neither at any time after her



arrival at SVPI Airport nor during the whole proceedings. So, I find that request made by her for re-export of gold jewellery is merely an afterthought and cannot be considered. The noticee denied of having gold with her at the time of interception and gold jewellery were recovered while passing through DFMD installed at SVPI Airport Ahmedabad. Further, it is already established and an admitted fact that there was no declaration made by the noticee in respect of said gold which were found in possession of the noticee. Therefore, the option under Section 80 of the Act would not be applicable to her. The request for re-export is therefore, rejected. I placed reliance on the judgment of Hon'ble Delhi High Court in case of Jasvir Kaur Vs. Union of India (1991 SCC Online Del 625) wherein the Hon'ble Court observed as:-

*9. We have no manner of doubt that re-export cannot be asked for as of right. If the Customs authorities have come to the conclusion, as they did in the present case, that the intention of bringing an article of high value is to dispose it of in India or is in an attempt to smuggle the same into India then the question of re-export cannot arise when that article is recovered from the passenger. The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export. That is not the intention of Rule 3 or Rule 7 of the Tourist Baggage Rules. It is the genuine personal jewellery, which alone is permitted to be brought into the country and which. Must be re-exported. Whenever the Customs authorities find that in the garb of personal items goods are sought to be smuggled or brought into the country without the authority of law then there is every right with the Government to confiscate the same. For good and valid reason re-export may be allowed but it cannot be claimed as of right.*

.....

*11. The learned counsel that..... In our opinion this is a wrong understanding of the law. Whenever an attempt is made to smuggle goods into the country whether by a tourist or by a professional smuggler and the article is recovered by the customs authorities then unless and until the Customs authorities come to the conclusion that the article is for bona fide use of the passenger the question of a right to re-export being granted does not arise. The rules in this country clearly indicate the value of the articles which can be brought, the number and quantity of the articles which can be brought and if there is an attempt to violate the law then the person must suffer the consequences.*

**34.** In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea is established on the basis of documents available on the records and discussion and findings. Accordingly, on deciding the penalty in the instant case, I also take into consideration, the observations of Hon'ble Apex Court laid down in the judgment of *M/s. Hindustan Steel Ltd Vs. State of Orissa*; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold items viz. 02 gold bangles, 02 gold anklets and 02 gold chain, total weighing 210.700 grams having purity of 999.0/24Kt. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on her part. I further find that the noticee had involved herself and abetted the act of smuggling of the said gold weighing 210.700 grams, carried by her. She has agreed and admitted in his statement that she travelled from Dubai to Ahmedabad with the said gold items concealed under her garments. Despite her knowledge and belief that the gold in form of jewellery carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 210.700 grams, having purity 999.0/24kt by concealment. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the noticee is liable for penal action under Sections 112 of the Act and I hold accordingly.

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

#### **ORDER**

- (i) I order **absolute confiscation** of gold i.e. two Gold Bangles weighing 50.000 gms, two Gold Chains weighing 60.700 gms and two Gold anklets weighing 100.00 gms, **totally weighing 210.700**

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**grams** having purity 999.00/24 Kt. and having the Market Value of **Rs.16,91,500/-** (Rupees Sixteen Lakhs Ninety One Thousands Five Hundred Only) and Tariff value as **Rs.15,18,652/-** (Rupees Fifteen Lakhs Eighteen Thousands Six Hundred and Fifty Two only) found concealed under garment and placed under seizure under panchnama proceedings dated 19.10.2024 and Seizure Memo Order dated 19.10.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) I impose a penalty of **Rs.4,50,000/-** (Rupees Four Lakh Fifty Thousand Only) on **Smt. Kajal Devi** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

**36.** Accordingly, the Show Cause Notice No. VIII/10-269/SVPIA-C/O&A/HQ/2024-25 dated 31.03.2025 stands disposed of.

**(Shree Ram Vishnoi)**  
Additional Commissioner  
Customs, Ahmedabad

F. No: VIII/10-269/SVPIA-C/O&A/HQ/2024-25      Date:30.06.2025  
**DIN: 20250671MN000000DFBD**

**BY SPEED POST AD**

To,  
**Smt. Kajal Devi, Wife of Shri Sanjay Kumar,**  
96/1, Sundar Nagar, Jaisinghpura,  
Shekhawatan, Jaipur-302027,  
State –Rajasthan, India.

**Copy to:**

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site.
6. Guard File.