

OIO No:223/ADC/SRV/O&A/2024-25
F. No: VIII/10-124/SVPIA-B/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-124/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	VIII/10-124/SVPIA-B/O&A/HQ/2024-25 dated 12.07.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	223/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	10.01.2025
E	जारी करने की तारीख/ Date of Issue	:	10.01.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Mohammadshafik Ansari, 1083, Pakwada, Khwaja Complex, Gomtipur, Ahmedabad-380021
(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, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		

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(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Shri Mohammadshafik Ansari, (hereinafter referred to as the said "passenger/ Noticee") residing at 1083, Pakwada, Khwaja Complex, Gomtipur, Ahmedabad-380021, holding an Indian Passport Number No. T7588413, arrived from Jeddah to Ahmedabad by Indigo Flight 6E92 and his boarding pass bearing Seat No12E, at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one passenger who arrived by Indigo Flight 6E92 on 10.03.2024 came from Jeddah to Ahmedabad at Terminal-2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 10.03.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. The AIU Officers asked about his identity of Shri Mohammadshafik Ansari by his passport no. T7588413 travelled by Indigo Flight 6E92 from Jeddah to Ahmedabad and his boarding pass bearing Seat No. 12E, after he had crossed the Green Channel at the Ahmedabad International Airport. In the presence of the Panchas, the AIU Officers asked Shri Mohammadshafik Ansari

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if he has anything to declare to the Customs, to which he denied the same. The officers offered their personal search to the passenger, but the passenger denied politely and said that he had full trust on them. Now, the officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which he gave the consent to be searched in front of the Superintendent of Customs.

2.1 The Officers, in presence of the Panchas, observed that Shri Mohammadshafik Ansari had carried checked in baggage i.e. Black color duffle bag. The officers, in presence of the Panchas carried out scanning of the trolley bag in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed.

2.2 The Officers, in presence of the Panchas, asked Shri Mohammadshafik Ansari to pass through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he was wearing on their body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound/ alert was generated. During frisking of the passenger Shri Mohammadshafik Ansari, the AIU officers thoroughly examined the passengers and on frisking, the officers found 03 black-coloured pouches in the right-side pocket of his white kurta. On examining all the black pouches one by one the AIU officers and the Panchas found that on all the said black pouch there is a logo and below that logo there is written as “SWISS FINE GOLD” below further it is written in Arabic language and further below it is written as “0559815497” and the AIU Officers mark the pouch as 1 to 3 for reference on the logo portion. Then, the officers, in presence of the Panchas, interrogated the passenger and on sustained interrogation and repeated questioning the passenger confessed

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that he was carrying smuggle black pouches contain gold and further tells that in 2 pouches there is 1 (one) white coloured gold chain in each pouch and in 1 pouch there is 1 (one) white coloured gold kada. The AIU officers in presence of the Panchas and Shri Mohammadshafik Ansari opened the pouch one by one and the description of the same is as below:

Sr. No.	Pouch Number	Description of goods contained in the pouch
1	1	White coloured metal chain
2	2	White coloured metal chain
3	3	White coloured kada

2.3 The Customs officers calls the Government Approved Valuer Shri Kartikey Soni Vasantrai and informs him that 2 white coloured metal chain and 1 white coloured kada have been found from the passenger. Hence, he needs to come to the Airport for testing and valuation of the said recovered material. Thereafter, the Government Approved Valuer comes to the AIU office. The AIU officers introduce him as Shri Kartikey Vasantrai Soni, and in presence of the Panchas along with the passengers the officers show the above recovered items to him. Shri Kartikey Vasantrai Soni, the Govt. approved valuer, weighs the said items recovered from the passenger. The details of item wise weight are tabulated below and the photographs of the weighment is as below:

Sr. No.	Name of the Passenger	Indian Passport No. (Identity Proof)	Weight in grams	
1	Shri Mohammadshafik Ansari	T7588413	(i) White coloured metal chain recovered from pouch 1 - and (ii) White coloured metal chain recovered from pouch 2 – total 779.92 grams. (iii) White coloured metal kada recovered from pouch 3 – 219.54grams.	Total: 999.460 grams.

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2.4 Thereafter, after testing the said white coloured metal chain (2 nos.) and kada (1 nos), the Government Approved Valuer vide its report No. 1505/2023-24 dated 10.03.2024 confirms that the said white coloured metal chain (2 nos.) and kada (1 nos) are made of pure gold totally weighing 999.46 Grams having purity 999.0/24kt. The value of the gold [white coloured metal chain (2 nos.)

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and kada (1 nos)] has been calculated as per the Notification No. 02/2024-Customs (N.T.) dated 15.01.2024 (gold) and Notification No. 04/2024-Customs (N.T.) dated 18.01.2024 (exchange rate). The details of the recovered gold from the passenger Shri Mohammadshafik Ansari, Passport Number T7588413 is as under:

Sl. No .	Description of goods	Qty	Purity	Net wt in grams	Tariff Value in Rs.	Market value in Rs.
1	Gold Chains (white coloured)	02	999.0, 24 Kt	779.920	4487367	5295657
2	Gold Bar	01	999.0, 24 Kt	219.540	1263151	1490676
	Total	03		999.460	5750518/-	6786333/-

2.5 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas the passenger and officers. All were satisfied and agreed with the testing and valuation Certificate No. 1505/2023-24 dated 10.03.2024 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the Passenger put their dated signature on the said valuation certificates.

3. The following documents produced by the passenger Shri Mohammadshafik Ansari were withdrawn under the Panchnama dtd. 10.03.2024 :

- i) Copy of Passport No. T7588413 issued at Ahmedabad on 06.08.2019 valid up to 05.08.2029.
- ii) Boarding pass of Indigo Flight No. 6E-92 Seat No. 12E from Jeddah to Ahmedabaddated 10.03.2024.

4. Accordingly, the 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/24kt purity weighing **999.460** grams recovered from Shri Mohammadshafik Ansari having market value of **Rs.67,86,333/-** (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three

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only) and having tariff value of **Rs.57,50,518/-** (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only) which were attempted to smuggle gold into India with, an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962, was seized vide Panchnama dtd. 10.03.2024, vide Seizure Memo dtd. 10.03.2024 issued from F. No. VIII/10-354/AIU/B/2023-24 Date: 10.03.2024, under the provisions of Section 110(1) & (3) of Customs Act, 1962 and accordingly the same was liable for confiscation as per the provisions of the Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A statement of Shri Mohammadshafik Ansari, was recorded on 10.03.2024 under Section 108 of the Customs Act, 1962, where he inter-alia stated that:-

- (i) His name, age and address stated above is true and correct. He is working as welder in shop.
- (ii) He lives with his six-family member having his wife, two sons, his mother and father. His wife is a house wife, His elder son 10 years of age studies in 4th standard and younger son is 5 years old.
- (iii) He has studied upto 11th standard. His monthly income is approx.. Rs.15,000/-.
- (iv) He went to Saudi Arabia for the purpose of Umra. A person named Irfan who is a travel agent offered pilgrimage for Umra in no cost. Hence, he get ready for the same. Irfan booked his tickets for to and fro for Umra. He reached Saudi Arabia and completed his Umra. He stayed in the area of Aiyub. One person Faridbhai gave him three pouches, out of which two pouches have chains and one pouch has 1 Kada in lieu of the free travelling for Umra. Faridbhai handed over the kada and chains to him outside the Jeddah International Airport on 09.03.2024 at 11:00 pm and told him to give the said gold to Irfan.
- (v) He stated that he never indulged in any smuggling activity in the past. This is the first time, he carried this kind of gold weighing 999.460 gram.

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(vi) On arrival at SVPI Airport at Ahmedabad at about 09.20 AM on 10.03.2024, he was intercepted by AIU Officers when he tried to exit through green channel with checked in baggage. His checked in baggage was put through baggage screening machine located near the green channel of the Arrival Hall and screened and checked thoroughly. During his personal search and interrogation by the AIU Officers, he handed over all the goods items which was kept in his luggage to the officer. After interrogation and frisking by the AIU officer he confessed that he was carrying 03 pouches containing chains and kada total weighing 999.460 grams. The said gold items was taken by the officers to the govt. approved Valuer, who in his presence tested and reported that the gold items is having weight 999.46 grams, having market value of Rs.67,86,333/- (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three only) and having tariff value of Rs.57,50,518/- (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only). The said gold bars were seized by the officers under Panchnama dated 10.03.2024 under the provision of Customs Act, 1962. He stated that he was present during the entire course of the Panchnama dated 10.03.2024 and he confirmed the events narrated in the said panchnama drawn on 10.03.2024 at Terminal-2, SVPI Airport, Ahmedabad. In token of its correctness, he put his dated signature on the said Panchnama.

(vii) He stated that he has given his above statement voluntarily and willingly without any threat, coercion or duress and he have been explained his above statement in Hindi as well and after understanding the same, in token of the above statement being true and correct and he put his dated signature on all the pages of the statement.

5.2. In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold amounting to **Rs.67,86,333/-** totally weighing **999.460**

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grams recovered from the said passenger, is more than Rs.50,00,000/-, hence, the said passenger was arrested under Section 104 of the Customs Act, 1962.

6. The above said gold the 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/ 24kt purity weighing 999.460 grams recovered from Shri Mohammadshafik Ansari having market value of Rs.67,86,333/- (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three only) and having tariff value of Rs.57,50,518/- (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only), was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing in his Pocket, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/24kt purity weighing 999.460 grams which were attempted to be smuggled by Shri Mohammadshafik Ansari, liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/24kt purity weighing 999.460 grams recovered from the pocket of the passenger, were placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 10.03.2024, issued from F. No. VIII/10-354/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. —*In this Act, unless the context otherwise requires, —*

(22) "goods" includes-

- (a) *vessels, aircrafts and vehicles;*
- (b) *stores;*
- (c) *baggage;*
- (d) *currency and negotiable instruments; and*
- (d) *any other kind of movable property;*

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(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(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;

(39) "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;"

II) Section 11A – Definitions -*In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) Section 77 – 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."*

IV) Section 110 – Seizure of goods, documents and things.—*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods."*

V) Section 111 – Confiscation of improperly imported goods, etc.—*The following goods brought from a place outside India shall be liable to confiscation:-*

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

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- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VI) Section 112 – Penalty for improper importation of goods, etc.– Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation.”

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) Section 3(2) - The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.”

II) Section 3(3) - 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.”

III) Section 11(1) - No export or import shall be made by any person

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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."

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - 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.

CONTRAVICTION AND VIOLATION OF LAWS

8. It therefore appears that:

(a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/24kt purity weighing 999.460 grams recovered from Shri Mohammadshafik Ansari having market value of Rs.67,86,333/- (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty-three only) and having tariff value of Rs.57,50,518/- (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only), not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules, and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/24kt purity weighing 999.460 grams recovered from Shri Mohammadshafik Ansari having market value of Rs.67,86,333/- (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three only) and having tariff value of Rs.57,50,518/- (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only) by

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the passenger, which was recovered from the pocket of the passenger, without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger 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.

- (b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) by the passenger, Shri Mohammadshafik Ansari, which was recovered from the Pocket, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- (d) Shri Mohammadshafik Ansari by his above-described acts of omission and commission on his part has 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 2 (two) gold chains (white coloured) and 1 (one) gold kada (white coloured) of 999.0/24kt purity weighing 999.460 grams recovered from Shri Mohammadshafik Ansari having market value of Rs.67,86,333/- (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three only) and having tariff value of Rs.57,50,518/- (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only), total weighing 999.46 grams without declaring it to the

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Customs, are not smuggled goods, is upon the passenger and Noticee, Shri Mohammadshafik Ansari.

09. Accordingly, a Show Cause Notice was issued to **Shri Mohammadshafik Ansari**, residing at 1083, Pakwada, Khvaja Complex, Gomtipur, Ahmedabad - 380021, holding an Indian Passport Number No. T7588413, as to why:

- (i) The **2 (two) gold chains** (white coloured) and **1 (one) gold kada** (white coloured) of 999.0/24kt purity weighing **999.460** grams and having market value of **Rs.67,86,333/-** (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three only) and having tariff value of **Rs.57,50,518/-** (Rupees Fifty-Seven Lacs Fifty Thousand Five Hundred and Eighteen only), which was recovered from the Pocket of Kurta, was placed under seizure under panchnama proceedings dated 10.03.2024 and Seizure Memo Order dated 10.03.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has submitted his written reply vide letter dated 24.09.2024 through his authorized representative wherein he denies the entire allegation in SCN. He submitted that the statement recorded under Section 108 was given under fear and duress of being arrested, therefore, the same was not true. He submitted that the gold was purchased by him and bill was produced at the same time. The gold jewellery was bought for his personal use and for his family and jewellery was kept in pocket of kurta. As he first time brought the

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gold and due to ignorance of Customs law/Rules he was unable to declare the same. There are plethora of judgments wherein release of gold has been allowed on payment of redemption fine, wherein the pax had been allowed for release/Re-export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of fine. He submitted that the gold was purchased by him from Jeddah from Al Balad United Trading Co. weighing 399.9 grams dated 07.03.2024 invoice no. 10249589, from Al Balad United Trading Co. weighing 380.5 grams dated 07.03.2024 under invoice no. 10249590 and weighing 219.5 grams dated 07.03.2024 under invoice no. 10249591. He was having bills of the same at that time, but prior to his declaration he was intercepted and resulting in booking the case. He submitted that no one has provided the declaration form neither by airline staff nor at time of disembarkation. He submitted that he was not a repeated offender and simply failed to declare the gold jewellery. The statement recorded under Section 108 of customs Act, 1962 under duress and fear of being arrested is not sustainable under provision of Section 138B of the Customs Act, 1962. He relied on the judgment passed by Hon'ble Supreme Court of India in case of Noor Aga Vs. State of Punjab. He submitted that there are plethora of judgments both for and against the release of gold seized in customs cases. A combined reading of the all the cases with specific reference to the policy/rules in vogue at the relevant times, will show that depending on circumstances of the each case in hand and the profile of the person involved, the goods in question may become "Prohibited" which otherwise not listed in the prohibited categories. However, despite the goods being prohibited the same can be released or re-exported in the discretion of the Adjudicating Authority, which discretion has to be exercised as per the canons laid down by the Hon'ble Apex Court as discussed above. The noticee has submitted various case laws alongwith his defense reply, the same are as :-

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- The Hon'ble Tribunal in case of Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai reported in 2011 (263) ELT 685 (Tri-Mumbai)
- Shaik Jamal Basha V. Government of India-1997 (91) ELT 277 (AP)
- Kadar Mydeen Vs. Commissioner of Customs (Preventive), west Bengal-2001 (136) ELT 758

Apart from that, the noticee has submitted various latest orders passed by the Revision Authority wherein redemption fine is allowed in lieu of confiscation. Further, the noticee has submitted case laws as mentioned below in his support wherein redemption fine was allowed:-

- Judgment of Hon'ble Supreme Court of India in case of Union of India vs. Dhanak M Ramji 201 (252) E.L.T A 102(S.C)
- Judgment of Hon'ble High Court of Judicature at Allahabad in case of Shri Rajesh Jhamatmal Bhat and another vs. Commissioner of Customs, Lucknow
- Judgment of Rajasthan High Court in case of Manoj Kumar Sharma Vs. Union of India dated 17.02.2022;

He submitted that the statement and panchnama was recorded under duress and threat. Also previously he was never involved in bringing the gold or for that matter any offending goods while travelled to India. This being first instance, he may be pardoned of the consequences as he merely failed to seek timely directives from the customs officials at the Airport. He submitted that the goods may be released to the him at earliest even provisionally for which he is ready to give bond or pay customs duty and penalty too. He requested for a personal hearing in the matter.

11. The noticee was given opportunity for personal hearing on 23.12.2024. Shri Rishikesh Mehra, Advocate and Authorized representative on behalf of noticee i.e Shri Mohammadshafik Ansari is appeared for personal hearing. He requested to attend the PH in person instead of video conferencing. He reiterated his written submission dated 24.09.2024. He submitted that gold is not

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in the list of prohibited item. The gold was not ingenious concealed and there are numbers of orders in which redemption fine is allowed in the similar cases and requested to pay applicable duty, fine and penalty to release the gold.

Discussion and Findings:

12. I have carefully gone through the facts of this case and the written submission made by the noticee and submission made during personal hearing. I find that the noticee has attended the PH and requests for release of gold in lieu of payment of applicable duty/tax, fine and penalty. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the **999.460** grams of **2 (two) gold chains** (white coloured) and **1 (one) gold kada** (white coloured) concealed in 03 black-coloured pouches in the right-side pocket of his white kurta of 24KT(999.0 purity), having Tariff Value of **Rs.57,50,518/-** and Market Value of **Rs.67,86,333/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 10.03.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

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.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of input that Shri Mohammadshafik Ansari was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out.

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The AIU officers under Panchnama proceedings dated 10.03.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The officers, in presence of the Panchas carried out scanning of the trolley bag in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed. During frisking of the noticee, the AIU officers thoroughly examined the noticee and on frisking, the officers found 03 black-coloured pouches in the right-side pocket of his white kurta. On examining all the black pouches one by one the AIU officers and the Panchas found that on all the said black pouch there is a logo and below that logo there is written as "SWISS FINE GOLD" below further it is written in Arabic language and further below it is written as "0559815497" and the AIU Officers mark the pouch as 1 to 3 for reference on the logo portion. Then, the officers, in presence of the Panchas, interrogated the passenger and on sustained interrogation and repeated questioning, the noticee confessed that he was carrying black pouches contain gold and further tells that in 2 pouches there is 1 (one) white coloured gold chain in each pouch and in 1 pouch there is 1 (one) white coloured gold kada. The details are as: -

Sr. No.	Pouch Number	Description of goods contained in the pouch
1	1	White coloured metal chain
2	2	White coloured metal chain
3	3	White coloured kada

Under his reply, I find that, the noticee has submitted that the noticee due to ignorance of customs provision he was unable to declare the same, however he orally declare the same before Customs Authority, however under Panchnama it is very clear that on sustained interrogation and after passing from the DFMD machine, only thereafter, the noticee has confessed he was carrying 03 black-coloured pouches in the right-side pocket of his white kurta containing 2 gold chain (white coloured) and 1 gold kada (white coloured). I further note that the noticee in his submission mentioned that he was not aware

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about the procedure for declaration of goods and no one in airline or other staff have provided the declaration form. 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.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 03 black-coloured pouches in the right-side pocket of his white kurta containing 2 gold chain (white coloured) and 1 gold kada (white coloured) and after completion of extraction, the Government Approved Valuer informed that the weight of the said 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium comes to **999.460** Grams having purity 999.0/24KT. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium is **Rs.57,50,518/-** and Market value is **Rs.67,86,333/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PC S	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold chain coated with white Rhodium	2	779.920	999.0/24Kt	52,95,657/-	44,87,367/-
2.	Gold Kada coated with white Rhodium	1	219.540	999.0/24Kt	14,90,677/-	12,63,151/-
	Total	3	999.460		67,86,333/-	57,50,518/-

16. Accordingly, the said 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) having purity 999.0/24 Kt. weighing 999.460 grams, recovered from noticee was seized vide Panchnama dated 10.03.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said

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gold jewellery was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

17. I also find that the said 999.460 grams of 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta), having Tariff Value of **Rs.57,50,518/-** and Market value is **Rs.67,86,333/-** carried by the noticee appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 10.03.2024 under Section 108 of the Customs Act, 1962. Under Submission, the noticee has alleged that he was not permitted to write his statement in her own handwriting and he was forced to sign the documents, else he was arrested and inculpatory statement which was recorded is completely in contrary to correct facts and circumstances and retracted the same. I find that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his signature on the Statement. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him in Hindi. He clearly admitted in his statement that the gold was not purchased by him and someone else gave him at Jeddah and asked to handover to the person who booked his to and fro tickets, at Ahmedabad Airport. The offence committed is admitted by the passenger in his statement recorded on 10.03.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs

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Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows: -

- Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA"
- 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"
- The Hon'ble Supreme Court in another matter of Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Supt. Of Cus., Marmagoa [Reported in 2001 (134) E.L.T 3 (SC)] has categorically held that "Statement recorded by Customs Act is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act....."
- 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."

I find under submission that the noticee has claimed the ownership of gold and mentioned that he had purchased the said gold for personal use for himself and his family and submitted the purchase invoice. On going through the statement tendered by the noticee, I find that the noticee has submitted that the gold was not purchased by him and same was given to him by other person named Shri

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Farid and asked to hand over the same to Shri Irfan, who had booked to and fro tickets for him. Therefore, I don't find any force in the contention of noticee in this regard and producing the invoices is afterthought. It is on the record that at the time of arrival, the noticee has not produced any purchase invoice for the said gold jewellery as claimed under submission.

18. I also find 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 as well as in his written submission. 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. Further, I find that understatement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the gold in form of 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta), 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 in form of 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) recovered from his possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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, 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 proof that they are not smuggled, shall be on the person from whose possession the goods have been seized. In this regard,

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he admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

19. Now come to the claim made by the noticee in his submission that the Gold in form of jewellery recovered is not in commercial quantity. 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. 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, bonafide 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.

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(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:-

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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.

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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 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” and same was found exceeding the above limit, therefore, the claim of noticee that the confiscated gold was not in commercial quantity is baseless and not supported by the law. 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.

From the facts discussed and provisions, it is evident that noticee had carried the said gold weighing 999.460 grams, while arriving from Jeddah 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 999.460 grams, liable for confiscation, under the provisions of Sections

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111(d), 111(f), 111(i), 111(j), 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.

20. 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-bonafide purposes. Therefore, the said improperly imported gold weighing 999.460 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

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It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 999.460 grams, having Tariff Value of Rs.57,50,518/- and Market Value of Rs.67,86,333/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 10.03.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form of 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta), shows the mens-reas of the noticee to not declare and to evade the payment of customs duty. 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.

21. I find that the Noticee confessed of carrying the said gold of 999.460 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

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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.

22. 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 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) weighing 999.460 grams, having Tariff Value of Rs.57,50,518/- and Market Value of Rs.67,86,333/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 10.03.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold weighing 999.460 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.

23. 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

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'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 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) weighing 999.460 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 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta). 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.

24. 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. 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 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) weighing 999.460 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 10.03.2024 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

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law as mentioned hereinabove at Para 10. 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 ¹[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:

² [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, ³[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 judgments wherein Redemption fine is allowed for release of Gold. I am of the view that conclusions of cases cited may be correct, but it cannot be applied universally without considering the hard realities and specific facts of each case. The decisions were made in different contexts, with different facts and circumstances, and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC) has stressed

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the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] *wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper.* Again in the case of CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)], *it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.* The ratio of case laws relied upon by the noticee are not applicable in the instant, as in the various judgments, it is very clearly mentioned that the redemption fine is not demanded as a right to claim and adjudicating authority has discretion to give option of redemption fine according to the rules of reason and justice. 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*

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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 :-

24.1. 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]

24.2. 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.

24.3. 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

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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).

24.4. 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

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positive directions to adjudicating authority to exercise option in favour of redemption.

24.5. 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”.

24.6. 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-reas.”

“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.”

24.7. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 999.460 grams (02 gold chain

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coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta)), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) weighing 999.460 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.**

25. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 999.460 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 said 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) with intent to evade the payment of Customs Duty. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-reas 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

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was attempting to evade the Customs Duty by not declaring the gold bar weighing 999.460 grams (02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta) 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 999.460 grams, carried by him. He has agreed and admitted in his statement that he travelled from Jeddah to Ahmedabad with the said gold in form 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta). 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 999.460 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.

26. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of one gold bar weighing **999.460** grams having purity of 999.0 (24KT.) recovered/ derived from 02 gold chain coated with white Rhodium and 01 Gold Kada coated with White Rhodium (concealed in 03 pouched in right side pocket of his white kurta), having Market value of **Rs.67,86,333/-** (Rupees Sixty-seven Lacs Eighty-six Thousand Three hundred and thirty three only) and Tariff Value of **Rs.57,50,518/-** (Rupees Fifty-

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Seven Lacs Fifty Thousand Five Hundred and Eighteen only), placed under seizure under Panchnama dated 10.03.2024 and seizure memo order dated 10.03.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs. 17,00,000/- (Rupees Seventeen Lakh Only)** on **Shri Mohammadshafik Ansari** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

27. Accordingly, the Show Cause Notice No. VIII/10-124/SVPIA-B/O&A/HQ/2024-25 dated 12.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250171MN000000B4F3

BY SPEED POST AD

To,
Shri Mohammadshafik Ansari,
1083, Pakwada, Khwaja Complex,
Gomtipur, Ahmedabad-380021

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusamd@gov.in.
6. Guard File.