



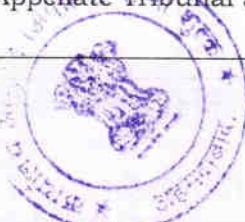
सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हड्कोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250871MN0000222EEB

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| क | फाइलसंख्या FILE NO. | S/49-454,455/CUS/AHD/2023-24 |
| ख | अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) : | AHD-CUSTM-000-APP-175 & 176-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 08.08.2025 |
| ङ | उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | 220/ADC/VM/O&A/2023-24, dated 09.02.2024 |
| च | अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON: | 08.08.2025 |
| छ | अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT: | <p>(i) Mr Fardeen S/o Mohd. Samar, R/o 1264, Gali Juman Wali, Daryaganj, Central Delhi, Delhi – 110002.</p> <p>(ii) Mr Mohammad Umaiz S/o Mohd. Mansoor, R/o 366, Katra Dhodiyan Bazar, Delhi Gate, Daryaganj, Central Delhi, Delhi – 110002.</p> |
| १. | यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है। | |

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| | This copy is granted free of cost for the private use of the person to whom it is issued. |
| 2. | <p>सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं।</p> |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. |
| | <p>निम्नलिखितसम्बन्धितआदेश/Order relating to :</p> <p>(क) बैगेजकेरूपमेंआयातितकोईमाल.</p> <p>(a) any goods imported on baggage.</p> <p>(ख) भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो।</p> <p>(ब) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.</p> <p>(ग) सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी।</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p> |
| 3. | <p>पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :</p> <p>The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :</p> <p>(क) कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए।</p> <p>(a) 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.</p> <p>(ख) सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र) ,जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क,मांगागयाव्याज,लगायागयादंडकीराशीऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-</p> <p>(d) The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.</p> |
| 4. | <p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p> |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : |



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| | सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench |
| | दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016 | 2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| 5. | सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए- | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of - |
| (क .) | अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउसेकमहोतोएकहजाररुपए. | |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees; | |
| (ख .) | अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो; पाचहजाररुपए | |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ; | |
| (ग) | अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो; दसहजाररुपए. | |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees | |
| (घ) | इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंडविवादमेहैं, यादंडके 10%अदाकरनेपर, जहांकेवलदंडविवादमेहै, अपीलरखाजाएगा। | |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. | |
| 6. | उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए. | |
| | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- | |
| | (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |



ORDER-IN-APPEAL

Shri Fardeen S/o Mohd. Samar, R/o 1264, Gali Juman Wali, Daryaganj, Central Delhi, Delhi – 110002 (hereinafter referred to as “the appellant - 1”) and Shri Mohammad Umaiz S/o Mohd. Mansoor, R/o 366, Katra Dhodiyan Bazar, Delhi Gate, Daryaganj, Central Delhi, Delhi – 110002 (hereinafter referred to as “the appellant - 2”) have filed the present two appeals in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 220/ADC/VM/O&A/2023-24, dated 09.02.2024 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that the appellant - 1 and appellant - 2, arrived from Bhubaneshwar to Ahmedabad on 05.07.2023 by Flight No. 6E-645 at SVPI Airport (Domestic), Ahmedabad. On the basis of passenger profiling and specific input that appellants were carrying dutiable/ contraband goods, the aforesaid appellants were intercepted by the DRI as well as Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while they were attempting to smuggle gold of foreign origin under the panchnama proceedings dated 05.07.2023 in presence of two independent witnesses. The officers asked the appellants, if they have anything to declare, in reply to which they denied. Thereafter, the officers proceed to examine all the baggage belonging to the appellants and on examination, nothing objectionable was found. Thereafter, on further interrogated the appellants confessed that their intention to travel from Bhubaneswar to Ahmedabad in Indigo Flight No. 6E-645 was just to collect the gold of foreign origin which was concealed inside one of the seats of said flight by a person who had travelled in the same flight from Dubai to India.

2.1 On being asked regarding who had come from Dubai to India, where the person was arrived in India, name and address of the said person, the flight details by which he arrived from Dubai to a place in India etc. The said appellant replied that they do not know about the name and address of the person, flight details, or any other matter relates to the person who came from Dubai to India. Further the appellant -1 stated that he was communicated by one person viz. Shri Shadab having his Mobile No. 8035296666 in Delhi to first go to Bhubaneswar from Delhi and then to board the Indigo Flight No. 6E 645 which was going from Bhubaneswar to Ahmedabad; that the said person has also arranged for the tickets from Delhi to Bhubaneswar and from Bhubaneswar to Ahmedabad. He further stated that as per the arrangement/ mutual understanding, Shri Shadab



had web-checked in and booked his seat to seat No. 29-E of Indigo Flight No. 6E-645 and as per his direction, he (appellant - 1) has to sit at the Seat No. 29-E and to travel from Bhubaneswar to Ahmedabad; that as per their planning, the person who came from the very same flight from Dubai to a place in India, which was earlier an international flight and subsequently converted into domestic flight and arrived to Bhubaneswar, had concealed the gold at Seat No. 29E of that flight. Accordingly, Shri Shadab of Delhi has given this task to recover the concealed gold from Seat No. 29E of Indigo Flight which was an international flight earlier. Accordingly, to get that foreign origin gold from the said specific seat, he has travelled from Bhubaneswar to Ahmedabad. On being asked, he stated that he had been given Rs. 12,000/- for that task. Accordingly, a statement of the appellant - 1 dated 06.07.2023 was recorded under Section 108 of the Customs Act, 1962.

2.2 Further, the appellant -2 stated that Shri Shadab had only given him directions to first go to Bhubaneswar from Delhi and then to board the Indigo Flight No. 6E 645 which is going from Bhubaneswar to Ahmedabad; that he had to just keep a watch on the activity of appellant -1 when he collected the gold from the said seat i.e. Seat No. 29E of that flight. He further stated that Shri Shadab had only arranged for the tickets from Delhi to Bhubaneswar and from Bhubaneswar to Ahmedabad. He further stated that as per the arrangement/ mutual understanding, Shri Shadab had web-check in and booked his seat to seat No. 23-D of Indigo Flight No. 6E-645 and as per his direction, appellant -1 had to sit at the Seat No. 29-E and as per planning, the person who came from the very same flight from Dubai to a place in India, which was subsequently converted into domestic flight and arrived to Bhubaneswar, has concealed the gold at Seat No. 29E of that flight. He further stated that he had to keep an eye on appellant -1 so that after recovering the concealed smuggled gold, he may not run away so he had travelled from Bhubaneswar to Ahmedabad. On being asked, he stated that he had been given Rs.10,000/- for that task. He also stated that he did not know the person and the relevant flight details except the facts that the said person was arrived from Dubai to a place in India and he had concealed the gold at Seat No. 29-E just to evade the Customs duty. Accordingly, a statement of the appellant -2 was recorded on 06.07.2023 under Section 108 of the Customs Act, 1962.

2.3 Thereafter, the officers asked both the appellants if they came to recover that gold of foreign origin from that Indigo Flight, now where was the gold. The appellants replied that due to movement of the rest of the passengers and watch of the security persons, the appellant -1 felt

uncomfortable and fear to recover the said concealed foreign origin gold and they deboard the Indigo Flight at Ahmedabad without taking the gold from that seat and the gold was still lying there only where it was concealed by the said unknown person. To verify the facts, the officers, the panchas as well as the appellants visited the apron areas of Terminal - 1 of SVPI Airport, Ahmedabad and started the rummaging of Indigo Flight No. 6E 645 specifically Seat No. 29-E and 23-D. Upon careful verification, the officers find that a grey-coloured pouch is concealed with double sided adhesive tape inside Seat No. 29-E of Indigo Flight No. 6E-645. Upon further verification, the pouch contains some substance in paste form. The officers further declare that as per the confession of the appellants and primary verification of the said pouch, it appears gold in paste form and therefore, the further verification was required. Since there is no Customs Office at Terminal 1, the officers, the panchas as well as the appellants came to the AIU office which was at arrival hall of Terminal 2 of SVPI Airport, Ahmedabad at 00.10 AM of 06.07.2023.

2.4 Thereafter, the said recovered material in paste form appeared to be of gold which needed to be confirmed and the purity as well as weight of the paste needed to be ascertained by a Government Approved Valuer. The Government Approved Valuer Shri Kartikey Vasantrai Soni After testing the said bar derived from 706.280 grams of packet containing gold paste and chemical mix., the Government Approved Valuer confirmed vide his Valuation certificate No. 231/2023-24 dated 06.07.2023 that it was pure gold. Further, he informed that the said recovered gold bar derived from the paste substance consisting of Gold & Chemical Mix, total having net weight of gold 614.000 grams, purity 999.0, Market Value at Rs. 37,08,560/- and Tariff Value is Rs.31,20,753/-. The value of the gold bar has been calculated as per the Notification No. 47/2023-Customs (N.T.) dated 30-06-2023 (gold) and Notification No.44/2023-Customs (N.T.) dated 15-06-2023 (exchange rate).

2.5 In view of the above, 614.000 grams Gold Bar had been placed under Seizure on 06.07.2023 under panchnama proceedings dated 06.07.2023 and Seizure Memo dated 06.07.2023 on the reasonable belief that the same are liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally.

2.6 Both the appellants had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The appellants had improperly imported gold weighing 614.000 grams having purity 999.0/24 Kt. derived from semi solid gold paste weighing 706.280 grams and having

Market Value at Rs.37,08,560/- and Tariff Value is Rs.31,20,753/-. The said semi solid gold paste was hidden in a packet duly wrapped with grey-colour adhesive tape and not declared to the Customs. The appellants tried to exit the Airport with the deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Thus, the element of mens rea appears to have been established beyond doubt. Therefore, the Improperly imported gold bar weighing 614.000 grams of purity 999.0/24 Kt. by the appellants by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bona fide household goods or personal effects. The appellants 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.

2.7 By not declaring the value, quantity and description of the goods imported by him, the appellants have violated the provisions of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013. The improperly imported gold by the appellants, found hiding in a packet duly wrapped with grey colour adhesive tape in the form of semi solid gold paste, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(1), 111(1), 111(1) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962. The appellants, by his above-described acts of omission/commission and/or abetment on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962. As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing 614.000 grams of purity 999.0/24 Kt. and having Market Value at Rs.37,08,560/- and Tariff Value is Rs.31,20,753/-, derived from semi solid gold paste weighing 706.280 grams hiding in a packet duly wrapped with grey colour adhesive tape in the form of semi solid gold paste without declaring it to the Customs, is not smuggled goods, is upon the appellants.

2.8 A Show Cause Notice under F. No. VIII/10-139/SVPIA-A/O&A/HQ/2023-24, dated 10.11.2023 was issued to the appellants proposing for confiscation of One gold bar weighing 614.000 grams having purity of 999.0 (24 Kt) recovered/ derived from the paste comprising of Gold and chemical Mix totally weighing 706.280 grams, having Market Value of Rs.37,08,560/- and Tariff Value of Rs.31,20,753/- under Section

111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. And for imposition of penalty upon the appellants under Section 112 of the Customs Act, 1962.

2.9 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of One gold bar weighing 614.000 grams having purity of 999.0 (24 Kt) recovered/ derived from the paste comprising of Gold and chemical Mix totally weighing 706.280 grams, Market Value at Rs.37,08,560/- and Tariff Value is Rs.31,20,753/- under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. The adjudicating authority also imposed penalty of Rs.15,00,000/- each on the appellant-1 & 2 under Section 112(a) (i) of the Customs Act, 1962.

3.1 Being aggrieved with the impugned order, the appellant -1 has mainly contended that;

- That the paste seized from the appellant was not imported from abroad by the appellant or by any other person. As stated above the appellant came from Bhubaneswar to Ahmadabad as a domestic passenger. It is on record that the appellant was a domestic passenger. Therefore, there was no need to declare the paste to the customs officers.
- Section 123 of the Customs Act, 1962 is not applicable.
- No evidence to prove foreign origin of gold paste. That the Air Intelligence Unit Officer case against the appellant is that one passenger who kept the gold in paste form under the seat no. 29E of the flight arrived from Dubai but could not locate the passenger who brought the gold in paste form from Dubai. There is nothing in the finding of the Additional Commissioner of Customs that the gold in the paste form was imported from Dubai and no name of the passenger who has brought the paste from Dubai. Further it is submitted that the appellant Mr. Fardeen has purchased the paste in gold form from Chandani Chowk Delhi. That appellant Mr. Fardeen is the owner of paste seized by the AIU Customs Department and also in the finding of the Additional Commissioner of Customs that appellant is the owner of gold paste. Further it is mentioned in his finding that the gold in paste form was seized from the appellant. That the paste confiscated by the Additional Commissioner of Customs is not of foreign origin. There is no foreign marking on the paste seized by the Customs Department showing of foreign origin. It is on record that the gold was extracted from the paste seized by the AIU Customs Officer. That the case against the appellant is totally wrong and without any basis on the

other hand the gold in paste form was bought by the appellant from Delhi and went to Bhubaneswar for sale in Bhubaneswar but he could not find a suitable purchaser in Bhubaneswar. So he decided to sale the gold in paste form at Ahmadabad. Gold was seized by the Customs Department in the domestic terminal Ahmedabad and thereafter absolutely confiscated by the Additional Commissioner Airport Ahmedabad. The appellant relied upon:

- (i) B. Dayalal Jain versus Commissioner of Customs, Bangalore 2006 (205) E.L.T. 229 (Tri. - Bang.) Final Order No. 1643/2005, dated 13-9-2005 in Appeal No. C/315/2003.
- (ii) Rajesh Pawar versus Union of India 2014 (309) E.L.T. 600 (Cal.) W.P. No. 209 of 2003, decided on 19-8-2014.
- (iii) Commissioner of Customs, Kolkata versus Mahesh Karel 2018 (363) E.L.T. 436 (Tri. - Kolkata) Final Order Nos. 75119-75121/KOL/2018 and Misc. Order No. M/75041/KOL/2018, dated 25-1-2018 in Application No. MA/COD/75648/2017 in Appeal Nos. C/76280, 76133 & 75819/2017-SM.

- The penalty imposed under Section 112(a) (i) is not called for in the given facts and circumstances of the case, the same may kindly be set aside.

3.2 Being aggrieved with the impugned order, the appellant -2 has mainly contended that;

- Gold in paste form not seized from appellant - 2. It is on record that the appellant Mohammad Umaiz was having no gold in paste form at the time intercepted by the DRI and AIU Unit Officers posted at Ahmedabad International Airport. Neither the gold in paste form was seized from the appellant nor he is the owner of gold in paste form.
- From perusal of Section 112(a) (i) it is very clear that this section is applicable to the person who came from abroad. Here in this case the appellant never went abroad and also there is no finding in order that appellant went out of India and imported the gold in paste from abroad. Particularly when it is established from the air ticket. That the appellant came to Ahmedabad as a domestic passenger. Under such circumstances of the case no penalty is imposable upon the appellant. The appellant -2 relied upon:

- (i) IN RE: K. ANBALAGAN 2020 (374) E.L.T. 285 (G.O.I.) Order No. 97/2020-CUS (SZ)/ASRA/Mumbai, dated 21-7-2020 in F. No. 380/182/B/16-RA/3941.

- (ii) Commissioner of Customs & C. Ex., Meerut versus Pawan Kumar Gupta 2011 (271) E.L.T. 10 (S.C.).
- (iii) Anant Samant versus Commissioner of Customs, Mumbai 2000 (117) E.L.T. 444 (Tribunal).
- (iv) Order No. 258/18-Cus Dated 30.01.2019 in the case of Shamim Ahmed.

4. Smt Harsimran Kaur, Advocate, appeared for personal hearing on 01.07.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. The advocate during personal hearing also relied upon certain case laws and circular.

5. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in the present appeal are as under;

- (a) Whether the impugned order directing confiscation of the One gold bar weighing 614.000 grams having purity of 999.0 (24 Kt) recovered/ derived from the paste comprising of Gold and chemical Mix totally weighing 706.280 grams, having Market Value of Rs.37,08,560/- and Tariff Value of Rs.31,20,753/- without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;
- (b) Whether the quantum of penalty amounting to Rs. 15,00,000/- imposed on the appellant - & 2, under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

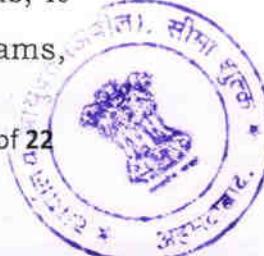
5.1 It is observed that Appellant No. 1 and Appellant No. 2 arrived at Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad on 05.07.2023 from Bhubaneswar via Indigo Flight No. 6E-645 (domestic). Based on specific intelligence and passenger profiling indicating the carriage of dutiable or contraband goods, the appellants were intercepted by officers of the Directorate of Revenue Intelligence (DRI) and Air Intelligence Unit (AIU), Customs, SVPIA, Ahmedabad. During the course of interception under panchnama proceedings conducted on 05.07.2023 in the presence of two independent witnesses, the officers enquired whether the appellants had anything to declare. Both denied carrying any dutiable or contraband goods. Subsequently, all baggage belonging to the

appellants was examined, but nothing objectionable was found. Upon further interrogation, both appellants admitted that their travel from Bhubaneswar to Ahmedabad on the said flight was part of a plan to retrieve gold of foreign origin concealed inside the aircraft. They stated that an unknown individual, who had travelled on the same flight when it was operating internationally from Dubai, had hidden the gold under a specific seat prior to the flight's conversion to a domestic leg. Appellant No. 1 disclosed that he was contacted by one Shri Shadab, resident of Delhi (Mobile No. 8035296666), who instructed him to travel from Delhi to Bhubaneswar and board Indigo Flight No. 6E-645 from Bhubaneswar to Ahmedabad. Shri Shadab had arranged both flight tickets and directed Appellant No. 1 to occupy Seat No. 29-E, where the gold was purportedly concealed. The appellant stated that as per instructions, the gold was to be retrieved from that seat during the journey. He was promised a sum of ₹12,000/- for completing this task. Appellant No. 2 corroborated the above facts and added that his role was to accompany Appellant No. 1 and monitor him to ensure he did not abscond after retrieving the gold. He was assigned Seat No. 23-D on the same flight and had similarly been directed by Shri Shadab. He was promised a payment of ₹10,000/- for his involvement. When questioned as to why the gold was not retrieved, the appellants stated that due to passenger movement and vigilance by security personnel, Appellant No. 1 became apprehensive and refrained from removing the concealed gold. They deboarded the flight at Ahmedabad without retrieving the contraband. To verify the statements, Customs officers, in the presence of the panchas and the appellants, conducted a rummaging of the Indigo Flight No. 6E-645 while it was stationed at Terminal 1, SVPIA, Ahmedabad. A thorough search of Seat Nos. 29-E and 23-D was undertaken. During this search, a grey-coloured pouch affixed with double-sided adhesive tape was discovered concealed within Seat No. 29-E. On examination, the pouch was found to contain a paste-like substance. Based on the appellants' confessions and preliminary verification, the substance was identified as gold in paste form, appearing to be of foreign origin and suspected to have been smuggled. The Government Approved Valuer Shri Kartikey Vasantrai Soni After testing the said bar derived from 706.280 grams of packet containing gold paste and chemical mix., the Government Approved Valuer confirmed vide his Valuation certificate No. 231/2023-24 dated 06.07.2023 that it was pure gold. Further, he informed that the said recovered gold bar derived from the paste substance consisting of Gold & Chemical Mix, total having net weight of gold 614.000 grams, purity 999.0, Market Value at Rs. 37,08,560/- and Tariff Value is Rs.31,20,753/-. The said articles were

seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 05.07.2023. The appellant did not declare the said gold before Customs which was smuggled from Dubai by an unknown passenger and concealed within Seat No. 29-E with help of double sided tape. As directed the Appellant No. 1 occupied Seat No. 29-E, where the gold was purportedly concealed and as per instructions, the gold was to be retrieved from that seat during the journey. Thus the intention of the appellants were clear that they were to retrieve the smuggled gold which was concealed within Seat No. 29-E with help of double sided tape with an intention to escape payment of duty. These facts have also been confirmed in the statements of the appellants recorded under Section 108 of the Customs Act, 1962 on 06.07.2023. There is no disputing the facts that the appellant had not declared possession of gold in paste form concealed within Seat No. 29-E with help of double sided tape at the time of his arrival in Ahmedabad. These facts are not disputed.

5.2 I find that it is undisputed that the appellant had not declared the seized gold in paste form concealed within Seat No. 29-E with help of double sided tape and smuggled by an unknown person from Dubai. The appellants acting as a carrier was to take the concealed gold from seat No 29-E and clear the same without payment of duty. Further, in his statement, the appellants had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of gold in paste form concealed within Seat No. 29-E with help of double sided tape and smuggled by an unknown person from Dubai. The appellant had, in his confessional statement, accepted the fact that they were to retrieved gold in paste form from that seat during the journey. Thus the foreign of the gold has been established. Thus the appellants were part of an organised smuggling syndicate. Therefore, the confiscation of gold by the adjudicating authority was justified as the applicant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112(a) of the Customs Act, 1962.

5.3 I have also perused the decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India on the similar issue. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed condition of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant are consequently liable for penalty. Thus, it is held that the undeclared gold having net weight of gold 614.000 grams,



purity 999.0, Market Value at Rs. 37,08,560/- and Tariff Value is Rs.31,20,753/-, are liable to confiscation under Section 111(d) of the Customs Act, 1962 and the appellant is also liable to penalty under Section 112(a) *ibid*.

5.4 In this regard, I also rely the judgement of the Hon'ble Supreme Court in the case of *Om Prakash Bhatia Vs Commissioner of Customs, Delhi* 2003 (155) E.L.T. 423 (SC) wherein it is held that;

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

Thus, it is clear that even though gold is not enumerated as prohibited goods under Section 11 of the Customs Act, 1962, but it is to be imported on fulfilment of certain conditions, still, if the conditions for such import are not complied with, then import of gold will fall under prohibited goods. Hence, I find no infirmity in the impugned order on this count.

5.5 It is further observed that the adjudicating authority in the instant case had relying on the decisions of Hon'ble Supreme Court in the case of *Om Prakash Bhatia Vs Commissioner of Customs, Delhi* 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of *Abdul Razak* [2012 (275) ELT 300 (Ker)], Hon'ble High Court of Madras in the case of *Samynathan Murugesan* [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Hon'ble High Court of Madras in the case of *P Sinnasamy* [2016 (344) ELT 1154 (Mad)] and Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue – Revisionary Authority in the case of *Abdul Kalam Ammangod Kunhamu* discussed in paras 33 to 42 of the impugned order, had held that smuggling of gold was done by the

appellant and had ordered for absolute confiscation of undeclared gold having net weight of gold 614.000 grams, purity 999.0, Market Value at Rs. 37,08,560/- and Tariff Value is Rs.31,20,753/-.

5.6 It is also observed from the facts and records of the present case that the appellants as a part of organised smuggling syndicate had boarded the Indigo Flight No 6E 645 from Bhubaneshwar to Ahmedabad and Shri Shadab had web-checked in and booked his seat to seat No. 29-E of Indigo Flight No. 6E-645 and as per his direction, the appellant - 1 was to sit at the Seat No. 29-E and to travel from Bhubaneswar to Ahmedabad and as per their planning, one person who came from the very same flight from Dubai to a place in India, which was earlier an international flight and subsequently converted into domestic flight and arrived to Bhubaneswar, had concealed the gold at Seat No. 29E of that flight. Accordingly, appellant No 1 was given task to recover the concealed gold from Seat No. 29E of Indigo Flight which was an international flight earlier. The appellant 2 was allotted seat 23-D and he had to keep an eye on appellant -1 so that after recovering the concealed smuggled gold, he may not run away. Thus this is an act of organised smuggling executed by the appellants. The gold in paste form was detected on the basis of specific intelligence. The appellants in their statement recorded under Section 108 of the Customs Act, 1962 on 06.07.2023 had admitted their involvement in the smuggling of gold in paste form concealed in seat No 29E of Indigo Flight No 6E 645. Thus the appellant had intended to clear the gold in paste form without paying Customs duty from the SVPPIA, Ahmedabad. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold was concealed ingeniously in paste form and the appellants were part of organised smuggling. Therefore, the case laws relied upon by the appellant in the appeal memorandum are not applicable in the instant case.

5.7 I rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of V.K. MOHAMMAD ALI Versus COMMISSIONER OF CUSTOMS, COCHIN [2019 (369) E.L.T. 1538 (Tri. - Bang)], wherein the Hon'ble Tribunal has upheld the decision of adjudicating authority for absolute confiscation of undeclared seized gold. The relevant paras are as under:

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

"(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or

exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

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

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

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

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

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

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

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

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

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

5.8 I also rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of Ismail Ibrahim Versus Commissioner of Customs, Bangalore [2019 (370) ELT 1321 (Tri Bang)], wherein the Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold i.e. 706.280 grams in paste form (Net weight 614.000 Grams) was concealed discreetly in the seat No. 29-E of Indigo Flight No. 6E-645.

5.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 217/2024-Cus, dated 16.10.2024 on identical issue i.e. attempt to bring undeclared gold in paste form in the case of Riswan Kochupurayil Nazeer, has upheld the absolute confiscation of 788.940 grams of gold extracted from gold paste weighing 874.760 grams valued at 30,29,931/- (Assessable Value) and Rs 34,99,286/- (market value). The penalty imposed was also upheld. The relevant paras are reproduced as under:

"8. The Government has examined the matter. It is observed that the Applicant has not declared the possession of impugned gold in his Customs declaration form and it was only through persistent enquiry and examination of the Applicant, that the body concealment of the impugned gold in paste form came to light. The Appellate Authority has also observed that the Applicant in his voluntary statement dated

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

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

10.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, Import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* (1971 AIR 293), the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi* (2003(155) ELT423(SC)), the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Further, in the case of *UOI & Ors vs. M/s Raj Grow Impex LLP & Ors* (2021-TIOL-187-SC-CNS-LB), the Hon'ble Supreme



Court has followed the judgments in *Sheikh Mohd. Omer (supra)* and *Om Prakash Bhatia (supra)* to hold that "any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."

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

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

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

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

11. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of *Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]*, that the option to release 'prohibited goods' on redemption fine is discretionary. Hon'ble Delhi High Court has, in the case of *Raju Sharma [2020 (372) ELT 249 (Del)]*, held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that ".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

12.1 As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles Imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of



Deepak Bajaj vs Commissioner of Customs (P), Lucknow(2019(365) ELT 695(All.)), held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80 of the Act, ibid. In this case, the Applicant had not made a true declaration under Section 77.

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

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

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

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

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

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

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

5.13 I also rely upon the decision of Hon'ble High Court of Kerala in the case of Abdul Razak Versus Union of India [2012 (275) ELT 300 (Ker)] maintained in the Hon'ble Supreme Court [2017 (350) ELT A173 (SC)], wherein the passenger, a carrier, tried to smuggle 8 kg of gold concealed in



emergency light, mixie, grinder, car horns etc. was held to be absolutely confiscated and not allowed to be released on redemption fine. The relevant para is reproduced as under:

“6. After hearing both sides and after considering the statutory provisions, we do not think the appellant, as a matter of right, can claim release of the goods on payment of redemption fine and duty. Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. There is no need for us in this case to consider the conditions on which import is permissible and whether the conditions are satisfied because the appellant attempted to smuggle out the goods by concealing the same in emergency light, mixie, grinder and car horns etc. and hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal import of gold. Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act.”

In the present case also the appellant, working as a carrier has tried to smuggle gold in paste form concealed in seat No. 29-E of Indigo Flight No. 6E-645 discreetly with an intention to smuggle the same into India. The gold was detected on the basis of specific intelligence and suspicious movement. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.16 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the appellants as a part of organised smuggling syndicate had boarded the Indigo Flight No 6E 645 from Bhubaneshwar to Ahmedabad and Shri Shadab had web-checked in and booked his seat to seat No. 29-E of Indigo Flight No. 6E-645 and as per his direction, the appellant - 1 has to sit at the Seat No. 29-E and to travel from Bhubaneshwar to Ahmedabad and as per their planning, one person who came from the very same flight from Dubai to a place in India, which was



earlier an international flight and subsequently converted into domestic flight and arrived to Bhubaneswar, had concealed the gold at Seat No. 29E of that flight. Accordingly, appellant No 1 was given task to recover the concealed gold from Seat No. 29E of Indigo Flight which was an international flight earlier. The appellant 2 was allotted seat 23-D and he had to keep an eye on appellant -1 so that after recovering the concealed smuggled gold, he may not run away. Thus this is an organised smuggling executed by the appellants. The concealment in this case was ingenious as substantial quantity of gold in paste form weighing 706.280 grams (Net weight 614.000 Grams) was intentionally and ingeniously concealed seat No. 29-E of Indigo Flight No. 6E-645 to evade detection by the Customs authorities. The appellant did not intend to declare the said gold and the same was detected only on the basis of specific intelligence. The appellant also admitted that they were to recover the concealed gold from Seat No. 29E of Indigo Flight and intended to clear the same without paying Customs duty from the SVPIA, Ahmedabad. The appellants were working as a carrier of gold in paste form. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned and intentional smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of seized gold of 24 kt/999.0 purity weighing 614.000 grams derived from the gold paste and chemical weighing 706.280 grams valued at Rs. 31,20,753/- (Tariff Value) and Rs 37,08,560/- (Market Value) under Customs Act, 1962. In view of above, the absolute confiscation of gold of 24 kt gold weighing 614.000 grams derived from the gold paste and chemical weighing 706.280 grams valued at Rs. 31,20,753/- (Tariff Value) and Rs 37,08,560/- (Market Value) is upheld.

6.17 Further, in respect of imposition of penalty amounting to Rs 15,00,000/- on the appellant 1 & 2 for bringing undeclared gold weighing 614.000 grams derived from the gold paste and chemical weighing 706.280 grams valued at Rs. 31,20,753/- (Tariff Value) and Rs 37,08,560/- (Market Value), the appellants as a part of organised smuggling syndicate has attempted to bring gold into India without declaring the same and concealing the same ingeniously in paste form into seat No. 29-E of Indigo Flight No. 6E-645. The quantum of gold is substantial and the appellants had smuggled gold by ingeniously and intentionally working as a carrier and as a part of organised smuggling syndicate concealing the same into seat No. 29-E of Indigo Flight No. 6E-645 in paste form. The appellants were aware that smuggling of gold without payment of customs duty is an offence and also admitted that he was carrying the said gold and intended to clear the same without paying Customs duty from the SVPIA,

Ahmedabad. Thus, I am of the considered view, that the penalty of Rs 15,00,000/- imposed on the appellant 1 & 2 under Section 112(a)(i) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112(a)(i) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellants. Therefore, there is no infirmity in the impugned order and the same is upheld.

7. In view of above, the appeal filed by the appellants are rejected.



सत्यापित/ATTTESTED

अधीक्षक/SUPERINTENDENT

सीमा शुल्क (आपील्स), अहमदाबाद,
CUSTOMS (APPEALS), AHMEDABAD

By Registered Post A.D.

(AMIT GUPTA)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F.Nos. S/49-454,455/CUS/AHD/2023-24
To, 2765

Dated -08.08.2025

- (i) Shri Fardeen S/o Mohd. Samar, R/o 1264,
Gali Juman Wali, Daryaganj, Central Delhi, Delhi – 110002
- (ii) Shri Mohammad Umaiz S/o Mohd. Mansoor,
R/o 366, Katra Dhodiyan Bazar, Delhi Gate,
Daryaganj, Central Delhi, Delhi – 110002,
- (iii) S S Arora & Associates (Advocates),
B1/71, Safdarjung Enclave, New Delhi - 29

Copy to:

- The Chief Commissioner of Customs Gujarat, Customs House,
Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Additional/Joint Commissioner of Customs, Customs, Ahmedabad.
4. Guard File