

OIO No:109/ADC/SRV/O&A/2025-26
F. No. VIII/10-277/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
 ,”सीमाशुल्कभवन“पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद- 380009.
 दूरभाष : (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in, फैंक्स : (079) 2754 2343
 DIN No. 20250771MN0000520195

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-277/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-277/SVPIA-A/O&A/HQ/2024-25 dated: 04.04.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	109/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	30.07.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	30.07.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Sabir Husein Rasul Bhai Qureshi S/o Rasul Bhai Abdul Bhai Qureshi, 5483, Tastivada, Malivada Nake Kapadwanj, Khada DT, Gujarat, India, Pin-387620
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें 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।		

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Brief facts of the case: -

On the basis of passenger profiling and suspicious movement of passengers, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a male passenger namely Shri Sabir Husein Rasul Bhai Qureshi, aged 47 years (D.O.B. 23.03.1977) (Mobile No.- 9892962871) (Passport No. M7255874), S/o Rasul Bhai Abdul Bhai Qureshi, residing at 5483, Tastivada, Malivada Nake Kapadwanj, Khada DT, Gujarat, India, Pin-387620 arriving by Indigo Airlines Flight No. 6E-1478 from Dubai to Ahmedabad at Terminal – 2 of the SVP International Airport, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. The passenger was asked by the AIU Officers whether he had made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which he replied in negative and informed that he was not carrying any dutiable items with him. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings was recorded under **Panchnama dated 26.11.2024.**

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

2.1 Thereafter, in the presence of the panchas, the AIU officers instructed the passenger to put his entire luggage on the X-Ray Bag Scanning Machine installed near the Green Channel at terminal 2 of SVPI Ahmedabad for scanning. On scanning of the said baggages in the X-ray machine no objectionable image was seen. Thereafter, the AIU officers once again asked the passenger if he was carrying any contraband/ Restricted/dutiable goods which he wanted to declare to the customs, but the passenger still replied in negative. Thereafter, in the presence of the panchas, the AIU officers asked Shri Sabir Husein Rasul Bhai

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Qureshi to walk through the Door Frame Metal Detector (DFMD) machine; before passing through the said DFMD Machine, the passenger was asked to remove all the metallic objects he was wearing on his body/clothes. Thereafter, the passenger removed metallic objects from his body/ clothes such as mobile, wallet etc., and kept in a plastic tray and passed through the DFMD. While He passed through the said DFMD, a Beep sound was heard and red lights were seen from the said DFMD. The officers asked the passenger whether he had any metallic object/ valuable items on his body/ his garments to which Shri Sabir Husein Rasul Bhai Qureshi informed that he had 04 Gold Bars weighing 316.500 Grams and one Gold Lucky weighing 17.010 Grams hidden in his Shoes.

2.2 The AIU officers conducted a thorough personal search of Shri Sabir Husein Rasul Bhai Qureshi wherein 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148 packed in a card packing, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 - G0010132 packed in a card packing, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer packed in a card packing, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and one Gold Lucky weighing 17.010 Grams were recovered from the Shoes of the passenger. The total weight of all the items found to be 333.510 grams. On being asked by the officers, the passenger informed that these said 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 - G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and one Gold Lucky weighing 17.010 Grams were purchased by him during his stay in Dubai. The photographs of the said items are as under:

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2.3 Thereafter, the AIU officers, called Government Approved Valuer Shri Soni Kartikey Vasantrai and informed that he needed to come to the Airport for examination and valuation of the 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and one Gold Lucky weighing 17.010 Grams of foreign origin which had been recovered from Shri Sabir Husein Rasul Bhai Qureshi and was suspected to be Gold. After that, the Government Approved Valuer reached the airport premises and the AIU officers introduced the panchas as well as the passenger to the said person viz. Shri Kartikey Vasantrai Soni, Government Approved Valuer.

3. After testing the said items, the Government Approved Valuer submitted his Valuation Report as Annexure-A having Certification No. 1243/2024-25 dated 26.11.2024 and confirmed that it was pure gold. Further, he informed that the total gross weight of said 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01Gold Lucky weighing 17.010 Grams, comes to **333.510 grams** and all were of having purity 999.0/24kt and having total **market value** is **Rs. 25,93,040/-** (Rupees Twenty Five Lakh Ninety Three Thousand and Forty Only) and **tariff value** is **Rs. 23,53,217/-** (Rupees Twenty Three Lakh Fifty Three Thousand Two Hundred and Seventeen Only). The Valuation details of which are as under:-

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Sl. No.	Details of Items	PCS	Net Weight In Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bars	4	316.5	999.0 24Kt	2460788	2233196
	Fine Gold Emirates Gold 999.9 100Grams-N11148,					
	Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 - G0010132,					
	AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer,					
	Gulf Gold Refinery GGR 10 Tolas 999					
2	Gold Lucky	1	17.010	999.0 24Kt	132253	120021
	TOTAL	5	333.510		2593040	2353217

3.1 Further, the Govt. Approved Valuer informed that the total Market Value of the said gold bar having purity 999.00/24 Kt is Rs. 25,93,040/- (Rupees Twenty Five Lakh Ninety Three Thousand and Forty Only) and tariff value is Rs. 23,53,217/- (Rupees Twenty Three Lakh Fifty Three Thousand Two Hundred and Seventeen Only), which has been calculated as per the Notification No. 80/2024-Customs (N.T.) dated 14.11.2024 (gold) and Notification No. 45/2024- Customs (N.T.) dated 20.06.2024 (exchange rate). He submits his valuation report to the AIU Officers.

Seizure of the above gold bar:

4. The aforementioned Gold items (04 gold bars and 01 gold lucky) totally weighing 333.510 grams having purity 999.0/24kt recovered from the passenger Shri Sabir Husein Rasul Bhai Qureshi had been carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Accordingly, the said gold items were placed under seizure vide seizure order dated 26.11.2024 and handed over to the Ware House In-charge, Customs, SVPI Airport, Ahmedabad vide Ware House Entry Nos. 7085 dated 26.11.2024.

5. Statement of Shri Sabir Husein Rasul Bhai Qureshi:

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Statement of Shri Sabir Husein Rasul Bhai Qureshi was recorded under Section 108 of the Customs Act, 1962 on 26.11.2024, wherein he inter alia stated as under:

5.1 He gave his personal details like name, age, address, education, profession and family details and informed that he had been working in a private firm M/s. Crystal Gallery in Dubai for last 30 years and stayed with his wife and four children in Dubai at Down Town Burj Residences, Dubai.

5.2 He further stated that he travelled via Indigo Airlines Flight No. 6E-1478 on 26.11.2024 from Dubai to Ahmedabad for the purpose of wedding of his niece and as he was the maternal uncle and as per their custom, he had to conduct the wedding of his niece. Therefore, he purchased the aforementioned gold bars and chain from Dubai, for the purpose of wedding of his niece during the proceedings of Panchnama dated 26.11.2024.

5.3 He further stated that he was present during the entire panchnama proceedings dated 26.11.2024 and the fact narrated therein was true and correct.

5.4 He stated that he was aware that smuggling of gold without payment of Customs duty was an offence and he was aware of the concealed gold in the form of 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold 999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and one Gold Lucky weighing 17.010 Grams having purity of 999.0/24kt total weighing 333.510 grams but he did not make any declarations in this regard to evade payment of Customs duty.

From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 04 gold bars and 01 gold lucky, totally weighing 333.510 grams having purity of 24 KT/999.0 was recovered from the shoes of Shri Sabir Husein Rasul Bhai Qureshi, who had arrived from Dubai to Ahmedabad on 26.11.2024 by Indigo Flight No. 6E-1478 at T-2 of SVPIA Ahmedabad. Further, the said quantity of gold is more than the

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permissible limit allowed to a passenger under the Baggage Rules, and for these reasons alone it cannot be considered as a bonafide baggage under the Customs Baggage Rules 2016 as amended. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items weighing 333.510 grams having purity of 24 KT/999.0 because of malafide intention to evade the payment of customs duty and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items weighing 333.510 grams having purity of 24 KT/999.0 recovered from Shri Sabir Husein Rasul Bhai Qureshi, was attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items weighing 333.510 grams having purity of 24 KT/999.0 is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items (04 gold bars and 01 gold lucky) weighing 333.510 grams recovered from the shoes of Shri Sabir Husein Rasul Bhai Qureshi at Terminal-2, SVPIA Ahmedabad on 26.11.2024 was placed under seizure vide Panchnama dated 26.11.2024 and Seizure order dated 26.11.2024 by the AIU Officers of Customs under the reasonable belief that the subject gold is liable for confiscation.

6. Summation:

From the investigation conducted in the case, it appears Shri Sabir Husein Rasul Bhai Qureshi had attempted to smuggle total 333.510 Grams of 999.0/24 kt. Pure gold items totally having total market value of Rs. 25,93,040/-. Since these items were clearly meant for commercial purpose and hence did not constitute Bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Accordingly, the aforesaid 24 Kt. Pure gold items having total weight of 333.510 grams and having total market value of Rs. 25,93,040/- were seized under the provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that the same was liable to be confiscated in terms the provisions of Section 111 of the Customs Act, 1962.

7. Legal provisions relevant to the case:

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

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- 7.1 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.
- 7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

- 7.5 As per Section 2(3) – "baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;

- (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property;
- 7.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- 7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- 7.11 As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.
- 7.12 Section 111. Confiscation of improperly imported goods, etc.:
- The following goods brought from a place outside India shall be liable to confiscation:-*
- [\(a\)](#) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*
- [\(b\)](#) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*

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[\(c\)](#) 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

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in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

[\(n\)](#) any dutiable or prohibited goods transited with or without transshipment 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.

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

any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

7.14 As per Section 123 of Customs Act 1962,

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

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

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

(ii) if any person, other than the person from whose possession

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the goods were seized, claims to be the owner thereof, also on such other person;

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

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

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

Customs Baggage Rules and Regulations:

- 7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.
- 7.17 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in 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.

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

- 7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.
- 7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department

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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 cut bar, 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	10%	41

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		other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls		
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Condition no. 41 of the Notification:

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

8 From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 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

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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.

CONTRAVENTION AND VIOLATION OF LAWS

9. It therefore appears that:

- (i) **Shri Sabir Husein Rasul Bhai Qureshi** had attempted to smuggle/improperly import 999.0/24 Kt. Pure gold items as detailed hereunder, having total weight 333.510 grams and having total market value of Rs. 25,93,040/- with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Shri Sabir Husein Rasul Bhai Qureshi knowingly and intentionally smuggled the said gold items upon his arrival from Dubai to Ahmedabad by Indigo Airlines Flight No. 6E-1478 on 26.11.2024 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold items smuggled by Shri Sabir Husein Rasul Bhai Qureshi, cannot be treated as bonafide household goods or personal effects. Shri Sabir Husein Rasul Bhai Qureshi has, thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.
- (ii) Shri Sabir Husein Rasul Bhai Qureshi, by not declaring the said gold items before the proper officer of the Customs have contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (iii) The said gold items smuggled by Shri Sabir Husein Rasul Bhai Qureshi, without declaring it to the Customs are liable for confiscation under Section 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) read with Section 2 (22),(33), (39) of the Customs Act, 1962.
- (iv) Shri Sabir Husein Rasul Bhai Qureshi by the above-described acts of omission/commission and/or abetment has/have rendered

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themselves liable to penalty under Section 112 of Customs Act, 1962.

- (v) As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon Shri Sabir Husein Rasul Bhai Qureshi, who are the Noticee in this case.

10. Accordingly, a Show Cause Notice was issued to **Shri Sabir Husein Rasul Bhai Qureshi, aged 47 years (D.O.B. 23.03.1977) (Mobile No.- 9892962871) (Passport No. M7255874), S/o Rasul Bhai Abdul Bhai Qureshi**, residing at 5483, Tastivada, Malivada Nake Kapadwanj, Khada DT, Gujarat, India, Pin-387620, as to why:

- (i) 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky weighing 17.010 Grams, having total weighing of all items to the tune of 333.510 grams having purity of 999.0/24kt and having total Market Value of **Rs. 25,93,040/-** (Rupees Twenty Five Lakh Ninety Three Thousand and Forty Only) and Tariff Value **Rs. 23,53,217/-** (Rupees Twenty Three Lakh Fifty Three Thousand Two Hundred and Seventeen Only) concealed in shoes worn by the passenger, who arrived from Dubai on 26.11.2024 by Indigo Flight No. 6E-1478 at T-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 26.11.2024 and Seizure Memo Order dated 26.11.2024, should not be confiscated under the provision of Section under Section 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) of the Customs Act, 1962.
- (ii) (ii) Penalty should not be imposed upon **Shri Sabir Husein Rasul Bhai Qureshi**, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

11. The noticee through his advocate vide letter dated 08.05.2025 submitted on 22.05.2025 submitted his written reply wherein he denies all the allegation. He admitted of having 04 Gold Bars (01 Pc. Fine Gold

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Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold 999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky weighing 17.010 Grams, having total weighing of all items to the tune of 333.510 grams having purity of 999.0/24kt and having total Market Value of **Rs. 25,93,040/-** (Rupees Twenty Five Lakh Ninety Three Thousand and Forty Only) and Tariff Value **Rs. 23,53,217/-** (Rupees Twenty Three Lakh Fifty Three Thousand Two Hundred and Seventeen Only) with him. He submitted that the statement given under Section 108 of Customs Act, 1962 was given under duress and threat of being arrest therefore, the statement was not true and cannot be relied upon. He submitted that gold is neither prohibited nor restricted, hence question for confiscation under Section 111 of Customs Act, 1962 does not arise and also not liable for penal action under Section 112 of Customs Act, 1962. He submitted while coming back to India from Dubai, he purchased the gold for his personal use and for his family. He was residing in Dubai since 1995 and was working at Hatimi Crystal Glass works, therefore, being an NRI and an eligible passenger as he was coming India after six months stay at abroad. Therefore, he is eligible passenger to bring gold on payment of duty @ 6% and others taxes (as per Notification No. 12/2012-Cus dated 17.03.2012).He submitted that he had produced the bill in his name but the same was not taken on record at any stage of investigation. He also mentioned that the statement recorded under Section 108 of the Customs Act, 1962 was taken under duress and therefore the same was not true. He submitted that the gold cut bar was hidden for the safety purpose as he was having of theft. He submitted that gold is not prohibited goods and he brought the gold first time. Due to ignorance of law, he was unable to declare the same. He had orally declared the gold before the authority in terms of Circular No. 09/2001-Cus dated 22.02.2001. He was an illiterate person and studied upto 9th standard and therefore did not know what was written in the Panchnama and statement. Due to threat of arrest, he signed the papers forcefully. There is plethora of judgments wherein release of gold has been allowed on payment of redemption fine, or passenger has been allowed for release/re-export in lieu of fine. In his statement he also mentioned that the gold belongs to him and purchased by him. He submitted that he was not understand what was written in the panchnama and statement as both were typed in English and he was forced to sign them.

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He submitted that he was not penalized under Section 112 as there was no evidence of any action which he had done in contrary to the Act. He relied on the following judgments:-

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

The Hon Tribunal while allowing redemption of gold not declared before

Customs held: -

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

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

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

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

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

Gold brought as a baggage by the appellant not declared – Confiscation under section 111(d) of the Customs Act,1962 sustainable- However, option given to appellant to redeem the same on payment of a fine of Rs.1.5 lakhs Section 125 ibid.

04 Order No: 426/04 issued vide File No: 380/57/8 2004-RA Cus dated 21.9.2004 passed by the Revisionary Authority, Government of India, upholding the order of the Commissioner of Customs (Appeals) Mumbai Airport order redemption of the non-declared seized gold imported by an eligible passenger on payment of fine,

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penalty and duty. Latest judgement of the Revisionary Authority, New Delhi are also enclosed herewith which is self-explanatory:

Further, he submitted the latest RA Orders:-

1. Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)
2. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)
3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Poket Case granted RF, PP)
5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.
6. 2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.
7. Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)
8. Order No: 954/2018 CUS(WZ)/ASRA/MUMBAI DT. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)
9. Order No: 29/2018 CUS(WZ)/ASRA/MUMBAI DT. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)

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10. Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Underwear Case granted RF,PP)
11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).
12. Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
13. Order No: 214/2021 CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
14. Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI DT. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)
16. Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)
17. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).

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18. Order No. 287/2022 CUS(WZ)/ASRA/MUMBAI DT 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).
19. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)
20. Order No. 284/2022 CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 in c/a Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)
21. Order No. 314/2022 CUS(WZ)/ASRA/MUMBAI DT 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)
22. Order No. 56/2023 CUS(WZ)/ASRA/MUMBAI DT 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)
23. Order No. 10/2019 CUS(WZ)/ASRA/MUMBAI DT 30.09.2019 in c/a Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)
24. Order No. 404 & 405/2023 CUS(WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)
25. Order No. 349/2022-CUS(WZ)/ASRA/MUMBAI DT 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)
26. Order No. 395-396/2023-CUS(WZ)/ASRA/MUMBAI DT 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala

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- V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
27. Order No. 352/2022-CUS(WZ)/ASRA/MUMBAI DT 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
28. Order No. 309/2022-CUS(WZ)/ASRA/MUMBAI DT 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
29. Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
30. Order No. 516-517/2023-CUS(WZ)/ASRA/MUMBAI DT 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)
31. Order No. 786/2023 CUS(WZ)/ASRA/MUMBAI DT 25.10.2023 in c/a Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
32. Order No. 885/2023 CUS(WZ)/ASRA/MUMBAI DT 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
33. Order No. 883/2023 CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
34. Order No. 907-909/2023 CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
35. Order No. 899/2023 CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
36. Order No. 898/2023-CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)

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

Further, he submitted the case law wherein NRI passenger had been allowed release of goods in lieu of RF and PP.

1. Order no: 404-405/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 30.03.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Huzefa Khuzefa Mamuwala (2. Shri Shabbir Ranijiwala (10 Pieces of Gold cut bar 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
2. Order no: 58/2020-CUS (WZ) /ASRA/MUMBAI/ DATED. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Shabbir Taherally Udaipurwala (Gold WEIGHING 466.640 grams Concealed Re-Export Nee Case granted RF, PP)
3. Order no: 605/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 22.08.2023 IN C/A Pr. Commissioner of Customs, CSI Airport

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Mumbai v/s Shri Hitesh laxmichand gagani (1 Gold kada and 1 gold chain 350.890 grams Concealed Re-Export Nee Case granted RF, PP)

4. Order no: 61/2020-CUS (WZ) /ASRA/MUMBAI/ DATED. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Basheer Mohammed Mansuri (10 Pieces of Gold cut bar 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
5. Order In Original No: JC/PK/ADJN/381/2021-22 Date Of Order 31.03.2022 And Date of Issue 12.04.2022 Joint Commissioner Of customs CSMI Airport Mumbai V/s Ms. Rashmi Satish Mandelia (3 Gold Biscuits (Bars) 349.000 Concealed Concealed Re-Export Nee Case granted RF, PP)
6. Order no: 280/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Priyal Sanjay Chokshi (3 Pieces of crude Gold Bangles 140.00 Grams Concealed Re-Export Nee Case granted RF, PP)
7. Order no: 281/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP)
8. Order no: 389/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 200.00 grams Concealed Re-Export Nee Case granted RF, PP)
9. Order no: 65/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP)
10. Order no: 402/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport

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Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP)

11. Order no: 349/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 29.11.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Kakali Sardar (8 Gold Bangles 2 Gold Rings 550.000 Grams Concealed Re-Export granted on RF, PP)

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

- In the case of Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.) the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.
- A Rajkumari Vs C.C Chennai, 2015 (321) ELT 540 (Tri-Chennai)

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

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

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

12. The noticee was given opportunity for personal hearing on 26.06.2025 & 07.07.2025. Shri Rishikesh J Mehra, Advocate on behalf of the noticee Shri Sabir Husein Rasul Bhai Qureshi appeared for

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personal hearing on 07.07.2025. He produced copy of Vakalatnama to represent the case. He re-iterated his written submission dated 22.05.2025. He submitted that Gold is not a prohibited item. He further submitted that his client has not concealed the gold ingeniously and same was put in his shoes. He submitted that his client was working in Dubai since 1995 and an NRI passenger, who returned in India after staying more than six months in Dubai from his last visit. He further requested to allow the re-export of the said gold items on redemption fine in the instant case. He submitted the latest orders passed by Commissioner (Appeals) wherein gold was allowed for re-export on redemption fine.

Discussion and Findings:

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

14. In the instant case, I find that the main issue to be decided is whether the 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky weighing 17.010 Grams, having total weighing of all items to the tune of 333.510 grams having purity of 999.0/24kt and having total Market Value of **Rs. 25,93,040/-** (Rupees Twenty Five Lakh Ninety Three Thousand and Forty Only) and Tariff Value **Rs. 23,53,217/-** (Rupees Twenty Three Lakh Fifty Three Thousand Two Hundred and Seventeen Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 26.11.2024 on a reasonable belief of smuggling that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

15. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement that Shri Sabir Husein Rasul Bhai Qureshi was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 26.11.2024 in presence of two independent witnesses asked the noticee

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if he had anything dutiable to declare to the Customs authorities, to which the said noticee replied in negative. The AIU officer asked the noticee to pass through the Door Frame Metal Detector after removing all metallic objects with him and while he passed through the said DFMD, a Beep sound was heard and red lights were seen from the said DFMD which indicated that there is some metallic substances on body/clothes of noticee. The officers asked Shri Sabir Husein Rasul Bhai Qureshi whether he had any metallic object/ valuable items on his body/ his garments to which Shri Sabir Husein Rasul Bhai Qureshi informed that he had 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky in his shoes. The said noticee then handed over the said gold bars and on gold lucky concealed in his shoes to the AIU Officers.

16. It is on record that Shri Kartikey Vasantraai Soni, the Government Approved Valuer, weighed the said 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky and informed that the total weight of gold was **333.510** Grams (316.500 Grams + 17.010 Grams) having purity 999.0/24KT which were hidden/concealed in his shoes. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 04 gold bars and 01 gold lucky was **Rs.23,53,217/-** and Market value is **Rs.25,93,040/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight In Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bars	4	316.5	999.0 24Kt	2460788	2233196
	Fine Gold Emirates Gold 999.9 100Grams-N11148,					
	Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 - G0010132,					
	AL Etihad Gold Dubai-UAE 50g Fine Gold					

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	999.9 (EG)Melter Assayer, Gulf Gold Refinery GGR 10 Tolas 999					
2	Gold Lucky	1	17.010	999.0 24Kt	132253	120021
	TOTAL	5	333.510		2593040	2353217

17. Under his submission, the noticee alleged that the statement recorded on 26.11.2024 was not voluntary and the same was recorded forcefully and threat of arrest. In this regard, I find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. The offence committed was admitted by the noticee in his statement recorded on 26.11.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. I find from the content of the statement dated 26.11.2024 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard and an afterthought. Moreover, I also not find any retraction filed by the noticee. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his signature on the Statement after understanding the same as explained by the officers. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him in Hindi and English. He clearly admitted that he did not make any declaration as he wanted to clearly the same without payment of Customs Duty. I find that noticee has failed to furnish any credible documentary evidence to substantiate his claim that the statement was obtained under duress, coercion, or threat. A retraction of a statement recorded under Section 108 of the Customs Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence. The law presumes that a

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statement made under Section 108 is voluntary unless cogent evidence to the contrary is presented. The offence committed is admitted by the noticee in his statement recorded on 26.11.2024 under Section 108 of the Customs Act, 1962. I find that in the statement, the noticee had disclosed detailed information about his current and permanent address, his family details, his work and profession. I find that the statement of noticee contain specific and intricate details, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statement. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statement in question. It is on the record that the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows:-

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

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“Confessional Statement corroborated by the Seized documents admissible even if retracted.”

- (vi) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon’ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, mis declared or undervalued.

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

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

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

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

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

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and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."
(emphasis supplied)

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

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

18. Further, he submitted in his submission that he is an illiterate person and due to ignorance of law, he was unable to declare the same as it was his first instance of carrying the gold with him. In this regard, I find that in any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. Hon'ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that *ignorance of law is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]*. Moreover, I find from the travel history sheet submitted by the noticee that he was working in Dubai since 1995 and is a frequent flier, therefore, the plea taken by the noticee that due to ignorance of law, he was unable to declare the same appears more excuse than the genuine reason/explanation.

18.1 Further, the noticee has contended that no declaration form was provided to him by airline staff. In this regard, I find from the records and submitted travel history that the noticee is a frequent flier, therefore, the plea of noticee that no customs declaration form was made available to him neither by the airline nor by the customs seems not credit worthy as if he really wants to declare the same, he may approach the airline at the time of journey and asked for the baggage declaration form. Furthermore, he could use "Athithi App" which is available for the passengers for declaration of goods available on public domain. Taking plea of not providing declaration form irrespective of fact that he is a frequent flier, merits no consideration. Also, the panchnama narrates the fact that the impugned gold was not declared by the noticee on his own and also not

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declared even after asking by the officers and it was recovered only after personal search of the noticee. Also, in his voluntary statement he admitted that he did not make any declaration in this regard and wants to clear the same to evade the payment of customs duty. These facts corroborates that the contention raised by the noticee is just an afterthought and frivolous. The legal principle "ignorantia juris non excusat" (ignorance of the law is no excuse) is a fundamental one. Frequent travellers are expected to be aware of customs regulations and declaration requirements, and simply claiming ignorance is unlikely to be a valid defense.

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

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

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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 negated the said contention and held thus:-

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

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

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

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

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

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

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

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

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that "A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".

Relying on the ratio of the judgments cited above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods" within the meaning assigned to the term under Section 2(33) of the Customs Act, 1962.

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

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generally imported from foreign countries. The test report and confessional statement of noticee alongwith the foreign marking found on said gold bars conclusively proved that the gold was of foreign origin. Therefore, it is crystal clear that the gold in question is of foreign origin. Further, he concealed the said gold bars and gold lucky in his shoes in a way so that the customs officer could have never suspected that he was carrying something with him. It confirms that the notice wilfully did this to hoodwink the Customs Authority with the intention to evade payment of Customs Duty. The nature of concealment reveals the mindset of the noticee to not only evade duty but smuggle the gold. It also reveals that the act committed by the noticees was conscious and pre-meditated.

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

Section 123. Burden of proof in certain cases. -

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

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

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

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

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

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

Hence, in respect of gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, the noticee has failed to produce any

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evidences in respect of the gold which was recovered from his possession that the gold was not smuggled one. I find from his submission as well as his statement that he claimed that the gold was purchased by him for his personal saving, however on contrary he was failed to produce any legal documents which proves that the gold was purchased by him in legitimate way. Moreover, he had no foreign exchange with him which is required to make payment for the said gold at the time of arrival. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that “in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt”. And “Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them”. From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Merely claiming that the gold was purchased by him without submission of any invoice/bill copy alongwith other documentary evidences viz, bank transactions details, which proves that the gold was purchased in legitimate way and as bona fide personal use, does not make him owner. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20 as amended. In the instant case, the noticee has failed to submit any documentary evidence in his written submission as well as during the personal hearing. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold was purchased by him is not tenable on basis of no documentary evidence.

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

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India. It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

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

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and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

22. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the 04 gold bars and 01 gold lucky having total weight 333.510 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that he wanted to clear the said gold clandestinely without payment of eligible custom duty. Moreover, from the travel history submitted by the noticee, I find that the last journey from India to Dubai was undertaken by the noticee on 08.10.2024 and returned from Dubai to India on 26.11.2024, well before the stipulated time of staying at least 06 months abroad to be considered as eligible passenger to bring the gold with him. Therefore, the contention of noticee that he was an eligible passenger to bring the gold as he returned to India after a gap of six months is found false and frivolous.

23. Further, the noticee has accepted that he had not declared the said 04 gold bars and 01 gold lucky concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the said 04 gold bars and 01 gold lucky, which was found in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared

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with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved.

24. From the facts discussed above, it is evident that noticee had carried the said gold weighing 333.510 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said 04 gold bars and 01 gold lucky of 24KT/999.00 purity totally weighing 333.510 grams, 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 concealing the said gold in his shoes and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

25. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was found in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 333.510 grams concealed by him, without

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declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 333.510 grams, having Tariff Value of Rs.23,53,217/- and Market Value of Rs.25,93,040/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 26.11.2024 liable to confiscation under the provisions of Sections 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealing the gold by him in form of 04 gold bars and 01 gold lucky concealed in his shoes, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

26. I find that the Noticee confessed of carrying the said gold of 333.510 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering

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to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

27. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said 04 gold bars alongwith a gold lucky weighing 333.510 grams, having Tariff Value of Rs.23,53,217/- and Market Value of Rs.25,93,040/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 26.11.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold items weighing 333.510 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

28. Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, alongwith defense submission as well as during the personal hearing. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit 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

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

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28.1. 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]

28.2. 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.

28.3. 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,

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“restriction”, also means prohibition, as held by the Hon’ble Apex Court in Om Prakash Bhatia’s case (cited supra).

28.4 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.

28.5. 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”.

28.6. 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

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gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."

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

29. Under submission, the noticee has requested for re-export of the said gold items i.e 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky weighing 17.010 Grams and relied upon the various case law in his support. Before discussion, I would like to reproduce the relevant provision of Section 80 of Customs Act, 1962 as :-

Section 80. Temporary detention of baggage. -

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

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

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Therefore, the option under Section 80 of the Act would not be applicable to him and accordingly, the request for re-export is therefore, rejected.

30. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold items and thus, failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the 04 gold bars and 01 gold lucky in his shoes with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 333.510 grams of 24Kt./999.0 purity in form of gold bars & gold lucky, concealed in his shoes is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 333.510 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(i), 111(j), 111(k), 111(l) & 111(m) of the Act.**

31. As regard for imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Sabir Husein Rasul Bhai Qureshi, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold in form of gold bars and gold lucky in his shoes, thus, established that the concealment of said gold bars and gold lucky was ingenious in nature. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to smuggle the gold bars alongwith gold lucky and attempting to evade the Customs Duty by not

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declaring the gold items weighing 333.510 grams having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said 04 gold bars and 01 gold lucky weighing 333.510 grams, carried by him. He has agreed and admitted in his statement that he travelled from Dubai to Ahmedabad with the said gold items which were concealed by him in his shoes. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 333.510 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) of the Customs Act, 1962 and I hold accordingly.

32. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of 04 Gold Bars (01 Pc. Fine Gold Emirates Gold 999.9-100 Grams-N11148, 01 Pc. Swiss Melter Gold Assayer Swiss Gold 50g Fine Gold 999.9 -G0010132, 01 Pc. AL Etihad Gold Dubai-UAE 50g Fine Gold 999.9 (EG)Melter Assayer, 01 Pc. Gulf Gold Refinery GGR10 Tolas 999) weighing 316.500 Grams and 01 Gold Lucky weighing 17.010 Grams, having total weighing of all items to the tune of **333.510 grams** having purity of 999.0/24kt and having total Market Value of **Rs.25,93,040/-** (Rupees Twenty Five Lakh Ninety Three Thousand and Forty Only) and Tariff Value **Rs. 23,53,217/-** (Rupees Twenty Three Lakh Fifty Three Thousand Two Hundred and Seventeen Only), concealed in shoes worn by the noticee, who arrived from Dubai on 26.11.2024 by Indigo Flight No. 6E-1478 at T-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 26.11.2024 and Seizure Memo Order dated 26.11.2024, under the provision of Section 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) of the Customs Act, 1962;

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- ii) I impose a penalty of **Rs. 6,50,000/- (Rupees Six Lakh Fifty Thousand Only)** on **Shri Sabir Husein Rasul Bhai Qureshi** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

33. Accordingly, the Show Cause Notice No. VIII/10-277/SVPIA-A/O&A/HQ/2024-25 dated 04.04.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-277/SVPIA-A/O&A/HQ/2024-25 Date:30.07.2025
DIN: 20250771MN0000520195

BY SPEED POST AD

To,
Shri Sabir Husein Rasul Bhai Qureshi
S/o Rasul Bhai Abdul Bhai Qureshi,
5483, Tastivada, Malivada Nake Kapadwanj,
Khada DT, Gujarat, India, Pin-387620

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.