

OIO No.35/AB/ADC/SRT-AIRPT/2024-25
F. No. VIII/26-58/AIU/CUS/2023-24



अपर आयुक्त, सीमा शुल्क कार्यालय

OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS

सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT

4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat -395007 ; Tel. No.- 0261-2990051

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PREAMBLE

A	डी आई ऐन/DIN	20250471MN000000DED6
B	फ़ाइल संख्या / File No.	F. No. VIII/26-58/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F.No.VIII/26-58/AIU/CUS/2023-24 dated 20.09.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	35/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	31.03.2025
F	जारी करने की तिथि/ Date of Issuance	01.04.2025
G	द्वारा पारित / Passed by	Shri Anunay Bhati Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and address of Passenger	Shri Jigneshkumar Karshanbhai Moradiya, 11, Vivekanand Society, Near Patidar Samaj Ni Wadi, Ved Gurukul Road, Katargam, Surat City, PIN- 395004, Gujarat

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए यह प्रति निशुल्क प्रदान की है ।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. इस आदेश से अपने को व्यथित महसुस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है । इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट का स्टाम्प लगा होना चाहिए ।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhavan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed by the post or person within sixty days of receipt of this order. It should bear a court fee stamp of appropriate value.

३. अपील के साथ निम्नलिखित चीजे संलग्न की जाए ।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश की प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोर्ट फी स्टाम्प लगा हो ।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

BRIEF FACTS OF THE CASE:

1. Shri Jigneshkumar Karshanbhai Moradiya (hereinafter referred to as the "Passenger/Noticee"), Age: 39 years, S/o Shri Karsanbhai Pitambarbhai Moradiya, residing at 11, Vivekanand Society, Near Patidar Samaj Ni Wadi, Ved Gurukul Road, Katargam, Surat City, PIN- 395004, Gujarat, holding passport No. N6335421 arrived at Surat International Airport on 28.03.2024 from Sharjah on Air India Express Flight No. IX-172 dated 28.03.2024.

2. Whereas, based on information collected and as per information received from DRI, Jigneshkumar Karshanbhai Moradiya was suspected to be carrying high-value dutiable/prohibited goods in-person or in the baggage, who was intercepted by the officers of the Air Intelligence Unit (AIU) and officers of DRI (hereinafter referred to as the "officers"), in the presence of panchas under Panchnama proceedings dated 28/29.03.2024, near the green channel of the arrival hall of International Terminal of International Airport, Surat. The passenger was found to be carrying two bags, one red trolley bag and one brown sling bag. The officers asked the passenger whether he had anything to declare, which the passenger denied. The officers informed the passenger that they would conduct his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger politely denied it. Thereafter, the officers asked the passenger whether he wanted to be searched in the presence of the Executive Magistrate or the Superintendent (Gazetted Officer) of Customs; in reply, the passenger consented to be searched before the Superintendent of Customs. Thereafter, the DRI officer and the passenger went inside the room meant for Baby Care located in the arrival area, where the passenger was asked to remove all the metallic objects from his body, and the officer scanned his body with the hand-held metal detector. During scanning, a beep sound was heard when the hand-held metal detector was passed over the waist portion of the blue colour jeans pants worn by the passenger. The jeans pants worn by the passenger were then passed through the XBIS scanner machine located in the arrival hall of Surat International Airport in the presence of the passenger and panchas. On scanning through the XBIS Scanner machine, a dark image was seen in the waist portion of the jeans, and then the jeans pant was cut open with the paper knife, and from inside, a paper strip containing paste-like material was recovered. The said strip was found to have a gross weight of 334.350 grams.

3. Subsequently, the officers passed the luggage he carried through the XBIS Scanner machine and thoroughly checked it after withdrawing its contents; however, nothing objectionable or prohibited goods were found.

4. The customs officers, panchas, and the passenger proceeded to Shri Ambica Touch Refinery to melt the paste-like material in a paper strip recovered from the passenger's jeans. At Shri Ambica Touch Refinery, the said material was melted in the furnace, whereupon gold in nugget form was obtained, and some ashes remained in the process. Thereafter, the gold nugget so obtained was kept in a pouch packed in a green envelope and sealed so that it could not be tampered with. Further, upon arrival at the arrival hall of Surat International Airport, the ACO informed them that the government-approved valuer was not reachable then and that the final value of the recovered gold nugget would be ascertained later under panchnama proceedings. The weight of the gold nugget was 243.58 grams (approximate).

5. Whereas, the above-mentioned 24 kt gold nugget weighing 243.750 grams recovered from the passenger, Shri Jigneshkumar Karshanbhai Moradiya, was placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 29.03.2024 under Panchnama proceedings dated

28/29.03.2024, on a reasonable belief that the said gold was smuggled into India and was liable for confiscation under provisions of the Customs Act, 1962.

6. Further, the Government Approved Valuer, Shri Vikasraj Tilakraj Juneja, arrived at the Customs office at Surat International Airport on 29.03.2024 and, the plastic container sealed under panchnama proceedings on 29.03.2024 was presented to the Government approved valuer in presence of the panchas and other Customs officers. It was further noticed that the departmental seal placed on the said container was intact. The plastic container was opened thereafter, and the valuer examined and weighed the said nugget on his weighing scale; the valuer certified the same as a 24 kt gold weighing 243.750 grams. The market value of gold nugget was Rs. 17,18,438/- (Rupees Seventeen Lakh Eighteen Thousand Four Hundred Thirty-Eight only) and its tariff value was Rs. 14,45,535/- (Rupees Fourteen Lakh Forty-Five Thousand Five Hundred and Thirty-Five only) as per Notification No. 24/2024-Customs-(NT) dated 26.03.2024 and 25/2024 – Customs (NT) dated 28.03.2024. Thereafter, the valuer issued a valuation certificate dated 29.03.2024/03. The Customs officers again sealed the gold nugget weighing 243.750 grams and handed it over to the warehouse in charge, Surat International Airport, Surat.

7. Further, the above-mentioned 24 kt gold nugget weighing 243.750 grams (extracted from the paper strip tucked into noticee's jeans pants) having a market value of Rs.17,18,438/- and tariff value of Rs. 14,45,535/-, recovered from the passenger, Shri Jigneshkumar Karshanbhai Moradiya was placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure Order dated 29.03.2024 under Panchnama proceedings dated 29.03.2024, on a reasonable belief that the said gold was smuggled into India and was liable for confiscation under provisions of the Customs Act, 1962.

8. The following documents were withdrawn from the Passenger for further investigation:-

- a) Copy of Boarding Pass from Sharjah to Surat of Air India Express Flight No. IX-172 dated 28.03.2024, Seat No. 6F, PNR No. C1YRQS.
- b) Copy of Passport No. N6335421 issued at Surat on 15.02.2016 and valid up to 14.02.2026.
- c) Copy of Aadhar Card (No. 5867 6124 9203).

9. Whereas, a statement of Shri Jigneshkumar Karshanbhai Moradiya was recorded on 29.03.2024 under Section 108 of the Customs Act, 1962, wherein he inter alia stated:-

- that he was residing at Plot No. 11, Vivekanand Society, Near Patidar Samaj Ni wadi, Ved Gurukul Road, Katargam, Surat City, PIN- 395004, Gujarat with his parents, brother, wife and two children; that he was engaged in the business of Job work in textile industry; that he had studied till 10th standard; that he could read, write and understand English, Gujarati and Hindi Languages.
- that he was shown and explained the panchnama dated 28/29.03.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, he put his dated signature on the panchnama in token of acceptance of the facts stated therein.
- that he had visited Dubai/Sharjah several times in connection with his business; he had gone to Sharjah on 24.03.2024 from Surat International Airport, Surat; that the gold nugget of 24 kt recovered from his possession

belonged to him, and he had purchased the same from a shop named Omni jewellers located at Dubai; and the shoppers sold him the jeans pant with gold paste concealed in its waist area; that for the said purchase he had made payment in cash which he had collected from his friends who were in Dubai; that he had brought the said gold paste to make jewellery for his family; that he did not declare the said gold paste as he was aware that import of Gold without payment of Customs duty was an offence about that the requirement of making declaration of said gold chain/nugget before Customs.

- that after clearing the immigration procedures, he collected his baggage, and during checkout, the Customs officials intercepted him, and further procedures, as stated in Panchnama dated 28/29.03.2024, were carried out.

10. LEGAL PROVISIONS RELEVANT TO THE CASE

- a) As per para 2.27 of Foreign Trade Policy 2023 -“Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.”
- b) As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 – “the Central Government may by order make provision for prohibiting, restricting or otherwise regulating, in all cases or specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.”
- c) As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992-“All goods to which any order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.”
- d) As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 – “no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”
- e) As per Section 11(3) of the Customs Act, 1962- “Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.”
- f) As per Section 2(3) of the Customs Act, 1962 – “baggage” includes unaccompanied baggage but does not include motor vehicles.
- g) As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
 - a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and
 - e. any other kind of movable property;

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- h) As per Section 2(33) of Customs Act 1962-“prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”
- i) As per Section 2(39) of the Customs Act 1962 –“‘smuggling’ in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113.”
- j) As per Section 77 of the Customs Act 1962-“the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.”
- k) As per Section 110 of the Customs Act, 1962-“if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.”
- l) Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation under section 111 (d) of the Customs Act 1962.
- m) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.
- n) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111 (j) of the Customs Act 1962.
- o) As per Section 112 of the Customs Act 1962-“any person,
 - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
 - (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”
- p) As per Section 119 of the Customs Act 1962, any goods used for concealing smuggled goods shall also be liable for confiscation.
- q) As per Section 123 of Customs Act 1962 (Burden of proof in certain cases)
 - (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-
 - (a) in a case where such seizure is made from the possession of any person -
 - i. on the person from whose possession the goods were seized and

- ii. if any person other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

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

- r) As per Customs Baggage Declaration Regulations, 2013- “all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.”
- s) As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold in any form, other than monetary gold and silver in any form, is amended from ‘Free’ to ‘Restricted’; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

CONTRAVENTION AND VIOLATION OF LAWS:

11. It, therefore, appeared that:

- a) Shri Jigneshkumar Karsanbhai Moradiya had actively involved himself in the instant case of smuggling gold into India. The said passenger had improperly imported a gold nugget of 24 kt weighing 243.750 grams having a market value of Rs. 17,18,438/- and tariff value of Rs. 14,45,535/-, without declaring it to the Customs by way of concealment in-person. He concealed the gold paste in jeans pants worn by him with a deliberate and mala fide intention to smuggle the said gold into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other Allied Acts, Rules and Regulations. The gold improperly imported by him with commercial considerations without declaration before the proper officer of Customs could not be treated as bona fide household goods or personnel effects. Shri Jigneshkumar Karsanbhai Moradiya had thus contravened the Foreign Trade Policy 2023, 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
- b) By not declaring the value, quantity, and description of the goods imported by him, the said passenger violated the provisions of the Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- c) The gold improperly imported by the passenger, Shri Jigneshkumar Karsanbhai Moradiya by concealing the same in-person without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- d) Shri Jigneshkumar Karsanbhai Moradiya, by his above-described acts of omission and commission, had rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

- e) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold, weighing 243.750 grams, having market value of Rs. 17,18,438/- and tariff value of Rs. 14,45,535/-without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, namely Shri Jigneshkumar Karsanbhai Moradiya.

12. Accordingly, a Show Cause Notice bearing F. No. VIII/26-58/AIU/CUS/2023-24 dated 20.09.2024 was issued to Shri Jigneshkumar Karsanbhai Moradiya calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 within thirty days from the receipt of notice as to why:

- (i) The recovered one 24-carat gold chain/nugget weighing 243.750 grams, having a market value of Rs.17,18,438/- (Rupees Seventeen Lakh Eighteen Thousand Four Hundred Thirty-Eight only) and its tariff value Rs. 14,45,535/- (Rupees Fourteen Lakh Forty-Five Thousand Five Hundred and Thirty-Five only), seized vide Seizure Order dated 29.03.2024 under panchnama proceeding dated 28/29.03.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii) A penalty should not be imposed upon him under Section 112(b) of the Customs Act, 1962.

13. DEFENCE REPLY:

In the Show Cause Notice dated 20.09.2024 issued to the noticee, the noticee was asked to submit his written reply/defence submission to the said notice within the stipulated time. Shri Prakash Shingrani, Advocate and Authorized representative of the noticee, submitted the defence reply/submission dated 17.10.2024 and additional submission dated 11.12.2024 to the Show Cause Notice. In the defence submissions, he submitted:

- that the noticee admits the possession, carriage, and ownership of the seized gold but denies the allegation that he attempted to clear the gold without declaring to Customs;
- that the noticee imported gold paste weighing 334.350 grams; that the gold paste was melted and refined, and a gold nugget weighing 243.750 grams was retrieved; that, however, in the impugned SCN, it was proposed to confiscate one 24-carat gold chain weighing 243.750 grams; Thus, there is no application of mind in the matter of the issuance of the impugned SCN by the authority concerned; that the impugned SCN is not sustainable; it cannot be considered a technical defect that could be cured by issuing a corrigendum; that if a corrigendum is issued now (after 6 months of the seizure of the goods), it would be in violation of Section 110(2) of Customs Act, 1962 and the goods under seizure are liable to be returned to the noticee. In view of the defect in the SCN, the gold chain cannot be confiscated, and no penalty u/s 112 (b) of the Customs Act, 1962 can be imposed on the noticee. In support of his claim, he has relied upon the case laws: M/s Shubham Electricals vs Commissioner of Service Tax, Rohtak – CESTAT, Principal Bench, New Delhi, Supreme Court of India -B. D. Gupta vs State of Haryana on 18 September 1972 -1972 AIR 2472, 1973 SCR (2) 323, Gujarat High Court in Hussainmiya Alias Jago Razakmiya ... vs State Of Gujarat on 9 February, 1999 - 1999 CriLJ 2401, Gujarat High Court in Om Shri Jigar Association vs Union Of India And Ors. on 5 May, 1994: 1994 209 ITR 608 Guj, Gujarat High Court in Kathi Harsur

Rukhad vs State of Gujarat and Ors. on 4 October, 1985: 1986 CriLJ 1627, (1986) 1 GLR 682, Calcutta High Court in Pradeep and Co. vs Collector of Customs and Ors. on 10 January, 1972: AIR 1973 Cal 131, 76 CWN 746, Karnataka High Court in Victory Glass and Industries Ltd. vs Collector of C. Ex. on 28 July, 1989: 1990 (25) ECC 72, 1990 (47) ELT 540 Kar, ILR 1989 KAR 3302, 1989 (2) KarLJ 484, Customs, Excise and Gold Tribunal – Mumbai in Metec Asia Pvt. Ltd. vs Commissioner of Customs (P) on 6 June, 1997: 1997 (95) ELT 440 Tri Mumbai; that the Additional Commissioner of Customs cannot choose to take upon adjudication of the proceedings initiated by this defective notice. If any order is passed on after the proceedings initiated by defective show cause notice, it cannot be sustained; that in this view, the SCN has to be quashed as invalid and not sustainable; that when there is a basic defect, viz., the defect in the Show Cause Notice itself, the defect cannot be cured by remanding the matter to the authority. Reliance is placed on the judgment of Inderjit Singh vs State of Maharashtra- AIR 1986 SC 328. He further submitted that it cannot be considered a technical defect that could be cured by issuing a corrigendum. If a corrigendum is issued now (after 6 months of the seizure of the goods), it will violate Section 110(2) of the Customs Act, 1962, and the goods under seizure are liable to be returned to the noticee. Given the defect in the SCN, the gold chain cannot be confiscated, and no penalty u/s 112 (b) of the Customs Act, 1962 can be imposed on the noticee;

- that extraction of pure gold before the seizure of the imported goods is an invalid and illegal procedure followed by DRI Officers; that he has further submitted that in the present case, a question arises as to what goods were smuggled into India, whether the gold paste weighing 334.350 grams or the gold nugget weighing 243.750 grams extracted from the gold paste weighing 334.350 grams; that undoubtedly, it was 343.350 grams of gold paste smuggled into India and later converted into pure gold nugget weighing 243.750 grams; that it was not 243.750 grams of pure gold smuggled into India, but 343.350 grams of gold paste smuggled into India, and 243.750 grams of pure gold was extracted from the said gold paste weighing 343.350 grams. The noticee has relied upon a few case laws: Pukhraj vs D.R. Kohli, SC, Mahadevi Lohariwala vs Union of India 1988 (38) ELT 585 (Calcutta), Bikaner-Assam Roadlines India Ltd, v. Union of India 2000 (119) ELT 282 (Patna H.C.), Angou Golmei v. Vizovolie Chakha Sang 1996 (81) ELT 440 (Patna), The Punjab and Haryana High Court in Gurmukh Singh v. Union of India and Others 1984 (18) ELT 274 (P&H), Sheo Nath Singh v. The Appellate Assistant Commissioner of Income Tax (Central) Calcutta and Others (SC), Innovation, Secunderabad and another v. Central Board of Excise and Customs and another 1984 (15) ELT 91 (A.P), The Collector, Central Excise. Allahabad and others v. L. Kashi Nath Jewellers AIR 1972 All HC 231, Abdul Kader v. Inspector of Central Excise 20.00 (126) ELT 48 (Mad. HC), A. B. Kundu v. Collector of Customs, Calcutta 1998 (104) ELT 732 (Tribunal) S. Nagarajan v. Vasantha Kumar and Another 1988 (34) ELT 571 (Kerala) (HC); 1988 Cr.L.J. 1217 The Mysore High Court in the case of Ganeshmul Channilal Gandhi and another v. Collector of Central Excise and Assistant Collector AIR 1968 Mysore HC, Collector (District Magistrate) Allahabad & others vs. Rajaram Jaiswal, reported in AIR 1985 SC 1622, PK Ghosh v. K.M. Mazodia reported in 2000 (117) ELT 14 (Cal) HC;
- that Gold is not a prohibited item, and gold seized from the noticee is not liable for confiscation; that he relied on the decisions in the cases of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009(241) ELT 182 (Cal.), Shaikh Jamal Basha v GOI, 1997 (91) ELT 277 (AP)

Union of India v. Dhanak M. Ramji 2003(248) ELT 128 (Bom), Sapna Sanjiv Kohli v. Commissioner of Customs, Surat 2010(253) ELT A52 (SC) and the case of Horizon Ferro Alloys Pvt Ltd. in the Division Bench of Punjab and Haryana High Court;

- that in support of his contention for the redemption of seized goods, he has relied upon the following decisions/Orders in the case: Commissioner of Customs V Alfred Menezes 2009(242) ELT 334 (Bom), Dhanak Madhusudan Ramii V Commissioner of Customs 2009(237) ELT 280, A. Rajkumari Vs Commissioner of Customs 2015(321) ELT 540, Mohd. Zia Ul Haque T2014/314/849, Yaqub Ibrahim Yusuf 2011(263) ELT 685, Shaikh Jamal Basha 1992(91) ELT 227(AP), Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai-2006 (205) ELT 383, (Tri-Chennai) Achiever International 2012(286) ELT 180 (Del), Shri Rama Sugar Industries Ltd. (1974) I SCC 534, Rajaram Bohra 2015(322) ELT 337 (Cal.), Ashok Kumar Verma 2019(369) ELT 1677, Mohammed Husain Ayyub Chilwan 2019(369) ELT 1784, Roshni Mathurdas 2019(369) ELT 184 (Tri Hyd);
- that the noticee claims ownership of the gold and redemption of the goods on payment of reasonable fine and penalty; that he has placed reliance upon the decisions of the Peringatil Hamza Vs CC (Airport), Mumbai 2014 (309) ELT 259 (Tri Mumbai); R. Mohandas Vs CC, Cochin 2016 (336) ELT 399 (Ker), the Hon'ble Kerala High Court; S. RAJAGOPAL Versus COMMISSIONER OF CUSTOMS, TRICHY the Tribunal;
- that this is his first offence, with no prior antecedents; that he had taken loans from friends to purchase the gold, and its confiscation would cause severe financial hardship; that he acknowledges the punitive, preventive, and reformatory intent of the law and seeks an opportunity to redeem the gold upon payment of applicable duty, fine, and penalty; that he contends that the allegations in the SCN are contradictory and prejudiced, failing to establish that he acted as a carrier; that the noticee neither committed nor participated in any act of organised smuggling under Section 111 of the Customs Act; that there is no evidence linking him to knowingly dealing with prohibited goods; that being a law-abiding citizen from a respectable family, the noticee urges that the proceedings against him be dropped; that he reserves the right to amend his submissions and requests an opportunity for a personal hearing before adjudication

14. RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, an opportunity to be heard in person was granted to the noticee to appear for a personal hearing on 11.12.2024 vide office letter of even F. No. VIII/26-58/AIU/CUS/2023-24 dated 25.11.2024. In response, Shri Prakash Shingrani, vide letter dated 11.12.2024, reiterated his written submission dated 17.10.2024 and further submitted and emphasized the consistency in allowing redemption of goods in light of various orders of the Hon'ble Court, Appellate Authority and Adjudicating Authority in favour of the noticee. Further, vide letter dated 17.12.2024, Shri Prakash Shingrani informed they did not require further Personal Hearing opportunity and requested to decide the matter on its merits.

15. DISCUSSION AND FINDINGS

I have carefully reviewed this case's facts, the relied-upon documents and the

relevant legal provisions, the defence submission and additional submission made by the noticee, and other materials on records. Therefore, I now proceed to decide the instant case based on evidence and documents available on record.

16. In the present case, I find that the main points to be decided are whether:

- (i)** The recovered one 24-carat gold chain/nugget weighing 243.750 grams, having a market value of Rs. 17,18,438/- (Rupees Seventeen Lakh Eighteen Thousand Four Hundred Thirty-Eight only) and its tariff value Rs. 14,45,535/- (Rupees Fourteen Lakh Forty-Five Thousand Five Hundred and Thirty-Five only), seized vide Seizure Order dated 29.03.2024 under panchnama proceeding dated 28/29.03.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 or otherwise;
- (ii)** A penalty should be imposed upon Shri Jigneshkumar Karsanbhai Moradiya under Section 112(b) of the Customs Act, 1962 or otherwise.

17. I find that the panchnama has recorded that a passenger, namely Shri Jigneshkumar Karsanbhai Moradiya holding passport No. N6335421 arrived at Surat International Airport on 28.03.2024 from Sharjah on Air India Express Flight No. IX-172. Based on DRI intelligence, Customs officers intercepted him near the green channel under Panchnama proceedings dated 28/29.03.2024, suspecting him of carrying dutiable/prohibited goods. The passenger, carrying a red trolley bag and a brown sling bag, denied having anything to declare. Upon consenting to a search before the Superintendent of Customs, a metal detector scan detected a concealed object in the waist area of his jeans. An XBIS scan further confirmed a dark image in the same area. The jeans were cut open, revealing a paper strip containing paste-like material weighing 334.350 grams. His baggage was also scanned but contained no objectionable items. The recovered material was taken to Shri Ambica Touch Refinery, where it was melted, yielding a gold nugget weighing approximately 243.750 grams and residual ash. The nugget was sealed in a green envelope with a departmental seal for security. Due to the unavailability of the government-approved valuer, the final valuation was deferred. On 29.03.2024, under fresh Panchnama proceedings, the sealed nugget was produced before the valuer, who verified the intact seal, weighed the gold at 243.750 grams of 24 kt purity, and certified its market value at Rs.17,18,438/- and tariff value at Rs.14,45,535/-. By Seizure Order dated 29.03.2024, issued under Panchnama proceedings, the 24 kt gold nugget was seized under Section 110 of the Customs Act, 1962, on a reasonable belief that it was smuggled into India, making it liable for confiscation under the provisions of the Act.

18. Further, I have gone through the statement dated 29.03.2024 of Shri Jigneshkumar Karshanbhai Moradiya recorded under Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was residing at Plot No. 11, Vivekanand Society, Near Patidar Samaj Ni wadi, Ved Gurukul Road, Katargam, Surat City, PIN- 395004, Gujarat with his parents, brother, wife and two children; that he was engaged in the business of Job work in textile industry; that he had a studied till 10th standard; that he could read, write and understand English, Gujarati and Hindi Languages.
- that he was shown and explained the panchnama dated 28/29.03.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, he put his dated signature on the panchnama in token of acceptance of the facts stated therein.

- that he had visited Dubai/Sharjah several times in connection with his business; he had gone to Sharjah on 24.03.2024 from Surat International Airport, Surat; that the gold nugget of 24 kt recovered from his possession belonged to him, and he had purchased the same from a shop named Omni jewellers located at Dubai; and the shoppers sold him the jeans pant with gold paste concealed in its waist area; that for the said purchase he had made payment in cash which he had collected from his friends who were in Dubai; that he had brought the said gold paste to make jewellery for his family; that he did not declare the said gold paste as he was aware that import of Gold without payment of Customs duty was an offence about that the requirement of making declaration of said gold chain before Customs.
- that after clearing the immigration procedures, he collected his baggage, and during checkout, the Customs officials intercepted him, and further procedures, as stated in Panchnama dated 28/29.03.2024, were carried out.

19. Further, I find that the noticee has never retracted his aforesaid statement dated 29.03.2024, and he confessed the offence committed by him in his statement. Therefore, I consider his statement to be material evidence in the instant case and to fortify my stand, I place my reliance on the observations/judgments of the following cases of the Hon'ble Apex Court and others:

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that the statement made before the Customs Officers, though retracted within 6 days is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act, 1962;
- The confessional statement given before the Customs officers is admissible evidence as they are not the police officers. This view has been upheld by the Hon'ble Supreme Court in the case of **Badaku Joti Savant vs. State of Mysore** [1978 (2) ELT J 323 (SC)];
- The decision of the Hon'ble Madras High Court in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Raghupathy** 1998 (98) ELT 50 (Mad), in which the court held that the confessional statement under Section 108, even though later retracted is a voluntary statement and was not influenced by duress and is a true one.
- The Hon'ble Apex Court in **Naresh J Sukhawani vs UOI** held that the Statement before the Customs Officer is a material piece of evidence.

20. Furthermore, I find that the noticee neither questioned the manner of the Panchnama proceedings at the relevant time nor contested the facts detailed in the Panchnama while recording his statement. Every procedure conducted during the Panchnama by the officers was thoroughly documented and executed in the presence of the panchas and the passenger. Additionally, I find that the passenger knowingly attempted to smuggle gold into India by way of clever concealment, violating the Customs Act of 1962. In his statement dated 29.03.2024, the noticee confessed that he was fully aware of the nature of his actions and their legal consequences. He also stated that the gold paste-like material weighing 334.350 grams in a paper strip recovered from the jeans pants belonged to him and that he had purchased it from Omni Jewellers in Dubai. He indicated that the shopkeepers sold him jeans with gold paste concealed in the waist area. Furthermore, he submitted that he had made the payment for this purchase in cash, which he had gathered from friends in Dubai. He

also claimed that he brought the gold paste to make jewellery for his family and intentionally failed to declare it to Customs with the intention of smuggling the same into India, despite being aware that importing gold without paying Customs duty constituted an offence. After reviewing the foregoing, I am satisfied to affirm that Shri Jigneshkumar Karshanbhai Moradiya's deliberate failure to declare the gold paste upon arrival and his attempt to avoid detection by Customs authorities clearly indicate his intention to smuggle gold into India. Upon arriving at Surat International Airport on 28.03.2024, he proceeded through immigration and baggage collection without making any declaration to any Customs officer. However, during the checkout process, he was intercepted by Customs officials, leading to the discovery of the smuggled gold and subsequent legal proceedings as per the Panchnama dated 28-29.03.2024. By his admission, he confessed that he intended to smuggle the gold to make jewellery. In contrast, he knew that such an act constituted an offence under Customs Law, for which he would have to face the prescribed legal consequences. After a careful review of the preceding events, I am conclusively led to the determination that the passenger has violated the provisions of the Customs Act, 1962; the Baggage Rules, 2016; the Foreign Trade (Development & Regulations) Act, 1992; the Foreign Trade (Development & Regulations) Rules, 1993; and the Foreign Trade Policy 2023.

21. Further, I find that the noticee confessed that he had not declared the said gold paste before the Customs authorities, which was ingeniously concealed inside in a paper strip tucked into the waist area of jeans pants. Further, it can be deduced from the discussion in the foregoing paragraph that he had not declared the same with the sole intention of smuggling the gold into India. Further, I find the modus used by the passenger to conceal the gold paste ingenious, which further corroborates his mala fide intent to circumvent the provisions of the Customs Act. I strongly opine that this is a clear case of non-declaration intending to smuggle the gold into Indian territory. Accordingly, there is sufficient evidence to affirm that the passenger was in possession of gold when he arrived at Surat Airport on 28.03.2024, and he failed to declare it before the Customs Authorities arrived at Surat International Airport, Surat. Therefore, it can be reasonably concluded that the case of gold smuggling against the passenger is conclusively established, as the gold recovered from his possession was kept undeclared with the intent to smuggle and evade the payment of Customs duty. Thus, I find it irrefutably established that the passenger had violated Section 77, Section 79 of the Customs Act, 1962 for the import/smuggling of gold which was not for bona fide use, and hence he has also contravened Rule 11 of the Foreign Trade Regulation Rules 1993 and Para 2.27 of Foreign Trade Policy 2023. It is pertinent to mention here that since 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, then as per Section 123 of the Customs Act, 1962, the burden to prove that they are not smuggled goods, shall be on the person from whose possession the goods have been seized. In the instant case, noticee in his statement dated 29.03.2024, has clearly confessed that he wanted to evade customs duty, and, therefore, he had not declared the same with the sole intention to smuggle the gold into India for making jewellery for his family.

22. Further, I deem it pertinent at this juncture to refer to **Section 2(39) of the Customs Act, 1962**, wherein **"smuggling"** is defined as any act or omission that renders goods liable to confiscation under **Section 111 or Section 113** of the Act. From the facts discussed above, it is evident that Shri Jigneshkumar Karsanbhai Moradiya had carried gold weighing 243.750 grams (extracted from a paper strip, concealed into Jeans Pants, weighing 334.350 grams containing gold paste) with 99% purity, concealed in the Jeans Pant worn by the passenger, while arriving from Sharjah to Surat, with the deliberate intent to smuggle the same into India without payment of Customs duty. His actions have rendered the said gold liable for

confiscation under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962. By concealing the gold in his baggage and failing to declare it before the Customs authorities, it is evident that he acted with a clandestine motive to evade customs duty. Moreover, he has confessed to smuggling, establishing his '*mens rea*' (guilty intent). Upon reviewing the above, I am of the considered opinion that the deliberate act of concealment by Shri Jigneshkumar Karsanbhai Moradiya and non-declaration of the gold before Customs in this case categorically make his offence fall within the definition of smuggling, making him liable for the confiscation of the impugned goods and penal consequences under the Customs Act, 1962.

23. Further, I have observed that the noticee had not filled out 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, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It has also been observed that the import was also for non-bona fide purposes, as the same was carried out with the sole intent of smuggling into India through clever concealment, as discussed above. Therefore, the said improperly imported gold by the passenger, Shri Jigneshkumar Karsanbhai Moradiya, without declaring to the Customs on his arrival in India, cannot be treated as bona fide household goods or personal effects. Therefore, it is undeniably established that the passenger has contravened the Foreign Trade Policy 2023 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.

24. I find that the noticee, in his defence submission dated 17.10.2024, has admitted the possession, carriage, and ownership of the seized gold but denied the allegation of attempting to clear the gold without declaring to Customs. I accept the noticee's admission of possession, carriage, and ownership of the seized gold. However, I find that the noticee's denying intent to evade customs declaration lacks merit in light of the facts and circumstances. I further find that the noticee was intercepted near the green channel based on credible DRI intelligence. During the search, gold paste concealed in the waist area of his jeans was detected and recovered in the presence of panchas under Panchnama proceedings. His failure to declare the gold at the first point of contact with Customs officers, despite carrying it in a concealed manner, constitutes a clear violation of customs regulations. The noticee's explanation that he purchased the gold in Dubai and brought it for personal use does not absolve him of liability, as non-declaration of dutiable goods is an offence under the Customs Act, 1962. The concealment of gold in paste form within his clothing further strengthens the department's case of deliberate smuggling with intent to evade duty. Additionally, his statement under Section 108 of the Customs Act establishes that he was fully aware of import regulations and the requirement to declare gold, reinforcing the inference of intent to evade. The subsequent melting of the paste confirmed the presence of 24 kt gold weighing 243.750 grams valued at Rs. 17,18,438/-, which was lawfully seized under Section 110 of the Act on reasonable belief that it was smuggled into India. The legal obligation to declare dutiable goods at arrival applies generally, and ignorance of the law cannot be a defense. The seizure was conducted in full compliance with due process, and the noticee's claims do not negate the factual position that he attempted to clear the gold without declaration. Given the evidence, statements, and circumstances, I find that the noticee's submission is devoid of merit.

25. The noticee, in his defence submission, had further submitted that the noticee imported gold paste weighing 334.350 grams, and when the gold paste was melted and refined, a gold nugget weighing 243.750 grams was retrieved; however, in the impugned SCN, it was proposed to confiscate one 24-carat gold chain weighing 243.750 grams; Thus, there is no application of mind in the matter of the issuance of

the impugned SCN by the authority concerned; that the impugned SCN is not sustainable; it cannot be considered a technical defect that could be cured by issuing a corrigendum; that if a corrigendum is issued now (after 6 months of the seizure of the goods), it would be in violation of Section 110(2) of Customs Act, 1962 and the goods under seizure are liable to be returned to the noticee. Given the defect in the SCN, the gold chain cannot be confiscated, and no penalty u/s 112 (b) of the Customs Act, 1962 can be imposed on the noticee. In support of his claim, he has relied upon various case laws of the Hon'ble Courts and other appellate forums. I find that the noticee's contention that the show-cause notice dated 20.09.2024 is rendered invalid solely due to the reference to a "24 kt gold chain" (instead of "gold nugget" recovered from melted gold paste) is misplaced and untenable. A minor misdescription or typographical error that does not prejudice the noticee or alter the essence of the allegations cannot, by itself, vitiate the entire proceedings. I note that it is a settled principle in law that while drafting a show-cause notice, the substance and the grounds of proposed action must be intelligible to the noticee to enable an effective defence. The test is whether the noticee has been apprised of the factual matrix and legal basis in a manner sufficient to respond. I reckon that in the present case, the SCN exhaustively sets out the alleged act of attempted smuggling or improper import of gold paste which, upon melting, yielded 243.750 grams of 24 kt gold, applicable provisions under the Customs Act, 1962 that warrant confiscation and penalty, the time, place, and manner of detection of the goods. I find that even if the SCN inadvertently used the term "gold chain" instead of "gold nugget," it remains undisputed that the goods under adjudication are 24 kt gold in refined form. The basic identity and nature of the goods, i.e., pure gold, are clearly understood by the noticee. I further find that Hon'ble Courts have consistently held that when a minor or clerical error does not cause prejudice to the affected party or result in any miscarriage of justice, such an error does not invalidate the show-cause notice in its entirety. The essential question is whether the fundamental allegations, legal provisions invoked, and the nature of contravention are duly conveyed. Here, I find that the SCN duly communicates the seizure of Gold (in paste form), which was melted to ascertain purity and weight. Further, the Department has proposed confiscation under Section 111 of the Customs Act, 1962 and the imposition of penalty under Section 112(b). Hence, the misdescription of the final shape (chain vs. nugget) in one part of the SCN is not fatal to the proceedings. I further find that section 124 of the Act requires a notice in writing stating the grounds for confiscation and the penal provisions invoked. This requirement is undeniably met. The grounds of confiscation, i.e. improper import of gold concealed as paste, are elaborated upon. I observe that no material fact has been withheld, and no new or extraneous commodity has been surreptitiously introduced to the prejudice of the noticee. Whether referred to as a "chain" or a "nugget," the underlying subject remains the same: 24 kt gold resulting from melted gold paste. I note that the noticee posits that issuance of any corrigendum now would violate Section 110(2) of the Act, but that argument misconstrues the provision. Section 110(2) primarily deals with the time limit for issuance of a show-cause notice from the date of seizure. A mere rectification of an inadvertent misdescription (i.e., "chain" instead of "nugget") is not tantamount to issuing a fresh show-cause notice with entirely new grounds. Rather, it is a correctible procedural defect that is not going to the root of the matter. I reiterate that the Supreme Court and multiple High Courts have consistently held that a trivial or typographical mistake can be cured if it does not introduce new facts or grounds and does not prejudice the other party. The error does not hamper the noticee's ability to defend since the SCN's entire factual narrative points to "24 kt gold" derived from the original gold paste. I find that a Corrigendum of even File No. dated 26.03.2025 to the Show Cause Notice bearing F. No. VIII/26-58/AIU/CUS/2023-24 dated 20.09.2024 has been issued by the Investigating Authority, rectifying the error accordingly. I further find that the decisions cited by the noticee (e.g., ***M/s Shubham Electricals vs Commissioner of Service Tax***,

Rohtak and others) focus on situations where the show-cause notice was so fundamentally defective or vague that the affected party could not ascertain the grounds or allegations. In contrast, the present SCN clearly sets out the factual sequence (import of gold paste, melting, purity determination), invokes specific provisions for confiscation and penalty (Sections 111 and 112 of the Act), leaves no ambiguity about the nature and substance of the goods: 24 kt gold. The mere mention of “chain” instead of “nugget” cannot be equated to a fatal defect that obscures the entire basis of the case. I have learned that the noticee contends that the Department failed to exercise its investigatory powers thoroughly and that such failure purportedly led to an allegedly “incoherent and vague” SCN. Respectfully, this assertion overlooks the fact that the Department did conduct its investigation: the gold paste was melted, refined, weighed, and tested. Nothing in the SCN suggests any incomplete or haphazard procedure that would deprive the noticee of knowing the precise allegations. In totality, I believe that the SCN identifies the correct commodity (24 kt gold) and the alleged contravention of the Customs Act, enabling the noticee to mount a full defence. A minor misdescription, wherein the final form has been referred to as a “chain” instead of a “nugget,” constitutes, at most, an inadvertent clerical error. This does not alter the nature of the alleged offence, introduce a fundamentally new ground, or prejudice the noticee’s right to submit a response. Furthermore, it is noted that the Investigating Authority issued a Corrigendum dated 26.03.2025 to the Show Cause Notice bearing F. No. VIII/26-58/AIU/CUS/2023-24 dated 20.09.2024 to the effect. Accordingly, I am of the considered view that the Show Cause Notice remains legally valid, and the proceedings initiated thereunder continue to be sustainable. The request for quashing the Show Cause Notice on the sole ground of this minor and rectifiable discrepancy is devoid of merit and is, therefore, rejected.

26. I find that the argument put forth by the noticee regarding the extraction of pure gold prior to seizure being invalid and illegal is without merit and fails to acknowledge the practical exigencies of enforcement under the Customs Act of 1962. The procedure employed by the Customs officers, which involved the extraction of pure gold from the recovered gold paste weighing 334.350 grams, followed by the seizure of the resultant gold nugget weighing 243.750 grams, was both lawful and procedurally appropriate within the operational framework of the Act. The extraction of pure gold, as opposed to the immediate seizure of the unrefined gold paste, was necessitated by the imperative to accurately ascertain the intrinsic value and purity of the material in question, thereby establishing a prima facie case for confiscation under Section 110 of the Customs Act of 1962. In the present case, the recovered gold paste, which weighed a total of 343.350 grams, was transformed through a systematic process into a gold nugget, the weight of which serves as an objective measure of the gold’s pure content, thus ensuring that the subsequent seizure was based on a verified measure of the contraband. The emphasis placed on the extraction process did not indicate a willful circumvention of the statutory mandate but rather showcased the diligence of the officers in securing tangible, quantifiable evidence before invoking their powers of seizure. It is well established that the exercise of discretionary powers by customs officers under the Customs Act is predicated upon a “reasonable belief” that the goods are smuggled and liable to confiscation, such belief being both honest and grounded in factual basis, as elucidated in the cases of Pukhraj v. D.R. Kohli and Mahadevi Lohariwala v. Union of India. In this instance, the existence of sufficient prima facie evidence, specifically the physical recovery of the gold paste from the passenger as well as the subsequent corroborative details derived from preliminary interrogation, clearly warranted the formation of a reasonable belief that the recovered commodity was, in fact, contraband. The procedural nuance of initially extracting the pure gold was not an attempt to evade the statutory requirement for seizing the goods based on reasonable belief; rather, it was a deliberate and measured act intended to facilitate an accurate

determination of the goods' smuggled nature. The argument that the officer should have seized the entire quantity of gold paste is misguided, as the extraction process provided a more reliable evidentiary basis for determining the precise nature and value of the smuggled goods, thus solidifying the legal foundation for the seizure. The statutory scheme of the Customs Act mandates that the officer's belief must be based on credible, material facts rather than abstract or speculative notions, a principle that is further underscored by the judgments delivered by the Calcutta, Patna, and Allahabad High Courts, as well as the elucidations of the Supreme Court. In light of this, the decision to execute the extraction followed by the subsequent seizure was not only consistent with established judicial precedents but also critical in preventing any attempts by the offender to evade legal scrutiny through the deliberate concealment or misrepresentation of the nature of the goods. Therefore, the sequence of actions taken by the officer comprising the extraction of pure gold and the subsequent seizure based on a reasonable belief substantiated by prima facie evidence constitutes a legitimate exercise of the statutory powers conferred under the Customs Act of 1962 and is devoid of any procedural defect or legal infirmity.

27. Further, I note that the noticee, in his defence submission, has contended that the Gold is not a prohibited item and that the gold seized from the noticee is not liable for confiscation. In support of that, he has referred to a few case laws. I find that the noticee in his statement confessed to carrying gold concealing ingeniously in a paper strip tucked into the waist area of Jeans pants worn by him and attempted to remove the said gold from the Surat Airport without declaring it to the Customs Authorities and thereby has violated the provisions of para 2.27 of the Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. I note that 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 has thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act. I further find that gold is not on the list of prohibited items, but the import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia**, in unambiguous terms, lays 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 goods, non-fulfilment of such conditions will make the goods fall within the ambit of 'prohibited goods'. I would also like to derive support in favour of my stand from the Hon'ble Delhi High Court's views in the case of **Nidhi Kapoor v. Principal Commissioner and Additional Secretary to the Government of India & Ors.**, wherein the Hon'ble Delhi High Court addressed the classification of gold as "prohibited goods" under Section 2(33) of the Customs Act, 1962. The court held that gold, when imported without adherence to prescribed conditions, qualifies as "prohibited goods." This classification empowers customs authorities to confiscate such goods under Section 111(d) of the Act. Furthermore, the court clarified that the discretionary power to allow redemption of confiscated goods under Section 125 of the Act does not extend to prohibited goods, thereby upholding the absolute confiscation of improperly imported gold.

I further find it relevant at this juncture to highlight that the smuggling of gold is per se restricted by virtue of Section 111 of the Customs Act as well as in terms of various notifications issued under the FTDR Act and the RBI Act. It should be brought to attention that importation of gold into India is highly regulated, and bulk importation of gold could only be affected by the nominated banks, agencies or business houses in the manner laid down by various DGFT regulations as well as the

RBI circulars or by the —eligible passengers in the manner provided by the relevant Regulations discussed hereinabove. There is no gainsaying that one of the main objects of the Customs Act is to prohibit the smuggling of goods and sternly deal with the same, as could be plainly gathered on a conjoint reading of Sections 2(25), 11(2)(c), 111 and 112 of the Act. It would be relevant to refer to the case of **Commissioner of Customs (Preventive) v. M. Ambalal & Co.**, wherein it was categorically observed that the Customs Act "aims to counter the difficulties that have emerged over the years due to the changing economic and financial conditions; amongst them, it proposes to tackle the increasing problems of smuggling both in and out of the country. The Act aims to deal with smuggled goods sternly and expeditiously and curb the dents in revenue that are thus caused. In order to deal with the menace of smuggling, the authorities are enabled to detect, conduct search and seizure, and, if necessary, confiscate such smuggled goods within the territory of India. *(emphasis supplied)*

In view of the discussions in the foregoing paragraphs, I find that non-fulfillment of the conditions has made the gold seized in the present case "prohibited goods" as the passenger trying to smuggle it was not an eligible passenger to bring it into India or import gold into India in baggage. Shri Jigneshkumar Karsanbhai Moradiaya has confessed to carrying the said gold, keeping it undeclared to smuggle the same, and evading payment of customs duty. By using this modus, it is unequivocally proved that the goods are offending in nature and, therefore, prohibited for their importation. Thus, the passenger does not fulfil the conditions.

28. Further, I find that the noticee has claimed ownership of the gold and requested relief in the case. The noticee, in his support, has referenced the case of **S. RAJAGOPAL Versus COMMISSIONER OF CUSTOMS, TRICHY the Tribunal; Peringatil Hamza Vs CC (Airport), Mumbai 2014 (309) ELT 259 (Tri Mumbai)**. In another relied-upon case of **R. Mohandas Vs CC, Cochin 2016 (336) ELT 399 (Ker), the Hon'ble Kerala High Court** held that:

"under Section 125 of the Customs Act the goods can be released to the owner of the goods or to the person from whose possession or custody such goods have been seized. Section 125 was originally worded to give custody of such goods only "to the owner of the goods. An amendment has been made with effect from 27-12-1985 by incorporating a provision to give release of the goods to the person from whose possession or custody such goods have been seized".

I find that the noticee, in claiming ownership of the gold in question, has not submitted any documents or evidence proving it belonged to him. However, it is an accepted position that the gold was seized from his possession. Further, I note that no one has claimed ownership of the gold except for the noticee. The noticee has relied on case laws, which I find relevant to the matter at hand, and the ratio of the case applies to the present situation. In light of these observations by the Hon'ble Tribunal, I allow the noticee's claim for ownership of the impugned gold.

29. I find that while the noticee's submissions regarding his alleged first offence, lack of antecedents, and resultant financial hardship arising from the confiscation of the gold may evoke sympathy on a humanitarian level, such submissions fail to negate or mitigate the legal consequences arising from his contravention of the Customs Act, 1962. The fact that the noticee claims to have taken loans from friends for the purchase of the gold, and that the confiscation thereof would precipitate severe financial hardship does not, in law, exonerate him from the statutory and evidentiary requirements established under the Act, nor does it serve as a basis to obviate the imposition of a duty, fine, and penalty imposed as a deterrent against the serious offence of smuggling. While the noticee contends that his actions were not

those of an organized smuggler under Section 111 of the Customs Act and that he neither committed nor participated in any such organized criminal activity, it must be emphasized that the statutory framework is designed to capture even isolated instances of smuggling, irrespective of the offender's prior conduct or familial background. The law, being indifferent to personal circumstances when determining criminal liability, mandates that each offence be assessed on the merits of the material facts and the applicable legal standards, and the absence of prior offences does not automatically entitle the noticee to an exculpatory relief or a relaxation of the stringent enforcement measures necessitated by the punitive, preventive, and reformatory objectives of the law. Moreover, the contention that the allegations in the Show Cause Notice (SCN) are contradictory and prejudiced and that they fail to establish that the noticee acted as a carrier is untenable when one considers the entire corpus of evidence available in the case file, which clearly indicates a pattern of conduct that is inconsistent with that of a mere innocent purchaser. The evidence, when viewed in its entirety, establishes a prima facie case that the noticee was in possession of goods that are contraband under the Customs Act, and any assertion to the contrary is unavailing in the light of established legal precedents. Further, the noticee's expressed willingness to redeem the gold upon payment of the applicable duty, fine, and penalty, while reflective of an acknowledgement of the law's remedial and corrective intent, does not serve to mitigate the seriousness of the offence, as the statutory scheme is not primarily remedial in nature but is designed to ensure strict compliance with the customs regulations. The notion that a personal hearing before adjudication should be granted is noted; however, the procedural safeguards enshrined within the statutory framework already provide for an opportunity to be heard, and the absence of any demonstrable material irregularity in the conduct of the inquiry cannot justify a wholesale dismissal of the proceedings. Furthermore, the noticee's submission that he is a law-abiding citizen from a respectable family and his subsequent request that the proceedings against him be dropped, are factors that, while potentially relevant in the consideration of sentencing or in the application of mitigating circumstances, do not negate the prima facie evidence of the offence committed. The integrity and efficacy of the Customs Act demand that each case be adjudicated based on objective evidence and adherence to legal principles, and the subjective assertions of personal character or financial hardship, though they may be considered as ancillary matters, cannot supplant the mandatory statutory requirements for establishing guilt. In conclusion, while the noticee reserves the right to amend his submissions and seek further opportunities for a personal hearing, such procedural entitlements do not obviate the legal and factual foundation upon which the seizure and subsequent proceedings have been predicated. The law unequivocally mandates that any deviation from its prescribed procedures or attempt to reframe the evidentiary landscape in purely subjective terms must be firmly resisted, as the overarching public interest in curbing smuggling and enforcing customs regulations remains paramount. Therefore, it seems to me that the submissions advanced by the noticee, though replete with expressions of remorse and appeals to extenuating circumstances, are insufficient to discharge the legal burden of proof or to justify the withdrawal of the proceedings, and the statutory and evidentiary imperatives dictate that the seizure and ensuing legal action remain fully justified and enforceable.

30. I find that the defence has asserted that the adjudicating authority in the past has allowed the release of Gold by way of redemption on payment of fine and penalty. Now, different views cannot be taken to cause injustice to the abovementioned client, i.e. noticee. I find this assertion of the noticee is flawed reasoning. I believe that the Adjudicating Authority is neither bound by its own past decisions in the strict sense of precedent nor restrained from arriving at a different conclusion based on each case's specific facts and circumstances. A prior decision, wherein gold was allowed to be redeemed upon payment of fine and penalty, cannot ipso facto curtail the

Authority's discretion in the present matter, especially if fresh material with different factual matrix, or changed legal considerations are involved. I further find that it is a settled principle of law that adjudication must be premised on the facts, evidence, and legal provisions relevant to each proceeding. The facts and circumstances of the present case materially differ from those in the previously cited matter. Accordingly, there can be no blanket application of the earlier decision to the present proceeding. Moreover, the Adjudicating Authority is obligated to exercise its discretion judicially. Where a differing factual situation or subsequent developments in law or policy are demonstrated, a distinct or stricter approach may be warranted in the interests of justice. In addition, the doctrine of consistency does not imply that an authority must forever adhere to a prior course of action, irrespective of differing facts or intervening legal considerations. Instead, consistency requires that the Authority furnishes reasons for any divergence. In the present case, the decision to adopt a different view is supported by rational grounds particular to the noticee's conduct, the extent of liability, and other factors that may not have been present or relevant in the earlier scenario. I maintain that insofar as the claim of "injustice" is concerned, the noticee's right to defend themselves remains intact, and any penalty, confiscation, or denial of redemption would still be subject to judicial scrutiny and review, thereby safeguarding fairness and due process. Hence, I find the above assertion by the noticee does not have ground.

31. I find that in support of his contention for the redemption of seized goods, i.e. Gold, the noticee has cited some case laws and requested relief in the case. I find that it is a settled legal position that the ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon'ble Supreme Court in the case of **CCE, Calcutta Vs. Alnoori tobacco products [2004 (170) ELT 135 (SC)]** has stressed the need to discuss how the facts of the decision relied upon applied to the factual situation of a given case. I find that the noticee has not addressed how the cited case laws apply to the facts of his case. I find that in the instant case, the noticee confessed in his statement that he had carried gold weighing 243.750 grams (extracted from a paper strip, concealed into Jeans Pants, weighing 334.350 grams containing gold paste) with 99% purity, concealed in the Jeans Pant worn by the passenger with the deliberate intent to smuggle the same into India without payment of Customs duty. The noticee further confessed that he was fully aware of the nature of his actions and their legal consequences. Therefore, I find the seized goods, i.e., a gold nugget of 243.750 grams of 99% purity, are liable for absolute confiscation and not fit for redemption. The Hon'ble Supreme Court, in the case of **Dropti Devi & Anr**, reported in [(2012)6 S.C.R. 307], has observed and taken a serious view of smuggling activities and observed that the smugglers, by flouting the regulations and restrictions by their misdeed directly affect the national economy and thereby endanger the security of the country. Consequently, in this instance, I am disinclined to exercise my discretion to grant the option to redeem the total foreign currency upon payment of the redemption fine, as provided under Section 125 of the Act. To support my position, I reference the following case laws and judgments from the Hon'ble Courts and other forums:

31.1 I find that 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., a 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.”

31.2 I find that 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 Samyanathan Murugesan reported in 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.

31.3 Further, I find that in a 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).*

31.4 I note that 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 gram 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.

31.5 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 7-10-2019 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 10-5-1993, 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”.

32. Further, considering the discussion in the preceding paragraphs, I find it evident that Shri Jigneshkumar Karsanbhai Moradiya, in his statement dated 29.03.2024, has confessed that he was aware that importing gold without paying Customs duty was an offence, yet he sought to evade this duty. Consequently, he did not declare the gold to the Customs Authorities, intending solely to smuggle it into India. Additionally, he admitted that he failed to declare the gold paste to Customs authorities upon arriving in Surat, with the intention of evading Customs Duty through smuggling. Moreover, he cleverly concealed the gold paste in the waist area of his jeans pants. Following examination and testing, the government-approved valuer certified the gold weight as 243.750 grams. The market value of the said gold nugget was assessed by the valuer at Rs. 17,18,438/- (Rupees Seventeen Lakh Eighteen Thousand Four Hundred Thirty-Eight only), with its tariff value set at Rs. 14,45,535/- (Rupees Fourteen Lakh Forty-Five Thousand Five Hundred and Thirty-Five only). The said gold was seized vide Seizure Order/Memo under Panchnama dated 28.03.2024 under the reasonable belief that the goods carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of the Customs Act, 1962. Given the facts of the present case before me and the judgments and rulings cited above, I am decisively led to the conclusion that the said gold nugget weighing 243.750 grams with 99% purity, is liable for absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act.

33. After a careful evaluation of the materials on record, I find that in the present case, the noticee was found in possession of a gold nugget weighing 243.750 grams (99% purity) (extracted from gold paste recovered from the Jeans Pants of the passenger) which was ingeniously concealed inside paper strip tucked into the waist area of the Jeans Pants worn by the passenger. He also failed to declare the said gold to Customs authorities upon his arrival at the Customs area in the arrival hall of Surat Airport, thereby violating the statutory requirements envisaged under the Customs Act and other relevant provisions related to the legal importation of gold into India by a passenger. After a comprehensive and detailed review of the aforementioned, it is clear to me that such an act on the part of the passenger has rendered the goods liable for confiscation under Section 111 of the Act. It would be relevant to refer to Section 112(b)(i) of the Customs Act, 1962, which imposes penalties on any person who acquires, possesses, stores, sells, or transports goods that they know or have reason to believe are liable for confiscation under Section 111 of the Customs Act. In the instant case, I find that the deliberate act of concealing the gold by the noticee unequivocally establishes his ‘*mens rea*’ and demonstrates a wilful intent to evade Customs regulations, leaving no room for doubt regarding his knowledge and involvement in the attempted act of smuggling. Therefore, I hold the one 24-carat gold nugget weighing 243.750 grams, having a market value of Rs. 17,18,438/-, liable for absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. Further, I find it irrefutably established that his actions fall squarely within the ambit of Section 112(b)(i) of the Customs Act, attracting penal liability and confiscating smuggled goods. Accordingly, I hold the noticee liable for a penalty under the said provision of the Customs Act, 1962.

34. Accordingly, in the exercise of the powers vested in me as the Adjudicating Authority, I hereby issue the following order:

ORDER

- (i) I order **absolute confiscation** of the recovered **one 24-carat gold nugget** weighing 243.750 grams, having a market value of **Rs. 17,18,438/- (Rupees Seventeen Lakh Eighteen Thousand Four Hundred Thirty-Eight only)** under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962.

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- (ii) I impose a **penalty** of **Rs.17,18,438/- (Rupees Seventeen Lakh Eighteen Thousand Four Hundred Thirty-Eight only)** upon Shri Jigneshkumar Karsanbhai Moradiya under Section 112(b)(i) of the Customs Act, 1962.

35. This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962, as amended or rules made thereunder or under any law for the time being in force.

(Anunay Bhati)
Additional Commissioner,
Surat International Airport,
Customs, Surat

BY SPEED POST AD/E.MAIL/WEBSITE

F. No. VIII/26-58/AIU/CUS/2023-24

Date: 31.03.2025

DIN: 20250471MN000000DED6

To,
Shri Jigneshkumar Karshanbhai Moradiya,
11, Vivekanand Society,
Near Patidar Samaj Ni Wadi,
Ved Gurukul Road,
Katargam, Surat City,
PIN- 395004, Gujarat

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy/Assistant Commissioner of Customs (TRC), Ahmedabad.
3. The Superintendent (Recovery), Customs, Surat International Airport, Surat.
4. The System In-Charge, Customs, H.Q., Ahmedabad, for uploading on the official website (via email)
5. Guard File