

OIO No: 280/ADC/SRV/O&A/2024-25
F. No: VIII/10-237/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाईकोर्टके सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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DIN: 20250371MN000000FFF3

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-237/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by the Pax.
C	मूलआदेशसंख्या/ Order-In-Original No.	:	280/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	19.03.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	19.03.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Juber Rauf Shaikh, S/o Shri Rauf Vahab Shaikh N-41/CD-I/24/3, Hedgewar Nagar, CIDCD, Nashik, Pin-422008
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील(चौथी मंजिल, 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 suspicious movement, a passenger, **Shri Juber Rauf Shaikh S/o Shri Rauf Vahab Shaikh** holding an Indian Passport

No. Y6942302 Residence: N-41/CD-I/24/3, Hedgewar Nagar, CIDCD, Nashik, Pin-422008 (as per his passport) arrived at SVPI, Airport, Ahmedabad from Dubai by Indigo Flight No. 6E 1478 dated 06.05.2024, was intercepted by the officers of AIU, SVPI, Airport, Ahmedabad. The AIU Officers in presence of independent panchas, asked the passenger, if he has anything to declare to Customs, in reply to which passenger denied.

2. The officer informed the passenger that he along with accompanied officers would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs.

2.1 Thereafter, the AIU officer asked the passenger to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he is wearing on his body/clothes. The passenger, readily removed the metallic substances from his body/clothes such as purse, watch, belt and ring etc. and keeps it on the tray placed on the table and after that AIU Officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passes through the DFMD Machine, no beep sound was heard indicating nothing dutiable/objectionable was there. Thereafter, the baggage of the passenger was checked by the officers thoroughly, but nothing found objectionable. Thereafter, the officers again asked the passenger, if he was anything dutiable which is required to be declared to the customs, to which the passenger denied. On sustained interrogation, the passenger confess that he was carrying two capsules containing gold paste concealed in his body i.e rectum. The passenger has handed over the capsules covered with white tape containing gold paste after returns from washroom.

3. The officers informed the Panchas that the capsules recovered from Shri Juber Rauf Shaikh contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the Panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said 02 capsules of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 422.54 Grams. The photograph of the same is as under:



3.1 Thereafter, the Government approved valuer Shri Kartikey Vasantraai Soni started the process of converting the said semi solid substances concealed in the said capsules into solid gold. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar weighing 390.80 grams having purity 999.0/24 Kt. is derived from the above mentioned 422.54 Grams of 02 capsules containing gold paste and chemical mix.

The photograph of the extracted gold bar is as under:

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3.2 After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantraai vide certificate no. 135/2024-25 dated 06.05.2024 certified that the gold bar weighing 390.800 is having purity 999.0/24kt, market value of **Rs.28,94,656/-** (Rupees Twenty-Eight Lakhs Ninety-Four Thousand Six Hundred Fifty-Six only) and having tariff value of **Rs.24,75,595/-** (Rupees Twenty-Four lakhs Seventy-Five Thousand Five Hundred Ninety-Five Only). The value of the gold bar has been calculated as per the which has been calculated as per the Notification No. 32/2024-Customs (N.T.) DTD. 30.04.2024 (Gold) and Notification No. 34/2024-Customs (N.T.) dtd. 02.05.2024 (exchange Rate). The Government Approved Valuer submits his valuation report to the AIU Officers which is annexed as Annexure-A & Annexure B to the Panchnama.

3.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantryai Soni was done in presence of the independent Panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 135/2024-25 dated 06.05.2024 given by Shri Kartikey Vasantryai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. The following documents produced by the passenger Shri Juber Rauf Shaikh were withdrawn under the Panchnama dated 06.05.2024:

- (i) Photocopy of Stamped pages of Indian Passport No. Y6942302 issued on 05.07.2023 and valid up to 04.07.2033.
- (ii) Boarding pass of Indigo Airways Flight No. 6E-1478(Seat No- 16F) from Dubai to Ahmedabad dated 06.05.2024.

4. Accordingly, gold bar having purity 999.0/24 Kt. weighing 390.800 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Shri Juber Rauf Shaikh was seized vide Panchnama dated 06.05.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Custom duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A statement of Shri Juber Rauf Shaikh was recorded on 06.05.2024, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that-

- i. He was working as a cook and monthly income was approx. 18,000/-. He knows Hindi, Marathi and English little bit;
- ii. That he was not a frequent flier and went Dubai for in search of job as cook in a hotel. Mr. Sonu who was an owner of hotel booked my tickets and handed over me 02 capsules to carry to India and for that he would receive Rs. 5000/- for transportation. He did not have any contact number and name of person to whom the capsule was given.
- iii. That he said gold was not belong to him and not purchased by him
- iv. That he was fully aware he was having gold concealed in his rectum
- v. That bringing gold be way of concealment is an illegal way and an offense. He stated that he never indulged in any smuggling activity in the past and this was his first time to carry gold weighing 390.080 grams.
- vi. He stated that he had been present during the entire course of panchnama dated 06.05.2024 and confirms the events narrated in the said panchnama dated 06.05.2024 drawn at

Terminal-2, SVPI, Airport Ahmedabad and in token of correctness, he put his dated signature on said panchnama.

5.1 In view of above, the said recovered gold weighing 390.080 grams, in form of 01 gold bar, (**'the said gold/ gold bar'** for short) was placed under Seizure on 06.05.2024 under Panchnama dated 06.05.2024 and Seizure Memo dated 06.05.2024 on reasonable ground that the same are liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally.

6. LEGAL PROVISIONS RELEVANT TO THE CASE:

- a)** As per para 2.26 of Foreign Trade Policy 2015-20 Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
- b)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- c)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- d)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.
- e)** As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- f)** As per Section 2(3) — "baggage" includes unaccompanied baggage but does not include motor vehicles

- g)** 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;
- h)** As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- i)** As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- j)** 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.
- k)** 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.
- l)** Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation under section 111(d) of the Customs Act, 1962.
- m)** Any dutiable or prohibited goods required to be mentioned under the regulation in an arrival manifest, import manifest or import report which are not so mentioned are liable to confiscation under Section 111(f) of the Customs Act 1962.
- n)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111(i) of the Customs Act, 1962.
- o)** Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111(j) of the Customs Act, 1962.
- p)** 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 are liable to confiscation under Section 111(l) of the Customs Act, 1962.
- q)** 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 are liable to confiscation under Section 111(m) of the Customs Act, 1962.

- r) As per Section 112 of the Customs Act, 1962 any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.
- s) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- t) As per Section 123 of the 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.
- u) As per Customs Baggage Declaration Regulations, 2013 all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

CONTRAVENTION AND VIOLATION OF LAWS

7. It therefore appears that:

- a) Shri Juber Rauf Shaikh had actively involved himself in the instant case of smuggling of gold into India. Shri Juber Rauf

Shaikh had improperly imported gold bar derived from gold and chemical mix in two capsules concealed in his rectum, weighing **390.080** grams made of 24kt/ 999.00 purity gold, having total **tariff value of Rs.24,75,595/-** (Rupees Twenty Four Lakh Seventy Five Thousand Five Hundred Ninety Five only) and **market value of Rs.28,94,656/-** (Rupees Twenty Eight Lakhs Ninety Four Thousand Six Hundred and Fifty Six only), without declaring it to the Customs. He opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules, and Regulations. Therefore, the improperly imported gold in the form of capsules concealed in rectum, by the passenger and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Shri Juber Rauf Shaikh has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

b) By not declaring the value, quantity and description of the goods imported by him, the said passenger has violated the provisions of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

c) The improperly imported gold by the passenger, Shri Juber Rauf Shaikh, found concealed/ hidden without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

d) Shri Juber Rauf Shaikh, by his above-described acts of omission/ commission and/ or abetment on his part has

rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

f) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold, totally weighing 390.080 grams having tariff value of Rs.24,75,595/- and market value of Rs.28,94,656/- by way of concealment in the form of capsules concealed in rectum, without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Juber Rauf Shaikh.

8. The passenger, Shri Juber Rauf Shaikh through his advocate Shri Rishikesh J Mehra vide letter dated 07.05.2024 received on 11.11.2024 submitted that his client is engaged in business and visited Dubai for new business opportunity. When he came back to India, he brought gold bar for his family from his personal savings and borrowed money from his friend. He submitted that his client has produced the copy of purchase bill of seized gold at the time of panchnama which was not brought in the records. He mentioned that his client has orally declared the said goods and also referred to CBEC Circular No. 09/2001. He submitted that there are so many judgments wherein gold was released on payment of redemption fine. He submitted that his client had been explained the clause and provisions of the Customs Act, 1962 to be included in the Show Cause Noticee for confiscation of gold and penalty provisions and after understanding the clause and provision of Customs Act, 1962, he requested for the waiver of SCN and to adjudicate the case without issuance of Show Cause Notice. He submitted they do not want any further investigation and case may be decided on merits of case and asked for personal hearing. He submitted that they are ready to pay applicable duty, penalty and fine and his client is also opted for Show Cause Notice. He mentioned that the goods were not in commercial quantity and same was brought for his family. Due to ignorance of law, he was unable to declare the same before Customs.

9. PERSONAL HEARING:

To follow the principle of natural justice, personal hearing in the matter was granted on 10.01.2025, 07.02.2025 & 28.02.2025. In the

first two instances no one has come to attend the PH. On 28.02.2025, Shri Rishikesh J Mehra, Advocate and authorized representative attended the PH on behalf of Noticee. He requested to attend the PH in person instead of video conferencing. He re-iterated his request of waiver of SCN as submitted vide letter dated 07.05.2024 received on 11.11.2024. He submitted that his client has brought the gold for personal use and for his family and purchased the gold from his personal saving and money borrowed from his friends. He hides the gold due to fear of loot and theft as he had to travel from Ahmedabad to Mumbai via. Train/bus. He submitted that the gold was not in commercial quantity and also gold is neither prohibited nor restricted. His client is ready to pay the applicable duty, fine and penalty and requested to release the gold. He requested to take lenient view and release the gold and submitted case law in his support wherein gold bar released on payment of redemption fine.

DISCUSSION & FINDINGS:

10. I have carefully gone through the facts of the case and submissions made by noticee/authorized representative from noticee vide letter dated 07.05.2024 as well as submission made by Advocate of the passenger/ Noticee during the personal hearing. I find that the passenger had requested for waiver of Show Cause Notice in written as well as he re-iterated the same during PH. Before proceeding further, I would like to go through the provisions for waiver of SCN as envisaged in Section 124 of Customs Act, 1962 as under:-

"124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein;

and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]”

Perusal of Section 124 of the Act states that a Show Cause Notice may be issued in Oral on the request of noticee. If an oral SCN waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. I find that the noticee through his letter dated 07.05.2024 requested for waiver of SCN/Oral SCN after preciously go through the provisions of Show Cause Notice under Section 124 of Customs Act, 1962. Therefore, the Oral SCN/Waiver of SCN can be granted under Section 124 of Customs Act, 1962 on his written request and after following the principle of natural justice. In the instant case, I find that the noticee has himself along with his representative has submitted his request letter for waiver of SCN which was consciously signed and Authorized representative has attended the PH. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

11. In the instant case, I find that the main issues that are to be decided is whether the said derived gold bar derived from semi solid paste form concealed in 02 capsules in his rectum, of 24Kt/ 999.0, totally weighing 390.080 grams and having tariff value of Rs.24,75,595/- (Rupees Twenty Four Lakhs Seventy Five Thousand Five Hundred Ninety Five only) and market value of Rs.28,94,656/- (Rupees Twenty Eight Lakh Ninety Four Thousand Six Hundred Fifty Six only) carried by the passenger, which was seized vide Seizure Order dated 06.05.2024 under the Panchnama proceedings dated 06.05.2024 on the reasonable belief that the said goods were smuggled into India, is

liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the passenger is liable for penalty under the provisions of Section 112 of the Act or not.

12. I find that the noticee Shri Juber Rauf Shaikh, was asked by the Customs officers whether he was having anything dutiable to declare to the Customs, to which he had replied that he has nothing to declare. The AIU officer asked Shri Juber Rauf Shaikh to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/ clothes. The passenger readily removed all the metallic objects such as mobile, Purse etc. and kept them in a plastic tray and passed through the DFMD. The passenger passed through the DFMD machine, but no beep sound was heard. Thereafter, the AIU officer checked the baggage of the noticee thoroughly but nothing found objectional. On sustained interrogation, the noticee confessed that he was carrying two capsules containing gold paste concealed in his body i.e rectum.

I further find that after testing, converting and valuation, the government approved valuer confirmed that the said recovered gold, derived from capsules containing gold paste concealed in rectum, is of purity 999.0/24Kt., totally weighing 390.080 Grams ('the said gold' for short) having Tariff value of Rs.24,75,595/- and Market value of Rs.28,94,656/-. The said gold was seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 06.05.2024. In fact, in his voluntary statement tendered under Section 108 of Customs Act, 1962, the noticee has admitted that the gold in form of paste in two capsules was given by person named Mr. Sonu. He clearly admitted that the gold was neither belong to him nor purchased by him and was fully aware that gold was concealed in his body i.e rectum. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty which is also admitted by him in his statement dated 06.05.2024. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply

mentions the restrictions on import of gold which are found to be violated in the present case. I find that the noticee has mentioned that due to ignorance of law and being the first time, he was unable to declare the same before authority. The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.

13. It is on the record the noticee had tendered their statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter is as:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."

14. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept

the said gold in form of paste in capsules concealed in his rectum, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. In his submission/request letter, the noticee has mentioned that copy of bill/invoice of the said seized gold was produced at the time of panchnama which was not brought on record during panchnama. However, on contrary, I find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording his statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. I also find no retraction filed by the noticee at the time of investigation or any later stage at the time of adjudication. Even during the submission made, the noticee just mentioned that they had produced the copy of bill, however no copy of invoice submitted by the noticee, which shows that he has nothing to submit and claim is just an afterthought and far from the truth. Even in his voluntary statement, he clearly admitted that the gold was not purchased by him and someone else gave him the capsules which contains gold paste.

15. From the facts discussed above, it is evident that noticee had carried the said derived gold bar weighing 390.800 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 390.800 grams, liable for

confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

16. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 390.800 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 390.800 grams, having Tariff Value of Rs.24,75,595/- and Market Value of Rs.28,94,656/-

recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 06.05.2024 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 the modus of concealing the gold in rectum in form of capsules, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

17. I find that the Noticee confessed of carrying the said gold of 390.800 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

18. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to

evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said derived gold bar weighing 390.800 grams, having Tariff Value of Rs.24,75,595/- and Market Value of Rs.28,94,656/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings dated 06.05.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bar weighing 390.800 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

19. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 390.800 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in form capsules containing gold paste, concealed in his rectum. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

20. 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 derived gold bar. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in form of capsules containing gold paste concealed in his rectum with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 390.800 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 06.05.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty. Under his submission, the noticee has agreed to pay the duty, penalty, fine requested to redeem the gold on payment of redemption fine. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods ¹ [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

² [**Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of [section 28](#) or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed];

Provided further that] , without prejudice to the provisions of the proviso to sub-section (2) of [section 115](#), such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.". Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Now in the latest judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, **I donot inclined to exercise the option to allow redemption fine in lieu of confiscation of gold.** Further, to support my view, I also relied upon the following judgment wherein redemption fine is not allowed which are as :-

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

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

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

20.2. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

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

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

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

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

release, is in accordance with law - Interference by Tribunal is against law and unjustified –

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

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

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

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

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

20.7. 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.

21. Further, I find that the noticee has requested to allow the gold bar for re-export. In this regard, Section 80 of the Act reads as under:

“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”.

21.1 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 his arrival at SVPI Airport nor during the whole proceedings. So, I find that request made by him for re-export of gold bars is merely an afterthought and cannot be considered. The passenger repeatedly denied of having any dutiable/prohibited goods with him at the time of interception and gold was recovered after thorough interrogation. Further, it is already established and an admitted fact that there was no declaration made of the gold concealed by him. Therefore, the option under Section 80 of the Act would not be applicable to him. The request for re-export is therefore, rejected.

22. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 390.800 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 390.800 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.**

23. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 390.800 grams, carried by him.

In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of noticee is

established as the nature of concealment of gold is ingenious in nature. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bar weighing 390.800 grams (derived from gold paste in two capsules) having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 390.800 grams, carried by him. He has agreed and admitted in his statement that he travelled from Dubai to Ahmedabad with the said gold in form of capsules containing gold paste concealed in his rectum. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 390.800 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

24. Accordingly, I pass the following Order:

ORDER

- (i) I order absolute confiscation of the gold bar having purity of 999.0/24kt, weighing **390.080 Grams** and having tariff value of **Rs.24,75,595/-** (Rupees Twenty Four Lakh Seventy Five Thousand Five Hundred Ninety Five only) and market value of **Rs.28,94,656/-** (Rupees Twenty Eight Lakhs Ninety Four Thousand Six Hundred Fifty Six only)

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derived from gold paste containing in two capsules concealed in rectum by **Shri Juber Rauf Shaikh** and seized vide Seizure Order dated 06.05.2024 under Panchnama proceedings dated 06.05.2024 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- (ii) I impose a penalty of **Rs.7,50,000/-** (Rupees Seven Lakh Fifty Thousand Only) on Shri Juber Rauf Shaikh under the provisions of Section 112(a)(i) & 112(b)(i) of the Customs Act, 1962.

25. This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-196/SVPIA-A/O&A/HQ/2024-25 Date:19.03.2025
DIN: 20250371MN000000FFF3

BY SPEED POST A.D.

To,
Shri Juber Rauf Shaikh
S/o Shri Rauf Vahab Shaikh,
N-41/CD-I/24/3, Hedgewar Nagar,
CIDCD, Nashik, Pin-422008.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (v)** Guard File.