

OIO No:112/ADC/SRV/O&A/2025-26
F. No. VIII/10-286/SVPIA-B/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

,"सीमा शुल्क भवन" पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद- 380009.
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DIN No. 20250871MN000000AA94

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-286/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-286/SVPIA-B/O&A/HQ/2024-25 dated: 06.05.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	112/ADC/SRV/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	05.08.2025
E	जारी करने की तारीख/ Date of Issue	:	05.08.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयात करकाना मान और पता / Name and Address of Importer / Passenger	:	Shri Imranbhai Abbasbhai Alad S/o Shri Abbasbhai Tajmohemad Kadiwal, Kuvetarvas, At Majadar Tal Vadgam, Banaskantha, Gujarat - 385210
(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 मंजिल, हड्डको 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 वाले व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी 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: -

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On the basis of passenger profiling of passengers, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a passenger Shri Imranbhai Abbasbhai Alad, aged 61 years, S/o Shri Abbasbhai Tajmohemad Kadiwal, having Indian Passport No. W8421029 residing at Kuvetarvas, at Majadar Tal Vadgam, Banaskantha, Gujarat - 385210, arriving on 03.12.2024 from Indigo 6E-76, from Jeddah to Ahmedabad, at the arrival Hall of the 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 were recorded under the said **Panchnama dated 03.12.2024.**

2. Whereas, the passenger was questioned by the AIU officers as to whether he was carrying any dutiable/contraband goods in person or in his baggage, to which he denied. The officers informed the passenger that a search of his baggage as well as his personal search was to be carried out and gave 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. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the passenger removed metallic objects from his body/clothes such as mobile, purse etc. and kept them in a plastic tray placed on the table. The said passenger then passed through the DFMD Machine, however, no beep sound was heard in the DFMD machine indicating there was nothing objectionable/dutiable on his body/clothes.

Later, the AIU Officer scanned his Checked-in bags and Hand Bag on Baggage Scanning Machine (BSM) and on examination of the trolley bags and hand bags of the passenger, from one of the handbags, 01 rhodium coated gold chain was found.

2.1 Thereafter, the AIU officer called the Govt. Approved Valuer Shri Kartikey Vasantrai Soni and informed him that 01 rhodium coated gold chain had been recovered from **Shri Imranbhai Abbasbhai Alad**, who had arrived on 03.12.2024 by Indigo 6E-76, from Jeddah to Ahmedabad

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at T-2 of SVPIA Ahmedabad and that he needed to come to the Airport for examination and valuation.

2.2 The Govt. approved valuer arrived at the SVPIA Airport and took the photographs of the above said article which is as under:



2.3 After testing and valuation of the said rhodium coated gold chain, the Government Approved Valuer vide his Certificate No. 1267/2024-25 dated 03.12.2024, gave the report as under:

Report No. 1267/2024-25 dated 03.12.2024						
Sr. No.	Item	Pcs.	Net weight	Purity	Market Value	Tariff Value
1	01 Rhodium coated gold chain	01	177.16 grams	999.0 24 Kt	Rs. 13,96,552/-	Rs. 12,85,252/-
		Value Notification Notification No. 84/2024-Customs (N.T.) dated 29.11.2024 (gold)				
		Exchange Rate Notification Notification No. 11/2024-Customs (N.T.) dated 21.11.2024 (exchange rate)				

3. Further, the Govt. Approved Valuer informed that the said 01 rhodium coated gold chain, weighing 177.16 grams, having purity 999.0 24 Kt was having total Market Value of Rs. 13,96,552/- (Thirteen Lakhs Ninety Six Thousand Five Hundred Fifty Two Only) and Tariff Value Rs. 12,85,252/- (Twelve Lakhs Eighty Five Thousand Two Hundred Fifty Two Only), which has been calculated as per the Notification No. 84/2024-Customs (N.T.) dated 29.11.2024 (gold) and Notification No. 11/2024-

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Customs (N.T.) dated 21.11.2024 (exchange rate). He submitted his valuation report to the AIU Officers.

3.1 The method of testing and valuation used by the valuer was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate given by the valuer. The following documents produced by the passenger were withdrawn under the Panchnama dated 03.12.2024 for further investigation: -

- i. Copy of Passport No. W8421029 issued at Ahmedabad on 25.11.2022 and valid up to 24.11.2032.
- ii. Boarding pass of Indigo 6E-76, from Jeddah to Ahmedabad.

Seizure of the above gold chain:

4. The said 01 rhodium coated gold chain totally weighing 177.16 grams having purity of 999.0/24 Kt were carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said 01 rhodium coated gold chain totally weighing 177.16 grams having purity 999.0 24 Kt and having market value of Rs. 13,96,552/- (Rupees Thirteen Lakhs Ninety Six Thousand Five Hundred Fifty Two Only) and Tariff Value Rs. 12,85,252/- (Rupees Twelve Lakhs Eighty Five Thousand Two Hundred Fifty Two Only), was placed under seizure vide Seizure Memo dated 03.12.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject gold chain coated with rhodium is liable for confiscation under Section 111 of the Customs Act, 1962.

5. Statement of Shri Imranbhai Abbasbhai Alad:

Statement of Shri Imranbhai Abbasbhai Alad was recorded under Section 108 of the Customs Act, 1962 on 03.12.2024, wherein he inter alia stated as under:

- (i) He has studied up to 4th standard and can read, write and speak Hindi & Gujarati language. His monthly income is Rs.30,000/-.
- (ii) He had travelled 02 times abroad in his lifetime. This time he travelled to Jeddah on 14.11.2024, and came back on 03.12.2024 by Indigo Flight

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6E-76 from Jeddah to Ahmedabad. He arranged his air tickets from savings.

(iii) He travelled to Jeddah to perform Umrah along with group of hajis. During performing Umrah, one of the person from the group told him that he could purchase some gold from Jeddah as the same would be required for his daughter's wedding and it would cost him less as compared to that in India. This was the first time he carried gold with him.

(iv) He had never carried any gold item before this and have never indulged in any smuggling activity in the past.

(v) He was aware that smuggling of gold without payment of Custom duty is an offence. He was well aware about concealed rhodium coated gold chain but did not make any declaration to evade the Custom duty. He opted for the green channel so as to attempt to smuggle the gold without paying the Custom duty.

6. Summation:

The above said 01 rhodium coated gold chain having purity 999.0 24 Kt weighing 177.16 grams recovered from Shri Imranbhai Abbasbhai Alad was allegedly attempted to be smuggled into India, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that 01 Rhodium coated gold chain was attempted to be smuggled by Shri Imranbhai Abbasbhai Alad, was liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said 01 rhodium coated gold chain having purity 999.0/24 Kt weighing 177.16 grams having Tariff Value of Rs. 12,85,252/- and Market value of Rs. 13,96,552/- along with its packing material used to conceal the said items, was placed under seizure under the provision of Section 110 (1) and (3) of the Customs Act, 1962 vide Seizure memo Order dated 03.12.2024.

7. Legal provisions relevant to the case:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions.—*In this Act, unless the context otherwise requires,—*

(22) “goods” includes—

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;

- (d) currency and negotiable instruments; and
- (d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(39) "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;"

II) Section 11A – Definitions -In this Chapter, unless the context otherwise requires,

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage - The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

IV) "Section 110 – Seizure of goods, documents and things.— (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"

V) "Section 111 – Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:-

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

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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;”

VI) “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 know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) “Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, 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.”*

II) “Section 3(3) - *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.”*

III) “Section 11(1) - *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.”*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *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.*

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 22 kt.) was restricted as per DGFT notification and import was permitted only by nominated agencies. Further, it appears that import of goods whereas it is allowed subject to certain

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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.

CONTRAVICTION AND VIOLATION OF LAWS

9. It therefore appears that:

- (a) The passenger Shri Imranbhai Abbasbhai Alad had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India by any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, or in any manner dealing with the said 01 rhodium coated gold chain having purity 999.0/24 Kt weighing 177.16 grams having Tariff Value of Rs. 12,85,252/- (Twelve lakhs eighty five thousand two hundred fifty two only) and Market value of Rs. 13,96,552/- (Thirteen lakhs ninety six thousand five hundred fifty two only).
- (b) The 01 rhodium coated gold chain was found concealed by way of concealing in the hand bag the passenger and not declared to the Customs. The passenger indulged himself in the instant case of smuggling of gold with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Thus, the element of mensrea appears to have been established beyond doubt. Therefore, the said 01 rhodium coated gold chain weighing 177.16 grams of purity 999.0/24Kt by Shri Imranbhai Abbasbhai Alad by way of concealment and without declaring it to the Customs cannot be treated as bona fide household goods or personal effects. The passenger 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.
- (c) By not declaring the value, quantity and description of the goods, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act,

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1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(d) The passenger has failed to produce the purchase documents of the said gold bar and Custom duty payment documents/proof has also not been submitted by the passenger for the same.

(e) The improperly imported 01 rhodium coated gold chain by the passenger and without declaring it to the Customs, was thus liable for confiscation under Section 111 of the Customs Act, 1962.

(f) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

(g) Shri Imranbhai Abbasbhai Alad by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

(h) As per Section 123 of Customs Act 1962, the burden of proving that the 01 rhodium coated gold chain **weighing 177.16 grams** of purity 999.0 24 Kt and having Tariff Value of Rs. 12,85,252/- (Twelve lakhs eighty five thousand two hundred fifty two only) and Market value of Rs. 13,96,552/- (Thirteen lakhs ninety six thousand five hundred fifty two only), found concealed with the passenger, without declaring it to the Customs, is not smuggled goods, is upon the passenger.

10. Accordingly, a Show Cause Notice was issued to **Shri Imranbhai Abbasbhai Alad, aged 61 years, S/o Shri Abbasbhai Tajmohemad Kadiwal, having Indian Passport No. W8421029 residing at Kuvetarvas, At Majadar Tal Vadgam, Banaskantha, Gujarat - 385210**, as to why:

(i) 01 rhodium coated gold chain weighing 177.16 grams having purity 999.0/24 Kt and having total Market Value of **Rs. 13,96,552/- (Rupees Thirteen Lakhs Ninety-Six Thousand Five Hundred Fifty-Two Only)** and Tariff Value

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Rs. 12,85,252/- (Rupees Twelve Lakhs Eighty-Five Thousand Two Hundred Fifty-Two Only) concealed in handbag by the passenger, who arrived from Jeddah on 03.12.2024 by Indigo Flight No. 6E-76 at T-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 03.12.2024 and Seizure Memo Order dated 03.12.2024, should not be confiscated under the provision of Section under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.

(ii) Penalty should not be imposed Shri Imranbhai Abbasbhai Alad, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

11. The noticee through his advocate vide letter dated 13.05.2025 submitted on 14.05.2025 submitted his written reply wherein he denies all the allegation. He submitted that it is true that he had brought 01 Rhodium Coated gold chain weighing 177.160 grams having total Market Value of **Rs. 12,85,252/-**. He submitted that the statement under Section 108 of Customs Act, 1962 was taken under duress and threat of being arrest therefore, the statement was not true and cannot be relied upon. He submitted that gold is neither prohibited nor restricted, hence question for confiscation under Section 111 of Customs Act, 1962 does not arise and also not liable for penal action under Section 112 of Customs Act, 1962. He submitted while coming back to India from Jeddah, he purchased the gold for his personal use and for his daughter's marriage and bill was produced to the officers but the same was not incorporated at any stage. He submitted that gold was purchased from "Pearl Necklace for gold and jewels weighing 117.16 grams dated 01.12.2024." He submitted that gold is not prohibited goods and he brought the gold first time. Due to ignorance of law, he was unable to declare the same. He had orally declared the gold before the authority in terms of Circular No. 09/2001-Cus dated 22.02.2001. He was an illiterate person and therefore did not know what was written in the Panchnama and statement as same was typed in English. Due to threat of arrest, he signed the papers forcefully. There is plethora of judgments wherein release of gold has been allowed on payment of redemption fine, or passenger has been allowed for release/re-export in lieu of fine. In his

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statement he also mentioned that the gold belongs to him and purchased by him. He submitted that he was not understand what was written in the panchnama and statement as both were typed in English and he was forced to sign them. He submitted that he was not allowed to read and not allowed to write in his own handwriting which he knows very well such as Gujarati. He further submitted that he had retracted after knowing the content of Statement and relied upon the case law of Hon'ble Supreme Court in case of Noor Aga Vs. State of Punjab. He submitted that he was not penalized under Section 112 as there was no evidence of any action which he had done in contrary to the Act. He relied on the following judgments:-

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

The Hon Tribunal while allowing redemption of gold not declared before

Customs held: -

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

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

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

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

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

Gold brought as a baggage by the appellant not declared – Confiscation under section 111(d) of the Customs Act,1962

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sustainable- However, option given to appellant to redeem the same on payment of a fine of Rs.1.5 lakhs Section 125 ibid.

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

Further, he submitted the latest RA Orders:-

1. Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)
2. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)
3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Poket Case granted RF, PP)
5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.
6. 2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.
7. Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)

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8. Order No: 954/2018 CUS(WZ)/ASRA/MUMBAI DT. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)
9. Order No: 29/2018 CUS(WZ)/ASRA/MUMBAI DT. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)
10. Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Underwear Case granted RF,PP)
11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).
12. Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
13. Order No: 214/2021 CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
14. Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI DT. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)

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16. Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)
17. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).
18. Order No. 287/2022 CUS(WZ)/ASRA/MUMBAI DT 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).
19. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)
20. Order No. 284/2022 CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 in c/a Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)
21. Order No. 314/2022 CUS(WZ)/ASRA/MUMBAI DT 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)
22. Order No. 56/2023 CUS(WZ)/ASRA/MUMBAI DT 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)
23. Order No. 10/2019 CUS(WZ)/ASRA/MUMBAI DT 30.09.2019 in c/a Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)
24. Order No. 404 & 405/2023 CUS(WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniiwala V/s. Pr. Commissioner of Customs, Ahmedabad.

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(Ingenious Concealment Socks and Trouser Pockets Case granted
Re-Export & RF, PP)

25. Order No. 349/2022-CUS(WZ)/ASRA/MUMBAI DT 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)
26. Order No. 395-396/2023-CUS(WZ)/ASRA/MUMBAI DT 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
27. Order No. 352/2022-CUS(WZ)/ASRA/MUMBAI DT 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
28. Order No. 309/2022-CUS(WZ)/ASRA/MUMBAI DT 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
29. Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
30. Order No. 516-517/2023-CUS(WZ)/ASRA/MUMBAI DT 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)
31. Order No. 786/2023 CUS(WZ)/ASRA/MUMBAI DT 25.10.2023 in c/a Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
32. Order No. 885/2023 CUS(WZ)/ASRA/MUMBAI DT 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
33. Order No. 883/2023 CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
34. Order No. 907-909/2023 CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

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35. Order No. 899/2023 CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
36. Order No. 898/2023-CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
37. Order No. 880-882/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
38. OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
39. OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023 IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
40. Order No. 961/2023-CUS(WZ)/ASRA/MUMBAI DT 29.12.2023 in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
41. Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)
42. Order No. 830-831/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

He submitted that there may be consistency in the approach of the adjudication authorities while deciding similar issues and placed reliance in case of Copier Company Vs. Commissioner of Customs, Chennai (2007 (218) ELT-142 (Tribunal)) Further, he relied upon the judgments in cases as:-

- In the case of Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.) the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner

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is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.

- A Rajkumari Vs C.C Chennai, 2015 (321) ELT 540 (Tri-Chennai)

Further, *relying on the latest judgements in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been released on redemption Fine and personal Penalty:-*

- High Court of Judicature at Allahabad Sitting at Lucknow, in CIVIL MISC REVIEW APPLICATION No. - 156 of 2022 in case of Sri Rajesh Jhamatmal Bhat And Another
- Rajasthan High Court, Manoj Kumar Sharma S/O Late Shri ... vs Union of India on 17 February, 2022

He further states that the goods may be released at the earliest even provisionally for which he is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN. It is also craved that if the same is not possible to release the gold on payment of fine and penalty, orders for Re-Export may be given too, for which he is ready to pay penalty too and requested for a personal hearing in the matter.

12. The noticee was given opportunity for personal hearing on 07.07.2025. Shri Rishikesh J Mehra, Advocate on behalf of the noticee Shri Imranbhai Abbasbhai Alad appeared for personal hearing on 07.07.2025. He produced copy of Vakalatnama to represent the case. He requested to attend the personal hearing in person instead of video conferencing. He re-iterated his written submission dated 13.05.2025. He submitted that Gold is not a prohibited item. He further submitted that his client has not concealed the gold ingeniously and same was found from his handbag. He submitted that his client has purchased the gold from his personal saving for his daughter's marriage. He submitted that his client is ready to pay applicable duty, fine and penalty and requested to release the gold chain on redemption fine. He relied upon the various latest case laws wherein the gold was released on redemption fine.

Discussion and Findings:

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

14. In the instant case, I find that the main issue to be decided is

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whether 01 Rhodium coated gold chain weighing 177.16 grams having purity of 999.0/24kt and having total Market Value of **Rs. 13,96,552/-** (Rupees Thirteen Lakhs Ninety Six Thousand Five Hundred Fifty Two Only) and Tariff Value **Rs. 12,85,252/-** (Rupees Twelve Lakhs Eighty Five Thousand Two Hundred Fifty Two Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 03.12.2024 on a reasonable belief of smuggling 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 passenger profiling that Shri Imranbhai Abbasbhai Alad was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the noticee as well as his personal search was required to be carried out. The AIU officers under Panchnama proceedings dated 03.12.2024 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to which the said noticee replied in negative. The AIU officer asked the noticee to pass through the Door Frame Metal Detector after removing all metallic objects with him and while he passed through the said DFMD, no Beep sound was heard indicating that there was nothing objectionable/dutiable on the body/clothes of noticee. On scanning of Checked-in bags and Hand Bag on Baggage Scanning Machine (BSM) and on examination of the trolley bags and hand bags of the noticee, 01 rhodium coated gold chain was recovered from one of the handbags. The said noticee then handed over the said gold rhodium coated gold chain to the AIU Officers.

16. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 01 rhodium coated gold chain and informed that the total weight of said gold chain was **177.16 Grams** having purity 999.0/24KT which was hidden/concealed in his handbag. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said rhodium coated gold chain was **Rs.12,85,252/-** and Market value is **Rs.13,96,552/-**. The details of the Valuation of the said gold chain coated with rhodium is tabulated as below:

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Report No. 1267/2024-25 dated 03.12.2024						
Sr. No.	Item	Pcs.	Net weight	Purity	Market Value	Tariff Value
1	01 Rhodium coated gold chain	01	177.16 grams	999.0 24 Kt	Rs. 13,96,552/-	Rs. 12,85,252/-
	Value Notification <i>Notification No. 84/2024-Customs (N.T.) dated 29.11.2024 (gold)</i>					
	Exchange Rate Notification <i>Notification No. 11/2024-Customs (N.T.) dated 21.11.2024 (exchange rate)</i>					

17. Under his submission, the noticee alleged that the statement recorded on 03.12.2024 was not voluntary and the same was recorded forcefully and threat of arrest. In this regard, I find that the passenger/noticing had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. The offence committed was admitted by the noticee in his statement recorded on 03.12.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. I find from the content of the statement dated 03.12.2024 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard and is an afterthought. Moreover, I also not find any retraction filed by the noticee. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his signature on the Statement after understanding the same as explained by the officers. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him in Hindi. He clearly admitted that he did not make any declaration as he wanted to clear the same without payment of Customs Duty. I find that noticee has failed to furnish any credible documentary evidence to substantiate his claim that the statement was obtained under duress, coercion, or threat. A retraction of a statement recorded under Section 108 of the Customs

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Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence. The law presumes that a statement made under Section 108 is voluntary unless cogent evidence to the contrary is presented. The offence committed is admitted by the noticee in his statement recorded on 03.12.2024 under Section 108 of the Customs Act, 1962. I find that in the statement, the noticee had disclosed detailed information about his family details, his work and profession. I find that the statement of noticee contain specific and intricate details, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statement. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statement in question. It is on the record that the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows:-

- (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 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.

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(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, mis declared 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

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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.**

Relying on the ratio of above judicial prudence, I find no merit in the contention of the noticee of tendering the statement under duress and threat of arrest.

18. Further, he submitted in his submission that he is an illiterate person and due to ignorance of law, he was unable to declare the same as it was his first instance of carrying the gold with him from abroad. In this regard, I find that 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.)]*. Therefore, the plea taken by the noticee that due to ignorance of law, he was unable to declare the same appears more excuse than the genuine reason/explanation.

18.1 Further, the noticee has contended that no declaration form was provided to him by airline staff and if the same was provided to him he would have definitely filed the declaration before Customs Authority. In this regard, I find that he clearly admitted in his voluntary statement that he was not willing to declare the same as he wanted to clear the said gold clandestinely to evade the payment of Customs Duty. Further, I find that he has travelled abroad on previous occasion also and if he really intended to declare the same, he would approach the airline staff during journey and asked for the baggage declaration form, however the same was not happened which clearly indicate that the noticee was not inclined to declare the same. Furthermore, he could use "Athithi App" which is available for the passengers for declaration of goods and available on public domain. Taking plea of not providing declaration form irrespective

of fact that he did not want to declare the same, merits no consideration. Also, the panchnama narrates the fact that the impugned 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 search of his baggages. Also, in his voluntary statement he admitted that he did not make any declaration in this regard and wants to clear the same clandestinely to evade the payment of customs duty. These facts corroborates that the contention raised by the noticee is just an afterthought and frivolous. The legal principle "ignorantia juris non excusat" (ignorance of the law is no excuse) is a fundamental one.

19. Section 2(33) of the Customs Act, 1962 defines 'prohibited goods' as 'any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with'. The said definition implies that in cases where the conditions applicable for import of goods are not complied with, such goods would fall under the category of 'prohibited goods'. Further, I also note that in the instant case, the gold has not been brought in India by a nominated agency notified by the RBI or DGFT, as the case maybe and as such the same would be covered under the category of 'prohibited goods'. My above finding is aptly supported by the case law of **Om Prakash Bhatia reported at 2003 (155) ELT 423 (SC)** wherein it has been held by the Hon'ble Supreme Court as under:

*From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. **This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods.** This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). **Hence, prohibition of importation or***

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

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

The above judgment has been followed by the Hon'ble High Court of Gujarat in the case of **Bhargavraj Rameshkumar Mehta reported at 2018 (361) ELT 260 (Guj)** wherein it has been observed as under:

15. We may recall, the contention of the Counsel for the petitioner in this respect was that the gold at the relevant time was freely importable. Import of gold was not prohibited. Case of the petitioner would therefore, fall under clause (ii) of Section 112 and penalty not exceeding 10% of the duty sought to be evaded would be the maximum penalty imposable. Such contention shall have to be examined in the light of the statutory provisions noted above. As

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noted, Section 111 of the Act provides for various eventualities in which the goods brought from a place outside India would be liable for confiscation. As per clause (d) of Section 111, goods which are imported or attempted to be imported or are brought within the Customs quarters for import contrary to any prohibition imposed by or under the Act or any other law for the time being in force, would be liable for confiscation. Similarly, for dutiable or prohibited goods found concealed in any manner in any conveyance would also be liable to confiscation. As per Section 2(39) the term 'smuggling' would mean in relation to any goods, any act or omission which will render such goods liable to confiscation under Section 111 or Section 113. **Thus, clearly Section 111 of the Customs Act prohibits any attempt at concealment of goods and bringing the same within the territory of India without declaration and payment of prescribed duty.** Term 'prohibited goods' as defined under Section 2(33) means any goods, the import or export of which is subject to any prohibition under the Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. This definition therefore, comes in two parts. The first part of the definition explains the term 'prohibited goods' as to mean those goods, import or export of which is subject to any prohibition under the law. The second part is exclusionary in nature and excludes from the term 'prohibited goods', in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. From the definition of term 'prohibited goods', in case of goods, import of which is permitted would be excluded subject to satisfaction of the condition that conditions for export have been complied with. **By necessary implication therefore in case of goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with.**

16. Further clarity in this respect would be available when one refers to the term 'dutiable goods' as to mean any goods which are chargeable to duty and on which duty has not been paid. We refer to this definition since Section 112 makes the distinction in respect of goods in respect of which any prohibition is imposed and dutiable

goods other than prohibited goods. When clause (ii) of Section 112 therefor, refers to dutiable goods other than prohibited goods, it shall necessarily have the reference to the goods, import of which is not prohibited or of which import is permissible subject to fulfilment of conditions and such conditions have been complied with. Condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions. When clearly the goods are sought to be brought within the territory of India concealed in some other goods which may be carrying no duty or lesser duty, there is clear breach of conditions of import of goods though per se import of goods may not be prohibited.

Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras 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 judgments cited above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods" within the meaning assigned to the term under Section 2(33) of the Customs Act, 1962.

19.1 Further, the test report submitted by the Government approved valuer also confirmed that the gold was of purity of 999.0/24Kt which is not in conformity with locally available gold but similar to the gold

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generally imported from foreign countries. The test report and confessional statement of noticee conclusively proved that the gold was of foreign origin. Further, he concealed the said gold chain coated with rhodium in his handbag in a way so that the customs officer could have never suspected that he was carrying something with him. By coating the gold with rhodium to give a look of silver, concealed in his handbag and not declaring the same before the Customs, establishes that the passenger/noticer had a clear intention to smuggle the gold clandestinely and to evade payment of customs duty. I find that the noticee has cleverly coated the pure raw gold having purity of 999.0/24kt with the rhodium to falsely represent it as silver, with the intent to deceive customs officers. This action of noticee violates customs laws and regulations related to the import and export of gold, as it misrepresents the true nature and value of the item being carried by noticee alongwith him on his arrival. The nature of concealment revealed the mindset of the noticee to not only evade duty but smuggle the gold. It also revealed that the act committed by the noticee was conscious and pre-meditated. The circumstance that the gold chain was coated with rhodium and given an appearance of having been made of silver though it was made of pure gold of 999.0/24 carat, is sufficient to belief that the seized gold in form of gold chain is for smuggling purpose. Had he not been intercepted by the Customs officer, the noticee would have gotten away with the gold and therefore, the same was correctly confiscated and making the noticee liable for penal action. From the above act, it is evidently clear that the notice wilfully did this to hoodwink the Customs Authority with the intention to evade payment of Customs Duty.

19.2 Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. Section 123 of Custom Act, 1962 read as follows:-

Section 123. Burden of proof in certain cases. -

¹ [(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person, -

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(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]

(2) This section shall apply to gold,² [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

Hence, in respect of gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, the noticee has failed to produce any evidences in respect of the gold which was recovered from his possession. Under his submission as well as in his statement he claimed that the gold was purchased by him from his personal saving. He also claimed in his submission that at the time of interception he had purchase bill with him, however on contrary I find no such documents on the record. Moreover, he also admitted in his voluntary statement that he did not want to declare the same before the customs authority to evade the payment of customs duty. Also, he had no foreign exchange with him which is required to make payment for the said gold at the time of arrival. In this regard, 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 above 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. Further, I find that the noticee has mentioned that

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said gold chain was purchased by him from M/s. Pearl Necklace for gold and jewels and submit the copy of purchase bill/invoice alongwith his defense claiming that the gold was purchased by him for his daughters' marriage. **However, ongoing through the details of bill/invoice, submitted by the noticee, I noticed that the invoice has lack of various crucial details. I find that there were no payment details is mentioned in the bill and moreover, the said bill shows the whole amount as pending. There is no signature of authorized person / seller i.e M/s. Pearl Necklace for gold and jewels in the bill and also no counter signature of customer, no complete details of purchaser are mentioned except name of purchaser and his passport number. Therefore, the invoice copy did not appear to be original and genuine.** For better understanding of the same, I would like to produce the copy of bill as:-

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Merely claiming the ownership on gold only on the basis of copy of bill which itself appears not genuine and without submission of any other documentary evidences viz, bank transactions details/cash details does not make him owner and does not establish that the gold was purchased in legitimate way and as bona fide personal use. 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 and 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 amended. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold was purchased by him is not tenable on basis of no documentary evidence.

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

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. *As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India.* It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less

than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceed 30 days and such passenger have not availed of the exemption under this notification.

21. 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.

22. 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 had brought the 01-rhodium coated gold chain having total weight 177.16 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 said gold clandestinely without payment of eligible custom duty. Moreover, from the travel history of the noticee, I find that the noticee went to Jeddah on 14.11.2024 and returned from Jeddah to India on 03.12.2024, well before the stipulated time of staying at least 06

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months abroad to be considered as eligible passenger to bring the gold with him.

23. From the facts discussed above, it is evident that noticee had carried the said gold weighing 177.16 grams, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said rhodium coated gold chain of 24KT/999.00 purity totally weighing 177.16 grams, liable for confiscation, under the provisions of Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold in his handbag and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

24. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was found in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *eligible passenger means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 177.16 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide

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household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 177.16 grams, having Tariff Value of Rs.12,85,252/- and Market Value of Rs.13,96,552/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 03.12.2024 liable to confiscation under the provisions of Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealing the gold by him in form of 01 rhodium coated gold chain in his handbag, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. *It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act.* It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

25. I find that the Noticee confessed of carrying the said gold of 177.16 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 as amended and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

26. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said rhodium coated gold chain weighing 177.16 grams, having Tariff Value of Rs.12,85,252/- and Market Value of Rs.13,96,552/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 03.12.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold item weighing 177.16 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

27. Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, alongwith defense submission as well as during the personal hearing. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products* [2004 (170) ELT 135(SC)] has stressed the need to discuss, how the facts of decision relied upon fit to factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi* [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision

is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, *I find that ratio of judgments relied upon by the noticee, is not squarely applicable in the instant case.* In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Further, from the SCN, Panchnama and Statement, I find that the noticee was not willing to declare the said gold item and tried to remove the gold chain clandestinely, to evade payment of customs duty. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of *Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C.)]* *that the option to release 'Prohibited goods' on redemption fine is discretionary.* In the case of *Raj Grow Impex (Supra)*, the Hon'ble Supreme Court has held that *that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.* Hon'ble Delhi High Court has, in case of *Raju Sharma [2020(372) ELT 249 (Del.)]* held that *Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive.* Also, the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that *--- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer.* Therefore, keeping in view of the judicial pronouncement above and nature of concealment alongwith the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as :-

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

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

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

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

27.2. 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.

27.3. 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).

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

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

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

27.5. 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”.

27.6. 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-reas.”

"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."

28. Under his submission, the noticee has requested for re-export of the said gold item i.e one rhodium coated gold chain weighing 177.16 Grams and relied upon the various case law in his support. Before discussion, I would like to reproduce the relevant provision of Section 80 of Customs Act, 1962 as:-

Section 80. Temporary detention of baggage. -

Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India 1 [and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name].

On a plain reading of above provision, it appears that a declaration under Section 77 is pre-requisite condition for detention/re-export in terms of Section 80ibid. Hon'ble Allahabad High Court has, in case of Deepak Bajaj [2019 (365) ELT 695 (All.)] held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80. In this case, the noticee had made no written or oral declaration in respect of the subject gold. Further, Hon'ble Delhi High Court has, in case of Jasvir Kaur vs. UOI [2019(241)ELT 521 (Del.)] held that re-export "cannot be asked for as a right-----. The passenger cannot be given a chance to try his luck and smuggle gold into country and if caught he should be given permission to re-export." Therefore, the option under Section 80 of the Act would not be applicable to him and accordingly, the request for re-export is therefore, rejected.

29. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized

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gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold item and thus, failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold chain in his handbag with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 177.16 grams of 24Kt./999.0 purity in form of gold chain coated with rhodium, concealed in his handbag is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 177.16 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Act.**

30. As regard for imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Imranbhai Abbasbhai Alad, I find that in the instant case, the principle of mens-reas on behalf of noticee is established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold in form of rhodium coated gold chain in his handbag, thus, established that the concealment of said gold was ingenious in nature. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to smuggle the said gold and attempting to evade the Customs Duty by not declaring the gold item weighing 177.16 grams having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said 01 rhodium coated gold chain weighing 177.16 grams, carried by him. He has agreed and admitted in his statement that he travelled from Jeddah to Ahmedabad

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with the said gold item which was concealed by him in his handbag. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 177.16 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

31. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of 01 rhodium coated gold chain weighing 177.16 grams having purity of 999.0/24kt and having total Market Value of **Rs. 13,96,552/-** (Rupees Thirteen Lakhs Ninety-Six Thousand Five Hundred Fifty-Two Only) and Tariff Value **Rs.12,85,252/-** (Rupees Twelve Lakhs Eighty-Five Thousand Two Hundred Fifty-Two Only), which was found concealed in handbag of the noticee, who arrived from Jeddah on 03.12.2024 by Indigo Flight No. 6E-76 at T-2 of SVPIA Ahmedabad and placed under seizure under panchnama proceedings dated 03.12.2024 and Seizure Memo Order dated 03.12.2024, under the provision of Section 111(d), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I impose a penalty of **Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand Only)** on **Shri Imranbhai Abbasbhai Alad** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-286/SVPIA-B/O&A/HQ/2024-25 dated 06.05.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250871MN000000AA94

BY SPEED POST AD

To,

Shri Imranbhai Abbasbhai Alad

S/o Shri Abbasbhai Tajmohemad Kadiwal,
Kuvetarvas, At Majadar Tal Vadgam,
Banaskantha, Gujarat – 385210

Copy to:

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