

OIO No:17/ADC/SRV/O&A/2025-26  
F. No: VIII/10-276/SVPIA-C/O&A/HQ/2024-25



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुरानेहाईकोर्ट केसामने, नवरंगपुरा, अहमदाबाद – 380 009.

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**DIN No. 20250471MN000094029C**

### PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-276/SVPIA-C/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>17/ADC/SRV/O&amp;A/2025-26</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>25.04.2025</b>
E	जारीकरने की तारीख/ Date of Issue	:	<b>25.04.2025</b>
F	द्वारा पारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातक कानाम और पता / Name and Address of Importer / Passenger	:	<b>Shri Gulam Ali S/o Shri Bhikha Khan</b> Kasbaniyo Ki Basti, Derasar, Barmer, Rajasthan Pincode: 344001
(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, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3 )	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii )	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4 )	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या 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:**

On the basis of passenger profiling by the AIU officers, the passenger namely Shri Gulam Ali, Aged 40 years (DOB: 20.01.1984), S/o Shri Bhikha Khan holding an Indian Passport Number No. W4454745, residing at:- Kasbaniyo Ki Basti, Derasar, Barmer,

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Rajasthan Pincode: 344001, who arrived from Jeddah to SVPI Airport, Ahmedabad by Flight No. 6E76 of Indigo flight on 11.11.2024 (Seat No. 24B) was intercepted by the officers of AIU at SVPI Airport, Ahmedabad.

**2.** The passenger Shri Gulam Ali was questioned by the AIU officers as to whether he was carrying any contraband goods in person or in his baggage to which he denied. The officer instructed the passenger to put his entire luggage on the X-Ray Bag Scanning Machine installed near the Green Channel at terminal-2 of SVPI Ahmedabad for scanning. Nothing objectionable was found during scanning of his baggage. Thereafter, the AIU officers once again asked the passenger if he is carrying any contraband/Restricted/dutiable goods which he wanted to declare to the customs, but the passenger still replied in negative.

**2.1** Thereafter, the AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine, after removing all metallic objects from his body/clothes, installed near the AIU Office at green channel in the Arrival Hall of Terminal 2 building. The passenger readily kept his mobile and purse in a plastic tray and passed through the DFMD machine. During DFMD strong beep sound is heard at the lower part of the metal detector machine indicating that there is still some objectionable/ metal item on his body/ clothes. Thereafter, the AIU officer again asked the passenger if he has anything to declare to the customs to which the passenger again denied. Further, during detailed frisking of the passenger i.e. Shri Gulam Ali, it is observed that he is having three black pouches and five transparent plastic zipper bags concealed under his clothes. Further, the AIU officers opened all the pouches and observed that first black pouch contained 2 rhodium coated anklets, second pouch contained 6 gold bangles, third pouch also contained 2 rhodium coated anklets. Further, on opening all the five plastic zipper bags, all having tissue paper inside the zipper bag and each tissue paper having gold chain wrapped inside it, thereby total five gold chains recovered from all the five plastic zipper bags. Photograph of the recovered items is as under :

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**2.2.** Thereafter, the AIU officer contacted the Government Approved Valuer Shri Kartikey Vasantrai Soni and informed him that four rhodium coated anklets, six gold bangles, and five gold chains are recovered from a passenger and that he is required to come to the office of the AIU situated at SVPI Airport, Ahmedabad for valuation and to ascertain the purity of said gold items.

**2.3** Mr. Kartikey Vasantrai Soni, Government Approved Valuer comes at the Airport after some time and the officer introduces him to the panchas as well as the passenger. The officers give four rhodium coated anklets, six gold bangles and five nos. of gold chains recovered from the said passenger to the Govt. Valuer. After that Shri Kartikey Vasantrai Soni weighs the above said gold items one by one. The photographs of the above said gold items are as under:

**PHOTOGRAPH OF 4 ANKLETS**

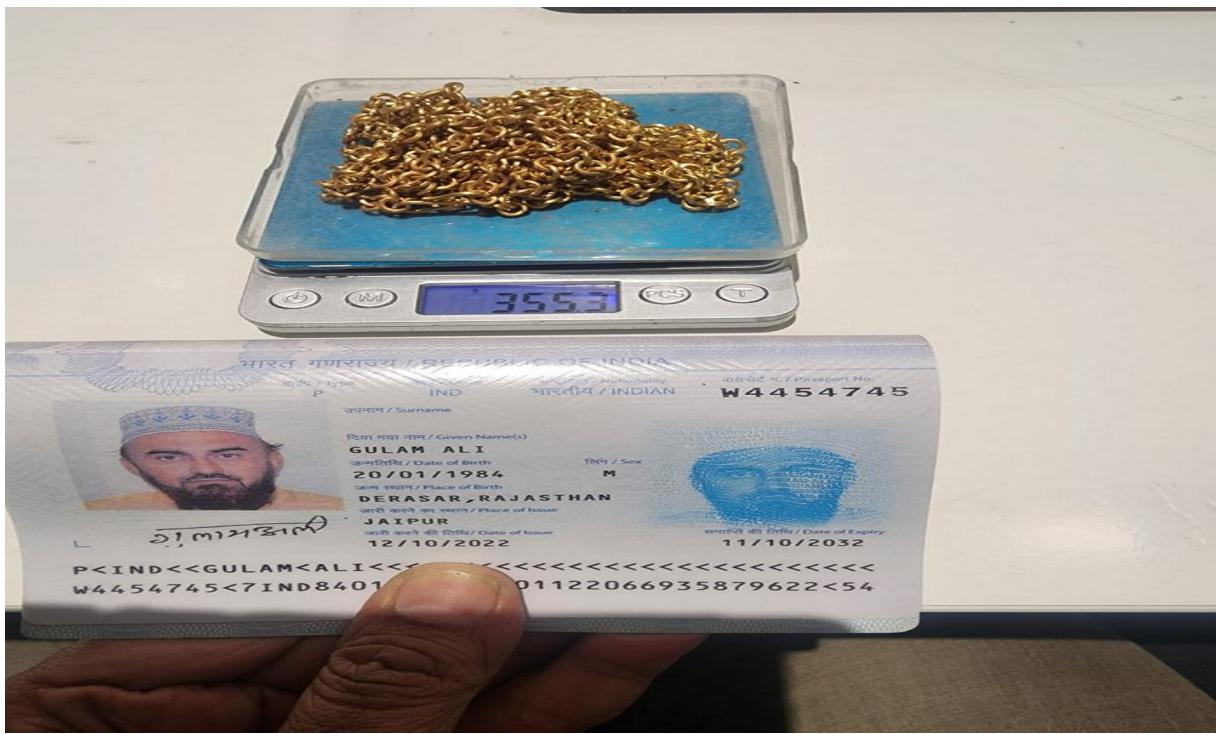


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**PHOTOGRAPH OF 6 GOLD BANGLES**



**PHOTOGRAPH OF 5 GOLD CHAINS**



**3.** After testing the said gold items, the Government Approved Valuer Shri Kartikey Vasantrai Soni confirms that the said 04 anklets coated with white rhodium are made of pure gold having purity 999.0/24kt and other items i.e 06 pcs gold bangles and 05 pcs of gold chains are having purity 916.0/22kt. He further calculates the value of these gold items as per the Notification No. 73/2024-Customs (N.T.) dated 30.10.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate).

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The details of the gold recovered from the passenger are as under:-

Name of passenger	Details of gold Items	P C S	Certifi cate no.	Net Weight in Gram	Puri ty	Market value (Rs)	Tariff Value (Rs)
Shri Gulam Ali	Gold Anklets Coated with White Rhodium	4	1198/2024-25	600.000	999.0 24Kt	467820 0/-	4506678/-
	Gold chains	5		355.200	916.0 22Kt	253870 3/-	2445624/-
	Gold Bangles	6		204.700	916.0 22Kt	146304 2/-	1409401/-
			<b>Total</b>	<b>1159.900</b>		<b>867994 5/-</b>	<b>8361703/-</b>

**Seizure of the above gold:**

**4.** The AIU Officer informs the panchas as well as the passenger Shri Gulam Ali that the said 04 Gold Anklets coated with White Rhodium of 999.0/24kt purity, totally weighing 600.0 Grams, 06 gold bangles of 916.0/22kt purity, totally weighing 204.7 Grams and 05 gold chains of 916.0/22 kt purity, totally weighing 355.2 Grams [Total 15 items having total weight 1159.9 Grams] are attempted to be smuggled to India with intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the AIU officers having a reasonable belief that the aforesaid gold items are being attempted to be smuggled by the said passenger and are liable for confiscation as per the provisions of Customs Act, 1962; hence, the aforesaid gold items are being placed under seizure vide seizure memo dated 12.11.2024.

**5. Statement of Shri Gulam Ali:**

Statement of Shri Gulam Ali was recorded on 12.11.2024 wherein he inter alia stated as under:

**5.1** He gave his personal details like name, address, profession, family details and education etc.

**5.2** His date of birth is 20.01.1984. He lives with his parents, wife and children at Kasbaniyo ki basti, Derasar, Barmer, Rajasthan,

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Pincode -344001. He also stated that he is a farmer and also work in the office of tour operator and his monthly income is around Rs.1 lac. On being asked for his overseas travel, he stated that he travelled to Jeddah to perform Umrah on 28.10.2024 from Delhi Airport and returned to India on 12.11.2024 by Indigo Flight No. 6E76 from Jeddah to SVPI Airport Ahmedabad.

**5.4** He has perused the Panchnama dated 11/12.11.2024 drawn at Arrival hall of Terminal-2 of SVPI Airport, Ahmedabad and he stated that he has been present during the entire course of the said panchnama and he agree with the contents of the said Panchnama. In token, he put his signature on every page of the panchnama.

**5.5** On being asked about purchase of 04 Nos. of white rhodium coated anklets, 06 Nos. of gold bangles and 05 Nos. of Gold chains, which were recovered during the Panchnama proceeding on 11/12.11.2024 at SVPI Airport, Ahmedabad, Shri Gulam Ali stated that when he was in Jeddah, he himself bought these gold items. He further stated that he had concealed / hidden these gold items in the pockets of his trousers, so as to evade the payment of Customs duty without declaring the same to the Customs and illicitly clear the same through green channel.

**5.7** Shri Gulam Ali further stated that he has never indulged in any smuggling activity in the past. This is first time when he carried gold to India.

**5.8** Shri Gulam Ali also stated that he was aware that smuggling of gold without payment of Customs duty is an offence. He was aware of the concealed gold in the form of anklets, bangles and chains, but he did not make any declarations in this regard to evade the Customs duty. He has opted for green channel so that he can attempt to smuggle the gold without paying customs duty.

5.9 From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as the quantity of gold brought by the passenger is more than the permissible limit allowed to a passenger under the Baggage Rules. Hence it cannot be considered as a Bonafide baggage under the

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Customs Baggage Rules, 2016. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items i.e. **(i) 04 Nos. of Gold Anklets coated with white rhodium weighing 600.00 gms having purity 999/24 KT and having Market Value of Rs. 4678200/- and Tariff Value as Rs. 4506678/-, (ii) 06 Nos. of gold chains weighing 355.200 gms having purity 916.00/22kt. And having Market Value of Rs. 2538703/- and Tariff Value of Rs.2445624/- and (iii) 06 Nos. of gold bangles weighing 204.700 gms having purity 916.00/22Kt. And having market value of Rs.1463042/- and Tariff Value of Rs.1409401/-**, because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 1159.900 Grams recovered from Shri Gulam Ali, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 1159.900 Grams is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 1159.900 Grams recovered from Shri Gulam Ali, who had arrived from Jeddah to SVPI Airport, Ahmedabad by Indigo Flight No.6E76 on 11.11.2024 (**Seat No. 24B**) at the arrival Hall of the SVPIA, Ahmedabad were placed under seizure vide Panchanama dated 11/12.11.2024 and Seizure order dated 12.11.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

## **6. Summation:**

The aforementioned proceedings indicates that Shri Gulam Ali had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold **(i) 04 Nos. of Gold Anklets coated with white rhodium weighing 600.00 gms having purity 999/24 KT and having Market Value of Rs. 4678200/- and Tariff Value as Rs. 4506678/-, (ii) 05 Nos. of gold chains weighing 355.200 gms having purity 916.00/22kt. And having Market Value of Rs. 2538703/- and Tariff Value of Rs.2445624/- and (iii) 06 Nos. of gold bangles weighing**

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**204.700 gms having purity 916.00/22Kt. And having market value of Rs.1463042/- and Tariff Value of Rs.1409401/-, Total weight 1159.900 grams having Market Value of Rs. 86,79,945/- and Tariff Value of Rs. 83,61,703/-, liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure vide seizure memo dated 12.11.2024.**

## **7. LEGAL PROVISIONS RELEVANT TO THE CASE**

- a)** As per para 2.26 of Foreign Trade Policy 2015-20 Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
- b)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- c)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- d)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.
- e)** As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- f)** As per Section 2(3) — “baggage” includes unaccompanied baggage but does not include motor vehicles
- g)** As per Section 2(22), of Customs Act, 1962 definition of

'goods' includes-

- a. vessels, aircrafts and vehicles;
- b. stores;
- c. baggage;
- d. currency and negotiable instruments; and
- e. any other kind of movable property;

**h)** As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

**i)** As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

**j)** As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

**k)** As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

**l)** Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation under section 111(d) of the Customs Act 1962.

**m)** Any dutiable or prohibited goods required to be mentioned under the regulation in an arrival manifest, import manifest or import report which are no so mentioned are liable to confiscation under Section 111(f) of the Customs Act 1962.

**n)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111(i) of the Customs Act 1962.

**o)** Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111(j) of the Customs Act 1962.

**p)** Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77 are liable to confiscation under Section 111(l) of the Customs Act 1962.

**q)** Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment

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referred to in the proviso to sub-section(1) of section 54 are liable to confiscation under Section 111(m) of the Customs Act 1962.

- r)** As per Section 112 of the Customs Act 1962 any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.
- s)** As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- t)** As per Section 123 of Customs Act 1962 (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-
  - (a) in a case where such seizure is made from the possession of any person –
    - (i) on the person from whose possession the goods were seized; and
    - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
  - (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.
- u)** As per Customs Baggage Declaration Regulations, 2013 all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

### **CONTRAVICTION AND VIOLATION OF LAWS**

**8.** It therefore appears that:

- a) Shri Gulam Ali had actively involved himself in the instant case of smuggling of gold into India. Shri Gulam Ali had improperly imported 04 Nos. of Gold Anklets coated with white rhodium weighing 600.00 gms having purity 999/24 KT and having Market Value of Rs.

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4678200/- and Tariff Value as Rs. 4506678/-, 06 Nos. of gold chains weighing 355.200 gms having purity 916.00/22kt. and having Market Value of Rs. 2538703/- and Tariff Value of Rs.2445624/- and 06 Nos. of gold bangles weighing 204.700 gms having purity 916.00/22Kt. And having market value of Rs.1463042/- and Tariff Value of Rs.1409401/-, Total **weight 1159.900 grams** having Market Value of **Rs. 86,79,945/-** and Tariff Value of **Rs. 83,61,703/-** without declaring it to the Customs. He opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported gold by the passenger without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Shri Gulam Ali has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- b) By not declaring the value, quantity and description of the goods imported by him, the said passenger has violated the provisions of Baggage Rules, 2016, read with Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- c) The improperly imported gold by the passenger, Shri Gulam Ali, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) read with Section 2(22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- d) Shri Gulam Ali, by his above-described acts of omission/ commission and/or abetment on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

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f) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold articles, i.e. **(i) 04 Nos. of Gold Anklets coated with white rhodium weighing 600.00 gms having purity 999/24 KT and having Market Value of Rs. 4678200/- and Tariff Value as Rs. 4506678/-, (ii) 05 Nos. of gold chains weighing 355.200 gms having purity 916.00/22kt. And having Market Value of Rs. 2538703/- and Tariff Value of Rs.2445624/- and (iii) 06 Nos. of gold bangles weighing 204.700 gms having purity 916.00/22Kt. And having market value of Rs.1463042/- and Tariff Value of Rs.1409401/-, Total weight 1159.900 grams having Market Value of Rs. 86,79,945/- and Tariff Value of Rs. 83,61,703/-**, without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Gulam Ali.

#### **9. DEFENCE REPLY:**

The noticee Shri Gulam Ali vide his letter dated 15.11.2024 and letter dated 10.12.2024 submitted that the concerned officers have informed him the applicable provision that may be incorporated in SCN and upon understanding of the applicable provisions, he requested for waiver of SCN. He submitted that he is ready to pay the applicable duty and penalty and request to decide the case on merits. He submitted to take a lenient view in the matter. Further, the noticee through his advocate and authorized representative Shri Mahavir Bhansali vide letter dated 23.01.2025, requested for waiver of Show Cuse Notice and requested to take lenient view in the matter and release the gold. He submitted that his client is owner of gold and his client is not a habitual offender and has never involved in any similar offense in earlier instances. He submitted his client was not well aware of provisions of Customs Act. He submitted that his client has already requested for waiver of SCN vide his letter dated 15.11.2024 & 10.12.2024 and asked for personal hearing in the matter.

Further, at the time of personal hearing, the advocate and authorized representative submitted the case laws/orders in their support wherein redemption fine is allowed, which are as:-

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- OIA No. AHD-CUSTM-000-APP-137-24-25 dated 02.07.2024 in case of Mr. Khan Naseer A Zaheer Ahmed
- Hon'ble CESTAT, Allahabad Order 2024(387) E.L.T 91 (Tri.-All.) in case of Waqar Vs. Commissioner of Customs (Preventive), Lucknow

#### **10. PERSONAL HEARING:**

To follow the principle of natural justice, personal hearing in the matter was granted on 07.04.2025. Shri M. B Bhansali, Advocate and authorized representative attended the PH on behalf of Noticee. He requested to attend the PH in person instead of video conferencing. He re-iterated his request of waiver of SCN as submitted vide letter dated 15.11.2024, 10.12.2024 & 23.01.2025. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the representative of the noticee has been explained the provisions of Section 124 thoroughly and waiver of SCN has been granted and matter is taken up for decision on merits. He submitted that the gold was not ingenious concealment as the same was in his clothes in jewellery form and gold was purchased by his client from his personal savings and borrowed money from his friend circle. He also submits that the gold is not prohibited item and it is the first time he brought gold and not a habitual offender and not involved in similar offence prior to this incident. Due to ignorance of law the gold was not declared by the passenger. He further submits that his client is ready to pay applicable Customs Duty, fine and penalty and requested for release of seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

#### **DISCUSSION & FINDINGS:**

**11.** I have carefully gone through the facts of this case and the submissions made by the Advocate of the noticee and submission made during the personal hearing and documents available on record. I find that the noticee had requested for waiver of Show Cause Notice in written as well as he re-iterated the same during PH. Before proceeding further, I would like to go through the provisions

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for waiver of SCN as envisaged in Section 124 of Customs Act, 1962 as under:-

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

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

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

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

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

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

Perusal of Section 124 of the Act states that a Show Cause Notice may be issued in Oral on the request of noticee. If an oral SCN/waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. I find that the noticee himself as well as through his advocate/authorized representative requested for waiver of SCN/Oral SCN after previously go through the provisions of Show Cause Notice under Section 124 of Customs Act, 1962 vide letter dated 15.11.2024, 10.12.2024 & 23.01.2025. Therefore, the Oral SCN/Waiver of SCN can be granted under Section 124 of Customs Act, 1962 on his written request and after following the principle of natural justice. In the instant case, I find that the noticee himself as

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well as through his representative has submitted his request letters for waiver of SCN which was consciously signed and Authorized representative has attended the PH. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

**12.** In the instant case, I find that the main issue that is to be decided is whether the gold items i.e. (i) 04 Nos. of Gold Anklets coated with white rhodium weighing 600.00 gms having purity 999/24 KT and having Market Value of Rs. 46,78,200/- and Tariff Value as Rs. 45,06,678/-, (ii) 05 Nos. of gold chains weighing 355.200 gms having purity 916.00/22kt. And having Market Value of Rs. 25,38,703/- and Tariff Value of Rs.24,45,624/- and (iii) 06 Nos. of gold bangles weighing 204.700 gms having purity 916.00/22Kt. and having market value of Rs.14,63,042/- and Tariff Value of Rs.14,09,401/-, having Total weight of all items 1159.900 grams with total Market Value of Rs. 86,79,945/- and Tariff Value of Rs. 83,61,703/-, carried by the noticee, which were seized vide Seizure Order dated 12.11.2024 under the Panchnama proceedings dated 11/12.11.2024 on the reasonable belief that the said goods were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the passenger is liable for penalty under the provisions of Section 112 of the Act.

**13.** I find that the Noticee himself as well as through his Advocate has submitted that the gold was brought by him, for his personal use. The gold was purchased by his client from Jeddah. He requested to allow release of gold on payment of redemption fine. He has further added that gold is not prohibited and not in commercial quantity. He submitted that his client has brought the gold jewellery first time alongwith him and therefore, unable to declare the same and requested to take a lenient view in the matter.

**14.** In this regard, I find that on the basis of passenger profiling Shri Gulam Ali, was intercepted when he was trying to exit through

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green channel. The baggage of the noticee was scanned through X-Ray baggage Scanning machine, however, nothing objectionable was found. The officers asked the noticee to pass through the DFMD Machine, after removing all metallic objects from his body/clothes, installed near green channel and after removing the metallic objects like mobile and purse, the noticee passed through the DFMD and while passing from DFMD, a strong beep sound was heard at the lower part of machine. During detailed frisking, it was observed that he was having three black pouches and five transparent plastic zipper bags concealed under his clothes. Further, on opening the pouches, 04 Rhodium coated anklets, 06 gold bangles recovered and on opening the zipper bags, 05 gold chains were recovered. It is also on record that the Govt. approved valuer examined all recovered items and submit his report vide certificate no. 1198/2024 dated 11.11.2024. wherein he submitted that the recovered gold items were of purity of 24kt/999.0 and 916.0/22kt. The details of same are as under:-

Sl. No	Name of the Passenger	Details of Items	PC S	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Shri Gulam Ali	Gold Anklets coated with White Rhodium	4	600.0	999.0 24 Kt	46,78,200/-	45,06,678/-
		Gold Chains	5	355.2	916.0/22Kt	25,38,703/-	24,45,624/-
		Gold Bangles	6	204.7	916.0/22Kt	14,63,042/-	14,09,401/-
		Total	15	1159.900		86,79,945/-	83,61,703/-

Hence, I find that the noticee was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which

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are found to be violated in present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

**15.** 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. For that, I relied upon the judgments as under:-

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

**16.** Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the said gold items viz. 04 gold anklets coated with rhodium, 05 gold chains and 06 gold bangles, which were in his possession and concealed by him in his trousers and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad.

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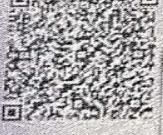
The case of smuggling of gold items recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. In his submission/request letter, the noticee has submitted the copy of bills. Also, at the time of personal hearing the authorized representative on behalf of noticee submitted that the gold items were purchased by his client from his personal savings and money borrowed from his friend circle and submitted 06 invoices of dated 07.11.2024 & 08.11.2024 showing purchase of 1200 grams of gold (200 grams each as per each invoice). However, ongoing through the invoices submitted by the noticee, I noticed that the most of details mentioned in all invoices are in Urdu language except details like time, weight and date which are in numeric and English. Further, I noticed some discrepancies like all the 06 invoices have issuing time of invoices, same and exact, even without change in even seconds as mentioned in each invoice. All the invoices contain the time as "11:16:23". Further, in each invoice, there are two different dates mentioned in each single invoices, as the invoices having date as 08.11.2024 also having date 08.11.2025 and the invoices having date 07.11.2024 also contains the date as 07.11.2025. Further, some boxes mentioned in the invoices appears different in colour to the rest of invoice and seems that the same be changed, therefore, bills are not appeared genuine. Further, on contrary, I find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording his statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the

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presence of the panchas as well as the passenger. I also find no retraction filed by the noticee at the time of investigation or any later stage at the time of adjudication. Even in his voluntary statement, he clearly admitted that the gold was brought by him and not purchased by him. Further, during the personal hearing, it was mentioned that the gold was purchased from personal savings and from the money borrowed from his friends. However, I find that the noticee has failed to establish the claim with the documentary evidences such as borrowing transaction and purchase transaction. For ready reference, I would like to paste sample two copy of invoice to establish my contention as under:-

Al Balad United Trading Co Buying and Selling Precious Metals Swiss Center (2) 1FDDAH - GABIL ST TEL: 0559815497		شركة البالد المتعددة التجارية لبيع وشراء المعادن الكمينية المركيز السويسري (2) جدة - شارع فارن - مقابل مول 0559815497	
رقم السجل التجاري	4030236124		
رقم المعادن	رخصة بخمسة		
نقدية	النوع: فرع السويسري 2		
مبيعات	فاتورة ضريبة مبسطة		
رقم الأسلار	رقم الفحص		
Account	الحساب	User	المستخدم
123456789	123456789	S	Time
11.11.2024	11.11.2024	Date	التاريخ
8/11/2025	نوع الفحص: السجل التجاري		
Page 1 of 1	Reg No -		
VAT	الضريبة	الإجمالي شامل	الإجمالي غير شامل الضريبة
64000	0	64000	64000
Price	السعر	320	Total
Precious stones	زنون الأجرار	0	الإجمالي غير شامل الضريبة
Weight	الوزن	200	أجمالي الوزن عيار 18
NO	العدد	1	أجمالي الوزن عيار 21
Caliber	العيار	24	أجمالي الوزن عيار 22
Unit	الوحدة	قطعة	أجمالي الوزن عيار 24
Explanations	زمرة التحفة		
200	200	9999 جرام عيار 24	24200
الإجمالي شامل الضريبة			
Total with VAT			
الضريبة المضافة 15%			
الإجمالي شامل الضريبة			
Total with VAT			
المدفوعات نقداً			
المدفوعات شبكة			
GULAM ALI/W4454745 . . أسلتم البضاعة سليمة وطالبة من المدفوعات			
توقيع الموظف			
علي محمد يامير ورك			
ش. البالد المتعددة التجارية			
4030236124			

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<b>Al Balad United Trading Co</b> Buying and Selling Precious Metals Swiss Center (2) JEDDAH, GABIL ST. TEL: 0559815497		 <b>شركة البالد المتحدة التجارية</b> لبيع وشراء المعادن الثمينة المركز السويسري (2) جدة. شارع قابس - هاتف: 0559815497	
<b>رقم السجل التجاري</b> 4030236124 <b>نسمة المعدن</b> 9 <b>نقدية الفرنج فرن السويسري 2</b> <b>عنوان</b> <b>فاتورة ضريبة مبسطة</b> <b>رقم الاشعار</b> 10245057 <b>رقم التقدیر</b> 10255067			
<b>Account</b> الحساب <b>User</b> المستخدم <b>Time</b> الوقت <b>Date</b> التاريخ <b>الناتج</b>			
<b>7/11/2025</b> <b>ناتج الطباخة</b> <b>Reg No</b> السجل التجاري <b>GULAM ALI W4454745</b> <b>Customer</b> <b>Page Tot 1</b> <b>Printing Date</b> <b>Tax No</b> الرقام الضريبي <b>Address</b> العنوان			
<b>الإجمالي شامل الضريبة</b> 64000 <b>الإجمالي غير شامل الضريبة</b> 64000 <b>الضريبة المضافة</b> VAT 15% <b>VAT</b> الضريبة <b>Total</b> الإجمالي <b>Price</b> السعر <b>Precious stones</b> وزن الأجرار <b>Weight</b> الوزن <b>NO</b> العدد <b>Caliber</b> العيار <b>Unit</b> الوحدة <b>Explanations</b> الأسباب			
<b>64000</b> <b>0</b> <b>64000</b> <b>320</b> <b>0</b> <b>200</b> <b>1</b> <b>24</b> <b>9999</b> <b>بريلاند عيار 24</b> <b>24200</b> <b>ستوك</b> <b>نقطة</b>			
<b>اجمالي الوزن عيار 18</b> 0 <b>اجمالي الوزن عيار 21</b> 0 <b>اجمالي الوزن عيار 22</b> 0 <b>اجمالي الوزن عيار 24</b> 200 <b>Total without VAT</b> <b>VAT 15%</b> <b>اجمالي شامل الضريبة</b> 64000 <b>Total with VAT</b> 64000			
<b>المبلغ المدفوع</b> 0.00 <b>المبلغ المدفوع حواله</b> 64000 <b>المبلغ المدفوعات شيك</b> 0.00 <b>المبلغ المدفوعات نقدا</b> 64000			
<b>البيانات المدفوعة</b> استلم البضاعة ملبوءة وخالية من الضرائب			
<b>توقيع الموظف</b> علي محمد ياميروك			
 <b>البالد المتحدة التجارية</b> <b>4030236124</b>			

**17.** From the facts discussed above, it is evident that noticee had carried the said gold items (04 gold anklet, 05 gold chains & 06 gold bangles) having total weight 1159.900 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold items of 24KT/999.00 & 22Kt/916.0 purity totally weighing 1159.900 grams, liable for confiscation, under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold items 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.

**18.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the

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baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold items weighing 1159.900 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold items weighing 1159.900 grams, having Tariff Value of Rs. 83,61,703/- and Market Value of Rs.86,79,945/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 12.11.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of anklets, chains and bangles in commercial quantity in his trousers in pouches, 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

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he knew or had reasons to believe that the same is liable to confiscation under the Act. Moreover, the noticee failed established the licit importation of the said goods. 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.

**19.** I thus find that the recovery of gold from the possession of the noticee which was hidden and not declared to the Customs with an intention to illicitly clear it from the Airport to evade the payment of Customs duty is an act of smuggling and the same is conclusively proved. By his above act of commission, it is proved beyond doubt that the noticee has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find from the statement that the gold brought by the noticee from Jeddah, however the same has not been declared before the Customs to evade payment of customs duty. Therefore, the gold imported by the noticee in the form of Jewellery, viz. 04 gold anklets, 05 gold chains and 06 gold bangles and deliberately not declared before the Customs on his arrival in India and in commercial quantity cannot be treated as a bonafide household goods and thus the passenger has contravened the Para 2.26 of the Foreign Trade Policy 2015-20 and thereby 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 read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No.50/2017-Customs dated 30.06.2017 as amended. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only be banks authorized by RBI or other authorized by DGFT and to some extent by passengers. Therefore, gold which is restricted item for import but which was imported without fulfilling the conditions for import becomes prohibited goods in terms of Section 2(33) and it is liable for confiscation under Section 111 of Customs Act, 1962.

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**19.1** As per the provisions of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall 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;*

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

*Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfilment of Condition No. 41 of the Subject Notification.*

*Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfilment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-*

*If,-*

1. *(a) the duty is paid in convertible foreign currency;*  
*(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and*
2. *the gold or silver is,-*
  - (a)carried by the eligible passenger at the time of his arrival in India, or*
  - (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and*

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*(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1;*

*Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.*

*Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits*

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled. As per the statement of Shri Gulam Ali recorded under Section 108 of the Customs Act, 1962, he went to Jeddah for umrah on 28.10.2024 and returned on 11.11.2024 well before the stipulated time of stay. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e gold

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jewellery in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

**19.2** In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

*(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](#);*

I find that the said gold items were not declared by Shri Gulam Ali to the Customs under Section 77 of the Customs Act, 1962 and he passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely derived gold jewellery which were found concealed and recovered in manner as described above, was made by the Noticee Shri Gulam Ali, in the prescribed declaration form. Also, I find that noticee is not eligible to import gold and that too undeclared in substantial quantity of 1159.900 grams and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

**19.3** in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

*(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under [section 77](#) [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of [section 54](#)];*

In this regard, I find that gold items totally weighing 1159.900 Grams recovered from the possession of noticee having market value of Rs. 86,79,945/- and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt & 916.0/22Kt. Further, I find that the noticee could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Shri Gulam Ali, thus failing to

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discharge their "burden of proof" that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

***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.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Gulam Ali in prescribed declaration form. I also find that the noticee was not eligible to import the said gold items concealed by noticee in his trouser and that too undeclared in terms of Section 77 of Customs Act, 1962 and hence the said gold items are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**20.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold items weighing 1159.900 grams, were recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in form of jewellery concealed in his trouser. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**21.** In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had

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attempted to smuggle the seized gold items to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold items. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold items in form of jewellery concealed in his trousers with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold items weighing 1159.900 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 12.11.2024 stated that he has carried the said gold items concealed in trouser to evade payment of Customs duty. Under his waiver request, the noticee has agreed to pay the duty, penalty, fine and requested to redeem the gold on payment of redemption fine. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

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

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

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

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

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

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

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

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*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]*

**21.2.** 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.

**21.3.** 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).*

**21.4** 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*

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*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.*

**21.5.** 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".

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

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

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

**21.7.** I find that the noticee has relied upon various case law submitted during the Personal Hearing by his authorized

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representative, however, I find that the Hon'ble Supreme Court in case of Ambica Quarry Works Vs. State of Gujarat & Othrs [1987 (1) S.C C.213] observed that "the ratio of any decision must be understood in the background of fact of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it." Further, in case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd 2003 (2) SC 111, the Hon'ble Apex Court observed "it is well settled that a little difference in facts or additional fact may make a lot of difference in the precedential value of a decision." In view of above, I hold that every case has different moments and facts when compare in minute-to-minute details. With respect to case law submitted it is stated that every case is unique and facts are different in every case, the same has to be considered accordingly. The orders are having different facts and even a small change in facts can completely change the complexion of the case and hence, I find that judgments relied upon by the noticees, are not squarely applicable in the instant 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.

**22.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold items viz. 04 gold anklets, 05 gold chain & 06 gold bangles totally weighing 1159.900 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold items weighing 1159.900 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.**

**23.** I further find that the noticee had involved himself and abetted the act of smuggling of the said gold items weighing 1159.900 grams, carried by him. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-reas on behalf of noticee is established as the nature of concealment of gold items is ingenious in nature. Accordingly, on deciding the penalty in the instant case, I also take into consideration

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the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "*The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.*" In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold items weighing 1159.900 grams (04 gold anklets, 05 gold chains and 06 gold bangles) having purity of 999.0/24K & 916.0/22kt. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold items weighing 1159.900 grams, carried by him. He has agreed and admitted in his statement that he travelled from Jeddah to Ahmedabad with the said gold items concealed in his trouser. 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 items weighing 1159.900 grams, having purity 999.0/24Kt and 916.0/22Kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

**24.** Accordingly, I pass the following Order:

**Ο R D E R**

- i. I order absolute confiscation of the impugned gold items, i.e. 04 Nos. of Gold Anklets coated with white rhodium weighing 600.00 gms having purity 999/24 KT and having Market

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Value of Rs. 46,78,200/- and Tariff Value as Rs. 45,06,678/-, (ii) 05 Nos. of gold chains weighing 355.200 gms having purity 916.00/22kt. And having Market Value of Rs. 25,38,703/- and Tariff Value of Rs.24,45,624/- and (iii) 06 Nos. of gold bangles weighing 204.700 gms having purity 916.00/22Kt. and having market value of Rs.14,63,042/- and Tariff Value of Rs.14,09,401/-, having **Total weight of all items 1159.900 grams with total Market Value of Rs. 86,79,945/- and Tariff Value of Rs. 83,61,703/-** recovered and seized from the passenger Shri Gulam Ali vide Seizure Order dated 12.11.2024 under Panchnama proceedings dated 12.11.2024 under the provisions of Section 111(d), 111(l) & 111(m) of the Customs Act, 1962;

- ii. I impose a penalty of **Rs.21,50,000/-** (Rupees Twenty-One Lakh Fifty Thousand Only) on Shri Gulam Ali under the provisions of Section 112 (a)(i) & Section 112 (b)(i) of the Customs Act 1962.
  
- 25.** This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

**(Shree Ram Vishnoi)**  
Additional Commissioner  
Customs, Ahmedabad

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DIN: 20250471MN000094029C

**BY SPEED POST A.D.**

To,  
**Shri Gulam Ali S/o Shri Bhikha Khan**  
 Kasbaniyo Ki Basti,  
 Derasar, Barmer, Rajasthan  
 Pincode: 344001.

**Copy to:**

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