



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
 “सीमा शुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद - 380009.
 दूरभाष :(079) 2754 4630, E-mail: cus-ahmd-adj@gov.in, फ़ैक्स :(079) 2754 2343
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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-47/SVPIA-C/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-47/SVPIA-C/O&A/HQ/2025-26 Dated 09.10.2025
C	मूलआदेश संख्या/ Order-In-Original No.	:	186/ADC/SRV/O&A/HQ/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	23.12.2025
E	जारी करने की तारीख/ Date of Issue	:	23.12.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Sufiyan, S/o Mohd. Rafik, A-58, Shradhapuri, Kanker Kheda, Meerut, Uttar Pradesh-250001
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

On the basis of intelligence, the officers of Air Intelligence Unit (AIU), SVPIA, Customs Ahmedabad, intercepted a male passenger named **Shri Sufiyan** (D.O.B. 20.05.1970) (hereinafter referred to as the said “passenger/Noticee”), S/o Shri Mohd Rafik, residing at A-58, Shradhapuri, Kankeer, Kheda, Meerut, PIN-250001, Uttar Pradesh, India (address as per passport), holding an Indian Passport No. C7907499, arriving from Jeddah to Ahmedabad (AMD) on 17.04.2025 via Indigo Flight No. 6E-76 (Seat No. 30A), at the arrival hall of the Terminal-2 of SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger’s personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings thereof were recorded under the Panchnama dated 17.04.2025.

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

2.1 The AIU officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/ clothes. However, even during this process, no beep sound was heard indicating any presence of objectionable/ dutiable items on his body/ clothes. Further, the officer observed that the passenger is carrying a hand bag and two trolley bags (One Brown Colour trolley bag and other green colour trolley bag), during scanning of the hand bag of the passenger no objectionable image is found. However, on scanning of both the trolley bags (One Brown Colour trolley bag and other green colour trolley bag) of the said passenger, **black colour linings were observed inside the handle of the trolley bag**, indicating that there might be gold wire(s) concealed inside the handle of the trolley bags. Accordingly, the officers opened the screws of the handle with the help of one screw driver and on opening the same **total four rhodium coated wires were extracted from inside the handles of both the trolley bags (two wires from each bag)** which appears to be of gold.

2.2 Thereafter, the officers called the Government Approved Valuer (Shri Kartikey Vasantrai Soni) and informed him about the recovered items, i.e. four rhodium coated wires which appears to be of gold were extracted from inside the handles of both the trolley bags and requested him to come to the office of the Air Intelligence Unit, SVPI Airport, Ahmedabad for testing and valuation purpose. In reply, the Government Approved Valuer informed the officer that the testing of the material is possible only at his workshop as gold has to be extracted from rhodium coated wires by melting it and also informed the address of his workshop.

3. Thereafter, at around 10:30 hrs. on 17.04.2025, the officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C. G. Road, Ahmedabad-380006. On reaching the above-mentioned premises, the officer introduced the panchas, as well as the passenger to one person namely Shri Kartikey Vasantrai Soni, Government Approved Valuer. Shri Kartikey Vasantrai Soni, Government Approved Valuer then started the detailed examination of the rhodium coated wires recovered from inside the handle of the trolley bags of Shri Sufiyan. Thereafter the valuer carried out weighment of the rhodium coated wires on his weighing scale. After doing the same, Mr. Kartikey Vasantrai Soni provided

detailed primary verification report of rhodium coated wires in the form of Annexure A and informs that the said **four rhodium coated wires consisting of Gold coated with white rhodium having Gross weight 423.89 grams**. The photograph of the recovered rhodium coated wires is as below:



3.1 Thereafter, the Government approved valuer led the Officers, panchas and the passenger to the furnaces, which is located inside his business premises. Then, Mr. Kartikey Vasantryai Soni started the process of converting the rhodium coated wires. The rhodium coated wires is cut into pieces which are put into the furnace and upon heating the same, it turned in to liquid of gold like material. The said substance consisting of gold is then taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it becomes yellow coloured solid metal in form of a gold bar. The photograph of the gold bar is as below:



3.2 After completion of the procedure, Government Approved Valuer informed that **gold bar weighing 419.65 grams** having purity 999.0/24 Kt. is derived from 423.89 grams of four rhodium coated wires. After testing the said bar, the Government Approved Valuer confirmed that it is pure gold. Shri Kartikey Vasantryai Soni vide **Certificate No. 082/2025-26 dated 17.04.2025** certified that the gold bar is having purity 999.0/24kt and having the Market value of Rs. 41,32,294/- and Tariff Value of Rs. 37,50,462/-. The value of the gold bar has been calculated as per the Notification No. 24/2025-Customs (N.T.) dated 15.04.2025 (gold) and Notification No. 24/2024 dated 12.04.2025 (Exchange rate). The summary of the valuation as per the certificate No. 082/2025-26 dated 17.04.2025 is as under:

Sr. No.	Details of Items	Pc s	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	419.65	999.0/24 Kt	41,32,294	37,50,462

3.3 Thereafter, after the completion of the extraction of gold at the workshop of Govt. Approved Valuer, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle along with the extracted gold bar and Valuation Certificate at around 13.20 hrs. on 17.04.2025.

4. SEIZURE OF THE ABOVE RHODIUM COATED GOLD BAR:

The said gold bar totally weighing 419.65 grams derived from four gold wires coated with white rhodium recovered inside the handles of two trolley bags of the passenger without any legitimate Import documents inside the Customs Area, therefore the same falls under the category of Smuggled Goods and appeared to be liable for confiscation under the Customs Act, 1962. Therefore, the said gold items totally weighing 419.65 grams, having purity of 999.0/24Kt. Market Valued at Rs.41,32,294/- (Rupees Forty-One Lakh Thirty Two Thousand Two Hundred Ninety-Four Only) and Tariff Value Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only) as on 17.04.2025 was placed under **Seizure vide Order Dated 17.04.2025** issued under the provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject gold items are liable for confiscation under Section 111 of the Customs Act, 1962.

Further, under sub-section (3) of Section 110 of the Customs Act, 1962, the both trolley bags used for packing and concealing the above mentioned gold in wire form, which (Gold in wire form) was attempted to be smuggled into India in violation of Section 77, Section 79 and Section 135 of the Customs Act, 1962 and therefore the same was also placed under seizure vide the same seizure order dated 17.04.2025 under the reasonable belief that the same are also liable to confiscation under Section 119 of the Customs Act, 1962.

5. STATEMENT OF SHRI SUFIYAN:

Statement of Shri Sufiyan was recorded on 17.04.2025, wherein he inter alia stated his personal details like name, address, family details, mobile number and bank account statement as mentioned in the statement and stated that he is working as a labour worker in 'Indane' gas agency, Address- A-58, Shradhapuri, Kanker Kheda, Meerut, Pin-250001, Uttar Pradesh, India. There is total seven members in his family i.e. his wife, three sons, two daughters and himself. Presently, he lived with his wife and youngest son at above mentioned address. His son is also working with him as labour worker in the same gas agency. His mobile no. is 9219226036. On being asked, he stated that he studied upto Primary School. His Adhar card no. is 4796 6343 0265, PAN card no. LMEPS4141M and bank account in Punjab National Bank, Cant Area, Shradhapuri, Kanker Kheda, Meerut, having account no. 0729000100322583 and IFSC Code PUNB0072900. On being asked, he stated that he has no E-mail i.d.

5.1 He further stated that he went to Jeddah on 31.03.2025 from Indira Gandhi International Airport, Delhi to perform Umrah (Religious activity). His monthly income of family is Rs. 20,000/-, as mentioned above he and his son worked as labour workers in 'Indane' gas agency at Meerut.

5.2 Regarding the purpose of his visit to Jeddah, he stated that the tickets for the journey (i.e. from Indira Gandhi International Airport, Delhi to Jeddah and from Jeddah to SVPI Airport, Ahmedabad) were booked by him from his savings from the Travel Agency namely Al Fahed Tours and Travels, Meerut. He stated that the above two trolley bags (i.e. brown and green colors) from which the gold concealed in the form of wires in the handle of the bags recovered by the AIU Officers were given to him by one Unknown person at Jeddah Airport. He stated that he hasn't any contact details of that unknown person. He reiterated that the two trolley bags, in which the gold was concealed, did not belonged to him as these were given to him by an unknown person in Jeddah. Therefore, this gold belonged to that unknown person. The unknown person bore his 'food and hotel stay expenses for the period from 01.04.2025 to 16.04.2025 in lieu of transport of these two trolley bags from Jeddah to SVPI Airport, Ahmedabad and then to Delhi. He stated that he was never visited abroad before, this is the first time he left India and visited Jeddah for Umrah. He further stated that the consignment of gold was supposed to be handed over to an unknown person at the outside of Delhi Airport whose details supposed to get on his

phone no. once he reaches Delhi. However, prior to his reaching Delhi, he was intercepted at Ahmedabad Airport.

5.3 On further inquiry, on being asked whether he was aware about the provisions of the Customs for import of Gold in any form, he stated that he had intentionally not declared the seized items, i.e. gold before the Customs Authorities on his arrival at SVP International Airport Ahmedabad, as he wanted to clear it illicitly and evade payment of Customs Duty. He is fully aware that clearing gold without declaring before Customs is an offence, under the provisions of Customs Act, 1962 and Regulations. He did not file any Declaration form for declaring the dutiable goods to the Customs. He agreed that he has done evasion of Customs duty on the gold total weighing of 419.65 grams with purity 999.0/24Kt and having Market Value Rs.41,32,294/- and Tariff Value Rs.37,50,462/-, which was recovered from the two trolley bags concealed in from of rhodium coated wire inside the handle of these two trolley bags in his possession.

5.4 He perused the Panchnama dated 17.04.2025 and stated that the facts narrated therein are true and correct.

5.5 From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, gold bar totally weighing 419.65 grams having purity of 999.0/24Kt and Market Valued at Rs.41,32,294/- (Rupees Forty-One Lakh Thirty-Two Thousand Two Hundred Ninety-Four Only) and Tariff Value Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only) as on 17.04.2025 derived from four gold wires coated with white rhodium which were concealed inside the handles of two trolley bags of the passenger, Shri Sufiyan, who had arrived from Jeddah to Ahmedabad on 17.04.2025 via Indigo Flight No. 6E-76 (Seat No. 30A), at Terminal-2 of SVPIA Ahmedabad. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules and for these reasons alone, it cannot be considered as a Bonafide Baggage under the Customs Baggage Rules, 2016.

5.6 According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper Officer. In the instant case, the passenger had not declared the said gold item totally weighing 419.65 grams having purity of 999.0/24Kt because of malafide intention and thereby contravened the provisions of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold totally weighing 419.65 grams having purity of 999.0/24Kt derived from four gold wires coated with white rhodium which were concealed inside the handles of two trolley bags, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold totally weighing 419.65 grams having purity of 999.0/24Kt is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Consequently, the same was placed under seizure vide Panchnama dated 17.04.2025 and Seizure Order dated 17.04.2025 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. SUMMATION:

The aforementioned proceedings indicated that Shri Sufiyan attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having Market Valued at Rs.41,32,294/- (Rupees Forty-One Lakh Thirty-Two Thousand Two Hundred NinetyFour Only) and Tariff Value Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only), liable for confiscation under the

provisions of Section 111 of the Customs Act, 1962 and therefore the same was placed under seizure vide Order dated 17.04.2025 issued under the Provisions of Section 110(1) and 110(3) of the Customs Act, 1962. Further, two trolley bags (one Brown Colour trolley bag and other green colour trolley bag) used for packing and concealing the above-mentioned gold in wire form were also liable for confiscation under the provisions of Section 119 of the Customs Act, 1962 and therefore the same was also placed under Seizure vide the same Seizure Order dated 17.04.2025 issued under the Provisions of Section 110(1) and 110(3) of the Customs Act, 1962.

7. LEGAL PROVISIONS RELEVANT TO THE CASE:

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

- 7.1** In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.
- 7.2** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 7.3** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

- 7.5** As per Section 2(3) – "baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property;
- 7.7** As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

- 7.8** As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 7.9** As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- 7.10** As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- 7.11** As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.
- 7.12** Section 111. Confiscation of improperly imported goods, etc.-*The following goods brought from a place outside India shall be liable to confiscation:*
- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*
 - (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*
 - (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*
 - (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
 - (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*
 - (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*
 - (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*
 - (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*
 - (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
 - (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*

- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of
goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*
- (n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;*
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*
- (p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

7.13 Section 112. Penalty for improper importation of goods etc.-*any person,*

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

7.14 As per Section 123 of Customs Act 1962,

- (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-*
 - (a) in a case where such seizure is made from the possession of any person -*
 - (i) on the person from whose possession the goods were seized; and*
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
 - (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*
- (2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

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

Customs Baggage Rules and Regulations:

7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to

India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

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

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

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

7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
35 6	71or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

Condition No. 41 of the Notification:

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

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

9. CONTRAVENTION AND VIOLATION OF LAWS:

It therefore appears that:

- (i) **Shri Sufiyan** had attempted to smuggle/improperly import gold totally weighing 419.65 grams having purity 999.0/24Kt and, having Market valued at Rs.41,32,294/- (Rupees Forty-One Lakh Thirty-Two Thousand Two Hundred Ninety-Four Only) and Tariff Value Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only) recovered from four gold wires coated with white rhodium which were concealed inside the handles of two trolley bags, with a deliberate intention to evade payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The said passenger, **Shri Sufiyan** had knowingly and intentionally smuggled the said gold by way of concealment inside the handles of two trolley bags having Gross weight 419.65 grams, on his arrival from Jeddah to Ahmedabad on 17.04.2025 by Indigo Flight No. 6E-76 (Seat No. 30A) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by **Shri Sufiyan**, by way of concealment inside the handles of two trolley bags and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. **Shri Sufiyan** has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.
- (ii) **Shri Sufiyan** by not declaring the gold brought by him in the form of four gold wires coated with white rhodium which was concealed inside the handles of two

trolley bags totally weighing 419.65 grams having purity 999.0/24Kt, which included dutiable and restricted/prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

- (iii) The improperly imported/smuggled gold by **Shri Sufiyan**, in the form of four gold wires coated with white rhodium totally weighing 419.65 grams having purity 999.0/24Kt that was recovered from inside the handles of two trolley bags, before arriving from Jeddah to SVPI Airport, Ahmedabad, on 17.04.2025 via Indigo Flight No. 6E-76 (Seat No. 30A) at Terminal -2, SVPIA Ahmedabad on 17.04.2025, 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), 2(33), 2(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (iv) **Shri Sufiyan**, by the above-described acts of omission/commission and/or abetment has rendered himself liable for penalty under Section 112 of Customs Act, 1962.
- (v) The Two Trolley Bags (one Brown Colour trolley bag and other green colour trolley bag) used for packing and concealing the above-mentioned gold by **Shri Sufiyan** were also liable for confiscation under the provisions of Section 119 of the Customs Act, 1962.
- (vi) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold totally weighing 419.65 grams that recovered from inside the handles of two trolley bags of the passenger, **Shri Sufiyan** who arrived from Jeddah to SVPI Airport, Ahmedabad, on 17.04.2025 via Indigo Flight No. 6E-76 (Seat No. 30A) at Terminal-2, SVPIA Ahmedabad are not smuggled goods, is upon **Shri Sufiyan**, who is the Noticee in this case.

10. Accordingly, a Show Cause Notice was issued to the Noticee i.e. **Shri Sufiyan**, residing at A-58, Shradhapuri, Kankeer Kheda, Meerut, Uttar Pradesh-250001, as to why:

- (i) The 01 Gold Bar weighing 419.65 grams having purity 999.0/24Kt and having Market valued at Rs. 41,32,294/- (Forty-One Lakh Thirty-Two Thousand Two Hundred Ninety-Four Only) and Tariff Value Rs. 37,50,462/- (Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty Two Only) recovered from four gold wires coated with white rhodium which was concealed inside the handles of two trolley bags, of the passenger, **Shri Sufiyan**, who arrived from Jeddah to Ahmedabad on 17.04.2025 by Indigo Flight No. 6E-76 (Seat No. 30A), at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 17.04.2025 and Seizure Memo Order dated 17.04.2025, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) The Two Trolley Bags (one Brown Colour trolley bag and other green colour trolley bag) used for packing and concealing the above-mentioned gold by **Shri Sufiyan** placed under seizure under panchnama proceedings dated 17.04.2025 and Seizure Memo Order dated 17.04.2025, should not be confiscated under the provisions of Section 119 of the Customs Act, 1962.
- (iii) Penalty should not be imposed upon **Shri Sufiyan**, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned herein above.

DEFENSE REPLY:

11. The noticee has submitted his written submission vide letter dated **13.11.2025** wherein he denied all the allegation against him made under the SCN.

11.1 He submitted that there was no mala fide or intentional attempt on his part to smuggle gold or evade Customs duty. He is a simple laborer employed with 'Sadhbhav Indane Seva' (Gas Agency) at Meerut, earning approximately 20,000/- per month. He studied only up to primary school and was traveling abroad for the first time to perform a religious pilgrimage (Umrah). The tickets for the journey (i.e. from Indira Gandhi International Airport, Delhi to Jeddah and from Jeddah to SVPI Airport, Ahmedabad) were booked by him from his savings from a via a Travel Agency Al Fahed Tours and Travel Meerut. He further submitted that due to his limited education, first-time international travel and limited understanding of Customs laws and procedures, he had no knowledge, or means to discern that their handles contained any valuable metal. He stated that he was genuinely unaware that metallic components embedded in trolley handles could be treated as dutiable or prohibited goods.

11.2 He submitted that the two trolley bags were handed over to him as complimentary bags at the place of stay at Jeddah. His travel was independently financed and that he had no financial or organizational link with any smuggling network or commercial entity. He further submitted that his conduct, viewed objectively, was at best bona fide but inadvertent, and not criminal. Accordingly, there was no conscious possession, ownership, or intent to smuggle; and hence the essential ingredients of Sections 77, 111, 112 and 119 of the Customs Act, 1962 are not attracted.

11.3 He submitted that there has been contravention of the provisions of Section 77 of the Customs Act, 1962, read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. The obligation as to Declaration under Section 77 arises only when a passenger knowingly possesses dutiable or prohibited goods and intentionally omits to declare them. Here, there was no conscious possession of the gold, since it was embedded inside the trolley handle and not visible or removable. There was no deliberate omission to declare any article. Regulation 3 of the Customs Baggage Declaration Regulations, 2013 only prescribes the manner of filing a declaration. Regulation 3 merely operationalizes Section 77; it does not create an independent offence. Where the main section is not attracted due to lack of intent, the Regulation also cannot be invoked.

11.4 He submitted that the Show-Cause Notice proposes confiscation under Sections

111(d), 111(f), 111(i), 111(j) and 111(m) read with Section 2(22), 2(33), 2(39) of the Customs Act, 1962 read in conjunction with Section 11(3) of the said act. For Sections 2(33), "prohibited goods" must be expressly prohibited by law and rhodium-coated wires are not prohibited items; at best, dutiable. Hence, confiscation under "prohibited goods" is unsustainable. For Section 2(39), "smuggling" implies intentional evasion, no such concealment existed. Section 111(i) and 111(m): These provisions apply where goods are intentionally concealed or mis-declared with the intent to evade duty. In the present case, there is no evidence of conscious concealment or knowledge. The metallic wires were embedded in the trolley handles and not accessible to him. There was no deliberate act or omission on his part that can attract the ingredients of Section 111.

11.5 He submitted that under the Section 112 of the Customs Act, 1962 the imposition of penalty requires proof of 'mens rea' a conscious and deliberate act to smuggle goods. Given his educational background and occupation, and the total

absence of evidence showing intent or gain, the essential ingredient of mens rea is missing. Therefore, no penalty under Section 112 can be sustained.

11.6 He submitted that the Section 119 applies only where conveyances or materials are knowingly used for concealment. The trolleys were ordinary baggage items, not designed or altered for smuggling. The provision therefore has no application.

11.7 He submitted that Section 123 of the Customs Act, 1962 does not apply to his case. The presumption under this section arises only when goods are seized from a person in conscious and exclusive possession. The alleged gold wires were embedded inside the fixed trolley handles pan of the bag's structure and were neither visible nor accessible. He had no knowledge or control over them, so the presumption cannot arise.

11.8 He submitted that the seizure was made during a routine Green Channel check, not on the basis of prior intelligence or reasonable belief of smuggling. Even if Section 123 were to apply, the presumption stands rebutted. His background shows there was no intent or knowledge of any smuggling. The bags were handed over at Jeddah, whose details he did not know, and his travel was financed independently. Therefore, the presumption under Section 123 stands fully rebutted, and the burden now lies on the Department to prove that he had conscious possession or knowledge of the alleged gold.

11.9 He further submitted that the Section 135 contemplates prosecution for willful intent. No such evidence or conduct exists; he had extended full cooperation throughout. Hence, criminal proceedings are unwarranted.

11.10 He submitted that there has been no violation of the Foreign Trade Policy (FTP) 2015-2020, particularly Para 2.26(a), which distinguishes bona fide personal baggage from commercial imports. He was carrying only personal trolley bags in the course of non-commercial travel and was not engaged in any trade activity. He neither possessed nor concealed any gold bars, coins, or jewellery; the wires later discovered in the trolley handles were undeclared solely due to his lack of knowledge of their presence.

11.11 He submitted that the provisions of Sections 3(2), 3(3), and 11 of the Foreign Trade (Development & Regulation) Act, 1992 had no application to his case, as he was not an importer, hold no Importer Exporter Code (IEC), and carried no goods for trade or resale. His situation pertains solely to bona fide personal baggage and not to any "import of goods" within the meaning of Sections 3(2) and 3(3) of the Act. He further submitted that with due regard to Customs Baggage Rules 2016 Rule 5, the present case isn't about declared jewellery, however, the Rule does confirm that baggage items are treated leniently if bona fide. The non-wearable wires in trolley handles cannot attract penal confiscation meant for smuggled jewellery.

11.12 He submitted that FTP Notification No. 49/2015-2020, which is relevant to importers, nominated agencies, or commercial consignments, basically institutional importers and not to personal baggage passengers with no business purpose. As he stated before, being a low-income pilgrim, he cannot be treated as a commercial importer. Customs Notification No. 50/2017-Customs (30.06.2017), (Sr. No. 356) Condition No. 41. He did not claim any exemption; hence non-compliance is irrelevant. Only applicable duty, if any, can be levied.

11.13 Further, he requested that for granted a personal hearing under Section 122A (l) read with Section 124(c) of the Customs Act, 1962 before any final adjudication is made, so that he may explain his case in person and produce any further clarification

or evidence required. He also requested to treat the alleged transaction as an unintentional and bona fide without any criminal intent, to drop the proposed penalty under Section 112 and not proceed under Section 135 and to dispose of the matter leniently considering his poor financial background, limited education, and full cooperation.

RECORD OF PERSONAL HEARING

12. To follow the principle of natural justice, personal hearing in the matter was fixed on 25.11.2025 & 28.11.2025. Shri Amit Sharma & Shri Lalit Kumar, Advocate alongwith the Noticee Shri Sufiyan appeared for personal hearing on 28.11.2025. They reiterated Shri Sufiyan's written submission dated 13.11.2025. They stated that the Noticee Shri Sufiyan is a labour employed and travelled abroad for the first time to perform a religious pilgrimage (Umrah). They submitted that the trolley bags were not belong to Shri Sufiyan. An unknown person handed over the two bags to shri Sufiyan as complimentary bags at the place of stay at Jeddah. He was unknown about the Gold which was concealed in the trolley bags handles, and therefore, the gold does not belong to him.

They requested to treat the alleged transaction as un unintentional and bona fide without any criminal intent. They further submitted that this was his first and last mistake and requested to take lenient view in the matter.

DISCUSSION AND FINDINGS:

13. I have carefully gone through the facts of the case. The Noticee had submitted his written submission on dated 13.11.2025. The noticee has availed the opportunity of personal hearing granted to him on 28.11.2025 and reiterated the written submission dated 13.11.2025 in the personal hearing. Accordingly, I take up the case for adjudication on the basis of evidences available on record and submission made by the noticee during the personal hearing.

14. In the instant case, I find that the main issue to be decided is whether the gold bar totally weighing **419.650 Grams** having purity of 999.0/24Kt and Market Value at **Rs.41,32,294/-** (Rupees Forty-One Lakh Thirty-Two Thousand Two Hundred NinetyFour Only) and Tariff Value Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only) as on 17.04.2025 derived from four gold wires coated with white rhodium, which were concealed inside the handles of two trolley bags (i.e. brown and green colors) of the passenger, Shri Sufiyan, seized vide Seizure Memo/Order dated 17.04.2025 under Panchnama proceedings dated 17.04.2025 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

15. I find that the Panchnama has clearly drawn out the fact that on the basis of specific intelligence regarding carrying restricted/prohibited goods, the officers of AIU intercepted Shri Sufiyan while he was attempting to exit through green channel without making any declaration. On being asked whether he had anything which required any declaration, he denied. Further, the officer observed that the passenger is carrying a hand bag and two trolley bags (One Brown Colour trolley bag and other green colour trolley bag), during scanning of the hand bag of the passenger no objectionable image is found. However, on scanning of both the trolley bags (One Brown Colour trolley bag and other green colour trolley bag) of the said passenger, **black colour linings were observed inside the handle of the trolly bag**, indicating that there might be gold wire(s) concealed inside the handle of the trolley bags. Accordingly, the officers opened the screws of the handle with the help of one screw driver and on opening the same **total four rhodium coated wires were extracted**

from inside the handles of both the trolly bags (two wires from each bag) which appears to be of gold. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the **gold bar weighing 419.65 grams** having purity 999.0/24Kt. and Market Value at Rs.41,32,294/- (Rupees Forty-One Lakh ThirtyTwo Thousand Two Hundred Ninety-Four Only) and Tariff Value Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only) as on 17.04.2025 derived from 423.890 grams of four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags (i.e. brown colored trolley bag and green colored trolley bag) of the passenger, Shri Sufiyan. The details of the Valuation of the said gold bar are tabulated as below:

Name of passenger	Details of gold Items	Pcs	Certificate No.	Net Weight in Gram	Purity	Market Value (Rs)	Tariff Value (Rs)
Shri Sufiyan	Gold Bar	01	082/202425	419.65 0	999.0/ 24Kt.	41,32,294/-	37,50,462/-

16. It is on the record that the noticee has tendered his statement voluntarily under Section 108 of the Customs Act, 1962. In view of the above, I find that the statement given by noticee under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. In support of my view, I relied on the following judgements:

- (i) Hon’ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that ***evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.***
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that *“Statement recorded by a Customs Officer under Section 108 is a valid evidence”*
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that *“It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962”*
- (iv) *There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion* as held by Hon’ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon’ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that ***“Confessional Statement corroborated by the Seized documents admissible even if retracted.”***
- (vi) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon’ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available

to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.

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

(viii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

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

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

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

(emphasis supplied)

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

16. I find that the noticee has alleged in his submission that he did not claim any exemption regarding Customs Notification No. 50/2017-Customs (30.06.2017) and FTP Notification No. 49/2015-2020, which is relevant to importers, nominated agencies, or commercial consignments, basically institutional importers and not to personal baggage passengers with no business purpose. As he stated before, being a low-income pilgrim, he cannot be treated as a commercial importer.

In view of the Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1kg only when gold is carried by the "eligible passenger". It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

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

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

16.2. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold item having

total weight 419.650 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that he wanted to clear the gold clandestinely without payment of eligible custom duty. In this connection, I also refer to Boards instructions issued vide F.No.495/6/97-Cus.VI dated 6-5-96 and reiterated in letter F.No.495/19/99-Cus.VI dated 11.4.2000 wherein it was clearly stated that the import of goods (gold in the instant case) in commercial quantities would not be permissible within the scope of the Baggage Rules, even **on payment of duty**. From the above findings and guidelines, it is crystal clear that the noticee does not fall under the ambit of “eligible passenger” to bring the gold as claimed by him in his submission. Further, the manner of recovery of gold clearly indicates that the concealment was not only ingenious but also premediated. The noticee also admitted to possession, carriage, non-declaration, concealment and recovery of gold. I find that every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. Therefore, the allegation of noticee that instruction under Circular No. 09/2001-Cus dated 22.02.2001 and Notification No. 12/2012-Cus dated 17.03.2012 was not followed is frivolous.

17. I find under submission that the noticee mentioned that it was his first time to bring the gold and due to ignorance of Customs Laws, he was unable to declare the same before authority. The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. **Hon’ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that ignorance of law is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]** . Also, the panchnama narrates the fact that the impugned foreign origin gold was not declared by the noticee on his own and also not declared even after asking by the officers and it was recovered only after deep examination of the baggage of the noticee. Also, in his voluntary statement he admitted that he did not make any declaration before the authority and also not inclined to do so.

In view of the non-declaration and the fact of having admitted carriage and possession of the impugned gold, it was established that the noticee had failed to declare the gold bar to the customs as required under Section 77 of the Customs Act, 1962. It was therefore evident that the noticee intended to evade duty as he had not made true and correct declaration of the dutiable goods possessed by him. Moreover, the noticee had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of the Customs Act, 1962.

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

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under: - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with.” From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with”.

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

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

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

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

treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, ibid.

19. Further, I find that, the noticee was carrying a very large quantity of gold in form of four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags (i.e. brown colored trolley bag and green colored trolley bag) carried by him and had not declared the same to the Customs. Even after interception, when the noticee was asked about the possession of any gold or dutiable items, he had stoically denied that he was carrying any gold. The noticee had not declared the gold in his possession in the Customs declaration form. The noticee had not filed a true declaration to the Customs and had clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The noticee had cleverly and innovatively concealed the four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags which reveals his mindset to smuggle the goods and evade the duty. The quantum of gold and the manner of attempting to smuggle indicates that the same was for commercial use. The method used by the noticee can be termed ingenious, as he had successfully passed through the security of the overseas departing airport and also tried of removing the same clandestinely at the arrival airport. The mode of concealment was clever and premediated and just to hoodwink the customs officers. The noticee did not intend to declare the gold in his possession to Customs. Had he not been intercepted, the noticee would have gotten away with such gold. I find that this kind of act of noticee abusing the liberalized facilitation process for genuine passengers and same should be dealt with firmly and deterrents available in the law are required to be strictly enforced in the instant case. Accordingly, I find that the confiscation of the gold is therefore justified and the noticee had rendered himself liable for penalty for his omissions and commissions.

20. I find that the noticee has clearly accepted that he had not declared the gold in form of four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags carried by him, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement he submitted that the two trolley bags, in which the gold was concealed, did not belonged to him as these were given to him by an unknown person in Jeddah. Therefore, this gold belonged to that unknown person. The unknown person bore his 'food and hotel stay expenses for the period from 01.04.2025 to 16.04.2025 in lieu of transport of these two trolley bags from Jeddah to SVPI Airport, Ahmedabad and then to Delhi.

20.1 Further, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that "in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt". And "Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them". From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated

Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. As gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of Customs Act, 1962.

21. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24Kt having 999.0 purity weighing 419.650 grams, in form of four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags (i.e. brown colored trolley bag and green colored trolley bag), while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 419.650 grams, seized under Panchnama dated 17.04.2025 liable for confiscation, under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By secreting the **gold bar weighing 419.65 grams** derived from 423.890 grams of four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags (i.e. brown colored trolley bag and green colored trolley bag) carried by him and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. *The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.* It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that he has **involved himself in carrying, keeping, concealing and dealing with the impugned goods** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

22. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e. Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended* and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Further, the noticee has not fulfilled the conditions prescribed for the eligible passenger to carry the gold in terms of Notification No. 50/2017-Customs, dated 30.06.2017. Therefore, the said improperly imported gold weighing 419.650 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

23. It is unequivocally established from the foregoing discussions that the gold in question was deliberately concealed and not declared to the Customs authorities with the sole intention of smuggling and evading payment of the applicable Customs duty. The record clearly shows that the passenger/noticee intentionally refrained from declaring the prohibited goods and chose the Green Channel for customs clearance after arriving from a foreign destination, demonstrating a willful intention to smuggle the impugned goods.

The seized gold consisted of a gold bar weighing 419.65 grams, of 24Kt./999.0 purity, having a Market Value of Rs.41,32,294/- (Rupees Forty-One Lakh Thirty-Two Thousand ₹ Two Hundred Ninety-Four Only) and a Tariff Value of Rs.37,50,462/- (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty-Two Only) as on 17.04.2025, derived from 423.890 grams of four white rhodium-coated gold wires, which were ingeniously concealed inside the handles of two trolley bags (one brown and one green) carried by the passenger. The gold was placed under seizure vide Panchnama dated 17.04.2025.

The noticee has admitted that, despite having knowledge that such goods were required to be declared and that such import constitutes an offence under the Customs Act, 1962 and the rules and regulations framed thereunder, he intentionally concealed the gold and deliberately omitted to declare it on his arrival at the airport. This conduct clearly demonstrates a willful attempt to smuggle the impugned gold into India.

In view of the above, I find that the noticee has committed an offence of the nature described under Section 112 of the Customs Act, 1962, and is therefore liable to penalty under the provisions of Section 112 of the Customs Act, 1962.

24. In view of the foregoing discussions, it is evident that the manner of concealment in the present case clearly demonstrates that the noticee intentionally attempted to smuggle the seized gold to evade detection by the Customs authorities. No evidence has been produced by the noticee to substantiate licit import of the seized gold at the time of interception. Consequently, the noticee has failed to discharge the onus cast upon him under Section 123 of the Customs Act, 1962.

From the SCN, Panchnama, and the noticee's statement, it is apparent that the noticee deliberately refrained from declaring the four-white rhodium-coated gold wires, which were concealed inside the handles of two trolley bags, and attempted to remove them clandestinely to evade payment of customs duty.

The settled position of law, as enunciated by the Hon'ble Supreme Court in *Garg Wollen Mills (P) Ltd. v. Additional Collector of Customs, New Delhi* [1998 (104) ELT 306 (S.C.)], is that the option to release 'prohibited goods' on payment of redemption fine is discretionary. Further, in *Raj Grow Impex (Supra)*, the Hon'ble Supreme Court held that the exercise of discretion must be guided by law, be reasonable and just, and based on relevant considerations.

The Hon'ble Delhi High Court, in *Raju Sharma* [2020 (372) ELT 249 (Del.)], has observed that the exercise of discretion by judicial or quasi-judicial authorities is open to interference only if it is perverse, tainted by patent illegality, or motivated by oblique considerations. Additionally, in its order dated 21.08.2023 in W.P.(C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023, the Hon'ble Delhi High Court held that any infraction of conditions for import of goods falls within the ambit of Section 2(33) of the Act, and consequently, the redemption and release of such goods is subject to the discretionary power of the Adjudicating Officer.

In light of the above judicial pronouncements, the egregious nature of concealment, and the facts of the present case, I am not inclined to exercise my discretion to allow redemption of the gold on payment of redemption fine under Section 125 of the Customs Act, 1962.

Further, to support my view, I also relied upon the following judgment which are as:

24.1. Before the Kerala High Court in the case of *Abdul Razak* [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from

application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

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

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

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

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

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

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

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

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

24.5. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-

Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

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

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

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

25. In the present case, upon careful consideration of all the facts, evidence, and submissions on record, I find that the noticee has committed a deliberate and wilful violation of the statutory provisions by failing to make the mandatory declaration as required under Section 11 and Section 77 of the Customs Act, 1962, and has also contravened Para 2.20 of the Foreign Trade Policy read with the Baggage Rules, 2016.

The passenger was found in possession of gold in bullion form valued at Rs.41,32,294/-, a quantity and value which clearly establish that the sole intention and purpose of the import was evasion of customs duty and circumvention of the legal obligations governing the import of gold into India under the Customs Act, 1962 and other laws for the time being in force.

The impugned gold was in the form of four white rhodium-coated gold wires, which were ingeniously and clandestinely concealed inside the handles of two trolley bags (one brown-coloured and one green-coloured) carried by the passenger. The concealment was pre-meditated, deliberate, and executed in a sophisticated manner, making detection difficult during routine checks and surveillance. The contraband was recovered only upon baggage scanning, which further reinforces the intent to smuggle the goods.

Based on the foregoing discussion and findings, the gold weighing 419.650 grams of 24Kt / 999.0 purity, in the form of a gold bar derived from 423.890 grams of four white rhodium-coated gold wires, which were concealed inside the handles of the said trolley bags, is held to be liable to absolute confiscation.

Accordingly, I hold in unequivocal terms that the seized gold weighing 419.650 grams of 24Kt./999.0 purity is liable to absolute confiscation under Sections 111(d), 111(f), 111(i), 111(j), 111(l), and 111(m) of the Customs Act, 1962.

Further, the two trolley bags (one brown-coloured and one green-coloured) used for packing and concealing the smuggled gold are also held to be liable to absolute confiscation under Section 119 of the Customs Act, 1962.

26. With regard to the imposition of penalty under Section 112 of the Customs Act, 1962, I find that in the instant case the existence of mens rea stands conclusively established beyond any doubt, on the basis of the documentary evidence on record and the detailed discussion hereinabove.

While determining the quantum and applicability of penalty, due regard is also given to the ratio laid down by the Hon'ble Supreme Court in the case of *M/s. Hindustan Steel Ltd. v. State of Orissa*, wherein it was held that:

“The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not in cases of technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”

In the present case, the facts clearly demonstrate that the noticee, despite having full knowledge and belief that the carriage of undeclared gold constituted an offence under the provisions of the Customs Act, 1962 and the rules and regulations framed thereunder, knowingly and intentionally attempted to smuggle gold weighing 419.650 grams of 24Kt./999.0 purity by adopting a method of deliberate and ingenious concealment.

It is therefore evident that the noticee knowingly concerned himself with carrying, removing, keeping, concealing, and dealing with smuggled goods, which he knew or had reason to believe were liable to confiscation under Section 111 of the Customs Act, 1962.

Further, the act of bringing into India goods in contravention of the provisions of the Customs Act and wilfully omitting to declare the same under Section 77 of the Customs Act, 1962 squarely falls within the scope of the expression “*does or omits to do any act which would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act*”, as contemplated under Section 112(a) of the Customs Act, 1962.

Additionally, the act of carrying and smuggling the goods in a pre-meditated and ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962.

In view of the foregoing facts, findings, and settled legal position, I hold that the noticee is squarely liable for imposition of penalty under Sections 112(a) and 112(b) of the Customs Act, 1962, and I order accordingly.

27. Accordingly, I pass the following Order:

O R D E R

- i. **I Order Absolute Confiscation of the Gold Bars weighing 419.65 Grams** having purity 999.0/24Kt and having **Market Value of Rs.41,32,294/-** (Rupees Forty-One Lakh Thirty-Two Thousand Two Hundred Ninety-Four Only) and **Tariff Value Rs.37,50,462/-** (Rupees Thirty-Seven Lakh Fifty Thousand Four Hundred Sixty Two Only) derived from 423.890 grams of four white rhodium coated gold wires, which were concealed inside the handles of two trolley bags (i.e. brown colored trolley bag and green colored trolley bag) carried by the passenger, **Shri Sufiyan**, who arrived from Jeddah to Ahmedabad on 17.04.2025 by Indigo Flight No. 6E-76 (Seat No. 30A), at Terminal-2 of SVPIA Ahmedabad, placed under seizure under Panchnama proceedings dated 17.04.2025 and Seizure Memo Order dated 17.04.2025, under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

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- ii. **I Order Absolute Confiscation of the** Two Trolley Bags (i.e. one Brown Colour trolley bag and other Green Colour trolley bag) used for packing and concealing the above-mentioned gold by **Shri Sufiyan** placed under seizure under panchnama proceedings dated 17.04.2025 and Seizure Memo Order dated 17.04.2025, under the provisions of Section 119 of the Customs Act, 1962.
- iii. **I Impose a Penalty of Rs.10,00,000/-** (Rupees Ten Lakhs Only) on **Shri Sufiyan** under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-47/SVPIA-C/O&A/HQ/2025-26 Dated 09.10.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN:20251271MN0000666F70

F. No. VIII/10-47/SVPIA-C/O&A/HQ/2025-26

Date: 23.12.2025

By Speed Post A.D.

To,

Shri Sufiyan,
S/o Mohd. Rafik,
A-58, Shradhapuri, Kanker Kheda,
Meerut, Uttar Pradesh-250001

Copy to:

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