



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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### PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-84/SVPIA/HQ/O&A/2019-20
B	कारणबता ओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-84/SVPIA/HQ/O&A/2019-20 Dated 08.01.2020
C	मूल आदेश संख्या / Order-In-Original No.	:	<b>220/ADC/SRV/O&amp;A/2024-25</b>
D	आदेश तिथि / Date of Order-In-Original	:	<b>08.01.2025</b>
E	जारी करने की तारीख / Date of Issue	:	<b>08.01.2025</b>
F	द्वारा पारित / Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<b>Mr. Sonikkumar Harishkumar Soni</b> Dadaji Ni Khadki, Haveli Mahollo, Vaso, Kheda, Gujarat, PIN 387380
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क		

	टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या डियूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

### **Brief facts of the case:**

On the basis of suspected movement, Mr. Sonikkumar Harishkumar Soni (hereinafter referred to as "the passenger"), an international passenger, aged 26 years (DOB: 22.02.1993), holding Indian passport having No L8623908, residing at Dadaji Ni Khadki, Haveli Mahollo, Vaso, Kheda, Gujarat, PIN 387380, and another passenger Ms. Margi Alkeshkumar Soni, aged 23 years holding New Zealand Passport having No. LL523240 arrived SVPI Airport, Ahmedabad, travelling from Brisbane, Australia via Singapore to Ahmedabad by Singapore Airlines Flight No. SQ 530 on 18.07.2019 at 2230 hours were intercepted by the Customs AIU officers, while they were leaving through the Green Channel at Arrival Hall for detailed checks on the basis of their suspicious movements in the presence of panchas.

**2.** Whereas, in presence of panchas, the passenger was asked as to whether he was carrying any contraband or any dutiable goods in person or in the baggage to which he denied. Thereafter, the officers also scanned his bag in the X-ray baggage scanning machine (BSM) installed at the Green channel, but nothing objectionable was noticed. Then he was asked to walk through the Door Frame Metal Detector (DFMD) after removing all the metallic objects he was wearing on his body. The passenger readily removed his belt, wallet, mobile, ring etc. and kept them in plastic tray and thereafter walked through the DFMD. On his walking through the DFMD, a loud beep was generated in the upper part of the DFMD. The AIU officer again asked the passenger whether he was still having any metallic substance left in his clothes, at this the passenger re-checked his clothes

and confirmed that he did not have any such material left in his clothes. The passenger was again asked to walk through the DFMD, and on his passing through the DFMD, a loud beep was again heard. The AIU officer again asked the passenger if he has hidden any metallic substance inside his clothes or inside his body. The passenger however denied that he had hidden any metallic substance inside his clothes or body. Thereafter, the passenger was again asked to walk through the DFMD, and on his walking through the DFMD, a loud beep was heard to which the AIU officers explained that there might be some metallic substance kept beneath the clothes. After much denial the passenger confessed that he has concealed/hidden metallic substance in his right arm on his bicep under the shirt. The passenger removed the Silver Colour coated metallic kada and gave it to the officers. The passenger's Silver Colour coated metallic kada was scanned in the X-ray machine to which a dark Black coloured image with Yellow outline appeared. The Officer asked whether it was made of 24 Carat Gold, to which the passenger denied and said it was made of a 5 metal alloy (Panch Dhatur). The said Silver Colour coated metallic kada was thereafter scratched with a knife to which it revealed a bright shiny yellow colour inside. On being shown it to the passenger, he finally confirmed that it was made of 24 Carat Gold. Thereafter, the passenger, along with the panchas was taken to the AIU office located opposite belt no. 5 of the Arrival Hall of Terminal 2 building, SVPI Airport, Ahmedabad. The AIU officers then after removing the kada, again asked the passenger to walk through the DFMD, but the DFMD did not make any sound.

**2.1** The photograph of Silver Colour coated metallic kada taken by the officer which is reproduced as under:



**3.** The Government Approved Valuer after testing and valuation of the said article i.e. **Silver Colour coated metallic kada**, was made of pure gold having purity of 24 Kt. (999). The report indicated that Gold kada, totally weighing 400.300 grams having a tariff value of Rs.12,62,987/- and local market value of Rs. 14,48,285/-.

**3.1** The said Gold Kada Coated with white Rhodium was 24kt Gold purity 999.0 and was weighing 400.300 Grams was Rs.14,48,285/- (Rupees Fourteen Lakhs Forty Eight Thousand Two Hundred and Eighty Five only (Local Market Value) and Rs.12,62,987/- (Rupees Twelve Lakhs Sixty Two Thousand Nine Hundred and Eighty Seven Only) (Tariff Value) recovered from the passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty and was a clear violation of the provisions of Customs Act, 1962. Thus, having a reasonable belief that the said Gold in form of Rhodium Coated Gold Kada was attempted to be smuggled by Mr. Sonikkumar Harishkumar Soni was liable for confiscation under the provisions of Customs Act, 1962; hence, it was placed under seizure vide panchnama dated. 18/19.07.2019 drawn by the officer of customs under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962.

**3.2** A Statement of the passenger Mr. Sonikkumar Harishkumar Soni was recorded on 19.07.2019, under Section 108 of the Customs Act, 1962, wherein he confirmed the residence address as at para 1 Supra.

He interalia stated that he arrived to Ahmedabad by Singapore Airlines Flight No. SQ 530 on 18.07.2019 from Brisbane, Australia via Singapore; that he had intentionally not declared the said substance before the Customs Authorities on his arrival at SVPI Airport, Ahmedabad and wanted to clear it illicitly and evade payment of duty; that he was fully aware that clearing Gold jewellery without declaring before Customs, with an intention to evade payment of Customs duty was an offence under the provisions of Customs Act, 1962 and regulations framed there under; that he agreed that he had evaded Customs duty on 24 kt. Gold Kada Coated with white Rhodium weighing 400.300 Grams having purity 999.0 was Rs. 12,62,987/- (Rupees Twelve Lakhs Sixty Two Thousand Nine Hundred and Eighty Seven Only) (Tariff Value) and Rs. 14,48,285/- (Rupees Fourteen Lakhs Forty Eight Thousand Two Hundred and Eighty Five only (Local Market Value) recovered from him.

**3.3** Statement of the co-passenger Mrs. Margi Alkeshkumar Soni, aged 23 years holding New Zealand Passport having No. LL523240 was recorded on 19.07.2019, under Section 108 of the Customs Act, 1962, wherein she confirmed that she is citizen of New Zealand currently living with her husband Mr. Sonikkumar Harishkumar Soni in Australia since 2015. She interalia stated that they had arrived to Ahmedabad by Singapore Airlines Flight No. SQ 530 on 18.07.2019 from Brisbane, Australia via Singapore; that her husband had intentionally not declared the said substance before the Customs Authorities on his arrival at SVPI Airport, Ahmedabad and wanted to clear it illicitly and evaded payment of duty; that she was fully aware that clearing Gold jewellery without declaring before Customs, with an intention to evade payment of Customs duty was an offence under the provisions of Customs Act, 1962 and regulations framed there under; that she agreed that they had evaded Customs duty on 24 kt. Gold Kada Coated with white Rhodium weighing 400.300 Grams having purity 999.0 was Rs. 12,62,987/- (Rupees Twelve Lakhs Sixty Two Thousand Nine Hundred and Eighty

Seven Only) (Tariff Value) and Rs. 14,48,285/- (Rupees Fourteen Lakhs Forty Eight Thousand Two Hundred and Eighty Five only (Local Market Value) recovered from her husband Mr. Sonikkumar Harishkumar Soni.

**3.4** Whereas, from the forgoing paras, it appears that the said passenger had brought gold in the form of Rhodium Coated Gold Kada of 24 Kt having purity 999.0 totally weighing 400.300 Grams. It appears that the passenger, by not declaring the same, had an intention to evade payment of Customs duty and thereby violated the provisions contained in the Customs Act, 1962, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

**3.5** Whereas it appears that in absence of any import documents evidencing legitimate import of the said gold in the form of Rhodium Coated Gold Kada, the same appears to be smuggled goods in terms of the provisions of Section 2(39) of the Customs Act, 1962. It further appears that Gold Kada Coated with white Rhodium imported by the passenger is to be construed as '*smuggling*' within the meaning of Section 2(39) of the Customs Act, 1962. By using the modus of concealing of the Gold Kada Coated with white Rhodium in his right arm on his bicep under the shirt which he wore, it appears that the passenger was fully aware that the goods would be offending in nature on its import. It appears that the passenger has involved himself in carrying, keeping, concealing and have dealt with the offending goods in a manner which he knew or have reasons to believe that the Gold Kada Coated with white Rhodium carried by him is liable to confiscation under the section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. It, therefore, appears that the passenger has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

**3.6** Whereas, the passenger appears to have contravened the following provisions of:

- Section 77 of the Customs Act, 1962, as he has failed to make a declaration of the imported the gold in the form of Rhodium Coated Gold Kada totally weighing 349.950 grams, which was recovered from his possession;
- Section 79 of the Customs Act, 1962 as he has imported the said gold in the form of Rhodium Coated Gold Kada of 24 Kt for commercial purpose which were not for his bonafide use;
- Section 7 of the Foreign Trade (Development & Regulations) Act, 1992 as he imported the said gold for commercial purpose.
- Rule 11 of the Foreign Trade (Regulation) Rules, 1993 as he failed to declare the value, quantity and description of the said gold imported by him;
- Para 2.26 of the Foreign Trade Policy 2015-2020, as he acted contrary to the restrictions imposed and imported non-bonafide baggage.

**4.** In view of the above, a Show Cause Notice No VIII/10-84/SVPIA/HQ/O&A/2019-20 dated 08.01.2020 was issued to the Noticees, alleging that -

- i) Gold Kada Coated with white Rhodium totally **weighing 400.300 Grams valued at Rs. 12,62,987/- [Tariff Value] (Rupees Twelve Lakh, Sixty Two Thousand, Nine Hundred and Eighty Seven Only) and [Rs. 14,48,285/- (Market Value)]**, placed under seizure under panchnama dated 18/19.07.2019, should not be confiscated under the provisions of Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962;
- ii) Penalty should not be imposed on Mr. Sonikkumar Harishkumar Soni under Section 112(a) and 112(b) of the Customs Act, 1962.
- iii) Penalty should not be imposed on Mrs. Margi Alkeshkumar Soni under Section 112(b) of the Customs Act, 1962.

**5.** The said Show Cause Notice was adjudicated by the Joint Commissioner of Customs, Ahmedabad, vide Order-in-Original No.

35/JC/SM/O&A/2020-21 dated 28.08.2020 issued on 04.09.2020  
wherein the Joint Commissioner passed order as under:

- i. I order absolute confiscation of the Gold Kada Coated with white Rhodium totally **weighing 400.300 Grams valued at Rs. 12,62,987/- (Rupees Twelve Lakh, Sixty Two Thousand, Nine Hundred and Eighty Seven Only) [Tariff Value]** and **Rs. 14,48,285/- (Rupees Fourteen Lakh Forty Eight Thousand Two Hundred Eighty Five Only) [Market Value]**, placed under seizure under panchnama dated 18/19.07.2019, should not be confiscated under the provisions of Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962;
- ii. I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on Mr. Sonikkumar Harishkumar Soni, under the provisions of Sections 112(a) and 112(b) under sub-clause 112(i) of the Customs Act 1962;
- iii. I refrain to impose penalty on Mrs. Margi Alkeshkumar Soni, under the provisions of Sections 112(b) of the Customs Act 1962;

**6.** Being aggrieved by the said Order-in-Original No. 35/JC/SM/O&A/2020-21 dated 28.08.2020 issued on 04.09.2020, the Noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The said appeal was decided by the Commissioner (Appeals), Customs, Ahmedabad vide Order-in-Appeal No. AHD-CUSTM-000-APP-1607-21-22 dated 23.03.2022, wherein he ordered that -

“ 6. In the light of the aforesaid facts and circumstances, I set aside the impugned order and remit the matter pertaining to this appeal to the concerned adjudicating authority who shall ascertain the facts, examine the documents, submission and case law relied upon by the appellant and pass speaking order afresh following principles of natural justice and legal provision. While passing this order, no opinion or views have been expressed on the merits of the dispute or

the submission and the case law cited by the appellant in this regard, which shall be independently examined by the proper officer.”

In view of the above referred OIA dated 23.03.2022, the case has been taken up for adjudication proceedings. Before, proceeding further, I would like to mention that a penalty was proposed on Noticee No. 2 i.e Mrs. Margi Alkeshkumar Soni in the SCN dated 08.01.2020 under Section 112 of Customs Act, 1962, which was dropped as per the findings by the Adjudicating Authority vide OIO No. 35/JC/SM/O&A/2020-21 dated 28.08.2020 issued on 04.09.2020. I find from the record that aggrieved by the impugned order dated 28.08.2020 issued on 04.09.2020, the Noticee No. 1 i.e Mr. Sonikkumar Harishkumar Soni preferred an appeal before Appellate Authority and the Noticee No. 2 has not filed any further appeal in the matter, therefore, it appears the allegations/charges related to Noticee No. 2 i.e Mrs. Margi Alkeshkumar Soni attains its finality and therefore, I refrain myself from discussing it again in the present order. Accordingly, I take up the case for fresh adjudication for the charges framed against Noticee No. 1 i.e Mr. Sonikkumar Harishkumar Soni under SCN dated 08.01.2020

#### **Defense reply and record of personal hearing:**

7. Personal Hearing in this case was fixed on 09.12.2024. Shri Naresh Satwani, Authorized representative/Advocate has appeared in personal hearing on behalf of noticee through video conferencing. He re-iterated the submission made in the matter dated 27.07.2020 and additional submission dated 24.10.2024. He submitted that the noticee was under belief that the personal jewellery worn on the body does not constitute “baggage” and therefore need not be declared. The noticee is an NRI, not a frequent traveller and arrived in India wearing the gold kada openly on his right arm, with no attempt to hide or mis declare it. The kada gifted by his parents, was previously taken by noticee from India to Australia. He submitted that the gold is restricted item and not a prohibited one. Section 111(d), (i), (l) and

(m) do not apply since there was no concealment. He relied on case laws that support redemption or re-export of personal items that are not concealed. He requested re-exporting the kada under Section 80 or to have it released upon payment of a reasonable redemption fine under Section 125, instead of absolute confiscation.

**Written Submission: -**

8. Shri Naresh Satwani, Advocate has filed initial defence reply dated 27.07.2020 to the show cause notice dated 08.01.2020 on behalf of Mr. Sonikkumar Harishkumar Soni wherein he denied the allegation levelled in the SCN dated 08.01.2020 and mentioned that all allegations were based on assumption and presumptions without any tangible evidences. He submitted that the statement of noticee was recorded under duress and pressure and retract from the statement. He submitted that the noticee and co NOTICEE are residing at Australia and travelled from Brisbane to Ahmedabad on 18.07.2019. after completion of immigration formalities, the noticee alongwith his wife walked through the green channel at arrival hall, the officer of customs intercepted the noticee and a thorough search was conducted of the noticee alongwith the baggage and found a Gold Kada coated with white Rhodium having purity of 999.0 and weighing 400.300 grams. On being asked the reason for declaring the same before Authority, the noticee was under impression that the baggage declaration was to be made for goods carrying in baggage only, while the said kada was worn by him, therefore, he did not declare the same. The noticee has submitted that they were not frequent flyer and came to India to attend a family function. He submitted that the Gold Kada was neither concealed in the baggage, nor in the body but was worn by the noticee on his right arm on his bicep and was a personal belonging. He submitted that they have requested the officer to detain the kada and may return to them while return back to Australia after attended the function. He submitted that the noticee is an NRI and doing Job there. He submitted that

the said Gold Kada was given as a marriage gift by his parent and carried the same to Australia. He submitted that, he was not frequent flyer, therefore, do not know much about custom law and procedure at that time for visiting abroad that a person has to declare gold ornaments, valuables etc. He noticee has submitted that he was not declare the said Gold Kada while visiting abroad. He submitted that non declaration of Gold Kada is just a procedural lapse and cannot be equated to smuggling. Further, gold is restricted item and not prohibited Item. Further, even as per the provision of Section 125 of Customs Act, 1962, the prohibited goods can be released on payment of fine in lieu of confiscation and requested to release the gold on payment of fine. The following case laws are submitted to show that the gold in the illegal custody of Customs is liable to be released on redemption fine-

- Omkar Jewellers Vs. Commissioner of Customs (Export) Delhi, The principal bench of Hon'ble CESTAT, New Delhi [2014 (312) E.L.T 776 (Tri.Del)]
- Vimlesh Kumar Neema Vs. Commissioner of Customs (Prev.), Ahmedabad decided by Hon'ble CESTAT, Ahmedabad [2007(219) E.L.T 346 (Tri. Ahmd)]
- The decision of Hon'ble High Court of Calcutta in case of Rajaram Bohra Vs. Union of India [2015(322) E.L.T 337 (Cal.)]
- The decision of Hon'ble CESTAT, West Zonal Bench, Mumbai in case of Yakub Ibrahim Yusuf Vs. Commissioner of Customs Mumbai [2011 (263) E.L.T 685 (Tri. Mumbai)]
- The Decision of Government of India, Department of Revenue, Revisionary Authority in case of Mohd. Zia Ul Haque [2014 (314) E.L.T 849 (G.O.I)]
- The decision in case of Hon'ble CESTAT South Zonal Bench, Chennai in case of Chinnakaruppan Vs. Commissioner of Customs, Trichy [ 2007 (207) E.L.T 138 (Tri. Chennai)]

- The decision of Hon'ble High Court of Madras in case of Collector of Customs, Madras Vs. Meena A Bharwani [2006 (194) E.L.T 273. (Mad)]

The noticee submitted that there is no intention of smuggling as alleged and the non-declaration of it in baggage declaration, is nothing but bonafide mistake, hence at most it can be treated as technical or procedural lapse and therefore, lenient view may be taken and the gold may be released without imposing any fine or on payment of minimum fine in lieu of confiscation and he further, request for re-export of the said gold kada.

Further, the noticee vide letter dated 23.10.2024 received on mail 24.10.2024 submitted additional submission wherein he submitted that the gold kada was worn openly on his right arm and was not concealed in any secret manner. The gold kada was a personal belonging which was gifted by his parents at the time of his marriage. He mentioned that he carried the said gold kada with him from India to Australia during his journey on 06.03.2018 and was wearing the same on return to India. He mentioned that even if the Gold Kada is deemed to fall under the definition of baggage, the relevant provisions under Section 80 of the Customs Act, 1962 allow for temporary detention of such item. In the case, he made an oral request to the officer to exercise the option, however the same was not allowed to him. He submitted that gold is classified as restricted item under the Foreign Trade Policy subject to certain conditions and is not classified as prohibited goods. The noticee mentioned that in first round of litigation the learned Adjudicating Authority for not giving option of redemption fine or option to re-export by relying on various cases which are not applicable in the present case and prayed to :

- To drop the proceedings initiated;
- May allowed to re-export as per Section 80 of Customs Act, 1962
- Looking to the status of noticee as NRI, a lenient view may be taken for imposing any fine and/or penalty

- Pass any other order or relief as may be deemed fit in the interest of justice

## **DISCUSSION & FINDINGS**

**9.** I have carefully gone through the facts of the case that the main issue to be decided is whether, gold kada of 24 kt gold having 999 purity, totally weighing **400.300** grams having tariff value of **Rs. 12,62,987/- and** Market Value of **Rs. 14,48,285/-** smuggled/ brought in by the passenger which were placed under seizure vide Panchnama drawn on 18/19.07.2019, 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.

After having identified and framed the main issue to be decided, as stated above, I now proceed to deal with the issue in the light of facts and circumstances of the case provision of the Customs Act, 1962, contentions of the noticee and evidences available on record.

**10.** I find that the Panchnama clearly draws out the fact that the noticee was intercepted when he was passing and was about to exit the green channel and on suspicion, personal search of the passenger and his baggage was conducted. The passenger did not declare the gold and denied to have dutiable goods. Under Panchnama, I find that during passing from DFMD (Door Frame Metal Detector) machine, loud beep sound heard and the AIU officer again asked the passenger whether he was still having any metallic substance left in his clothes, at this the passenger re-checked his clothes and confirmed that he did not have any such material left in his clothes. The passenger was again asked to walk through the DFMD and on his passing through the DFMD, a loud beep was again heard. The AIU officer again asked the passenger if he has hidden any metallic substance inside his clothes or inside his body. The passenger however denied that he had hidden any metallic substance inside his clothes or body. Thereafter,

the passenger was again asked to walk through the DFMD and on his walking through the DFMD, a loud beep was heard to which the AIU officers explained that there might be some metallic substance kept beneath the clothes. On being questioned, the noticee confessed that he had concealed/hidden metallic substance in his right arm on his bicep under the shirt. The passenger removed the Silver Colour coated metallic kada and gave it to the officers. It is also on record that the government approved valuer had tested and certified that Gold kada were of 24 kt gold with 999.0 purity, totally weighing **400.300 grams, valued at Rs. 12,62,987/- (Tariff Value) and Rs. 14,48,285/- (Local Market Value)**, placed under seizure under panchnama dated 18/19.07.2019, in the presence of the passenger and Panchas.

Under his reply, I find that, the noticee has submitted that he is NRI and not a frequent traveler. The Gold Kada was worn openly on his right arm and was not concealed in any secret manner. The gold kada was a personal belonging which was gifted by his parents on his marriage. He mentioned that he carried the said gold kada with him from India to Australia during his previous visit and now he returned with the same. Since it was originally taken from India, therefore, he believed that bringing it back does not require any declaration or payment of duty. He submitted that as per Section 2(3) of Customs Act, 1962 the term "Baggage" ordinarily refers to suitcase, bags or containers in which a traveler carries goods or personal belonging. Item worn on the body cannot be considered "baggage" as per the definition. Further noticee has taken a plea that not being a frequent flyer, he do not know much about the Customs Law and procedure that at time of visiting abroad, a person has to declare the gold ornaments, valuables etc. if crosses the permitted limit. I find that under his submission, the noticee himself admitted that they have crossed the green channel and not declared the said gold kada in the impression that the same was not covered under the "Baggage". It is very clear from the content of Panchnama only after passing from the DFMD machine 2-3 times, the noticee had confessed the

loud sound heard because of gold kada wear by him on his bicep beneath under his shirt and noticee himself accepted in his submission that he had not declared the same before Custom Authority.

*Since the noticee has taken a plea that the gold kada is his personal belonging which he carried while going abroad from India on 06.03.2018 and he wearing the same kada while returning from abroad, I am duty bound to examine the same and see whether the noticee has informed the customs authority before leaving India. I find that as per the provision envisaged every passenger leaving India are subject to clearance by the Customs Authorities. Only bonafide baggage is allowed to be cleared by the passengers. There is a procedure prescribed whereby the passenger leaving India take the export certificate for the various high value items includes jewellery as well. Such an export certificate facilitates re-importation of such goods while bringing back the things in India as no duty is charged. In the instant case, I find that the noticee failed to do so and did not produce any valid export certificate which constitutes their say. Therefore, the goods seized are not to be considered as 'Used One' and the claim of the noticee that the Gold Kada was carried by him while going abroad and he brings the same with him in India does not hold ground and far from the truth.*

11. Now come to the claim made by the noticee in his submission that the Gold Kada worn by him does not include in the "Baggage" as per the definition. In this regard, I shall briefly refer to the provisions of the Customs Act, 1962 and the Baggage Rules 2016 and the few other rules. 35. As per Section 77 of the Customs Act, 1962, an owner of a baggage is required to make a declaration of the content of the baggage for the purpose of clearing it before the proper Officer.

#### **Section77:DECLARATION BY OWNER OF BAGGAGE:-**

*"The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer"*

As per Section 79 of the Customs Act, 1962, bona fide baggage of a passenger is exempted from payment of duty. Section 79 of the Custom Act, 1962 reads as under:-

**SECTION 79. BONA FIDE BAGGAGE EXEMPTED FROM DUTY.—**

(1) *The proper officer may, subject to any rules made under sub-section*

*(2), pass free of duty-*

*(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;*

*(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.*

(2) *The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify –*

*(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);*

*(b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);*

*(c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.*

(3) *Different rules may be made under sub-section (2) for different classes of persons.*

**The expression “baggage”** is defined in Section 2(3) of the Customs Act, 1962 as under:-

*Section 2(3): baggage" includes unaccompanied baggage but does not include motor vehicles".*

As per Section 80 of the Customs Act, 1962, a proper officer, at the request of a passenger, can detain any article in a baggage of a passenger which are either dutiable or the import of which is prohibited, in respect of which, a true declaration has been made under Section 77 for being returned on his leaving India and if for any reason, the passenger is unable to collect the article at the time of leaving India, the article may be returned to him through any other passenger authorized by him who would be leaving India or as cargo consigned to him.

The Board has also framed Baggage Rules,2016 under Section 81 of the Custom Act, 1962. Rule 3 of the Baggage Rules, 2016 which is relevant for this case reads as under:-

**RULE 3. PASSENGER ARRIVING FROM COUNTRIES OTHER THAN NEPAL, BHUTAN OR MYANMAR.:-**

An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,-

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of Indian origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.

Explanation. – The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.]

**Annexure-I to the Baggage Rule, 2016 reads as under:-**

**ANNEXURE-I (See Rule 3, 4 and 6)**

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. **Gold or silver in any form other than ornaments.**
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

Further, The expression “personal effect” is defined in Rule 2(vi) of the Baggage Rules, 2016 as follows:-

Rule 2(vi) “personal effects” means things required for satisfying daily necessities but does not include jewellery”.

Thus, jewellery items are not articles of personal effect. Jewellery are any other articles other than the articles of “personal effect”. Therefore, the noticee comes within the meaning of Rule 2(1)(v) of the said Rules are governed by Sub Clause (b) of the Rule 3 of Baggage Rules, 2016. The said Rule read with Annexure I makes it clear that gold or silver ornaments upto a value of Rs.50,000/- (Rupees Fifty Thousand only) worn in person or carried on person are only freely.

Since the value of the gold ornaments worn by noticee exceeded Rs.50,000/- (Rupees Fifty Thousand only), it was incumbent on the part of the noticee to have made proper declaration under Customs Baggage Declaration Regulations, 2013 read with Baggage Rules 2016. These Rules apply to all

passengers including tourist coming to India. These Rules are clear and There is no scope for any ambiguity and confusion. Therefore, the gold ornament/jewellery worn by the noticee comes under ambit of definition of "Baggage". If the value of gold and silver ornaments exceeded the value under the Rules, the noticee was required to make appropriate declaration. However, case in hand, I find no declaration under Section 77 of Customs Act, 1962 was given by the noticee. Therefore, I find the ground taken by the noticee appears not tenable.

I further note that the noticee in his submission mentioned that he was not aware about the procedure of Customs Law. The explanation given by the noticee cannot be held to be genuine and creditworthy. 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.

**12.** I find under submission that the noticee has retract from the statement by saying that the same was recorded under duress and at the time of signature they were not aware of submission recorded by the officers. In this regard, I find that it is quite clear that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording his statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. The passenger has not dislodged any of the facts narrated in his deposition. In fact, in his statement, he has clearly admitted that he had intentionally kept undeclared the Gold kada and had not declared the same on his arrival before the Customs officer with an intent to clear them illicitly and evade payment of customs duty and thereby, violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020. The Statement under Section 108 of the Customs Act, 1962 was

given voluntarily and the noticee was at liberty to not endorse the typed statement or hand written statement, if the same had been taken coercion/pressure as alleged by the noticee. Therefore, I do not find any force in the contention of noticee in this regard and same is afterthought. It is on the record the noticee had tendered their 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 is as:-

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

**13.** Under submission, the noticee has mentioned that he was not given the option Temporary Detention of Baggage as per Section 80 of Custom Act, 1962 and also requested for re-export of the Gold Kada. 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 written 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." Hence, I hold that the noticee was rightly not given the option of temporary detention. Therefore, the option under Section 80 of the Act would not be applicable to him. The request for re-export is therefore, rejected.

**14.** Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said Gold kada,

which was 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 with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**15.** From the facts discussed above, it is evident that noticee had carried the said gold weighing 400.300 grams, while arriving from Brisbane (Australia) to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 400.300 grams, liable for confiscation, under the provisions of Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold 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.

**16.** 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 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-bona fide purposes. Therefore, the said improperly imported gold weighing 400.300 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bona fide 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 400.300 grams, having Tariff Value of Rs.12,62,987/- and Market Value of Rs.14,48,285/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 18/19.07.2019 liable to confiscation under the provisions of Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form gold kada concealed in his right arm on his bicep under the shirt, 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.

**17.** I find that the Noticee confessed of carrying the said gold of 400.300 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 passenger without following the due process of law and without adhering 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.

**18.** 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 gold bar weighing 400.300 grams, having Tariff Value of Rs.12,62,987/- and Market Value of Rs.14,48,285/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 18/19.07.2019. 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 bar weighing 400.300 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.

**19.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 400.300 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in form of kada hidden in his right arm on bicep under the shirt. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**20.** 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 bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find

that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of kada hidden in right arm on bicep under shirt with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 400.300 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 18/19.07.2019 stated that he has carried the said gold by concealment to evade payment of Customs duty. Under his submission, the noticee has requested to redeem the gold on payment of redemption fine and relied on the various case law as mentioned hereinabove at Para 08. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

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

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

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

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

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

**20.1.** Further, 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]*

**20.2.** 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.

**20.3.** Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

89. *While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same,*

*wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**20.4** 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.*

**20.5.** 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".

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

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

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

**20.7. 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.**

**21.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 400.300 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 400.300 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962.**

**22.** I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 400.300 grams, carried by him. Under his submission, the noticee has mentioned that penalty upon a person can be imposed only if he known or has reason to believe that the goods, he is

handling are liable to confiscation under Section 111 of the Customs Act, 2017. Hence mere non declaration in baggage declaration under bonafide belief, cannot be considered as concealment of Gold Kada with intent to evade the payment of Customs Duty. The noticee has submitted case laws to support his contention regarding imposing penalty under Section 112 of Customs Act, 1962 as :-

- The decision of Hon'ble Tribunal, Mumbai in case of Asian Paints (India) Ltd Vs. Commissioner of C.Ex, Hyderabad-I reported in 2004 (167) ELT 224(Tri-Mumbai)
- The decision of Hon'ble Principal Bench of CESTAT, New Delhi in case of Praveen Kumar Chugh Vs. Commissioner of Customs, New Delhi
- The decision of Hon'ble CESTAT, Kolkata in case of Vijay Kumar Chaudhery Vs. Commissioner of Customs, Patna

On going through the judgment made in cases cited by the Noticee in his support, I find that the case laws are different and not relevant in the instant case. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of noticee is established wherein it states that "The act is not culpable unless the mind is guilty". Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bar weighing 400.300 grams (Gold Kada) 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 gold bar weighing 400.300 grams, carried by him. He has agreed and admitted in his statement that he travelled from Brisbane (Australia) to Ahmedabad with the said gold in form Kada concealed in right arm on bicep under shirt. 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 400.300 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.

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

**ORDER**

- i. I order absolute confiscation of the said Gold kada concealed/hidden in right arm on bicep under Shirt, totally weighing 400.300 grams having tariff value of **Rs. 12,62,987/- (Rupees Twelve Lakh, Sixty Two Thousand, Nine Hundred and Eighty Seven Only)** And Market Value Of **Rs. 14,48,285/- (Rupees Fourteen Lakhs Forty Eight Thousand Two Hundred and Eighty Five Only)** recovered from Mr. Sonikkumar Harishkumar Soni and placed under seizure vide panchnama dated 18/19.07.2019 under Section 111(d),111(i), 111(l), and 111(m) of the Customs Act,1962;
  
- ii. I impose a penalty of Rs.4,00,000/- (Rupees Four Lakh Only) on Mr. Sonikkumar Harishkumar Soni, under the provisions of Sections 112(a)(i) of the Customs Act 1962;

OIO No:220/ADC/SRV/O&A/2024-25  
F. No: VIII/10-84/SVPIA/HQ/O&A/2019-20

**24.** Accordingly, the Show Cause Notice No. VIII/10-84/SVPIA/HQ/O&A/2019-20 dated 08.01.2020 stands disposed of.

Additional Commissioner  
Customs, Ahmedabad

F. No. VIII/10-84/SVPIA/HQ/O&A/2019-20  
**DIN: 20250171MN0000000BE9**

Date: 08.01.2025

**BY SPEED POST A.D.**

To,  
Mr.Sonikkumar Harishkumar Soni  
Dadaji Ni Khadki, Haveli Mahollo,  
Vaso, Kheda, Gujarat, PIN 387380

**Copy to:**

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusam@gov.in
- (v) Guard File.