OIO No:72 /ADC/SRV/O&A/2026-27
F. No: VIII/10- 11/Prev./O&A/HQ/2026-27

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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DIN: 20260871MN00003D2B71

PREAMBLE

A	फ़ाइलसंख्या / File No.	:	VIII/10- 11/Prev./O&A/HQ/2026-27
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	CUS/SIIB/MISC/1376/2025-PREV-O/o PR COMMR-CUS-AHMEDABAD dated 05.06.2026
C	मूलआदेशसंख्या / Order-In-Original No.	:	**72/ADC/SRV/O&A/2026-27**
D	आदेशतिथि / Date of Order-In-Original	:	**01.09.2026**
E	जारीकरनेकीतारीख / Date of Issue	:	**01.09.2026**
F	द्वारापारित / Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**01) Shri Janakkumar Ganeshlal Joshi, C/o Ganesh Lal Joshi, Jetana, Via- Bhilura,** Taluka Sagwara, Dungarpur, Rajasthan-314031 Email id – janakjoshi041@gmail.com **02). Shri Manoharlal Devilal Patel,** Resident of 45-46, Laxminagar Society, Naya Hospital Road, Dungarpur, Rajasthan- 314001 Email id- kalal.hkhardik51@gmail.com

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(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या 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 information received from the Police Inspector, Dabhoda Police Station, Gandhinagar, vide letter dated 12.11.2025 bearing O.N. No. 2968/2025, it was reported that the officers of the Local Crime Branch (LCB-2), Gandhinagar had intercepted persons namely Shri Janakkumar Ganeshlal Joshi, Shri Anilkumar Ganeshlal Joshi, Shri Sujal Pravinji Kalal and Shri Manohar Devilal Kalal (Patel) near Lavarpur Bridge on 17.10.2025 and seized gold pieces weighing approximately 199 grams from Shri Janakkumar Ganeshlal Joshi and 147 grams from Shri Anilkumar Ganeshlal Joshi (However, during the course of investigation the actual weight of the Gold bars were found to be 200.00 grams and 147.20 grams, respectively). It was further informed that the said gold appeared to have been brought from Kuwait to India through Ahmedabad Airport without declaration before Customs and without payment of applicable Customs duty.

2. Pursuant to the authorization granted by the Assistant Commissioner of

Customs (Preventive), Ahmedabad, a team of Preventive Officers comprising Shri Dinesh Kumar Meena, Superintendent; Shri Mayur Joshi, Superintendent; and Shri Ravi Kumar, Inspector, visited Dabhoda Police Station on 08.12.2025. The proceedings for taking over the custody of the seized gold from the police were conducted under a Panchnama dated 08.12.2025 in the presence of two independent witnesses (Panchas), the accused persons, namely Shri Manohar Devilal Patel and Shri Janak Ganeshlal Joshi, police officers of Dabhoda Police Station, and the Government Approved Valuer, Shri Soni Kartikey Vasantrai.

3. During the proceedings, it was revealed that Shri Janakkumar Ganeshlal Joshi was arrived from Kuwait to Ahmedabad on 17.10.2025 via Indigo Airlines Flight No. 6E 1244. He admitted to clearing the Green Channel at Sardar Vallabhbhai Patel International Airport (SVPIA) without declaring the gold pieces he was carrying. He was later picked up by Shri Sujal Kalal and Shri Manohar Patel in a Kia Seltos (RJ 27 CM 5377) before being intercepted by the Local Crime Branch (LCB-2) Gujarat Police.

4. The seized material was produced by Head Constable Smt. Manisha Shyamalbhai Chaudhary in sealed plastic boxes. Upon opening the seals in the presence of Panchas, yellow metal piece covered in black plastic tape was recovered. The photograph of the said gold piece on the weighing scale is reproduced hereunder for the reference:

5. EXAMINATION AND VALUATION:

5.1 Thereafter, with a view to check the purity, quantity and value of the said
recovered items, the Government Approved Valuer, Shri Soni Kartikey Vasantrai, was requested to examine the said yellow metal pieces and carry out valuation thereof. After examination, the valuer submitted Valuation Report Certification No. 758/2025-26 dated 08.12.2025 and confirmed that Cut gold bar recovered from Shri Janakkumar Ganeshlal Joshi was pure gold.

5.2 The details of the cut gold bar recovered from the passenger Shri Janakkumar Ganeshlal Joshi are as under:

Name of Passenger	Details of gold Items	PCS	Certificate no.	Net Weight in Gram	Purity	Market value (Rs.)	Tariff Value (Rs.) 08.12.2025
Shri Janakkumar	Gold Piece	1	758/2025-26 dated	200.00	995.0 24Kt	26,50,000/-	24,39,536/-

Ganeshl al Joshi							
	Total	1		200.0 0	995.0 24Kt	26,50, 000/-	24,39,536 /-

5.3 The Government Approved Valuer informed that valuation was carried out as per Notification No. 75/2025-Customs (N.T.) dated 28.11.2025 (Gold) and Notification No. 43/2025-Customs (N.T.) dated 05.12.2025 (Exchange Rate). Thereafter, the Customs officers informed Shri Janakkumar Ganeshlal Joshi that they had reasonable belief that the aforesaid gold was being attempted to be smuggled into India with an intent to evade payment of Customs duty, which is a clear violation of the provisions of the Customs Act, 1962 and was liable for confiscation as per the provisions of the Customs Act, 1962; hence, it is being placed under seizure.

6. SEIZURE OF THE ABOVE GOLD PIECES: -

6.1 The said cut gold bar weighing 200.00 grams, having purity of 995.0/24 Kt, with a market value of Rs. 26,50,000/- (Rupees Twenty-Six Lakh Fifty Thousand Only) and tariff value of Rs. 24,39,536/- (Rupees Twenty-Four Lakh Thirty-Nine Thousand Five Hundred Thirty-Six Only) as on 08.12.2025, were found to have been smuggled into India by Shri Janakkumar Ganeshlal Joshi and was accordingly placed under seizure dated 08.12.2025 (RUD 05) on a reasonable belief that the said goods i.e. cut gold bar is liable for confiscation under Section 111 of the Customs Act, 1962. The said goods were attempted to be smuggled into India through SVPI Airport, Ahmedabad, and was initially recovered by the Local Crime Branch-2, Gandhinagar, and subsequently handed over to Dabhoda Police Station. Thereafter, the said goods were seized by the officers of Customs (Preventive), Ahmedabad under a Panchnama dated 08.12.2025 drawn at Dabhoda Police Station, Gandhinagar, in the presence of independent Panch witnesses.

6.2 Further, in exercise of the powers conferred under sub-section (3) of Section 110 of the Customs Act, 1962, the remnant packing materials, namely black tape used for packing and concealment of the cut gold bar, was also placed under seizure along with the Cut Gold Bar on a reasonable belief that the same was liable for confiscate under Section 119 of the Customs Act 1962.

7. STATEMENT OF SHRI JANAKKUMAR GANESHLAL JOSHI:

7.1 Statement of Shri Janakkumar Ganeshlal Joshi was recorded on 15.12.2025, wherein he inter alia stated his personal details like name, address, family details and mobile number as mentioned in his statement and stated that he was doing the job of a Driver in Kuwait since 2012. He stated that he can read, write English language very well. His mobile no. is 9351878569. His Adhar card no. is 7832 3244 1653.

7.2 On being asked his connection with the gold cut bar weighing 200.00 grams, seized from Dabhoda Police Station on 08.12.2025, he stated that he had known Shri Manoharlal Devilal Patel for the past 7–8 years, who had requested him to bring the gold from Kuwait for his daughter's marriage. He purchased the said gold bar from M/s. Al-Najma Daulia Gold Jewellery vide Invoice No. 80237 dated 04.09.2025 for 6640 Kuwait Dinars and brought it to India on 17.10.2025 via Indigo Flight No. 6E- 1244, concealing it in his check-in baggage without declaring it to Customs. After exiting SVPI Airport, Ahmedabad, he was intercepted near Gandhinagar by the Local Crime Branch, where the gold was recovered and seized under Panchnama dated 17.10.2025. The gold was kept at Dabhoda Police Station, and he later appeared there on 08.12.2025 during further proceedings conducted by Customs (Preventive), Ahmedabad.

7.3 In response to being confronted with his statement dated 17.10.2025 recorded before ASI, LCB-2, Gandhinagar, wherein it was mentioned that Shri Gopal Bhogilal Patel had handed over the gold and offered Rs. 10,000/- for carrying it from Kuwait to Ahmedabad, he stated that the said statement was explained to him in Hindi and, upon perusal, he clarified that although

Shri Gopal Bhogilal Patel was present with him at the time of purchase in Kuwait, the gold was purchased by him using his own funds, which were to be recovered from Shri Manoharlal Devilal Patel, Dungarpur. He further stated that neither Shri Gopal Patel nor Shri Manoharlal Patel had offered or agreed to pay him any additional amount for bringing the gold from Kuwait to Ahmedabad.

7.4 On being asked whether he was aware that gold brought into India from a foreign country is required to be declared before the Customs Authorities and that applicable customs duty must be paid at the time of arrival in India, he stated that at the time of his arrival in India, he was aware of the requirement to declare the gold and pay the applicable customs duty. However, he did not declare the gold before the Customs authorities and did not pay the applicable customs duty.

7.5 On being asked why was the gold cut bar concealed by wrapping it in black tape and hiding it in his luggage, he stated that he had done so to avoid detection of the said gold bar. He further stated that apart from the above instance, he had never brought gold from a foreign country into India without declaring it to Customs and/or without payment of applicable customs duty.

8. STATEMENT OF SHRI MANOHARLAL DEVILAL PATEL:

Statement of Shri Manoharlal Devilal Patel was recorded on 23.12.2025, wherein he inter alia stated as below:

8.1 On being asked how long he has known Shri Janak Ganeshlal Joshi, how he is related/acquainted with him, and why a Power of Attorney has been executed/issued in his favour by him, in reply he stated that he has known Shri Janak Ganeshlal Joshi for the last about 6–7 years and that he is his friend. He further stated that Shri Janak Ganeshlal Joshi is a resident of Jetana, Taluka Sagwara, District Dungarpur, Rajasthan and also stated that Shri Janak Ganeshlal Joshi has been working as a driver in Kuwait since 2012 and visits India once or twice a year. Since Shri Janak Ganeshlal

Joshi and his brother Anilkumar Ganeshlal Joshi were planning to return to Kuwait, they executed a Power of Attorney in his name so that he could represent them before the Police, Court, and/or any other Government Department in connection with this matter.

8.2 On being asked whether he had perused the statement of Shri Janak Ganeshlal Joshi recorded on 15.12.2025 under Section 108 of the Customs Act, 1962, and whether he admitted its contents, and if so, to state his role and the complete facts regarding procurement, concealment, carriage, arrival, and seizure of the gold cut bar brought from Kuwait to Ahmedabad, in reply he stated that he had perused the said statement and had signed and dated each page as a token of having perused the same, and that he agreed with its contents. He further stated that he had requested Shri Janak Joshi to bring the said gold cut bar from Kuwait to Ahmedabad while coming to India. He stated that Shri Janak Joshi has been working as a driver in Kuwait since 2012 and came to India on 17.10.2025, and while he was in Kuwait and planning his return, he was contacted and requested to bring 200.00 grams of 24 Kt pure gold, which was brought by him on 17.10.2025 by Indigo Airlines Flight No. 6E-1244 from Kuwait to Ahmedabad. He further stated that the said gold cut bar was purchased from M/s Al Najma Daulia Gold Jewellery vide Invoice No. 80237 dated 04.09.2025 for 6640 Kuwait Dinars, paid in cash by Shri Janak Joshi, which he was to reimburse in Indian currency at Dungarpur; however, due to seizure by the Police, the amount has not been reimbursed. He stated that he required the said gold for his daughter's marriage. He further stated that after arrival at SVPI Airport, Ahmedabad on 17.10.2025, Shri Janak Joshi cleared the Customs Green Channel without making any declaration of the said gold cut bar. Thereafter, Shri Janak Joshi and his brother Shri Anil Ganeshlal Joshi came out of the airport, where he and Shri Sujal Kalal were waiting in a Kia Seltos car No. RJ 27 CM 5377, and they proceeded towards Sagwara. While on the way, near Lawarpur Bridge, Gandhinagar, they were intercepted by Local Crime Branch-2, Gandhinagar, in the presence of two independent witnesses, and during checking, the Police recovered the said gold cut bar wrapped in black tape from the check-in luggage, got it tested through a goldsmith, and sealed it under Panchnama dated 17.10.2025, and kept it at Dabhoda Police Station. He further stated that on 08.12.2025, upon being called by the Police, he and Shri Janak Joshi remained present at Dabhoda Police Station during Panchnama proceedings dated 08.12.2025 conducted by Customs, wherein the sealed plastic box was produced, found intact, opened, and examined by a Government-approved valuer, who certified the purity as 24 Kt and the market value as Rs. 26,50,000/-. Thereafter, Customs seized the said gold cut bar and the black tape used for concealment under the provisions of the Customs Act, 1962, by sealing both under the signatures of himself, the Panch witnesses, and the Customs officer.

9. The passenger namely Shri Janakumar Ganeshlal Joshi in connivance with
Shri Manoharlal Devilal Patel, was involved in the smuggling of gold and have
requested for waiver of the Show Cause Notice. However, considering the facts, circumstances, modus-operandi and the gravity of the offence involving the attempted smuggling of 200.00 grams of foreign-origin 24 KT gold (concealed inside in the check-in baggage amongst dry fruit packets wrapped in black tape), issuance of a Show Cause Notice under Section 124 of the said Act is considered necessary to ensure compliance with the principles of natural justice. Accordingly, the request for waiver of the Show Cause Notice is not acceded to and the matter is proposed to be adjudicated after issuance of a detailed Show Cause Notice.

10. SUMMATION: The aforementioned proceedings indicates that Shri Janakkumar Ganeshlal Joshi in connivance with Shri Manoharlal Devilal Patel, attempted to smuggle the aforesaid cut gold bar into India and thereby rendered the aforesaid cut gold bar having Market value amounting to Rs. 26,50,000/- (Rupees Twenty-Six Lakh Fifty Thousand Only) and tariff value of Rs. 24,39,536/- (Rupees Twenty-Four Lakh Thirty-Nine Thousand

Five Hundred Thirty-Six Only) as on 08.12.2025, liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same was placed under seizure vide Order dated 08.12.2025 issued under the Provisions of Section 110(1) and (3) of the Customs Act, 1962.

11. **<u>Legal provisions relevant to the case:</u>**

Foreign Trade Policy 2015-20 as amended in year 2023 and Foreign Trade (Development and Regulation) Act, 1992

11.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, as amended, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

11.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

11.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

11.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

11.5 As per Section 2(3) – "baggage includes unaccompanied baggage but does not include motor vehicles.

11.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

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

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

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

11.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

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

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

11.12 Section 111. Confiscation of improperly imported goods, etc.:

The following goods brought from a place outside India shall be liable to confiscation:-

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under

clause (c) of section 7 for the import of such goods;
(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
(f)any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;
(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;
(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;
(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];
(n) any dutiable or prohibited goods transited with or without

transhipment or attempted to be so transited in contravention of the provisions of Chapter VIII;
(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

11.13 Section 112. Penalty for improper importation of goods etc.:

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

11.14 ***SECTION 119.*** *Confiscation of goods used for concealing smuggled goods: Any goods used for concealing smuggled goods shall also be liable to confiscation.*
Explanation: *In this section, "goods" do not include a conveyance used as a means of transport.*

11.15 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.

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

Customs Baggage Rules and Regulations:

11.17 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

11.18 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 bona-fide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

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

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

11.20 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

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

	Chapter or Heading or sub–heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

Condition no. 41 of the Notification:

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

12. 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 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.

<u>Contravention and violation of law:</u>

13. It therefore appears that:

(i) **Shri Janakkumar Ganeshlal Joshi** had attempted to smuggle/improperly import of cut gold bar weighing 200.00 grams, having purity of 995.0/24 Kt, with a market value of Rs. 26,50,000/- (Rupees Twenty-Six Lakh Fifty Thousand Only) and tariff value of Rs. 24,39,536/- (Rupees Twenty-Four Lakh Thirty-

Nine Thousand Five Hundred Thirty-Six Only) as on 08.12.2025 recovered from him with a deliberate intention to evade payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations.

It appears that Shri Jankakumar Ganeshlal Joshi knowingly and intentionally brought the said cut gold bar into India through SVPI Airport without declaring the same before Customs authorities and without payment of the applicable Customs duty. The said gold was initially recovered by the Local Crime Branch-2, Gandhinagar and subsequently handed over to Dabhoda Police Station. Thereafter, the goods were seized by the officers of Customs (Preventive), Ahmedabad under a panchnama dated 08.12.2025.

The improperly imported cut gold bar, having not been declared before Customs upon arrival in India, cannot be treated as bona fide baggage, household goods, or personal effects. By his aforesaid acts and omissions, Shri Janakkumar Ganeshlal Joshi appears to have rendered the said goods liable to confiscation under the provisions of the Customs Act, 1962 and has contravened the provisions of the Foreign Trade Policy, 2023, read with Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 and Sections 3(2) and 3(3) thereof, as amended from time to time.

(ii) Shri Janakkumar Ganeshlal Joshi did not declare to the proper officer of Customs the cut gold bar weighing 200.00 grams and having a purity of 995.0/24 Kt, which was brought by him into India and was liable to Customs duty and subject to restrictions/prohibitions under the applicable laws. By deliberately failing to declare the said goods at the time of arrival, he has contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

(iii) The cut gold bar weighing 200.00 grams and having a purity of 995.0/24 Kt, which appears to have been improperly imported/smuggled into India by Shri Janakkumar Ganeshlal Joshi, was initially recovered by the Local Crime Branch-2, Gandhinagar and subsequently handed over to Dabhoda Police Station. Thereafter, the said goods were seized by the officers of Customs (Preventive), Ahmedabad under a panchnama dated 08.12.2025.

(iv) In view of the foregoing facts and circumstances, the said cut gold bar is liable to confiscation under Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962, read with Sections 2(22), 2(33) and 2(39) of the Customs Act, 1962, and further read in conjunction with Section 11(3) of the Customs Act, 1962.

(v) Shri Janakkumar Ganeshlal Joshi, by the above-described acts of omission/commission and/or abetment has rendered himself liable for penalty under Section 112 of Customs Act, 1962.

(vi). As per Section 123 of Customs Act 1962, the burden of proving that the said cut Gold bar weighing 200.00 grams that recovered from the passenger, Shri Janakkumar Ganeshlal Joshi who arrived from Kuwait to SVPI Airport, Ahmedabad, on 17.10.2025 by Indigo Airlines Flight no, 6E 1244, at Terminal-2, SVPIA Ahmedabad is not smuggled goods, is upon Shri Janakkumar Ganeshlal Joshi, who is the Noticee in this case.

(vii) Further, based on the facts and evidence available on record, it appears that Shri Manoharlal Devilal Patel was knowingly concerned with, and actively involved in, the attempted smuggling and improper importation of the seized foreign-origin 24 Kt cut gold bar weighing 200.00 grams. During the course of the investigation, he admitted that the said gold was procured from

Kuwait at his behest and for his benefit, and that he had requested Shri Janakkumar Ganeshlal Joshi to carry the same into India, with the understanding that the cost thereof would be reimbursed by him.

Shri Manoharlal Devilal Patel further admitted that both he and Shri Janakkumar Ganeshlal Joshi were aware of the requirement to declare the gold before Customs authorities and to pay the applicable Customs duty. Despite such knowledge, the gold was allegedly concealed in the baggage of Shri Janakkumar Ganeshlal Joshi and brought into India without declaration before Customs and without payment of the applicable Customs duty, with the apparent intention of evading duty and avoiding detection by Customs authorities.

It therefore appears that Shri Manoharlal Devilal Patel played an active role in arranging, facilitating, financing and abetting the procurement, transportation and attempted smuggling of the said gold from Kuwait into India through another person. By knowingly facilitating and abetting the improper importation of the said gold, which has rendered the goods liable to confiscation under the Customs Act, 1962, Shri Manoharlal Devilal Patel appears to have rendered himself liable to penal action under Section 112 and other applicable provisions of the Customs Act, 1962.

(viii) The acts and omissions of Shri Manoharlal Devilal Patel clearly demonstrate his conscious involvement in, and abetment of, the improper importation and attempted smuggling of the seized gold, rendering the goods liable to confiscation under the Customs Act, 1962. Therefore, it appears that Shri Manoharlal Devilal Patel has rendered himself liable to penal action under Section 112 of the Customs Act, 1962 for knowingly aiding, abetting and facilitating the illegal import of goods liable to confiscation, for contravention of the provisions of the Customs Act, 1962.

14. Accordingly, a Show Cause Notice No. CUS/SIIB/MISC/1376/2025-PREV-O/o PR COMMR-CUS-AHMEDABAD dated 05.06.2026 was issued to Shri Janakkumar Ganeshlal Joshi and Shri Manoharlal Devilal Patel, as to why:

(i) One (01) cut Gold Bar totally weighing 200.00 grams having purity of 24Kt/995.0 with a market value of Rs. 26,50,000/- (Rupees Twenty-Six Lakh Fifty Thousand Only) and tariff value of Rs. 24,39,536/- (Rupees Twenty-Four Lakh Thirty-Nine Thousand Five Hundred Thirty-Six Only) as on 08.12.2025, that was initially recovered by the Local Crime Branch-2, Gandhinagar, and subsequently handed over to Dabhoda Police Station. Thereafter, the said goods were seized by the officers of Customs (Preventive), Ahmedabad under seizure memo dated 08.12.2025, should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of Customs Act, 1962.

(ii) Packing materials, i.e. black tape used for packing and concealment of the cut gold bar mentioned (i) above, and placed under seizure memo dated 08.12.2025 along with the Cut Gold Bar should not be confiscated under Section 119 of the Customs Act 1962

(iii) Penalty should not be imposed upon **Shri Janakkumar Ganeshlal Joshi and Shri Manoharlal Devilal Patel**, 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:

15. The noticee Shri Janakkumar Joshi submitted his written submission vide letter dated 21.07.2026 wherein he acknowledges the receipt of SCN. He submitted that he is working as driver in Kuwait since 2012 and visited his hometown Dunagpur, Rajasthan, once or twice in a year. He made a bonafide purchase of 24kt gold bar weighing 200.00 grams from M/s. Al

Najma Daulia Gold jewellery under invoice no. 80237 by his own funds for his friend Manoharlal Devilal Patel's daughter marriage and Shri Manoharlal Patel reimburse the same upon his arrival on actual basis, without any additional commission/payment. He submitted that he was arrived to India via Indigo Flight No. 6E-1244 at SVPI, Ahmedabad with the gold bar placed in his check-in baggage and inadvertently did not declare the same before the Customs Authority due to lack of knowledge of legal procedures. Soon after he departed for his hometown his car was stopped by Local Crime Branch, Gandhinagar, near lawarpur bridge and checked the baggage which resulted in to recovery of said gold bar which was seized by police vide panchnama dated 17.10.2025 and later on the said gold was seized by the Customs Department vide Panchnama dated 08.12.2025 followed by seizure of gold vide Seizure Memo dated 08.12.2025 and thereafter recorded the statement wherein he again stated that the said gold was purchased for Shri Manoharlal Patel daughter's marriage. He submitted that the gold should not be confiscated absolutely and allowed for re-export. He submitted that the jurisprudence regarding disposal of seized gold under Section 125 of Customs Act, 1962 is no more *res-integra* it is trite law that so long as the gold is not ingeniously secreted with the sole intention of smuggling it or as a part of organized smuggling syndicate, absolute confiscation should not be ordered. He submitted that the Hon'ble Supreme Court of India certainly held that definition of "Prohibited Goods" under Section 2(33) of Customs Act, 1962 includes restricted goods where the condition is not complied; but the same was with respect to the question of Confiscation under Section 113 of Act. The above characterization does not ipso jure extend to consideration of redemption fine or re-export under Section 125 of Act. The Hon'ble Supreme Court in later judgment by a larger bench of 3 judges in CC vs. M/s. Atul Automations Pvt. Ltd -CA/1057/2019 has categorically rejected the revenue's argument that absence of necessary DGFT authorization would give character of prohibited item to an otherwise restricted item. Rather the court held that for purpose of Section 125, the fundamental distinction between item absolutely prohibited and item restricted should be maintained. The Supreme Court thus upheld imposition of redemption fine and release of consignment for re-export under Section 125 of Act. Therefore, the decision of Om Prakash Bhatia by 2 judge bench is distinguishable in as much it operates in field of Section 2(33) read with Section 113 and cannot be directly applied in context of Section125 where another (and later) authority of Atul Automation Pvt Ltd 3 judge bench hold the field and also submit that the same was also referred by Hon'ble Allahabad High Court in CC vs. Rajesh Jamatmal Bhat -C.A No. 07/2019. Therefore, it clear that the seized gold is not prohibited item, but only a restricted item as per the relevant provisions of Customs Act, read with FTP and DGFT Notification No. 49/2015-20 dated 05.01.2022 importable as per Notification No. 50/2017-cus dated 30.06.2017 and accordingly, the same may be offered redemption fine by application of M/s. Atul Automations (Supra).

He further stated that the discretion under Section 125 should be excercised judicially based on facts and circumstances of each case. It is settled law that absolute confiscation should not be ordered as a matter of routine unless there are compelling circumstances such as gold being secreted in ingenious manner or the passenger being repeated offender or part an organized smuggling syndicate and submitted following case law in his support:-

- CCE Vs. Dharmesh Pansuriya -2018(363) ELT 555 (Tri. Ahm)- CESTAT Ahmedabad. Gold Bars of 25 Kgs released on redemption fine.
- Rawal Singh -OIA No. AHM-CUSTM-000-263-25-26 dated 19.09.2025 -Ld Commissioner (Appeals) Ahmedabad : 5 Gold bars of 274 grams (24kt) allowed to be re-exported to Saudi arabia on payment of redemption fine as the gold was in form of bars and not ingeniously secreted for commercial consideration and the passenger had no antecedents.
- Almioz-Ahmed Order No. 67/2023-CUS(WZ)/ASRA/Mumbai dated 22.09.2023, Revisionary Authority, Mumbai: Gold bars allowed for re-export on payment of redemption fine on the fact that quantum of gold was not commercial

- Order No. 355/2022- CUS(WZ)/ASRA/Mumbai dated 07.12.2022, Revisionary Authority, Mumbai
- Order No. 516-517/2023- CUS(WZ)/ASRA/Mumbai dated 30.06.2023, Revisionary Authority, Mumbai;
- Kasmani Aziz -Order No. 68/2024- CUS(WZ)/ASRA/Mumbai dated 24.01.2024, Revisionary Authority, Mumbai
- Mohammad Motiwala- Order No. 380/2022- CUS(WZ)/ASRA/Mumbai dated 14.12.2022, Revisionary Authority, Mumbai

He submitted that the fact and circumstances merit treatment of improper importation of 200 grams gold cut bar as a bonafide case of non-declaration for following reasons: -

- The gold was not ingeniously concealed but was kept in cut bar form, as purchased inside his check in baggage;
- The quantity of gold carried by him was not in commercial quantity and is much lesser than the higher amounts treated as non-commercial and allowed for redemption fine and re-export
- He has legitimate purchase invoice bearing no. 80237 dated 04.09.2025 purchased at Kuwait from M/s. Al Najma Daulia Gold Jewellery and not a case of unaccounted item being smuggled
- The said gold bar for sole purpose of Shri Manoharlal Patel's daughter marriage.
- He is not a habitual offender and found involved in such inadvertence for the first time.
- He was complied with the investigation throughout and has not attempted to evade detection at any stage. It is only because of his inadvertence and lack of legal knowledge that he did not follow the proper procedure of carrying /importing gold.
- As the gold was only 200 grams and for personal purpose, it did not qualify as commercial quantity so as to raise concern of harm to domestic economy and in any case if gold is allowed to be re-exported as prayed and all alleged impact to domestic market will be completely wiped out too.

He further submitted that there are numerous binding authorities including decision from jurisdictional Commissioner (Appeals) and CESTAT Ahmedabad where redemption fine /re-export has been allowed. He requested to allow re-export of seized gold.

He further submitted that penalty, if any imposed on him should be commensurate with hid bonafide and facts of case and should not be punitive and harsh. He admittedly committed an inadvertence of non-declaring gold cut bar he was carrying but has never made an attempt at ingeniously concealing it or evading its detection. Rather he kept it in his regular check in baggage in manner which was easily detected by police as evident by the Panchnama dated 17.10.2025. therefore, it is evident that goods were secreted and there was no malafide intention. At the best the only infraction committed by him is his lack of legal awareness. He requested to adopt a humane approach in adjudging the quantum of penalty under Section 112 such that it is not unreasonable and financially onerous but one which will have a positive effect to ensure strict compliance with the law in future. He prayed to release the gold without absolutely confiscating under Section 125 of Act and allow re-export of the same; impose only a reasonable penalty.

15.1 Further vide letter dated 21.07.2026 Shri Manoharlal Devilal Patel submitted his written submission through his advocate wherein he submitted that the noticee is resident of Dungarpur and works as a contractor. He knew Janak Joshi and Anil Joshi through a relative Shri Gopal Bhogilal Patel from past 6-7 years. He requested Shri Janak Joshi to bring certain gold from Kuwait for his daughter's marriage scheduled in feb-mar-2027, in view of renowned quality of Kuwait's gold and fluctuating gold price in Indian domestic market and agreed to reimburse the gold price in actual without paying any commission. He submitted that he picked Shri Janak Joshi and Anil Joshi from Airport upon their arrival at Ahmedabad and while going to home they were intercepted by police near Lawarpur Bridge and the police recovered cut gold bars from the baggage of Shri

Janak Joshi and Anil Joshi during checking and the same were placed under Seizure under Panchnama dated 17.10.2025 and subsequently put under Seizure vide Panchnama dated 08.12.2025 and seizure memo dated 08.12.2025 while handing over the gold cut bars to Customs officers by Local Crime Branch Police, Gandhinagar. He submitted that the burden to prove mens-rea is on the revenue. The scope of Section 123 of Act is qua burden of proving that the goods are not smuggled. In the instant case, the allegation against him is not that he had smuggled the goods rather the faces the allegation of abetment, which is beyond the scope of Section 123 of Act. Further unlike Section 123 of Act, where the onus is reversed qua persons from whom the goods are seized or the person who claims to be the owner the onus under Section112 of Act for allegation of abetting lies squarely with revenue. In the present case, gold bars were found in possession of co-noticee viz inside his check in luggage and at the time of interception the ownership lay with the co noticee only who had purchased the gold under cover of legitimate invoice using their own funds. He was supposed to pay the cost on actuals later. Thus, as per established principle of contract and property law, the ownership of the gold has been transferred to him. He submitted that Revenue must establish with positive evidence that there is requisite mens-rea to smuggle the goods. The requirement of mens-rea under section 112 of Act especially qua allegation of abetment has been established by various court time and again. For that they relied upon the judgment of Bombay High Court in the matter of Amritalakshmi Machine works v CC, Mumbai 2016(335) ELT 225 (Bom.) and Rajeev Khatri Vs. CC, 2023: DHC: 4428, Lalit Jain Vs. CC Ahmedabad Final Order A/10975/2025 (in Customs Appeal No. 10061/2022), CEGAT New Delhi in case Janta Traders, Bombay Vs. CC Bombay (1988) 34 ELT 65.

He further relied on the case law as under:-

- M/s. AV Global Corporation Vs. CC New Delhi 2025(8) TMI 656, CESTAT New Delhi;
- M/s. Dhanlabh Logistics LLP Vs. CC Ahm 2025(4) TMI 776, CESTAT Ahmedabad;

He submitted that there must be actual abetment in improper importation of good that renders the goods liable for confiscation under Section 111 of Act. He made a request in Sept 2025 to Shri Janak Joshi to purchase some gold for his daughter's marriage and there was no evidence on record which indicates that he was in contact with Shri Janak Joshi and Shri Anil Joshi and has discussed to clear the gold under green channel. There was no intention to smuggle the gold without payment of appropriate customs duties, rather the intention was to avoid the uncertain fluctuation of domestic gold price and case was built on assumptions, presumptions and his proximity with the co-noticees without any actual positive evidences that he had actually abetted illicit clearance of gold without making declaration under Section 77 of the Act. Even if the adjudicating authority determines that the penalty under Section112 of act is imposable, it is submitted that the aforesaid lack of positive evidence may kindly be considered as mitigating factor and only a nominal amount of penalty may be imposed. He prayed not to impose penalty under Section 112 and in alternative, only impose a nominal penalty in view of absence his involvement in actual clearance of seized gold.

16. PERSONAL HEARING:-

Personal hearing in the matter was fixed on 23.07.2026 & 07.08.2026. Shri Parthiv Joshi, Advocate and Authorized Representative appeared for personal hearing on 07.08.2026 through video conferencing on behalf of both noticees that are Shri Janakkumar Ganeshlal Joshi and Shri Manoharlal Devilal Patel.

He reiterated the written submission dated 21.07.2026, filed for both noticees. He submitted that Shri Janak Joshi carried the gold for Shri Manohar Patel to use in his daughter's marriage. He argued that the gold was not in a large quantity and was intended solely for personal effects. He further mentioned that in numerous cases, gold brought into India in much higher quantities were released upon payment of a redemption fine or allowed for re-export. He stated that his client, Shri Janak Joshi, produced a copy of the invoice at the time of interception. The cost was to be reimbursed by Shri Manoharlal Patel, who had requested Shri Janak Joshi to bring the gold for the wedding. He emphasized that Shri Janak Joshi only carried legitimately purchased gold for Shri Manohar Patel and had no past record of carrying gold illegally. Finally, he highlighted that his client had cooperated fully with the investigation from day one, and requested to impose a minimum penalty to serve as an enforcement mechanism rather than a purely punitive measure. For the penalty under Section 112 (a) against Shri Manohar Patel who is ultimate beneficiary he submitted that for imposition of penalty under Section 112 there should be a mens-rea, and Shri Manohar Patel has no personal role during clearance at Airport and he contacted Shri Anil Joshi well before 02-03 months from the date of actual import to bring the gold for him and he was not instructed any of them to bring the gold under green channel or hide it in any manner. he was going to pay the actual amount of gold to them and accordingly requested to impose minimum penalty on his client Shri Manohar Patel. He submitted that he has nothing to add more.

Discussion and Findings:

17. I have carefully gone through the facts of the case, the Show Cause Notice, the written defense submissions filed by both Noticees and the oral/documentary evidence available on record. I, therefore, take up the case for adjudication, on the basis of evidences available on record.

18. In the instant case, I find that the main issue to be decided is Whether the goods seized falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 or not and whether, **200.00** grams of cut gold bar, found concealed by the noticee Shri Janakkumar Ganeshlal Joshi having **market value of Rs. 26,50,000/- (Rupees Twenty-Six Lakh Fifty Thousand Only) and tariff value of Rs. 24,39,536/- (Rupees Twenty-Four Lakh Thirty-Nine Thousand Five Hundred Thirty-Six Only)**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 08.12.2025, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee Shri Janakkumar Ganeshlal Joshi and Shri Manoharlal Devilal Patel are liable for penal action under the provisions of Section 112 of the Act.

19. I note that the case originated from the information received from the Police Inspector, Dabhoda Police Station, Gandhinagar, vide letter dated 12.11.2025 bearing O.N. No. 2968/2025, indicating that the officers of the Local Crime Branch (LCB-2), Gandhinagar had intercepted persons namely Shri Janakkumar Ganeshlal Joshi, Shri Anilkumar Ganeshlal Joshi, Shri Sujal Pravinji Kalal and Shri Manohar Devilal Kalal (Patel) near Lawarpur Bridge on 17.10.2025 and seized gold pieces weighing approximately 199 grams from Shri Janakkumar Ganeshlal Joshi and 147 grams from Shri Anilkumar Ganeshlal Joshi. The information further indicated that said gold appeared to have been brought from Kuwait to India through Ahmedabad Airport without declaration before Customs and without payment of applicable Customs duty. On the basis of said information, the officers of Customs, Preventive Section received the custody of the said gold pieces from the Dabhoda Police Station under Panchnama dated 08.12.2025 in presence of two independent panchas, the accused persons namely Shri Manohar Devilal Patel and Shri Janak Ganeshlal Joshi, police officers of Dabhoda Police Station, and the Government Approved Valuer, Shri Soni Kartikey Vasantrai.

19.1 Before discussing the allegations levelled in the impugned SCN in light of submissions made by the noticees, it is imperative to mention that none of them have retracted from their voluntarily statements tendered by them before Customs officers under Section 108 of Customs Act, 1962 as well as statement tendered before officer of LCB-2 team, Gandhinagar, Gujarat Police. I find that the said noticees have admitted in their respective statements that they have given statements voluntarily and without any inducement, threat and coercion or by any improper means. Both of them (Shri Janakkumar Joshi and Shri Manoharlal Patel) have confirmed that the gold found in possession of Shri Janakkumar Joshi was brought from Kuwait and was cleared without making any declaration before Customs on 17.10.2025. I find that the statements recorded under Section 108 of the Customs Act, 1962 have evidentiary value under the provisions of law.

19.2 It is on record and evident that the noticee Shri Janakkumar Joshi exited through green channel of the Arrival Hall of Terminal 2 of SVPI Airport, without making any declaration to the Customs irrespective of the fact that he had a cut gold bar weighing 200.00 grams of having purity 24kt/995.0. It is also on record that on the basis of specific information, Local Crome Branch, Police officer intercepted a Car Bearing No. RJ 27 CM 5377 (Kia Seltos) and the examination/search of Car alongwith the baggage therein resulted in recovery of said cut gold bar. It is also on record that Government approved Valuer Shri Kartikey Vasantrai Soni had tested and certified that the said cut gold bar was of 24 kt/995.0 purity, weighing 200.00 Grams. The Tariff Value of said gold items having purity 995.0/24 Kt., was **Rs.24,39,536/-** and market Value of **Rs.26,50,000/-**, which was placed under seizure vide Seizure memo dated 08.12.2025 under Panchnama dated 08.12.2025, in the presence of the noticee Shri Manoharlal Patel and having power of attorney in his name provided by Noticee Shri Janakkumar Joshi and independent panch witnesses.

Prior to further discussion, I would like to determine whether the seized goods constitute 'prohibited goods' pursuant to Section 2(33) of the Customs Act, 1962.

20. 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’. 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 Shekih 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 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. This classification is strengthened by the noticee’s explicit, written admission acknowledging non-compliance, which conceded the prohibited status of the subject goods.

21. I find that the passengers/noticees neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed therein during the recording of their statements. The offence was expressly admitted by the noticee, Shri Janakkumar Joshi, in his statement dated 17.10.2025 before the LCB-2, Gandhinagar, and his subsequent statement dated 15.12.2025 before the Customs Officer, Preventive Section, under Section 108 of the Customs Act, 1962. It is on record that the noticee tendered these statements voluntarily. Statements recorded under Section 108 of the Customs Act, 1962, hold significant evidentiary value under the provisions of law.

In their statements dated 17.10.2025 before the LCB-2, Gandhinagar, both noticees Shri Janak Joshi and Shri Manoharlal Patel confirmed that the gold was given to Shri Janak Joshi by Shri Gopal Bhogilal Patel in Kuwait, at the request of Shri Manoharlal Patel. Furthermore, in their respective statements of the same date, they admitted that Shri Janak Joshi was to receive Rs.10,000/- for carrying the gold to India.

I also note that during the seizure made by the LCB-2, Gandhinagar, they explicitly admitted to not having any purchase documents related to the said gold. However, during the panchnama proceeding dated 08.12.2025 for taking over custody of the gold from Dabhoda Police Station, they submitted a copy of Invoice No. 80237 dated 04.09.2025. If they genuinely possessed the said invoice with them, there is no explanation as to why they failed to produce it before the LCB-2 team on 17.10.2025. Therefore, I find that the invoice was managed as an afterthought during the period between the seizure on 17.10.2025 and the takeover on 08.12.2025. This conclusion is heavily supported by the fact that co-accused Shri Anilkumar Joshi returned to Kuwait on 05.11.2025, whereas Shri Gopal Bhogilal Patel was already present, allowing for the retroactive fabrication or management of documents. As established by the Hon'ble Supreme Court in State of Maharashtra v. Natwarlal Damodardas Soni, subsequent production of managed acquisition proofs cannot cure the taint of an illegal importation executed at the customs barrier.

22. I find that the noticee walked through the Green Channel without filing a baggage declaration form or declaring the gold in his possession, demonstrating a clear intent to evade customs duty. For the purpose of customs clearance, arriving passengers must use a two-channel system: the Green Channel for those with no dutiable goods, and the Red Channel for those carrying dutiable goods. Under Section 77 of the Customs Act, 1962, read with the Baggage Rules and Regulation 3 of the Customs Baggage Declaration Regulations, 2013, all passengers are legally required to file a correct declaration of their baggage. By deliberately bypassing the Red Channel and exiting through the Green Channel, the noticee failed to declare the gold. This conduct establishes his clear mindset and intention to evade the payment of applicable customs duty, thereby rendering the seized cut gold bar as non-bonafide baggage. In his submission, the noticee has claimed that the present case is one of inadvertent non-declaration, rather than a deliberate attempt to ingeniously conceal gold or evade detection. He contends that, at worst, his only infraction was a lack of legal awareness. *However, the explanation offered by the noticee cannot be accepted as genuine or credible. It is a well-settled principle of jurisprudence that ignorance of the law is no excuse (ignorantia juris non excusat) for failing to comply with statutory mandates that must be executed in a specific manner. This foundational principle has been consistently recognized and followed by the Hon'ble Supreme Court of India in a catena of judgments. Specifically, the Hon'ble Calcutta High Court in* ***Provash Kumar Dey v. Inspector of Central Excise and Ors.*** *reaffirmed that ignorance of law cannot be used as a shield, and consequently held the petitioner guilty of contravening statutory rules.*

Furthermore, the record reveals that the noticee has been working as a driver in Kuwait since 2012. Being an international traveller who frequently visits India, possesses ample familiarity and practical knowledge of airport customs clearance procedures. Therefore, his plea that a lack of legal awareness prevented him from declaring the gold is clearly an afterthought, lacks creditworthiness, and must be rejected as false.

The noticee further contended that facts and circumstances of the case merits as a bonafide case of non-declaration on the facts that the gold was not concealed ingeniously; was not in commercial quantity; have legitimate purchase invoice; gold was for personal use; no harm to domestic economy; found no antecedents against him and relied upon various judgment in support of his contention. In this regard, I find that the concept of concealment under Customs law is not restricted to body cavities or complex mechanical hiding spots. Active concealment is established when a passenger, while carrying high-value dutiable cargo, consciously bypasses the Red Channel and exits through the Green Channel. By walking through the Green Channel, the passenger made a false declaration by conduct under Section 77 of the Act. As established by the Hon'ble Supreme Court in *State of Maharashtra v. Natwarlal Damodardas Soni*, cross-barrier evasion of restricted goods without declaration constitutes a completed act of smuggling. Therefore, the method of packaging cannot diminish the gravity of the infraction. Further, Precious metal imported in the form of raw, industrial cut bars does not fall under the definition of standard passenger personal baggage as prescribed under Baggage Rules, 2016. Since the Noticee intentionally attempted to clear the said cut gold bar completely outside lawful banking, licensed import, and customs duty channels, the entire transaction is commercial in its scope and impact. The Noticee's claim of a clean record and compliance during the investigation, cooperative behavior during a post-seizure police interrogation does not erase the active fraud committed at the port of entry. The Noticee chose to cooperate only *after* his vehicle was intercepted at Lawarpur Bridge and the hidden bullion was physically uncovered by the LCB-2 team. If he were truly a law-abiding citizen, he would have declared the gold in his possession before the Customs Authority and discharged his lawful duty liability. Therefore, the said improperly imported cut gold bar of 200.00 Grams recovered from the possession of Shri Janakkumar Joshi having market value of Rs. 26,50,000/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee has not fulfilled the conditions of eligible passenger to brought the gold. The noticee have thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

23. I find that as per paragraph 2.26 of Foreign Trade Policy (FTP) 2015-20, *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 the **statutory ITC (HS) Classification of Export and Import Items, as amended from time to time**, import of all dutiable articles by a passenger in his baggage is 'Restricted' and subject to the fulfillment 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 exceeds 30 days and such passenger have not availed of the exemption under this notification.

24. 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.

25. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold item having total weight 200.00 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 exited through green channel without making any declaration regarding the cut gold bar in order to evade the payment of eligible Customs Duty.

26. I find that the noticee has clearly accepted that he had not declared the gold items viz. cut gold bar weighing 200.00 to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad and exited from the green channel. Had he not been intercepted by the LCB-2 team, Gandhinagar, at Lawarpur Bridge, he would have escaped with the undeclared gold without payment of customs duty. In his submission, Shri Janakkumar Joshi mentioned that the gold was purchased by him in legitimate way for Shri Manoharlal Patel's daughter marriage and the same would be reimbursed by Shri Manoharlal Patel on actual basis, however in his statement dated 17.10.2025 before LCB-2 team, he clearly admitted that he had no purchase bill/invoice for that and same was handed over to him by Shri Gopal Bhogilal Patel, a relative of Shri Manoharlal Patel who asked him to send the gold and for that he would get Rs.10,000/-. I find that the noticee has completely failed to discharge the burden of proof cast upon him under Section 123 of the Customs Act, 1962, as he failed to provide item-wise inventory, verifiable banking transactions, or funding sources required to prove a legitimate, bona fide import. To evaluate the noticee's claims, I look to the mandatory conditions prescribed in Para 3 of Circular No. 06/2014-Cus dated 06.03.2014. The circular explicitly mandates that for the import of gold in any form, an eligible passenger must declare an item-wise inventory of the gold being imported, which must be duly certified by the passenger and the assessing officer. Furthermore, field officers are explicitly directed to ascertain the passengers' antecedents, the source of funding for the gold, the source of foreign currency used to pay the duty, and the identity of the person who booked the travel tickets. This structural grid is enacted specifically to prevent the misuse of baggage facilities by unscrupulous elements who hire eligible passengers as paid carriers.

From the aforementioned conditions, it is crystal clear that a passenger must declare an item-wise inventory and provide strict documentary proof regarding the source of money used for the purchase. Merely claiming ownership of the gold on the strength of an invoice, which itself was belatedly managed without supporting evidence like bank transaction details, completely fails to establish a legitimate, bona fide purchase for personal use.

Consequently, the act of bringing gold across the barrier without declaring it in the prescribed manner, with the clear intent to evade customs duty, conclusively establishes a case of smuggling. By importing smuggled gold that was clearly not for bona fide personal use, the noticee violated Section 77 and Section 79 of the Customs Act, 1962, thereby attracting a consequential violation of Rule 11 of the Foreign Trade (Regulation) Rules, 1993, and Para 2.26 of the Foreign Trade Policy, 2015-20.

26.1 As gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence but an unverified, delayed invoice to discharge this legal onus. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold items belong to him is not tenable on basis of no documentary evidence.

27. From the facts and evidence discussed above, it is conclusively established that the passenger/noticee brought 24-karat gold items of 995.0 purity, weighing 200.00 grams in the form bar, and intentionally concealed them upon his arrival from Kuwait to Ahmedabad. His deliberate actions were aimed at smuggling and removing the goods without the payment of appropriate customs duty. Consequently, the gold weighing 200.00 grams, seized under the panchnama dated 08.12.2025, is liable for confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l), and 111(m) of the Customs Act, 1962. By secreting the cut gold bar and failing to declare them before the customs authorities, the noticee's clear and premeditated intent to clandestinely smuggle the gold and evade customs duty is fully proved. The commission of the aforementioned acts squarely brings the impugned goods within the ambit of 'smuggling' as defined under Section 2(39) of the Customs Act, 1962.

27.1. 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 fulfillment 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 fulfillment 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

(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. 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 conditions were 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 cut gold bar in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) 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 cut gold bar was not declared by Shri Janakkumar Joshi to the Customs under Section 77 of the Customs Act, 1962 and exited 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 cut gold bars which was found concealed and recovered in manner as described above, was made by the Noticee Shri Janakkumar Joshi, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

(III) 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 cut gold bar weighing 200.00 Grams recovered from the possession of Shri Janakkumar Joshi having market value of Rs. 26,50,000/- and admittedly smuggled into India. On test, the gold bar was found to be of purity of 995.0/24kt. Further, I find that the noticees failed to establish alongwith valid documents regarding legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Shri Janakkumar Joshi, thus failing to discharge the "burden of proof" that the gold was legally imported/possessed. He has 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.*

Accordingly, the said gold bar is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

28. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered the gold of 24 kt having 995.0 purity weighing 200.00 gms., in form of cut bar, having total market Value of Rs.26,50,000/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 08.12.2025 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By utilizing the modus operandi of wrapping of cut gold bar in black tape and concealing the same with the packets of Pistachois, Almonds to disguise them as personal effects, and by failing to declare them to the customs authorities upon arrival in India, it is established that the passenger/noticee was fully aware that the import of the said goods was illicit in nature. It is clear that he knowingly carried the gold and deliberately failed to declare it to customs upon arrival at the airport. The record demonstrates that he actively involved himself in carrying, possessing, concealing, and dealing with the impugned goods in a manner where he knew, or had reasons to believe, that the items were liable to confiscation under the Act. Consequently, it is proved beyond doubt that the passenger has committed an offence of the nature described under Section 112 of the Customs Act, 1962, thereby rendering himself liable to a penalty under the said section.

29. Once the seized goods are held to be liable for confiscation, the next question before me to decide is whether to allow the release of the impugned goods on Redemption Fine or order for absolute confiscation of the same. The provisions related to redemption of confiscated goods are stipulated in Section 125 of the Customs Act, 1962; sub-section (1) of the said section 125 says that

"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 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. It is, amply clear from the said Section that, where the confiscated goods are not prohibited for import or export, the Adjudicating Authority is under obligation to release the same. However, in those cases where the confiscated goods are prohibited for import or export, discretion has been vested in the Adjudicating Authority to decide the issue on the basis of the facts and circumstances involved.

30. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods on merit. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large. 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. 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 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, <u>*I find that judgments relied upon by the noticee, is not squarely applicable in the instant case.*</u> 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. 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 noticee did not want to declare the said cut gold bar and removed 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)] <u>*that the option to release 'Prohibited goods' on redemption fine is discretionary*</u>. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that <u>*"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.*</u>". Also, Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that <u>*"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."*</u> Also, in a recent 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 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 :-

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

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

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

30.2. 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.

30.3. 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).

30.4 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.

30.5. 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".

30.6. 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."*

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*"**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**."*

31. Further, the noticee Shri Janakkumar Joshi in his written submission asked for re-export and placed reliance on many case laws wherein seized goods were allowed for re-export. Before, further discussion, I would like to reproduce the provisions envisaged under Section 80 of the Act as:

"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 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 authorized by him and leaving India or as cargo consigned in his name".

31.1 I find that Section 80 of the Act does allow re-export of goods but the important point to be seen is as to whether there has been a true declaration of the goods on arrival. The legislative object behind Section 80 also deserves emphasis. The benefit of detention for subsequent re-export is available only to a passenger who voluntarily approaches the Customs authorities and truthfully declares the goods carried by him or her. The statutory incentive contained in Section 80 is intended to encourage truthful disclosure at the point of entry into India. It is not designed to confer the same benefit upon a passenger who suppresses the existence of dutiable or prohibited goods, crosses the Green Channel and is thereafter intercepted upon detection by the Customs authorities. A perusal of the provisions of Section 77 reveals that Section 77 casts a mandatory obligation upon every passenger arriving in India to truthfully declare the contents of his or her baggage before clearance by the Customs authorities. Section 80, which specifically deals with passenger baggage, creates a limited statutory exception. It enables the proper officer, upon the request of the passenger, to detain dutiable or prohibited articles for the purpose of their subsequent return or re- export. However, this statutory benefit is not available universally. ***The Legislature has consciously made its availability conditional upon the passenger having made a true declaration under Section 77***. Section 125, on the other hand, operates in an altogether different field. It empowers the adjudicating authority to grant an option to redeem confiscated goods upon payment of redemption fine. The provision neither specifically deals with passenger baggage nor expressly authorises re-export of confiscated baggage irrespective of compliance with Section 80. Further, it is already established and an admitted fact that there was no declaration made by the noticee in respect of said cut gold bar which were found in possession of the noticee. Therefore, the option under Section 80 of the Act would not be applicable to him. The request for re-export is therefore, rejected. To support my view, I put reliance on the judgment of Hon'ble Delhi High Court in the matter of Jasvir Kaur v. Union of India wherein Hon'ble Court observed that :-

"*9. We have no manner of doubt that re-export cannot be asked for as of right. If the Customs authorities have come to the conclusion, as they did in the present case, that the intention of bringing an article of high value is to dispose it of in India or is in an attempt to smuggle the same into India then the question of re-export cannot arise when that article is recovered from the passenger. The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export. That is not the intention of Rule 3 or Rule 7 of the Tourist Baggage Rules. It is the genuine personal jewellery which alone is permitted to be brought."*

Also, in latest judgment, the Division Bench of the Hon'ble High Court of Delhi in ***Oguljeren Derchiyeva v. Union of India*** has categorically held that *the special statutory mechanism for re-export is strictly contingent upon a passenger making a truthful, initial declaration under Section 77.*

32. Given the facts of the present case and the judgments and rulings cited above, I find that the deliberate manner of concealment clearly demonstrates the noticee's intent to smuggle the seized gold to evade detection by the customs authorities. Consequently, the noticee has failed to discharge the burden of proof cast upon him under Section 123 of the Customs Act, 1962. Therefore, the gold weighing 200.00 grams with a purity of 24kt/995.0, brought in the form of cut gold bar and concealed by the noticee, is liable for **absolute confiscation. Accordingly, I hold in unequivocal terms that the said seized gold weighing 200.00 grams is liable for absolute confiscation under Sections 111(d), 111(f), 111(i), 111(j), 111(l), and 111(m) of the Customs Act, 1962**. **I also hold in unequivocal terms that black tape used to conceal the gold bar, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.**

33. Now, I came to decide whether the noticee Shri Janakkumar Joshi is liable for penalty under Section 112 or otherwise:

From the above discussions and findings in the foregoing paras, it is very evident that the noticee had involved himself in the act of smuggling of gold weighing 200.00 grams of 24Kt./995.0 purity, retrieved in form of cut gold bar concealed by noticee. Further, it is fact that the passenger/noticee has travelled with gold items totally weighing 200.00 grams of 24Kt./995.0 purity, from Kuwait to Ahmedabad 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 thereunder. Accordingly, 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"* . 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 weighing 200.00 grams, having purity 995.0/24Kt 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 is liable for confiscation under Section 111 of the Customs Act, 1962. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under *"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"* and covered under Section 112(a) of the Customs Act, 1962 and *Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act,* *1962*. Therefore, I find that the noticee is liable for the penalty under Section 112(b) of the Customs Act,1962 and I hold accordingly.

34. Now, I came to decide whether the noticee Shri Manoharlal Patel is liable for penalty under Section 112 or otherwise:

34.1 From the records available in file in form of Panchnama dated 17.10.2025 drawn by LCB-2 team, Gandhinagar, Statement/confession dated 17.10.2025 of all noticees before LCB, Gandinagar, Gujarat Police, Panchnama dated 08.12.2025 and statement of Shri Janakkumar Joshi and Shri Manoharlal Patel under Section 108 of Customs Act, 1962, I find that Shri Manoharlal Patel was actively engaged in the smuggling of gold. Firstly in his statement dated 17.10.2025 before officers of LCB-2 Gandhinagar, he clearly admitted that he contacted Shri Gopal Bhogilal Patel, a relative of him and was working in Kuwait to bring the gold and also admitted that the said seized gold in form of bar was handed over to Shri Janakkumar Joshi by Shri Gopal Bhogilal Patel and the said fact was also admitted by Shri Janakkumar Joshi in his statement dated 17.10.2025 presented before officers of LCB-2, Gandhinagar and also admitting the fact that he would get Rs.10,000/- for carrying the said gold to India. Further, during the panchnama proceeding dated 08.12.2025 and subsequent statement dated 23.12.2025, he submitted that he contacted Shri Janakkumar Joshi to bring the gold for his daughter's marriage and Shri Gopal Bhogilal Patel accompanied Shri Janakkumar Joshi while purchasing the gold from Kuwait Market. He further claimed that the gold was purchased by Shri Janak Joshi under legitimate invoice and payment was made in cash which he was going to reimburse/return to Shri Janak Joshi on actual basis and no other consideration was to be given apart from the value of the Gold.

He further contended that the procurement was lawful, submitting a copy of Invoice No. 80237 dated 04.09.2025 issued by M/s. Al-Najma Daulia Gold Jewellery (Kuwait) in the name of Shri Janakkumar Joshi. He maintained that the gold was purchased in a bona fide manner for a bona fide purpose, namely his daughter's marriage. In this regard, I have already discussed the truthfulness and genuineness of the said invoice at length in the foregoing paragraphs; therefore, I refrain from repeating the same findings. Further, the noticee contended that Section 123 of the Customs Act, 1962 cannot be invoked against him, as he was not in direct possession of the gold. He further alleged that he is only being charged with abetment, which falls outside the scope of Section 123 of the Act. In this regard, I rely on the decision of the Hon'ble Supreme Court of India in the matter of Balumal Jamnadas Batra v. State of Maharasthra, wherein the Hon'ble Court held that: *'even if the goods bearing foreign markings were not seized under the Customs Act, and as such Section 123(1) of the Act was not attracted, the aforementioned circumstances, under Section 114 read with Section 106 of the Evidence Act, were sufficient to presume that the accused knew that the goods had been smuggled or imported in contravention of law.'*

The ratio of the aforementioned case law is squarely applicable to the present facts. The noticee, Shri Manoharlal Patel, had complete knowledge that the gold was with Shri Janakkumar Joshi, and that the same was brought by him on the specific instructions of Shri Manoharlal Patel. Accordingly, the burden of proving that the said gold was not smuggled lies squarely upon the noticee, Shri Manoharlal Patel. Therefore, the noticee's contention that Section 123 of the Customs Act, 1962 is inapplicable to him holds no merit and is hereby rejected.

34.2 Shri Manoharlal Patel argues that the reverse burden of proof under Section 123 applies strictly to the person from whose physical possession the goods were seized or the legal owner. He submits that since the gold bar was recovered from the check-in luggage of Shri Janak Joshi, and no financial reimbursement had taken place, legal title never transferred to him under contract law. Citing *Amritalakshmi Machine Works* and *Rajeev Khatri*, he argues that the Revenue has no positive evidence showing he abetted terminal clearance or held a specific *mens rea* regarding the Green Channel bypass. I find that in cases of gold smuggling, a co-noticee's involvement may extend beyond direct possession of the gold, encompassing various roles such as facilitating transportation, providing logistical support, or even engaging in money laundering. Further, I also consider the totality of circumstances, including statements from co-noticees and the noticee himself, to determine the extent of their involvement in the smuggling operation and from the evidences on the record. I find that in the instant case the noticee himself arrived at Airport to pick Shri Janakkumar Joshi to take the delivery of gold. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act" covered under Section 112(a) of the Customs Act, 1962 and *carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods is clearly covered under Section 112(b) of the Customs Act, 1962*. The statutory provisions of Section 112(b) do not limit penalty action strictly to the individual holding legal title or physical custody of goods. It widely covers any individual who is "in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with" smuggled items. In the instant case, the noticee Shri Manoharlal Patel instructed to Shri Janakkumar Joshi to brought the gold from Kuwait, who intentionally on his arrival at Airport did not declare the said gold before the Customs Authority and exited through green channel without making any declaration. Further, I find that in the instant case, Shri Manoharlal Patel is ultimate beneficiary. I find that, the manner of concealment being clever, conscious and pre-meditated and this being a clever attempt to brazenly smuggle impugned gold and noticee was fully aware that the import of said goods is offending in nature.

34.3 The co-noticee, Shri Manoharlal Devilal Patel, has vehemently argued that he cannot be penalized under Section 112 of the Customs Act, 1962, on the ground that the Revenue has failed to adduce positive evidence to establish *mens rea* or conscious knowledge of the illegal clearance. He has placed heavy reliance on a constellation of judicial decisions primarily *Amritalakshmi Machine Works v. CC (Bom.)*, *Rajeev Khatri v. CC (Del.)*, and

Lalit Jain v. CC (Tri.-Ahm.). Ongoing through the judgments relied upon by the Noticee, I note that the legal propositions laid down in those cases operate in a completely different factual galaxy and are entirely distinguishable from the present case. I find that the co-noticee, Shri Manoharlal Devilal Patel, had complete and conscious knowledge of the gold being brought into the country by the passenger, Shri Janakkumar Joshi. This fact is conclusively established by his own voluntary admission in his statement recorded under Section 108 of the Act, wherein he explicitly stated that he had contacted Shri Janakkumar Joshi to procure and bring the gold from Kuwait, promising to pay him the actual cost of the gold in return upon arrival. It, is therefore, mens-rea of the noticee is proved beyond doubt. Therefore, the noticee has involved in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with any goods** which he knows or has reason to believe that goods is liable to confiscation under section 111 and is liable to penalty under Section 112(b) of Customs Act, 1962. 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. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 200.00 grams. Despite his knowledge and belief that bringing the gold in concealed manner without making declaration is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it. Accordingly, I hold that the noticee named Shri Manoharlal Patel is liable for the penalty under Section 112 (b) of the Customs Act,1962 and I hold accordingly.

35. Accordingly, I pass the following Order:

OIO No:72 /ADC/SRV/O&A/2026-27
F. No: VIII/10- 11/Prev./O&A/HQ/2026-27

O R D E R

i.) I order **absolute confiscation** of a cut gold bar weighing **200.00 grams** having Market Value at **Rs.26,50,000/- (Rupees Twenty-Six Lakh Fifty Thousand only)** and Tariff Value is Rs**. 24,39,536/- (Rupees Twenty-Four Lakh Thirty-Nine Thousand Five Hundred Thirty-Six only)** concealed by the passenger/noticee Shri Janakkumar Ganeshlal Joshi and placed under seizure under panchnama dated 08.12.2025 and seizure memo order dated 08.12.2025 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I order absolute confiscation of Black tape used for wrapping and concealing the gold bar placed under seizure under panchnama dated 08.12.2025 and seizure memo order dated 08.12.2025 under Section 119 of the Customs Act, 1962

iii.) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Janakkumar Ganeshlal Joshi under the provisions of Section 112(b)(i) of the Customs Act 1962.

iv.) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Manoharlal Devilal Patel under the provisions of Section 112(b)(i) of the Customs Act 1962.

36. Accordingly, the Show Cause Notice No. CUS/SIIB/MISC/1376/2025-PREV-O/o PR COMMR-CUS-AHMEDABAD dated 05.06.2026 stands disposed of.

Digitally signed by
SHREE RAM VISHNOI
Date: 01-09-2026
14:58:22

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10- 11/Prev./O&A/HQ/2026-27 Date:01.09.2026

DIN: **20260871MN00003D2B71**

By SPEED POST A.D.

OIO No:72 /ADC/SRV/O&A/2026-27
F. No: VIII/10- 11/Prev./O&A/HQ/2026-27

To,

1. **Shri Janakkumar Ganeshlal Joshi,**
C/o Ganesh Lal Joshi, Jetana, Via- Bhilura,
Taluka Sagwara, Dungarpur, Rajasthan-314031
Email id – janakjoshi041@gmail.com

2. **Shri Manoharlal Devilal Patel,**
Resident of 45-46, Laxminagar Society,
Naya Hospital Road, Dungarpur,
Rajasthan- 314001
Email id- kalal.hkhardik51@gmail.com

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.