



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000C84F

क	फ़ाइलसंख्या FILE NO.	S/49-63/CUS/AHD/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-104-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.06.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	238/ADC/VM/O&A/2023-24, dated 07.03.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	25.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Qureshi Muzammil Ismail, B-Sector, X-Line, Room No. 09, Cheeta Camp, Trombay, Mumbai - 400088.

1. यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.

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2. सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.

	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.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.	
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :	
	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)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहज़ारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 1000/-	
(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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी. ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	In respect of cases other than these 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 :	
	सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	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 -	
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(a)	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;	
(ख)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए	
(b)	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 ;	
(ग)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहज़ाररूपए.	
(c)	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	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10%अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, अपीलरखाजाएगा।	
(d)	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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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 Qureshi Muzammil Ismail, B-Sector, X-Line, Room No. 09, Cheeta Camp, Trombay, Mumbai - 400088 (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. 238/ADC/VM/O&A/2023-24, dated 07.03.2024 (hereinafter referred to as "the impugned order") passed by Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, on the basis of suspicious movement and profiling, holding Indian Passport No. Y5499587, had arrived from Dubai to Sardar Vallabhbhai Patel International Airport, Ahmedabad by Fly Dubai Flight No. FZ 437 on 01.09.2023 was intercepted by the officers of Air Intelligence Unit (AIU), Sardar Vallabhbhai Patel International Airport, Ahmedabad. He was intercepted under Panchnama proceedings dated 01.09.2023 while he had crossed the Green Channel without making any declaration to the Customs. On being asked, whether he has anything to declare to Customs, to which he denied. The officers, in presence of the panchas carried out scanning of the trolley bags in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, some suspicious was observed. On sustained interrogation, the passenger asked whether he was concealing any high value dutiable goods, then the appellant confessed that he has concealed wire inside the trolley bag weighing around 203.31 grams. On further sustained interrogation, Shri Qureshi Muzammil Ismail confessed that he hid two packets covered with black colour adhesive plastic tape inside his undergarment of lower body part and the packets contain gold paste and chemical total 82.910 grams in semi solid form and he removed it and handed over to the Customs officers.

2.1 The Government Approved Valuer informed that 01 Gold bar weighing 194.170 grams having purity 999.0/24 Kt. derived from 203.310 grams of wires and 64.780 grams having purity 999.0/24 kt derived from the 82.910 grams containing gold and chemical mix wrapped in the black colored plastic tape. After testing the said bar, the Government Approved Valuer confirmed that it is pure gold and issued Certificate bearing No. 477/2023-24 dated 01/09/2023, wherein it is certified that the gold bar is having purity 999.0/24kt, weighting 194.170 grams having tariff value of Rs.10,21,437/- and market value of Rs.11,91,815/- and the gold bar weighing 64.780 grams having purity 999.0/24kt, tariff value of Rs.3,40,777/- and Market Value of Rs.3,97,620/-. The value of the gold bar has been calculated as per the Notification No. 63/2023-Customs (N.T.)



dated 31.08.2023 (gold) and Notification No. 63/2023-Customs (N.T.) dated 17.08.2023 (exchange rate).

2.2 The AIU Officers informed the panchas as well as the appellant, that the recovered 02 gold bars of 24Kt. with purity 999.0 total weighing 258.950 grams having total tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/-. The appellant had attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the officers informed that they have a reasonable belief that the aforesaid Gold had attempted to be smuggled by the appellant, are liable for confiscation as per the provisions of Customs Act, 1962, hence the aforesaid Gold was placed under seizure, vide Seizure Memo dated 01.09.2023, under Section 110 (1) & (3) of the Customs Act, 1962.

2.3 Statement of the appellant was recorded on 01.09.2023 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he had visited Dubal (UAE) two times. On 20.08.2023, he went to Dubai to bring gold from Dubai. He concealed gold in wire form in outer edge of trolley bag and semi-solid gold paste in his undergarment and returned India by Fly Dubai Flight No. FZ437, dated 31.08.2023 scheduled from Dubai to Ahmedabad on 01.09.2023. He further stated that this is the first time when he indulged in smuggling of gold activity by way of concealing gold in trolley in wire form and gold in paste form consisting mixture of gold and chemical covered with black plastic tape concealed in his undergarment. He further stated that on arrival at SVPI Airport at Ahmedabad at about 3.33 am on 01.09.2023, he picked up his checked in baggage and walked towards the exit gates through the Green Channel after crossing the Customs counter at the red Channel. He confirmed the events narrated in the Panchnama drawn on 01.09.2023 at Terminal -2, SVPI Airport, Ahmedabad. His Checked-in baggage was put through baggage screening machine located near the green channel of the Arrival Hall and screened and checked thoroughly. Thereafter, he confirmed that when the officer asked him repeatedly about any concealment of any contraband goods in his luggage, he handed over the entire goods item which was kept in his luggage to the officer. Then officer checked luggage and being dis-satisfied, interrogated him about any concealment. Then, he admitted that he had concealed gold in his trolley bags as wire form and in black coloured plastic tape containing gold in semi solid paste form in his undergarments. Further, the appellant has removed the gold from trolley bag and underpants and handed over to the Customs Officers. He stated that he is very well aware that smuggling of gold without Payment of



customs duty is an offence. He was aware of the concealed gold but he did not make any declarations in this regard

2.4 The above said gold bars with a net weight of 258.950 grams having purity of 999.0/24 Kt. involving tariff value of Rs. 13,62,214/- and market value of Rs.15,89,435/- recovered from the appellant which were attempted to be smuggled into India with an intent to evade payment of Customs duty by concealing in outer edge of trolley bag and wrapped in black coloured plastic tape containing gold in semi solid paste form in his underwear/ underpants, which was in clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bars totally weighing 258.950 Grams which were attempted to be smuggled by the appellant, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said gold bar weighing 258.950 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 01.09.2023, issued from F. No. VIII/10-91/AIU/A/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

2.5 The appellant had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The appellant had improperly imported gold bar weighing 258.950 Grams having purity 999.0/24 Kt., by concealing in trolley bag in form of wire and one packet wrapped in black coloured plastic adhesive tape containing gold in semi solid paste form in his Undergarment and involving tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/-. The said gold was concealed in his trolley bag and wrapped in black colored plastic adhesive tape containing gold in semi solid paste form in his Undergarment not declared to the Customs. The appellant opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported total 258.950 Grams of gold bars of purity 999.0/24 Kt. by the appellant by way of concealing in outer edge of his trolley bag and wrapped in black colored plastic tape containing gold in semi solid paste form in his Undergarment, without declaring it to the Customs on arrival in India cannot be treated as bonafide 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.



2.6 By not declaring the value, quantity and description of the goods imported by him, the appellant 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. The improperly imported gold by the appellant, found concealed 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 Customs Act, 1962. The appellant, 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. As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing 258.950 Grams having purity 999.0/24 Kt. and having tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/-, which was concealed in outer edge of his trolley bag and wrapped in black colored plastic tape containing gold in semi solid paste form in his Undergarment by the appellant, totally weighing 258.950 grams without declaring it to the Customs, are not smuggled goods, is upon the appellant.

2.7 A Show Cause Notice under F. No. VIII/10-203/SVPIA-A/O&A/HQ/2023-24, dated 19.01.2024 was issued to the appellant proposing for confiscation of two gold bar weighing 258.950 Grams having purity 999.0/24 Kt. and having tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/- which was concealed in outer edge of trolley bag and wrapped in black coloured plastic tape containing gold in paste form in his undergarment, seized under Panchnama dated 01.09.2023, under Section 111(d), 111(f), 111(i), 111(h), 111(l) and 111(m) of the Customs Act, 1962 and for imposition of penalty upon the appellant under Section 112 of the Customs Act, 1962.

2.8 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of two gold bar weighing 258.950 Grams having purity 999.0/24 Kt. and having tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/- seized under Panchnama dated 01.09.2023, under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs 5,00,000/- on the appellant under Section 112(a)(i) of the Customs Act, 1962.

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



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- The Show Cause Notice issued without a valid and verifiable digital DIN (Document Identification Number) is invalid and it is to be considered that it was never issued. Therefore, the seized goods are liable to be released unconditionally.
- Improper handling of the seized gold. As per the clear directives issued by the Board, any seized crude gold is to be sent to the Government Mint for the process of melting and refining. However, in the present case of seizure, the Customs department deviated from this prescribed procedure. Instead of adhering to the established protocol, the seized gold was taken to a private refinery for melting and refining.
- Proposal for imposition of penalty u/s 112 not sustainable. The petitioner submits that the authority who issued the impugned SCN proposed for imposition of penalty u/s 112 of Customs Act, 1962. What was communicated in the SCN was vague and ambiguous. It could not be made out from the show cause notice whether the charge was being made with reference to Section 112(a) or (b). Therefore, the show cause notice should have been struck down on the ground of ambiguity.
- Gold is not a prohibited item. Gold seized from the petitioner is not liable for confiscation. The Parliament enacted the Customs Act, 1962 (for short "the 1962 Act") to consolidate and amend the law relating to Customs. Section 11 of the 1962 Act empowers the Central Government to prohibit importation and exportation of goods. The relevant provision in the context of prohibited goods is Section 11 of Customs Act and it is not the case of the Department that gold has been notified as prohibited goods either absolutely or subject to some conditions. No other legal provision is also mentioned in the present case by which import of gold has been prohibited. Even Baggage Rules do not prohibit the importation of gold. Section 125 of the Customs Act, 1962 vests the power to grant redemption of confiscated goods. It may be seen that section 125 above divides the goods. in to two categories, one category' relates to goods which are prohibited and the second category deals with all other goods. The distinction between the categories is made on the basis of offences allegedly committed in the matter. In the case of second category of goods i.e, goods which are not prohibited, the goods have to be invariably redeemed by giving an option to the person concerned to get the same redeemed by paying the redemption fine. In the case of first category i.e. where prohibited goods are involved, the adjudicating authority is given discretion to



either absolutely confiscate the goods or allow redemption. The appellant relied upon the following case laws:

- Suresh Kumar Agarwal Vs Collector of Customs, Madras [1998 (103) ELT 18 (AP)]
- Bhargav B Patel [2015-TIOL-1951-CESTAT-MUM]
- Commissioner of Customs (AP) Vs Alfred Menezes [2009 (242) ELT 334 (BOM)]
- Dhanak M. Ramji Vs Commissioner of Customs (Airport), Surat [2009 (237) ELT 280 (Tri)] upheld by the Hon'ble Supreme Court 2010 (252) ELT A102 (SC).
- Mohd Zia Ul Haque 2014/314 (GOI)
- A.Rajkumari vs CC (Chennai) 2015 (321) ELT 540 (Tri-Chennai). Affirmed by the Hon. Apex Court vide 2015 (321) ELT A207 (SC)
- Yaqub Ibrahim Yusuf Vs Commissioner of Customs [2011 (263) ELT 685]
- Shaikh Jamal Basha Vs Government of India [1992 (91) ELT 227 (AP)]
- Mohammed Ahmed Manu Vs Commissioner of Customs, Chennai [2006 (205) ELT 383 (Tri Chennai)]
- Mohd Zia ul haque Vs Additional Commissioner of Customs, Hyderabad [2014(214) ELT 849 (GOI)]
- Rajaram Bohr A Vs Union of India [2015 (322) ELT 337 (Cal)]
- Ashok Kumar Verma [2019 (369) ELT 1677 (GOI)]
- Mohammed Husain Ayyub Chilwan [2019 (369) ELT 1784 (Tri Hyd)]
- Roshni Mathuradas Kothadia Vs Commissioner of Customs, Hyderabad [2019 (369) ELT 1784 (Tri Hyd)]
- Reliance placed on Board's Circular no 495/5/92-Cus.VI dated 10-05-1993 for denying redemption of confiscated gold is not sustainable. Circulars cannot override statute. The Adjudicating Authority relied upon Board's Circular no 495/5/92-Cus. VI dated 10-05-1993 for denying redemption of confiscated gold. In the said circular in question, the Board had advised 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 adjudication authority is satisfied that there was no concealment of the gold in question.
- Binding precedents were not followed by Adjudicating Authority. In Hari Singh v. State of Haryana, it was noted that it is true that in



the system of justice which is administered by courts, one of the basic principles to be kept in mind that the courts of co-ordinate jurisdiction should have consistent opinions in respect of similar sets of facts and circumstances or question of law. If opinions given on identical facts are inconsistent, instead of achieving harmony in the judicial systems, it will lead to judicial anarchy. The view that has held the field for a long time must not be disturbed merely because of the possibility of another view.

- Reliance placed by the adjudicating authority on the decision in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)] is misplaced. The appellant submitted that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products (2004 (170) ELT 135 (SC)) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgment in the case of Escorts Ltd. Vs CCE, Delhi (2004 (173) ELT 113 (SC)), wherein it has been observed that one additional or different fact may make difference between conclusion in two cases and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC (Port), Chennai Vs Toyota Kirloskar [2007 (213) ELT 4 (SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of decision has to be culled out from facts of given case. Further the decision is an authority for what it decides and not what can be logically deduced there from.
- Penalty imposed on the petitioner is disproportionate to the value of gold imported by him. Imposition of heavy penalty on the petitioner is not sustainable.
- The petitioner claims ownership of the gold and unconditional redemption of the gold under absolute confiscation. The petitioner submits that he is into the business of car parts. He is the owner of the gold under absolute confiscation. He borrowed money from his business contacts in Dubai and purchased the gold in Dubai for making jewellery for his family members. It is submitted without prejudice to the submission already made, admittedly gold is not a prohibited item. It is a restricted item and consequently the person from whom it was recovered or the owner of the goods is entitled for



release of the seized material under Section 125 of the Customs Act. Section 125 of Customs Act, 1962 provides that in case of prohibited goods the adjudicating authority may give an option of redemption and in this way he has discretionary power but for other than prohibited goods the adjudicating authority has to give option to pay fine in lieu of confiscation and in this way the adjudicating authority shall allow redemption to the owner or to the person from whose possession such goods have been seized. The benefit of the same be extended to the petitioner. Taking the overall facts and circumstance of the case, infirmities pointed out and submissions made by the petitioner into consideration, the gold bars may be released to the petitioner unconditionally. Reliance is placed on the following decisions:

- Jatinder Kumar Sachdeva vs The Union of India and Ors on 8 December, 2016-Delhi High Court.
- K.H Mohamed Ismail (Alias) vs The Additional Commissioner of ... on 8 September, 2021 - Madras High Court
- M/S. Chokshi Arvind Jewellers vs Union of India and Ors on 20 September, 2023 - Bombay High Court.
- The petitioner submits that the gold was not validly seized. He was not issued any valid any Show Cause Notice with verifiable DIN. Therefore, the gold under seizure cannot be confiscated. Proposal made in the SCN for imposition of penalty u/s 112 is not sustainable. Therefore, the gold must be released unconditionally as per Section 110 read with section 124. When no confiscation is maintainable, no penalty can be imposed on him.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 04.06.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. The advocate during personal hearing also relied upon the following case laws:

(i) OIA No. AHD-CUSTOM-000-APP-332-23-24 Dated 13.12.2023 In c/a Mr. Kachhadia Mahipal Vitthalbhai V/s. Additional Commissioner of Customs Ahmedabad. (Rhodium coated Gold Case granted RF, PP).

(ii) OIA No. AHD-CUSTOM-000-APP-364-23-24 DT 10.01.2024 IN c/a Mr. Ankit Kamleshkumar Shah V/s Commissioner of Customs (Appeals), Ahmedabad. (Gold Case granted RF, PP).

(iii) OIA No. AHD-CUSTOM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms. Shaikh Anisa Mohammed Amin V/s Commissioner of



Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

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

(v) OIA No. AHD-CUSTM-000-APP-161-24-25 DT 26.07.2024 in c/a Mr. Subhan Gulab Pathan V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

(vi) Order No 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF, PP).

(vii) Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP).

(viii) Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

(ix) Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP).

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

(xi) Order No. 907-909/2023-CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a (1) Mr. Shahrukh Khan, Muniruddin Pathan (2) Mr.



Rushabhbbhai Pravinbbhai Goswami (3) Mr. Mahendrasinh Zala V/s. Pr. Commissioner of Customs, SVPI Airport, Ahmedabad. (Gold Weighing 1778.980 grams Case granted on RF, PP).

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

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 confiscation of the seized gold of 24 kt/999.0 purity weighing 258.950 grams valued at Rs. 13,62,214/- (Tariff Value) and Rs 15,89,435/- (Market Value) 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. 5,00,000/- imposed on the appellant, under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. Before going into the merits of the case, I find that the impugned order has been received by the appellant on 12.03.2024 and the appeal has been filed on 20.05.2024. Thus, the appeal has been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant has requested for condoning the delay in filing the said appeals on the ground that he was out of station and was unable to pursue the matter and brief the advocate in time. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

6.1 It is observed that the appellant, on the basis of suspicious movement and profiling, holding Indian Passport No. Y5499587, had arrived from Dubai to Sardar Vallabhbhai Patel International Airport, Ahmedabad by Fly Dubai Flight No. FZ 437 on 01.09.2023 was intercepted



by the officers of of Air Intelligence Unit (AIU), Sardar Vallabhbhai Patel International Airport, Ahmedabad. He was intercepted under Panchnama proceedings dated 01.09.2023 while he had crossed the Green Channel without making any declaration to the Customs. The officers, in presence of the panchas carried out scanning of the trolley bags in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, some suspicious was observed. On sustained interrogation, the passenger was asked whether he was concealing any high value dutiable goods, then the appellant confessed that he has concealed wire inside the trolley bag weighing around 203.31 grams. On further sustained interrogation, the appellant confessed that he hid two packets covered with black colour adhesive plastic tape inside his undergarment of lower body part and the packets contain gold paste and chemical total 82.910 grams in semi solid form and he removed it and handed over to the Customs officers. The Government Approved Valuer informed that 01 Gold bar weighing 194.170 grams having purity 999.0/24 Kt. derived from 203.310 grams of wires and 64.780 grams having purity 999.0/24 kt derived from the 82.910 grams containing gold and chemical mix wrapped in the black colored plastic tape. After testing the said bar, the Government Approved Valuer confirmed that it is pure gold and issued Certificate bearing No. 477/2023-24 dated 01/09/2023, wherein it is certified that the gold bar is having purity 999.0/24kt, weighting 194.170 grams having tariff value of Rs.10,21,437/- and market value of Rs.11,91,815/- and the gold bar weighing 64.780 grams having purity 999.0/24kt, tariff value of Rs.3,40,777/- and Market Value of Rs.3,97,620/-. The recovered 02 gold bars of 24Kt. with purity 999.0 total weighing 258.950 grams having total tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/- were seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 01.09.2023. 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 in wire form concealed in the trolley bag and in paste form concealed inside the inner portion of the underwear worn by him 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.

6.2 I find that it is undisputed that the appellant had not declared the seized gold in wire form concealed inside the trolley bag and in paste form concealed inside the underwear worn by him to the Customs on his arrival



in India. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of gold in wire form concealed inside the trolley bag and in paste form concealed inside the underwear worn by him. 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) of the Customs Act, 1962.

6.3 I have also perused the decisions 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 condition of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant are consequently liable for penalty. Thus, it is held that the undeclared gold weighing 258.950 grams having total tariff value of Rs.13,62,214/- and market value of Rs.15,89,435/-, are liable to confiscation under Section 111(d) of the Customs Act, 1962 and the appellant is also liable to penalty under Section 112(a) *ibid*.

6.4 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.....”

Thus, it is clear 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.

6.5 It is further observed that the adjudicating authority in the instant case had 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 discussed in paras 21 to 28 of the impugned order, had held that smuggling of gold was done by the appellant and had ordered for absolute confiscation of undeclared gold weighing 258.950 grams of purity 999.0/24Kt, having Tariff value of Rs. 13,62,214/- and Market value of Rs. 15,89,435/-.

6.6 It is also observed from the facts and records of the present case that the appellant had ingeniously concealed gold in wire form inside the trolley bag and in paste form inside the underwear worn by him with an intention to smuggle the same without payment of duty. The gold in wire and paste form was detected during scanning of baggage and personal search of the appellant and on sustained interrogation. The appellant in his statement recorded under Section 108 of the Customs Act, 1962 on 30.08.2023 had admitted that he was carrying the said gold and intendment to clear the same without paying Customs duty from the SVPIA, Ahmedabad. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold was concealed ingeniously in wire and paste form. Therefore, the case laws relied upon by the appellant in the appeal memorandum are not applicable in the instant case.

6.7 I rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of V.K. MOHAMMAD ALI Versus COMMISSIONER OF CUSTOMS, COCHIN [2019 (369) E.L.T. 1538 (Tri. Bang)], wherein the Hon'ble



Tribunal has upheld the decision of adjudicating authority for absolute confiscation of undeclared seized gold. The relevant paras are as under:

6. The brief issue for consideration in the case is to decide whether the adjudicating authority as a discretion to release the gold confiscated or the seized gold requires allowing to be redeemed on payment of fine in lieu of confiscation in terms of Section 125 of the Customs Act, 1962. Section 125 of the Customs Act reveals as under:

“(1) Whenever confiscation of any goods is authorized 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 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 :

Provided 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.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.”

6.1 A plain reading of the above provision gives understanding that while the adjudging officer may permit the redemption of goods on payment of fine in lieu of confiscation of goods which are prohibited in nature, he shall, in the case of other goods, ‘may’ permit redemption on payment of fine in lieu of confiscation.

6.2 There are two situations which emerge out of the legal position which needs to be addressed; firstly, whether the impugned goods are in the nature of prohibited goods wherein the adjudicating authority has an option to permit the goods to be redeemed on payment of fine in lieu of confiscation. Secondly, whether the adjudging officer has a discretion so as to allow or not such goods to be redeemed on payment of fine in lieu of confiscation.

6.3 For an appreciation of the same, it is required to see what are prohibited goods is Section 2(33) of the Customs Act, 1962 defines prohibited goods as follows :

Prohibited goods means “any goods, the import or export on 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.”

In view of the above, for the goods to acquire a nature of being prohibited who either be prohibited under Customs Act or any other law



for the time being in force or the goods should have been imported wherein the conditions subject to which the goods are permitted to be imported are not complied with. Admittedly, the impugned gold is not prohibited either under Customs Act or any other law for the time being in force at the material time. As per the records of the case, the appellant have not submitted anything to show on record that the goods have been properly imported. It is to be inferred that the impugned gold has been imported without following the due process of law that is to say without following the procedures thereof. Therefore, it is to be held that the impugned goods have acquired the nature of being prohibited goods in view of Section 2(33) of the Customs Act, 1962.

6.4 Having found that the impugned goods have acquired the nature of prohibited goods, the issue which remains to be decided as to whether the adjudicating authority can exercise [its] discretion to allow the goods to be redeemed. Going by the wordings of Section 125, it is clear that in such circumstances i.e. whether the goods are prohibited, the adjudicating authority 'may' permit the redemption. That being the case the Tribunal cannot sit in judgment over the discretion exercised by the competent authority duly empowered under the statute. We find that as submitted by the Learned DR, the Hon'ble High Court of Madras has categorically held that: "When a prima facie case of attempt to smuggle the goods is made out, it is not upon the Tribunal, the issue not give positive directions to the adjudicating authority, to exercise option in favour of the respondents". We also find that this Bench of the Tribunal (supra) in a case involving identical circumstances has upheld the absolute confiscation of gold biscuits of foreign origin seized from a passenger who claimed that the same were purchased in Mumbai.

7. In view of the above, we find that the Order-in-Appeal does not require any intervention and as such the appeals are rejected

6.8 I also rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of Ismail Ibrahim Versus Commissioner of Customs, Bangalore [2019 (370) ELT 1321 (Tri Bang)], wherein the Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold i.e. 258.950 grams in wire form concealed in the trolley bag and in paste form was concealed discreetly inside the underwear worn by him.

6.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 217/2024-Cus, dated 16.10.2024 on identical issue i.e. attempt to bring undeclared gold in paste form in the case of Riswan Kochupurayil Nazeer, has upheld the absolute confiscation of



788.940 grams of gold extracted from gold paste weighing 874.760 grams valued at 30,29,931/- (Assesable Value) and Rs 34,99,286/- (market value). The penalty imposed was also upheld. The relevant paras are reproduced as under:

"8. The Government has examined the matter. It is observed that the Applicant has not declared the possession of impugned gold in his Customs declaration form and it was only through persistent enquiry and examination of the Applicant, that the body concealment of the impugned gold in paste form came to light. The Appellate Authority has also observed that the Applicant in his voluntary statement dated 04.01.2021 under Section 108 of the Customs Act, 1962 admitted that he knew that importing of gold without payment of duty is an offence; that he had committed an offence by concealing the gold and not declaring the same to evade payment of Customs duty; that the impugned gold was handed over to him by a person at Dubal with instructions to smuggle the same to India and promised the Applicant a remuneration of Rs. 30,000/- in return. The Applicant in his second voluntary statement recorded on 16.01.2021 reiterated his earlier statement. The Appellate Authority in para (11) of the said O-I-A, has also noted that, on 11.07.2022, the Authorised representative of the Applicant, Shri Nazeer, who is the father of the Applicant, has admitted to his son's offence and has also stated the Applicant has committed this offence knowingly for financial gains. The impugned gold items smuggled into India via ingenious body concealment cannot be considered as bonafide baggage. The entire proceedings have also been covered under a Mahazar in presence of independent witnesses which also corroborates the sequence of events.

9. As per Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. Leave alone declaring the gold as required under Section 77 of the Customs Act, 1962, the Applicant chose to ingeniously conceal it in his rectum and this was detected only upon during his search & examination. Had he been the owner of the gold and had intended to declare the gold to Customs, he would not have had to resort to such ingenious concealment. Thus, the lack of any documents establishing ownership and non-declaration is not surprising. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the adjudicating & appellate authorities that the impugned goods were liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

10.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, Import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* (1971 AIR 293), the Apex Court has held that for the purpose of Section 111(d) of the



Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi* (2003(155) ELT423(SC)), the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Further, in the case of *UOI & Ors vs. M/s Raj Grow Impex LLP & Ors* (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in *Sheikh Mohd. Omer* (supra) and *Om Prakash Bhatia* (supra) to hold that "any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."

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

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

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

10.4 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

11. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of *Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi* [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. Hon'ble Delhi High Court has, in the case of *Raju Sharma* [2020 (372) ELT 249 (Del)], held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 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 the Adjudging Officer". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

12.1 As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles Imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of *Deepak Bajaj vs Commissioner of Customs (P), Lucknow*(2019(365) ELT 695(All.)), held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had not made a true declaration under Section 77.

12.2 Further, the Hon'ble Delhi High Court has, in the case of *Jasvir Kaur vs. UOI* (2009 (241) ELT 621 (Del.)), held that re-export is not permissible when article is recovered from the passenger while attempting to smuggle it. Hence, the question of allowing re-export does not arise.

13. The case laws relied upon by the Applicant, in support of his various contentions, are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

14. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods as upheld by Commissioner Appeals does not require any interference. The quantum of penalty imposed on the Applicant is neither harsh nor excessive.

15. The revision application is rejected for the reasons aforesaid."

6.10 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of *Ms Ros Maszwin Binti Abdul Kadir*, Order No. 184/2024-CUS, dated 04.09.2024 wherein absolute confiscation of one long crude gold chain of 24 carat purity weighing 1.2 kgs valued at Rs 39,70,800/-, wrapped in a condom which was found concealed in lower inner garment, was upheld. The penalty imposed was also upheld.

11 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of *Sh Rafi Syed*, Order No. 175/2024-CUS, dated 28.08.2024 wherein absolute confiscation of 39 gold bars of 24 carat purity weighing 3800 grams valued at Rs 1,16,58,400/-, concealed inside plastic pouches containing dates, was upheld. The penalty imposed was also upheld.

6.12 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Shri Riyas Khan, Order No. 190/2024-CUS, dated 09.09.2024 wherein absolute confiscation of two cut gold bits and 78 gold ingots of 24 carat purity weighing 2620 grams valued at Rs 87,42,940/- concealed in play station joy sticks, was upheld. The penalty imposed was also upheld.

6.13 I also rely upon the decision of Hon'ble High Court of Kerala in the case of Abdul Razak Versus Union of India [2012 (275) ELT 300 (Ker)] maintained in the Hon'ble Supreme Court [2017 (350) ELT A173 (SC)], wherein the passenger, a carrier, tried to smuggle 8 kg of gold concealed in emergency light, mixie, grinder, car horns etc. was held to be absolutely confiscated and not allowed to be released on redemption fine. The relevant para is reproduced as under:

"6. After hearing both sides and after considering the statutory provisions, we do not think the appellant, as a matter of right, can claim release of the goods on payment of redemption fine and duty. Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. There is no need for us in this case to consider the conditions on which import is permissible and whether the conditions are satisfied because the appellant attempted to smuggle out the goods by concealing the same in emergency light, mixie, grinder and car horns etc. and hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal import of gold. 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."

In the present case also the appellant, concealed the seized gold in wire form in the trolley bag and in paste form discreetly inside the underwear worn by him with an intention to smuggle the same into India. The gold was detected only on the scanning of baggage and personal search of the appellant on the basis of his suspicious movement and sustained



interrogation. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.14 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the concealment in this case was ingenious as substantial quantity of gold in wire and paste form weighing 258.950 grams was intentionally and ingeniously concealed inside the trolley bag and in the underwear worn by him to evade detection by the Customs authorities. The appellant did not intend to declare the said gold and the same was detected only on scanning of his baggage and his personal search and sustained interrogation. He also admitted that he was carrying the said gold and intend to clear the same without paying Customs duty from the SVPIA, Ahmedabad. The appellant has requested for release of the said gold but not claimed ownership of gold and has not submitted any evidence to this effect. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned and intentional smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of seized gold of 24 kt/999.0 purity weighing 258.950 grams valued at Rs. 13,62,214/- (Tariff Value) and Rs 15,89,435/- (Market Value) under Customs Act, 1962. In view of above, the absolute confiscation of gold of 24 kt gold weighing 258.950 grams valued at Rs. 13,62,214/- (Tariff Value) and Rs 15,89,435/- (Market Value) is upheld.

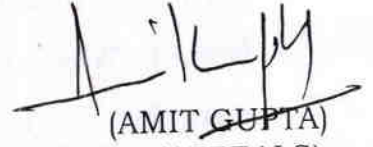
6.15 Further, in respect of imposition of penalty amounting to Rs 5,00,000/- on the appellant for bringing undeclared gold weighing 258.950 grams valued at Rs. 13,62,214/- (Tariff Value) and Rs 15,89,435/- (Market Value), the appellant has attempted to bring gold into India without declaring the same and concealing the same ingeniously in wire form in the trolley bag and in paste form in the underwear worn by him. The quantum of gold is substantial and the appellant had smuggled gold by ingeniously and intentionally concealing the same in wire and paste form. The appellant was aware that smuggling of gold without payment of customs duty is an offence and also admitted that he was carrying the said gold and intend to clear the same without paying Customs duty from the SVPIA, Ahmedabad. Thus, I am of the considered view, that the penalty of Rs 5,00,000/- imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112(a)(i) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellant.



Therefore, there is no infirmity in the impugned order and the same is upheld.

7. In view of above, the appeal filed by the appellant is rejected.




(AMIT GUPTA)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

सत्यापित/ATTESTED



अधीकृत/SUPERINTENDENT

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