



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,

चौथी मंजिल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250471MN00006176AB

क	फ़ाइलसंख्या FILE NO.	S/49-271/CUS/AHD/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-014-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	09.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	110/ADC/VM/O&A/2023-24, dated 17.07.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	09.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Mr Darshan Rajeshbhai Dodiya, Vaijanath Mandir Same, Bhurakhiya, Damnagar, Amreli – 365220.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय,

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

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



ORDER-IN-APPEAL

Mr. Darshan Rajeshbhai Dodiya, Vaijanath Mandir Same, Bhurakhiya, Damnagar, Amreli – 365220 (hereinafter referred to as “the appellant”) has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 110/ADC/VM/O&A/2023-24, dated 17.07.2023 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that on the basis of passenger profiling and suspicious movement, the appellant, holding Indian Passport No. S 4446915, who had arrived from Bangkok by Thai Smile Flight No WE 341 on 09.03.2023, was intercepted by the officers of Customs, Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad, while he was attempting to exit through Green Channel without making any declaration to Customs, as recorded under Panchnama proceedings dated 09.03.2023 in presence of two independent witnesses for his personal search and examination of his baggage. The appellant was carrying one brown coloured airbag and one plastic bag. On being asked whether he was carrying any contraband goods in person or in baggage to which he denied. The appellant, as directed by the Custom officers, removed all the metallic objects such as mobile, watch etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating there was nothing objectionable/metallic substance on his body/clothes. Thereafter, the appellant move to the AIU Office located opposite Belt No. 5 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with his baggage. The officers checked the baggage of the appellant thoroughly in presence of panchas but nothing objectionable was found. Then, the AIU officer asked the appellant again if he is having anything dutiable which is required to be declared to the Customs to which the appellant denied. Thereafter, the AIU officers checked the airport trolley on which the appellant has loaded his luggage and it was noticed that two square shaped material wrapped in aluminum foil had been pasted with the help of double sided tape under the airport trolley. The AIU officer recovered the said two square shaped material and after removing the double sided tape and aluminum foil it was found that the same are two cut gold bars with embossing "Valcambi Suisse".

2.1 The Government Approved Valuer, Shri Kartikey Vasantrai Soni, on request of the Customs officers, confirmed that the said recovered 02 cut bars weighing 978.800 grams are of gold of 24 kt purity. He vide his Valuation Certificate No. 1127/2022-23, dated 09.03.2023 confirmed that

the gold was having purity of 995.0/24Kt. and was valued at Rs. 47,89,366/- (Tariff Value) and Rs. 55,69,372/- (Market Value) which has been calculated as per the Notification No. 11/2023-Customs (N.T.), dated 28.02.2023 (Gold) and Notification No. 12/2023-Customs (N.T.), dated 02.03.2023 (Exchange Rate).

2.2 The two cut gold bars weighing 978.800 grams and having purity 995.0/24 Kt., recovered from the appellant, were seized vide Panchnama dated 09.03.2023, under the provisions of Customs Act 1962, on the reasonable belief that the said cut gold bars were smuggled into India by the appellant with an intention to evade payment of Customs duty and accordingly the same were liable for confiscation under Customs Act 1962 read with Rules and Regulation made thereunder.

2.3 Statement of the appellant was recorded on 09.03.2023 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he is one of the partners of M/s. Diamond Tours, Dam Nagar and the other partner is Shri Kaushik Barot who is his friend. He further stated that he lives with his mother, brother, uncle and aunty, that they have a company in the name of M/s. J.K. Steel Fabrication which is doing fabrication works and the said firm is being looked after by his uncle and his brother. He went to Bangkok on 06th March, 2023 for the purpose of making arrangement viz. Booking of hotel, transportation etc. for their four clients and that other purpose of his visit was to have a discussion with the officials of M/s. Bangkok Palace, Bangkok regarding hiring of two rooms for one year. His partner Mr. Kaushik Barot has booked his to and fro ticket and the payment was also made by him. On being shown the Panchnama dated 09.03.2023 under which two gold cut KG bars totally weighing 978.800 grams of purity 995.0/24KT and having market value of Rs.55,69,372/- and Tariff value of Rs.47,89,366/- were recovered from him and he agreed with the contents of the panchnama. He further stated that he has never indulged in any smuggling activity in the past and this is the first time he has brought Gold into India concealing the same under the airport baggage trolley. He confirmed that he is aware that smuggling of gold without payment of customs duty is an offence and since he had to clear the gold bars without payment of Customs duties, he did not make any declarations in this regard and has opted for green channel so that he can attempt to smuggle the Gold without paying customs duty.

2.4 The above said cut gold bars totally weighing 978.800 grams, having purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/-, recovered from the appellant, were attempted to be smuggled into India with an intent to evade payment of

Customs duty by way of concealing the same under the airport trolley, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the cut Gold bars weighing 978.800 grams were attempted to be smuggled by the appellant were liable for confiscation under Section 111 of the Customs Act, 1962, they along with the packing materials were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo Order dated 09.03.2023.

2.5 The appellant had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The appellant had improperly imported two cut gold bars totally weighing 978.800 grams having purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,266/- and Market Value of Rs. 55,69,372/-. The said two cut gold bars were concealed by the appellant under the airport trolley and not declared to the Customs. The appellant opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. by the appellant by way of concealment under the airport trolley without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The appellant 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.

2.6. Further, as per Section 123 of Customs Act 1962, the burden of proving that the two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/-, concealed by the appellant under the airport trolley without declaring it to the Customs, are not smuggled goods, is upon the appellant.

2.7 A Show Cause Notice bearing F. No. VIII/10-14/SVPIA-D/O&A/HQ/2023-24, dated 02.05.2023 was issued to the appellant proposing for confiscation of two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/-, concealed by the appellant under the airport trolley seized under Panchnama dated 09.03.2023, confiscation of packing material i.e., aluminium foil and adhesive tape used for packing and concealment of seized gold bars and for imposition of penalty upon the appellant under Section 112 of the Customs Act, 1962.

2.8 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/- under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. The adjudicating authority has also ordered for absolute confiscation of packing material i.e., aluminium foil and adhesive tape used for packing and concealment of seized gold bars. The adjudicating authority imposed penalty of Rs. 19,00,000/- on the appellant under Section 112 (a) (i) of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;

- He cannot be declared as the owner of goods, merely because, he possessed an Offending Trolley on which the Offending Gold was discovered.
- If the ownership of the Offending Gold is in question, the personal penalty on the Appellant is unjustified and ex facie illegal.
- In the absence of any corroborative evidence or statement against the statement of the appellant, the fastening of ownership as a consequence of driving an Offending Trolley is not only far-fetched but also not within the ambit of "preponderance of possibility" as is the minimum threshold required for Adjudicating confiscation and the consequent individual penalty.

The Offending Trolley, which is the most important part of the evidence has never been linked to the appellant directly or even in an implied manner. The origin of the Offending Trolley till the time of its interception in the hands of the appellant has not been even been investigated let alone corroborated. The offending gold was found secured by Aluminum foil with an adhesive tape on an airport trolley which caused the revenue to proceed with the present search proceedings and the present proceedings are nothing but the consequence of such search process.

- The airport trolley which was neither a part of accompanying baggage nor a part of his person was never secured nor seized by the revenue authorities and without such a seizure of the airport trolley which admittedly is the carrier of the contraband of the offending gold any case made out of improper search is to be known as the principals of the "Doctrine of fruit of a poisonous tree."
- Revenue has failed miserably to show proximate "cause of action" or "probable cause" in launching the present proceedings and for this

reason alone, order in origin has to fail. In such circumstances, the order in origin may be set aside in the interest of justice.

- The Hon'ble Supreme Court in the case of Kamlakshi Finance Corporation reported at 1991 (55) ELT 433 has held that the adjudicating authorities and the appellate authorities have to give utmost regard to the orders passed by the Tribunal inasmuch as the order of the Tribunal is binding on all the adjudicating and appellate authorities under it and the principles of judicial discipline are to be followed, whereby the order of a Higher Forum is binding upon all the other lower authorities below it. In the present case, the order passed by the adjudicating authority is passed by disregarding the legal precedents as set forth by the superior authorities and, therefore even otherwise the impugned order is liable to be set aside in the interest of justice.

4. Shri M. B. Bhansali, Advocate, appeared for personal hearing on 12.03.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. During personal hearing, the Advocate submitted additional submission wherein he submitted that:

- ❖ The appellant is original owner of the two gold bars and which were recovered from his possession. The appellant is not a carrier so also he purchased the gold from his savings and some amount borrowed from his friend.
- ❖ The appellant had two gold bars weighing up to 978.800 grams which worth of Rs. 55,69,372/- and the appellant had brought the same for making jewelry for his family in Amreli.
- ❖ It is not the case that the appellant want to sell the gold for profit into India after the same is handed over to the appellant. The gold was imported for the bone-fide use as per the rules and the appellant is and was ready and willing to pay the applicable duty in that regard.
- ❖ As regards penalty, it is submitted that the appellant is an innocent person. It may be appreciated that there are absolutely no incidents. Not even a single case other than the present one is booked against the appellant herein. Not even a single Show-cause Notice other than the impugned Show-cause Notice is issued to the appellant till date. Moreover, it is pertinent to appreciate that the appellant is a bonafide person. Therefore, in the interest of justice, penalties imposed upon the appellant under Sections 112(a)(i) may be set aside.

- ❖ It is submitted that, the fact that gold is not a prohibited item, for import it is also evident from perusal of list of prohibited items for import. Therefore, the gold in question may be released.
- ❖ In the said matter the list of prohibited items is as below....

 - i. Pornographic and obscene materials
 - ii. Maps and literature where Indian external boundaries have been shown incorrectly.
 - iii. Narcotic Drugs and Psychotropic Substances.
 - iv. Counterfeit goods and goods violating any of the legally enforceable intellectual property right.
 - v. Chemicals mentioned in schedule 1 to the Chemical weapons convention of U.N.1993.

- ❖ The appellant have never indulged in any smuggling activity in past. He is not habitual offender and never involved in this type of similar offence earlier.
- ❖ Gold in question was not ingeniously concealed and quantity is not large. It is request to be released on nominal RF and Penalty.
- ❖ The gold bars deserve to be released and handed over to the appellant, who is ready and willing to pay duty on that behalf.
- ❖ The appellant further relied upon the following decisions:

- (i) Waqar Versus Commissioner of Customs (Preventive), Lucknow [2024(387) E.L.T. 91 (Tri.-All.)]
- (ii) Commissioner of Customs, CSI Airport, Mumbai Versus Mr Mohammed Yasar Ballor Ibrahim [Order No. 67/2023-CUS(WZ)/ASRA/MUMBAI]
- (iii) Shri. Balanadukkam Muhammed Versus Pr. Commissioner of Customs, CSMIA, Mumbai [Order No. 355/2023-CUS (WZ)/ASRA/MUMBAI].

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

- (a) Whether the impugned order directing absolute confiscation of two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/- without giving option for redemption under

Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;

(b) Whether the penalty amounting to Rs. 19,00,000/- imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that, on the basis of passenger profiling and suspicious movement, the appellant, holding Indian Passport No. S 4446915, who had arrived from Bangkok by Thai Smile Flight No WE 341 on 09.03.2023, was intercepted by the officers of Customs, Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad, while he was attempting to exit through Green Channel without making any declaration to Customs. The appellant was carrying one brown coloured airbag and one plastic bag. On being asked whether he was carrying any contraband goods in person or in baggage to which he denied. The officers checked the baggage of the appellant thoroughly in presence of panchas but nothing objectionable was found. Then, the AIU officer asked the appellant again if he is having anything dutiable which is required to be declared to the Customs to which the appellant denied. Thereafter, the AIU officers checked the airport trolley on which the appellant has loaded his luggage and it was noticed that two square shaped material wrapped in aluminum foil had been pasted with the help of double sided tape under the airport trolley. The AIU officer recovered the said two square shaped material and after removing the double sided tape and aluminum foil it was found that the same are two cut gold bars with embossing "Valcambi Suisse". The Government Approved Valuer, Shri Kartikey Vasantrai Soni, on request of the Customs officers, confirmed that the said recovered 02 cut Gold bars weighing 978.800 grams are of 24 kt purity. He vide his Valuation Certificate No. 1127/2022-23, dated 09.03.2023 confirmed that the gold was having purity of 995.0/24Kt. and was valued at Rs. 47,89,366/- (Tariff Value) and Rs. 55,69,372/- (Market Value). The appellant did not declare the said gold before Customs when he was asked. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on 09.03.2023. There is no disputing the facts that the appellant had not declared possession of gold at the time of his arrival in India when asked to do so. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

6.1 I find that it is undisputed that the appellant had not declared the seized gold to the Customs on his arrival in India when he was asked to

declare the same before the Customs Authorities. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, non-declaration and recovery of the seized gold. The appellant had, in his confessional statement, accepted the fact of non-declaration of gold before Customs on arrival in India. Therefore, the confiscation of gold by the adjudicating authority was justified as the applicant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112 (a)(i) of the Customs Act, 1962.

6.2 I have also perused the decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India submitted by the appellant. I find that the Revisionary Authority has taken a view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/- are liable to confiscation and the appellant is also liable to penalty.

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



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

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

6.4 In respect of absolute confiscation of two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and having Tariff Value of Rs. 47,89,366/- and Market Value of Rs. 55,69,372/-, it is observed that the adjudicating authority in the instant case relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)], Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker)], Hon'ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue – Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu in paras 27 to 33 of the impugned order, had ordered for absolute confiscation of two cut gold bars totally weighing 978.800 grams of purity 995.0/24 Kt. and valued at Rs 47,89,366/- (Tariff Value) and Rs. 55,69,372/- (Market Value).

6.5 It is observed from the facts and records of the present case that the appellant had concealed two cut gold bars wrapped in aluminium foil and pasted with help of double sided tape under the airport trolley with an intention to smuggle the same without payment of duty. The gold was detected during examination of the airport trolley when the appellant was intercepted on the basis of profiling and suspicious movement. The appellant in his statement recorded under Section 108 of the Customs Act, 1962 on 09.03.2023 had admitted that he is aware that smuggling of gold without payment of customs duty is an offence and since he had to clear the gold bars without payment of Customs duties, he did not make any declarations in this regard and has opted for Green Channel so that he can attempt to smuggle the Gold without paying customs duty. He confirmed the content of the Panchnama dated 09.03.2023 under which two gold cut bars totally weighing 978.800 grams of purity 995.0/24KT and having market value of Rs.55,69,372/- and Tariff value of Rs.47,89,366/- were recovered from him and he agreed with the contents of the panchnama. Thus, the present case is not of simple non declaration of gold but an act of

smuggling, as the gold was concealed in airport trolley with an intention to smuggle the same without payment of duty for commercial reasons. The appellant has not submitted any evidence for substantiating the transactions for purchase of gold in such a quantity.

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

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

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

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

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

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

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

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

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

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

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

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

6.7 I also rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of Ismail Ibrahim Versus Commissioner of Customs, Bangalore [2019 (370) ELT 1321 (Tri Bang)], wherein the Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the

baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold i.e. 978.800 grams concealed in the airport trolley.

6.8 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 251/2023-CUS (WZ)/ASRA/MUMBAI, dated 21.02.2023 on similar issue i.e. attempt to bring undeclared gold in form of 02 kadas and 03 chains concealed in hand bag in the case of Shri Deepak Rupani, wherein the Hon'ble Revisionary Authority has upheld the absolute confiscation of 1166.680 grams of gold valued at Rs. 30,27,534/- (Tariff Value) and Rs 33,95,040/- (market value). The relevant paras are reproduced as under:

"7. The Government has gone through the facts of the case. The two gold bars were found only when the hand bag of the applicant was screened. The Applicant had not filed any declaration of dutiable goods before the Customs as required under Section 77 of the Customs Act, 1962. The quantity of gold recovered is substantial and in form of ornaments i.e. 2 nos of karda and 3 chains. The confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

8. *Further, 2 Apple watches were found in the handbag of the applicant alongwith an invoice showing the value of the watches, Free baggage allowance of Rs. 50,000/- was given to the applicant.*

9. *The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.E.T. 1154 (Mad), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) ELT. 423 (S.C.), has held that 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 Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. It is thus 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".

10. Further, in para 47 of the said case, the Hon'ble High Court has observed "Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation..... Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicant thus liable for penalty.

11. Once goods are held to be prohibited, Section 125 of the Customs Act, 1962 still provides discretion to consider release of goods on redemption fine Hon'ble Supreme Court in case of M/s. Raj Grow Impex [CIVIL APPEAL NO(S) 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020-Order dated 17.06.2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, 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; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper, and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion, such an exercise can never be according to the private opinion.

71.1 It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding floors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

12. Government notes that the gold was in the form of ornaments. The applicant had kept the same in the hand bag and was not concealed in an ingenious. Usually, the hand bags are not screened at the arrival airport. The quantity of the gold is quite substantial. The applicant had not declared the gold ornaments in his possession which indicates that he had no intention to pay duty on the same. All these have been properly considered by the OAA while confiscating the gold ornaments absolutely.

13. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the quantity being substantial, clear intention to clear the gold ornaments without payment of duty, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold ornaments. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority upholding the order of absolute confiscation of the gold ornaments passed by the adjudicating authority is therefore liable to be upheld."

6.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 217/2024-Cus, dated 16.10.2024 wherein the applicant attempt to bring undeclared gold in paste form in the case of Riswan Kochupurayil Nazeer, WHEREIN THE Revisionary Authority has upheld the absolute confiscation of 788.940 grams of gold extracted from gold paste weighing 874.760 grams valued at 30,29,931/- (Assesable Value) and Rs 34,99,286/- (Market Value).

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

6.11 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Sh. Rafi Syed, Order No. 175/2024 - CUS, dated 28.08.2024 wherein absolute confiscation of 39 gold bars of 24 carat purity

weighing 3800 grams valued at Rs 1,16,58,400/-, concealed inside plastic pouches containing dates, was upheld. The penalty imposed was also upheld.

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

6.13 I also rely upon the decision of Hon'ble High Court of Kerala in the case of Abdul Razak Versus Union of India [2012 (275) ELT 300 (Ker)] maintained in the Hon'ble Supreme Court [2017 (350) ELT A173 (SC)], wherein the passenger, a carrier, tried to smuggle 8 kg of gold concealed in emergency light, mixie, grinder, car horns etc. was held to be absolutely confiscated and not allowed to be released on redemption fine. The relevant para is reproduced as under:

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

In the present case also, the appellant had attempted to smuggle 978.800 grams of gold. He had concealed two cut gold bars wrapped in aluminium foil and pasted with help of double sided tape under the airport trolley with

an intention to smuggle the same without payment of duty. The manner of concealment of seized gold clearly shows the intention of the appellant to not make any declaration before the Customs and comes under the category of ingenious concealment. The appellant has not submitted any evidence to substantiate the transaction in this case. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.14 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the concealment in this case was intentional as substantial quantity of gold in form of two cut gold bars weighing 978.800 grams wrapped in aluminium foil and pasted with help of double sided tape under the airport trolley with an intention to smuggle the same without payment of duty and to evade detection by the Customs authorities. The appellant did not intend to declare the said gold. The appellant in his statement admitted that he is aware that smuggling of gold without payment of customs duty is an offence and since he had to clear the gold bars without payment of Customs duties, he did not make any declarations in this regard and has opted for green channel so that he can attempt to smuggle the Gold without paying customs duty. He has not submitted any evidence to substantiate the transaction to acquire the seized gold. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold in substantial quantity was ingeniously concealed in airport trolley with an intention to smuggle the same without payment of duty. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of 978.800 gram of gold under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. In view of above, the absolute confiscation of gold of 24 kt gold weighing 978.800 gram valued at Rs. 47,89,366/- (Tariff Value) and Rs 55,69,372/- (Market Value) is upheld.

6.15 Further, in respect of imposition of penalty amounting to Rs 19,00,000/- on the appellant for bringing undeclared gold weighing 978.800 gram valued at Rs. 47,89,366/- (Tariff Value) and Rs 55,69,372/- (Market Value), the appellant in the appeal memorandum has contended that he cannot be declared as the owner of goods, merely because, he possessed an offending Trolley on which the offending Gold was discovered. Further, in the additional submission made at the time of personal

hearing, the appellant has submitted that he is original owner of the two gold bars and which were recovered from his possession. Thus, there is contradiction in the submissions of the appellant. However, there is no dispute regarding the fact that the seized gold concealed in the airport trolley were not declared with the intention clear the said gold bars without payment of Customs duties. He has not made any request along with any ground for reduction in penalty during personal hearing also. It is observed that the appellant had attempted to bring gold into India without declaring the same and concealing the same in airport trolley. The quantum of gold is substantial and the appellant had intentionally smuggled gold. The appellant was aware that smuggling of gold without payment of customs duty is an offence as stated by him in his statement dated 09.03.2023. Thus, I am of the considered view, that the penalty of Rs 19,00,000/- imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112(a)(i) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellant. Therefore, there is no infirmity in the impugned order and the same is upheld.

7. In view of above, the appeal filed by the appellant is rejected.



Akhilesh Kumar
9th April, 2025.
(AKHILESH KUMAR)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.No. S/49-271/CUS/AHD/2023-24
343
To,

Dated -09.04.2025

(i) Mr Darshan Rajeshbhai Dodiya,
Vaijanath Mandir Same, Bhurakhiya,
Damnagar, Amreli – 365220,

Copy to:

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

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (आपील्स), अहमदाबाद,
CUSTOMS (APPEALS), AHMEDABAD