



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हड्डकोभवन HEDCO Bhavan, ईश्वर भुवन रोड Ishwar Bhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

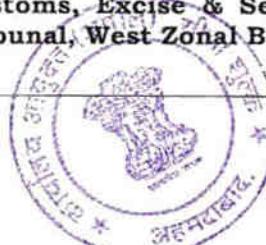
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क	फ़ाइलसंख्या FILE NO.	S/49-154/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधरा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-210-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.09.2025
ঙ	उद्भूतअपीलआदेशकीसं. बदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	48/ADC/SRV/O&A/2025-26, dated 13.06.2025
চ	अपीलआदेशজারীকরনেকীদিনাংক ORDER-IN-APPEAL ISSUED ON:	01.09.2025
ছ	अपीলকর্তাকানামবপতা NAME AND ADDRESS OF THE APPELLANT:	Shri Suresh Kumar, V Jayra, PO Jayra Fala, Kuvediya, Teh - Kherwara, Dist Udaipur, Rajasthan..
1.	यहপ্রতিউস্বব্যক্তিকেনিজীউপযোগকেলিএমুফ্তমেংদীজাতীহৈজিনকেনামযহজারীকিযাগ্যাহৈ.	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	সीমাশুল্কঅধিনিয়ম 1962 কীধারা 129 ঢাঁড়ী (1) (যথাসংশোধিত) কেঅধীননিম্নলিখিতশ্রেণিয়োকেমামলোকেসম্বন্ধমেকোইব্যক্তিইসআদেশসেঅপনেকোআহতমহসুসকরতাহোতোইসআ দেশকীপ্রাপ্তিকীতারীখসে 3 মহীনেকেঅদৰঅপৰসচিব/সংযুক্তসচিব (আবেদনসংশোধন), বিত্তমন্ত্রালয়, (রাজস্ববিভাগ) সংসদমার্গ, নইদিল্লীকোপুনৰীক্ষণআবেদনপ্রস্তুতকরসকরতেহৈ.	

Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.

निम्नलिखित सम्बन्धित आदेश/Order relating to :

(क) बैगेज के रूप में आयातित कोई माल।	(a) any goods imported on baggage.
(ख) भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।	(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग) सीमा शुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बना एगएन्यिमों के तहत शुल्क वापसी की अदायगी।	(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3. पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क) कोर्ट फीएक्ट, 1870 के मदसं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।	(a) 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो।	(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any.
(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां।	(c) 4 copies of the Application for Revision.
(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमा शुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1,000/- (रूपए एक हजार मात्र) जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी आर. 6 की दो प्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एकलाख या उससे कम होतो ऐसे फीस के रूप में रु. 200/- और यदि एकलाख से अधिक होतो फीस के रूप में रु. 1,000/-।	(d) The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4. मदसं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क और सेवाकर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।	In respect of cases other than those mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दૂસરીમંજિલ, બહુમાલીભવન, નિકટગિરધરનગરપુલ, અસારવા, અહમદાબાદ-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सીમાશુલ્કઅધિનિયમ, 1962 કીધારા 129 એ (6) કેઅધીન, સીમાશુલ્કઅધિનિયમ, 1962 કીધારા 129 એ(1) કેઅધીન અપીલ કે સાથનિસ્ત્રલિખિત શુલ્ક સંલગ્ન હોને ચાહે- Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(ક)	અપીલ સે સમ્બન્ધિત મામલે મેં જહાં કિ સીસીમાશુલ્ક અધિકારી દ્વારા માંગ ગયા શુલ્ક ઔર વ્યાજ તથા લગાયા ગયા દંડ કીર કમ પાઁચ લાખ રૂપએ યા તુસે ક મહોતો એક હજાર રૂપએ.	
(ા)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ખ)	અપીલ સે સમ્બન્ધિત મામલે મેં જહાં કિ સીસીમાશુલ્ક અધિકારી દ્વારા માંગ ગયા શુલ્ક ઔર વ્યાજ તથા લગાયા ગયા દંડ કીર કમ પાઁચ લાખ રૂપએ સે અધિક હોલે કિ ન રૂપયે પચાસ લાખ સે અધિક ન હોતો; પાચ હજાર રૂપએ	
(બ)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ગ)	અપીલ સે સમ્બન્ધિત મામલે મેં જહાં કિ સીસીમાશુલ્ક અધિકારી દ્વારા માંગ ગયા શુલ્ક ઔર વ્યાજ તથા લગાયા ગયા દંડ કીર કમ પચાસ લાખ રૂપએ સે અધિક હોતો; દસ હજાર રૂપએ.	
(ચ)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(ઘ)	ઇસ આ દેશ કે વિરુદ્ધ અધિકરણ કે સામને, માંગે ગએ શુલ્ક કે 10% અદાકરને પર, જહાં શુલ્ક યા શુલ્ક એવં દવિવાદ મેહેં, યા દંડ કે 10% અદાકરને પર, જહાં કે વલ દંડ વિવાદ મેહેં, અપીલ રહ્યા જાએ ગા।	
(દ)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	ઉક્ત અધિનિયમ કીધારા 129 (એ) કે અન્તર્ગત અપીલ પ્રાધિકરણ કે સમક્ષ દાયર પ્રત્યે ક આવે દન પત્ર - (ક) રોક આ દેશ કે લિએ યા ગલતિયો કો સુધારને કે લિએ યા કિ સી અન્ય પ્રયોજન કે લિએ કિ એ ગા એ અપીલ : - અથવા (ખ) અપીલ યા આવે દન પત્ર કા પ્રત્યા વર્તન કે લિએ દાયર આવે દન કે સાથ રૂપ યે પાઁચ સૌ કા શુલ્ક ભી સંલગ્ન હોને ચાહે.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

Shri Suresh Kumar, V Jayra Fala, Kuvediya, Teh - Kherwara, Dist Udaipur, Rajasthan (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 48/ADC/SRV/O&A/2025-26, dated 13.06.2025 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs, Ahmedabad, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of suspicious movement, the appellant having Indian Passport No. P 7118926 was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU") on arrival at SVP International Airport, Ahmedabad from Kuwait by Kuwait Airways Flight No KU 345 on 07.10.2024 while he was attempting to exit the Green Channel without making any declaration to the Customs. The appellant 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 his body/ clothes. The appellant readily kept mobile and his purse in a plastic tray and passed through the DFMD machine. During DFMD, strong beep sound was heard at the middle and lower part of the metal detector machine indicating the presence of some objectionable/ dutiable items on his body/ clothes. Further, during personal search/ detailed frisking of the appellant, the AIU Officers found one cut bar in the back of the right pocket of his jeans and two kadas (one in each leg) found concealed around the leg, below the knee. Further, two coins were also recovered from his wallet. All these items recovered from the appellant, *prima facie*, appeared to be made of gold having purity 24 Carat.

2.1 The Government Approved Valuer, vide Certificate No. 1009/2024-25 dated 07.10.2024 certified that the items recovered are of pure gold, having purity 999.0/24 Kt., totally weighing 337.880 and are having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-, which has been calculated as per the Notification No.64/2024-Customs (N.T.) dated 30.09.2024(Gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (Exchange Rate).

2.2 The said three gold items i.e. two Gold kadas weighing 204.540 gms, Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms that has been recovered from the body concealment of the appellant 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 337.880 grams having purity 999 and having the Market Value of Rs.26,42,222/- and Tariff value of Rs.24,41,017/- were placed under seizure vide Order dated 07.10.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

2.2 Statement of the appellant was recorded on 07.10.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he is educated up to class 8th and that he is the only bread earner in the family and is residing at Kuwait and engaged in the work of decoration, there. He also stated that his monthly income is around 200 Kuwaiti Dinars. He further stated that he has been working at Kuwait since last 16 years and visit India after every six-seven month to meet his family. The trips were undertaken from his own personal savings. In the present case, he had travelled to Kuwait on 20.05.2024 and returned to India on 07.10.2024 at Ahmedabad Airport by Kuwait Airways Flight No. KU 345 and that the tickets of this trip were also purchased by him through the travel agent. He further stated that the seized gold items i.e. one cut gold bar, two gold kadas and two gold coins recovered from his possession have been purchased by him from his own personal savings and that these items belonged to him. He also stated that these gold items were brought by him by way of concealing/ hiding the same under the jeans that he was wearing, so as to evade payment of Customs duty. These gold items were then seized by the officers under Panchnama dated 07.10.2024, under the provisions of the Customs Act, 1962. He further stated that he was also aware that import of gold by way of concealment and evasion of duty is an offence and that he knowingly did not make any declaration on his arrival and opted for green channel, as an attempt to smuggle the gold without payment of customs duty. He perused the Panchnama dated 07.10.2024 and stated that the facts narrated therein are true and correct. He further stated that he has never indulged in any smuggling activity in the past. This is first time when he carried gold to India.

2.3 The aforesaid gold 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 appellant is more than the permissible limit allowed to a passenger under the Baggage Rules. 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 appellant had not declared the said gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-. Instead, the same were ingeniously hidden under the jeans pant he 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 337.880 Grams recovered from the appellant, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. Thus, the said gold items totally weighing 337.880 Grams is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 337.880 Grams recovered from the appellant, who had arrived from Kuwait to SVPI Airport, Ahmedabad by Kuwait Airways Flight No. KU345 on 07.10.2024 at the arrival Hall of the SVPIA, Ahmedabad were placed under seizure vide Panchanama dated 07.10.2024 and Seizure order dated 07.10.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold items are liable for confiscation.

2.4 The appellant had attempted to smuggle/improperly import gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-, found concealed under the jeans pant worn by the appellant, 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 appellant had knowingly and intentionally smuggled the said gold items gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams, by ingeniously concealing the same under the jeans pant worn by him, on his arrival from Kuwait to Ahmedabad on 07.10.2024 by Kuwait Airways Flight No. KU345 at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by the appellant, by way of concealment in the jeans pant worn by him and without declaring it to Customs on arrival in India cannot be treated as Bona fide household goods or personal effects. The appellant 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.

2.5 The appellant by not declaring the gold brought by him in the form of gold items, i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. that was found concealed in the jeans pant worn by him, 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. The improperly imported/smuggled gold by the appellant, in the form two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt., found concealed under the jeans pant worn by him, before arriving from Kuwait to SVPI Airport, Ahmedabad, on 07.10.2024 via Kuwait Airways Flight No. KU345 (Seat No. 26 K) at Terminal -2, SVPIA Ahmedabad on 07.10.2024, 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. The appellant, by the above-described acts of omission/commission and/or abetment has rendered himself liable to penalty under Section 112 of Customs Act, 1962. As per Section 123 of Customs Act 1962, the burden of proving that the said Gold items totally weighing 337.880 grams, found concealed under the jeans pant worn by the appellant who arrived from Kuwait via Kuwait Airways Flight No. KU345 at Terminal -2, SVPIA Ahmedabad on 07.10.2024 are not smuggled goods, is upon the appellant.

2.6 A Show Cause Notice was issued to the appellant proposing confiscation of the gold items i.e. two Gold kadas weighing 204.540 gms. one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/- under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962 and also proposing penalty under Section 112 of the Customs Act, 1962.

2.7 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity

999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/- under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 6,50,000/- on the appellant under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;

- The adjudicating authority has not considered the request for re-export of the goods under consideration by placing reliance on the case of Jasvir Kaur reported at 2019 (241) ELT 521 (Del). In this regard, it is the stand of the Government that option to redeem the goods on payment of redemption fine has to be exercised which is evident from the judgment in the case of Ashok Kumar Verma reported at 2019 (339) ELT 1677 (GOI) wherein the option to redeem the smuggled gold was given. The facts of the said case reveals that it was a case of concealment of gold but the Government exercised the powers under Section 125 to offer redemption fine instead of absolute confiscation.
- The Hon'ble Tribunal has also taken cognisance of the stand of the Government in the case of Ashwini Kumar Alias Amanullah reported at 2021 (376) ELT 321 (T) and upheld the action of offering redemption fine on the smuggled gold.
- Further, in the case of Phornchanok Namaliwani reported at 2018 (364) ELT 1135 (GOI), the Additional Commissioner had exercised the power under Section 125 and had offered redemption of the smuggled gold on payment of redemption fine @ 15% of the value of the goods and the said action has been upheld by the Government.
- In view of the above it is clear that the option of redeeming the goods on payment of redemption fine under Section 125 of the Customs Act is a norm accepted by the Government of India. Accordingly, in the instant case, the adjudicating authority ought to have allowed the re-export of goods on payment of the redemption fine under Section 125 of the Customs Act and the order for absolute confiscation of the gold deserves to be set aside on the above grounds.
- The appellant craves leave to place reliance on the judgement (a) AK Jewellers Vs Commissioner of Customs, Mumbai (2003(155) E.L.T.585 (Tribunal-Larger Bench)], wherein it was held that Redemption fine in lieu of confiscation and re-export are two independent actions, hence the view taken that in case the assessee



is allowed to re-export, the confiscation and redemption fine is not justified.

- Further, Hon'ble Supreme Court in the case of Collector of Customs, Mumbai Vs. Elephanta Oil and Industries Limited, reported at 2003 (152) ELT 257 (SC), has rejected the plea of the party therein that once re-export is directed by the Department, redemption fine and penalty cannot be imposed. This was a case where the Department itself directed re-export of the goods.
- In the case of Preeti Exim Vs CC, New Delhi 2007(214) E.L.T. 555(Tri-Del.), CESTAT held that imposition of redemption fine and penalty is sustainable when goods are ordered to be re-exported.
- In the case of Simla Trading Corp 2003 (151) E.L.T.102 (Tri-Chennai), Hon'ble CESTAT held that permission to re-export goods, specifically sought by the importer, not to be denied merely on the ground of mis-declaration of Country of Origin and spelling mistake in the name of goods, when goods are freely importable. Penalty is imposable on the importer under Section 112(a) of the Customs Act, 1962, but it is reduced from Rs.1,00,000/- to Rs.25,000/- considering the overall facts and circumstances, including the monetary loss already suffered by the importer. The ratio of this Tribunal Judgement is squarely applicable to the impugned case.
- In view of the above judgements it is amply clear that the re-export can be allowed on payment of redemption fine and penalty. It is a settled law that there can be no universal rule for redemption fine and penalty which depends on the facts and circumstances of each case as held by the Apex Court in the case of CC Vs Mansi Impex 2011 (270) E.L.T. 631 (SC). Reliance is also placed on ratio of judgements cited under 2011 (264) E.L.T.3(SC) and 1993(66) E.L.T.537(SC).
- The appellant further submitted that the adjudicating authority has imposed a huge penalty amounting to Rs. 6,50,000/- in the instant case. While imposing such penalty, the adjudicating authority had not considered the fact that the appellant was in Kuwait since the last 16 years and was under the bonafide belief that he was allowed to carry gold upto 1 kg.
- The appellant had carried the gold from Kuwait to India for his sister's marriage since the price of gold in Kuwait is lower as compared to the price in India. The appellant is only 8th Standard pass out and he is engaged in the work of decoration at Kuwait and he is lone bread earner of the family He came to know that if an Indian residing in the foreign country for more than one year then



he can carry the gold item without custom duty from some Indian person in Kuwait. Accordingly, he had carried the gold for his sister's marriage.

- It is submitted that the act of non-declaration of the gold was not intentional. The appellant was under the bonafide belief that only dutiable goods were required to be declared and as such he made no declaration of the gold since he thought that the same did not attract customs duty.
 - The appellant further contended that the allegation that he had an intention of smuggling the gold item & jewelry is fallacious since he has been staying in Kuwait since last sixteen year and has frequently visiting the India to meet his family but he has never brought gold. The said fact can be verified from the records in as much as no case of smuggling has been booked against the appellant prior to this incident. If at all the appellant had the intention of smuggling the gold he could have brought substantial quantity of gold instead of bringing non-commercial quantity of 337.880 gms. Further, the same shows that the appellant intended to financially help the family to celebrate the marriage of sister as it is the prime duty being a lone bread earner of the family. It also needs to be appreciated that a quantity of 337.880 gms can be by no stretch of imagination considered as a commercial quantity. Accordingly, it is submitted that the act of non-declaration was merely owing to ignorance on the part of the appellant and there was no intention to smuggle gold without payment of duty.
 - Further, the appellant is not financially sound which is evident from the fact that he has sought re-export of the goods owing to non-availability of funds to pay the customs duty thereon.
 - In view of the above it is submitted that the penalty amounting to Rs. 6,50,000/- is too high in the facts of the case at hand and it is prayed that the same maybe set aside.
4. The appellant vide letter dated 12.08.2025 submitted that he is engaged in the labour work of decoration at Kuwait and have come to India to visit his home town in Gujarat. Under the said appeal, he has sought for re-export of the seized goods. Since, he would be leaving India to travel to Kuwait in the second week of September 2025, it is requested that the appeal may please be disposed at the earliest so as to enable him to carry the gold back to Kuwait in the event that his request is considered. He requested that his appeal may please be disposed of on merits on the basis of his written submissions. he does not desire a personal hearing in the matter.

5. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in the present appeal are as under;

- (a) Whether the impugned order directing absolute confiscation of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/- without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;
- (b) Whether the quantum of penalty amounting to Rs. 6,50,000/- imposed on the appellant, under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.



It is observed that on the basis of suspicious movement, the appellant having Indian Passport No. P 7118926 was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU") on arrival at SVP International Airport, Ahmedabad from Kuwait by Kuwait Airways Flight No KU 345 on 07.10.2024 while he was attempting to exit the Green Channel without making any declaration to the Customs. The appellant 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 his body/ clothes. The appellant readily kept mobile and his purse in a plastic tray and passed through the DFMD machine. During DFMD, strong beep sound was heard at the middle and lower part of the metal detector machine indicating the presence of some objectionable/ dutiable items on his body/ clothes. Further, during personal search/ detailed frisking of the appellant, the AIU Officers found one cut bar in the back of the right pocket of his jeans and two kadas (one in each leg) found concealed around the leg, below the knee. Further, two coins were also recovered from his wallet. All these items recovered from the appellant, prima facie, appeared to be made of gold having purity 24 Carat. The Government Approved Valuer, vide Certificate No. 1009/2024-25 dated 07.10.2024 certified that the items recovered are of pure gold, having purity 999.0/24 Kt., totally weighing 337.880 and are having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-. The appellant did not declare the said gold before

Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

6.1 I find that it is undisputed that the appellant had not declared the seized gold to the Customs on his arrival in India. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, non-declaration and recovery of the seized gold. The appellant had, in his confessional statement, accepted the fact of non-declaration of gold before Customs on arrival in India. Therefore, the confiscation of gold by the adjudicating authority was justified as the applicant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

6.2 I have also perused the decision of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India submitted by the appellant and other decisions also. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/- are liable to confiscation and the appellant is also liable to penalty.

6.3 In this regard, I also rely the judgement of the Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC) wherein it is held that;



".....(a) if there is any prohibition of import or export of goods under the Act or any other law for the 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 goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 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 purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods....."

It is apparent from the above judicial pronouncement that even though gold is not enumerated as prohibited goods under Section 11 of the Customs Act, 1962, but it is to be imported on fulfilment of certain conditions, still, if the conditions for such import are not complied with, then import of gold will fall under prohibited goods. Hence, I find no infirmity in the impugned order on this count.

6.4 In respect of absolute confiscation of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-, it is observed that the adjudicating authority in the instant case relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker), Hon'ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)] and Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue - Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu, Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) in paras 29.1.1 to 29.1.6 of the impugned order, had ordered for absolute confiscation of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-.

6.5 I find that the Hon'ble CESTAT, Ahmedabad has in the case of Commr. of C. Ex., Cus. & S.T., Surat-II Vs Dharmesh Pansuriya [2018 (363) E.L.T. 555 (Tri- Ahmd)] considered the decision of Hon'ble High Court of Madras in the case of Commissioner of Customs (Air) Chennai-I Vs P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad)] and the decision of Hon'ble High Court of Bombay in the case of Commissioner Vs Alfred Menezes [2009 (242) E.L.T. 334 (Bom)], and were of the view that in case of prohibited goods as defined under Customs Act, 1962, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. The relevant paras are reproduced hereunder:

"8. It is the argument of the Revenue that under the aforesaid provision, once the goods in question are prohibited goods under the Act, no discretionary power is left with the adjudicating authority for imposition of fine. We are afraid that the said plea of the Revenue may not find support from the principle of law laid down by the Hon'ble Bombay High Court in the case of Alfred Menezes case (supra). Their Lordships after analyzing the said provision of Section 125 of the Customs Act observed as follows:

3. It is, therefore, clear that Section 125(1) deals with two situations (1) the importation and exportation of prohibited goods and (2) the importation and exportation of any other goods. Insofar as importation or exportation of prohibited goods, the expression used is that where the goods were confiscated, the officer "may". In the case of any other goods, which are confiscated, the officer "shall".

4. It is, therefore, clear that insofar as the prohibited goods are concerned, there is discretion in the officer to release the confiscated goods in terms as set out therein. Insofar as other goods are concerned, the officer is bound to release the goods. In the instant case, we are concerned with prohibited goods. The officer has exercised his discretion. The Tribunal [2009 (236) E.L.T. 587 (Tri - Mum.)] has upheld the order of the adjudicating officer.

9. This principle is later followed by the Hon'ble Madras High Court recently in P. Sinnasamy's case (supra). Thus, in view of the aforesaid principle, even if the goods in question are considered as prohibited goods as defined under the Customs Act, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. In these premises, thus to consider the issue raised at the bar that whether the gold bars removed from the Unit in SEZ without permission and contrary to the Circulars issued by RBI and Customs, became prohibited goods, or



otherwise, in our view, becomes more an academic exercise and hence need not be resorted to.

10. The other argument advanced by the Ld. AR for the Revenue is that in view of the judgment of Hon'ble Madras High Court in P. Sinnasamy's case, discretion conferred under the provision cannot be arbitrary and it is to be exercised in judicious manner. From the finding of the Ld. Commissioner, we notice that even though he has not considered the goods as prohibited ones, observing it in the sense that these are not arms, ammunitions, narcotic substance, but after examining the fact that the gold bars were imported for its authorized use in the SEZ and after considering other extenuating circumstances, exercised discretion in directing confiscation of the gold bars removed unauthorizedly from the SEZ Unit with option to redeem the same on payment of fine. We find that in P. Sinnasamy's case (*supra*), the adjudicating authority has directed absolute confiscation of the gold smuggled into the country, which was set aside by the Tribunal, with a direction to the adjudicating authority to consider imposition of fine, which did not find favour from the Hon'ble High Court. Their Lordships observed that once the adjudicating authority has reasonably and correctly applied the discretion, it is not open to the Tribunal to give positive direction to the adjudicating authority to exercise option in a particular manner. Even though the facts and circumstances in the said case are different from the present one, inasmuch as in the said case the Commissioner has directed absolute confiscation, but in the present case option for payment of fine was extended by the Commissioner; however, the principle laid down therein is definitely applicable to the present case. Therefore, we do not find merit in the contention of the Revenue that the Adjudicating authority ought to have directed absolute confiscation of the seized goods."

6.6 I have also gone through the judgement of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Nagpur-I Vs Mohd. Ashraf Armar [2019 (369) E.L.T. 1654 (Tri Mumbai)] wherein the Hon'ble Tribunal, after considering the decision of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), has upheld the order of Commissioner (A) who set aside the order of absolute confiscation ordered by the adjudicating authority and allowed redemption of 1200.950 gm of concealed gold valued at Rs. 27,02,137/- on payment of fine of Rs 5,50,000/-. The relevant paras are reproduced hereunder:



“4. We have perused the case record as well as judgment passed by the Hon’ble Supreme Court, Delhi in Om Prakash Bhatia’s case. Relevant interpretation of “prohibited goods”, as made in para 9 of the said judgment is reproduced below for ready reference:

” 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 the 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 goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 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 purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression ‘prohibition’ used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import (Control) Order, 1955. The Court negatived the said contention and held thus: -

‘...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to “any prohibition imposed by any law for the time being in force in this country” is liable to be confiscated. “Any prohibition” referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions “prohibiting”, “restricting” or “otherwise controlling”, we cannot cut down the amplitude of the words “any prohibition” in Section 111(d) of the Act. “Any prohibition” means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import (Control) Order, 1955, it is clear that



import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues".

5. Going by the bare reading of the said interpretation, it can be said that in the definition of prohibited goods in terms of Section 2(33) of the Customs Act, 1962, any such goods means any such restricted and prohibited goods and not any other goods. It is in this context the whole analyses of prohibited goods is made by the Hon'ble Apex Court and not in respect of any other goods other than prohibited and restricted goods. Gold being a permitted goods for importation, cannot be said to be restricted goods in applying such an interpretation but ceiling on the maximum quantity that could be imported could never be equated with restriction or prohibition to such importation. Admittedly, appellant's intention to evade duty by suppressing such import is apparent on record for which Commissioner (Appeals) has rightly confirmed fine and penalty under relevant provisions of the Customs Act but absolute confiscation of gold, which is permitted to be imported to India, solely on the ground that it was brought in concealment cannot be said to be in confirmity to law or contradictory to decision of Hon'ble Apex Court given in Om Prakash Bhatia's case. Hence the order.

6. Appeal is dismissed and the Order-in-Original No. 1/SBA/JC/CUS/2014, dated 27-5-2014 passed by the Commissioner (Appeals) is hereby confirmed."

6.7 It is further observed that in respect of absolute confiscation of gold bar, the judgment pronounced on 05.05.2023 in respect of Civil Misc. Review Application No. 156/2022 filed at Hon'ble High Court of Allahabad sitting at Lucknow, by the Commissioner of Customs, Lucknow is relevant wherein the Hon'ble High Court has upheld the decision of Hon'ble Tribunal who had upheld the decision of Commissioner (Appeals) that gold is not prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act, 1962 and thus rejected the review application filed by the Commissioner of Customs, Lucknow. The relevant paras of the judgment are reproduced hereunder:

"16. In the present case, the Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act. The Tribunal has recorded that the respondents had brought impugned Gold from Bangkok to Gaya International Airport without declaring the same to Customs Authorities and there was nothing to explain as to how the Customs authorities posted at Gaya International Airport could not detect such huge quantity of gold being removed from Gaya International Airport by passengers on their arrival and there was no explanation as to how the respondents procured gold before they were intercepted at Mughalsarai Railway Station and the Tribunal



has dismissed the Appeals for the aforesaid reason and has affirmed the order passed by the Commissioner (Appeals) holding that the import of gold was not prohibited under the Foreign Trade Policy or any other law and, therefore, there is no sufficient ground for absolute confiscation of the gold.

17. Nothing was placed before this Court to challenge the finding of the Commissioner (Appeals), which was upheld by the Tribunal, that Gold is not a prohibited item, and nothing was placed before this Court to establish that this finding of the Commissioner (Appeals) was wrong or erroneous.

18. Even if the goods in question had been brought into India without following the conditions prescribed therefore and those fall within the category of prohibited condition, Section 125 of the Act provides that the Adjudicating Officer may give to the owner of such goods an option to pay fine in lieu of confiscation. Section 128 A of the Act confers powers on the Commissioner (Appeals) to pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. In the present case, the Commissioner (Appeals) has modified the order of absolute confiscation by imposing penalty in lieu thereof, which was well within his power as per Section 128 A. The Tribunal has affirmed the order of the Commissioner (Appeals). This Court dismissed the further Appeal filed by the Department, finding no illegality in the judgment passed by the Tribunal.

19. In view of the aforesaid discussion, we are of the view that the order passed by this Court refusing to interfere with the aforesaid order passed by the Tribunal does not suffer from any error, much less from an error apparent on the face of the record.

20. The review application lacks merits and, accordingly, the same is dismissed. "

6.8 Further, It is observed that in the decision vide Order No.355/2022-CUS (WZ)/ASRA/MUMBAL, dated 07.12.2022 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger had brought 02 gold bars of 01 kg each and 02 gold bars of 10 tolas each totally weighing 2233.2 grams wrapped with white coloured self-adhesive marking tape and concealed in both the watch pockets of black coloured trousers worn by him, relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:



"16. Once goods are held to be prohibited, Section 125 still provided discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s Raj Grow Impex (CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 Order dated 17.06.2021) has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below:

71. Thus, 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; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

17.1 Government further observes that there are catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of *Union of India vs Dhanak M Ramji* [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

18.1 For the reasons cited above, Government finds that this is not a case of impersonation as construed by the lower authorities. Also, for the reasons cited above, it would be inappropriate to term the appellant as habitual offender. In the instant case, the impugned gold bars were kept by the applicant on his person i.e., in the pockets of the pants worn by him. Government observes that sometimes passengers resort to such innovative methods to keep their valuables / precious possessions safe. Also, considering the issue of parity and fairness as mentioned above, Government finds that this is a case of non-declaration of gold.

18.2 Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating the (02) two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/-. Also, observing the ratio of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of gold bars but allows the impugned gold bars to be redeemed on payment of a redemption fine.

19 The Government finds that the penalty of Rs 6,00,000/- imposed under Section 112 (a) & (b) by the original authority and upheld by the AA is commensurate with the omission and commissions committed. Government finds the quantity of the penalty as appropriate.

20. In view of the above, the Government modifies the OIA passed by the AA to the extent of absolute confiscation of the gold bars i.e. (02) two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/- and grants an option to the applicant to redeem the same on payment of a redemption fine of Rs 12,00,000/- (Rupees Twelve Lakhs only). The penalty of Rs 6,00,000/- imposed by OAA and upheld by AA is sustained.

21 Accordingly, Revision Application is decided on the above terms."

6.9 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 67/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.01.2023, on recovery of two gold bars of 01 kg each and 02 gold bars of 10 tolas each concealed in the pant worn, totally weighing 2232 grams valued at Rs 58,23,846/- upheld the decision of Appellate Authority allowing redemption of gold bars on payment of redemption fine of Rs 11,00,000/- and upheld the penalty of Rs 6,00,000/- imposed by the Original Adjudicating Authority and upheld by the



Appellate Authority observing that the concealment was not ingenious, the passenger was not habitual offender and involved in the similar offence earlier, there was nothing on record that he was part of an organised smuggling syndicate. The Government found that this was a case of non-declaration of gold and held that absolute confiscation of the impugned gold leading to dispossession of gold would be harsh and not reasonable. With this observation the order of Appellate Authority granting an option to redeem the gold on payment of redemption fine was upheld.

6.10 Further, the Hon'ble High Court of Allahabad in the case of Commissioner of Customs, Aliganj, Lucknow Versus Rajesh Jhamatmal Bhat [2022 (382) ELT 345 (All)] had upheld the decision of Hon'ble Tribunal wherein the Hon'ble Tribunal had upheld the decision of Commissioner (Appeal) wherein 4076 grams of gold bars recovered from the specially designed cavities made in the shoes, valued at Rs. 1,09,98,018/- was allowed to be redeemed on payment of redemption fine and penalty. The Hon'ble Tribunal had reduced the redemption fine from 25,00,000/- to Rs 15,00,000/- and penalty was also reduced from 10,00,000/- to 5,00,000/- as ordered by the Commissioner (Appeal). The Hon'ble High Court observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold upheld the decision of Hon'ble Tribunal.

6.11 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the recent decision vide Order No 68/2024-CUS (WZ)/ASRA/MUMBAI, dated 24.01.2024, in the case of Mr Kasmani Asif Abdul Aziz wherein the passenger had kept three gold kadiwali chains and two gold pendants in a transparent plastic pouch kept in pant pocket totally weighing 1200 grams of 24 kt having 999.0 purity valued at Rs. 35,22,816/- (Tariff value) and Rs. 39,02,400/- (Market value) had finally held that since quantum of gold is not commercial and the applicant was in possession of invoice for purchase of gold jewellery, concealment was not ingenious, the passenger is not a habitual offender and was not involved in the similar offence earlier and not a part of organised smuggling syndicate, it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine.

6.12 In view of above decisions of the Principal Commissioner & ex-officio Additional Secretary to Government of India, I am of the considered

view that in present case also there is no allegation that the appellant is habitual offender and was involved in similar offence earlier. The appellant was not a part of organised smuggling syndicate. The appellant in the defence submission before the adjudicating authority as recorded in the impugned order has submitted that he was residing in Kuwait since last sixteen year. For his sister's marriage, he bought the gold in Kuwait as the rate of gold was cheaper in Kuwait as compare to India. He brought the gold jewellery for his personal use and the said gold was purchased by him for his sister's marriage from his personal savings. Thus, there is no dispute in respect of the ownership of the seized gold. The appellant was not a carrier. There is nothing on record to suggest that the concealment was ingenious. The investigation of the case has not brought any smuggling angle but the investigation suggest that this is case of non-declaration of gold with intention of non-payment of Customs duty. Further, a copy of appeal memorandum was forwarded to the adjudicating authority for his comment and submission of case laws on similar matter but no reply was received till date. The fact of the present case also indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial consideration. The absolute confiscation of impugned gold, leading to dispossession of the gold in the instant case is, therefore, harsh. Therefore, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad and Mumbai as detailed in the above paras, I am of the considered view that the absolute confiscation of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/- is harsh. I, therefore, set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allow redemption of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-, on payment of fine of Rs 4,50,000/- in addition to the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962.



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6.13 In respect of request for re-export of the impugned gold, it is observed that the appellant was holding civil id card No 284112103829 of State of Kuwait valid upto 06.04.2026. The appellant had claimed ownership of gold and desired to take it back. I have also gone through the recent decision vide Order No 404-405/2023-CUS (WZ)/ASRA/MUMBAI dated 30.03.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after observing that the passenger was having resident status of Doha/Qatar, allowed re-export of goods. In view of above, I allow re-export of seized gold on payment of redemption fine as discussed above and any other charges payable in respect of the impugned gold.

6.14 Further, in respect of imposition of penalty amounting to Rs 6,50,000/- on the appellant for non-declaration of gold items i.e. two Gold kadas weighing 204.540 gms, one Cut Gold bar weighing 92.500 gms and two gold coins weighing 40.840 gms, totally weighing 337.880 grams having purity 999.00/24 Kt. and having the Market Value of Rs.26,42,222/- and Tariff value as Rs.24,41,017/-, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad, Mumbai and Allahabad as detailed in the above paras, I am of the considered view that penalty of Rs. 6,50,000/- ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty to Rs. 2,00,000/-.

6.14 The fine and penalty of the above amount will not only eliminate any profit margin, if any, but will also have a positive effect on the applicant to ensure strict compliance of law in future.

7. In view of above the appeal filed by the appellant is disposed off in the above terms.



सत्याग्रह/ATTESTED
अधिकारी/SUPERINTENDENT
कानूनी युक्ति (अपील), अहमदाबाद
(APPEALS), AHMEDABAD
By Registered Post A.D.

F. No. S/49-154/CUS/AHD/2025-26


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

Dated -01.09.2025

To,

- (i) Shri Suresh Kumar, Son of late Shri Basulal,
V Jayra, PO- Jayra Fala, Kuvediya, Tehsil-Kherwara,
Udaipur, Rajasthan PIN-313804,

Copy to:

1. The Principal Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad. *3249*
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Joint/Additional Commissioner of Customs, Ahmedabad.
4. Guard File

