सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260371MN000000F137

क	फ़ाइलसंख्या FILE NO.	S/49-544/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-692-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	06.03.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	29/AP/CPV-AC/SVPIA/2025-26 dated 29.01.2026
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	06.03.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Ishwar Lal Kasota Village Asariwada, Post-Thana, Kherwara, Udaipur, Rajasthan - 313804.

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

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

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

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद.

ORDER-IN-APPEAL

Shri Ishwar Lal Kasota Village Asariwada, Post-Thana, Kherwara, Udaipur, Rajasthan - 313804 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 29/AP/CPV-AC/SVPIA/2025-26 dated 29.01.2026 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs, SVPIA, Ahmedabad, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that, on the basis of profiling, the appellant, holding Indian Passport No. R9909995, arrived from Kuwait to Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad by Indigo Airlines Flight No. 6E-1244 on 17.03.2025, was intercepted by AIU officers while he was attempting to exit through green channel without making any declaration to the Customs. Appellant's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the Panchnama dated 17.03.2025. The appellant was questioned by the AIU officers as to whether he was carrying any dutiable/contraband goods in person or in his baggage, to which he denied. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the appellant removed all metallic objects from his body/clothes such as mobile, purse etc. and kept them in a plastic tray placed on the table. The appellant then passed through the DFMD Machine and a beep sound was heard in the DFMD machine indicating there was something objectionable/dutiable on his body/clothes. On proper frisking of the appellant 01 Gold kada was recovered which was worn in the right hand of the appellant. Further, the AIU officers scan all the baggage of the appellant in the X-Ray baggage scanning machine, and checked his baggage thoroughly however, nothing objectionable was found in the luggage.

2.1 The Government Approved Valuer, Shri Kartikey Vasantrai Soni vide Certificate No. 1781/2024-25 dated 17.03.2025 certified that the said 01 gold kada, weighing 75.29 grams, having purity 999.0/24 Kt is having total Market Value of Rs. 6,82,880/- and Tariff Value of Rs. 6,22,044/-, which has been calculated as per the Notification No. 13/2025-Customs (N.T.) dated 13.03.2025 (gold) and Notification No. 20/2024-Customs (N.T.) dated 07.03.2025 (exchange rate).

2.2 The said 01 gold kada totally weighing 75.29 grams having purity of 999.0 24 Kt was carried and attempted to be cleared through Customs

without any legitimate import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said 01 gold kada, totally weighing 75.29 grams, and having purity 999.0 24 Kt and having market value of Rs. 6,82,880/- and Tariff Value Rs. 6,22,044/-, were placed under seizure vide Seizure Memo dated 17.03.2025 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject 01 gold kada is liable for confiscation under Section 111 of the Customs Act, 1962.

2.3 Statement of the appellant was recorded on 17.03.2025 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he has studied up to 5th standard and can read, write and speak Hindi language. He works as a cleaner in Kuwait and his monthly income is Rs.25,000/-. He had visited abroad twice before this time but this was the first time he carried gold with him. This time he travelled to Kuwait on 08.08.2023, and came back on 17.03.2025 by Indigo Flight No. 6E-1244 from Kuwait to Ahmedabad. The tickets were booked by a person, Mr. Rupesh from Kuwait to Ahmedabad Airport, whom he knew for some time in Kuwait. He did not charge for the ticket from him and instead gave him a gold kada and instructed to wear the same while he was coming back to India. The consignment of gold was supposed to be handed over to an unknown person at the outside of SVPI, Airport Ahmedabad, whose details he was supposed to get on his phone once he reaches Ahmedabad and in return he was supposed to be paid Rs. 10,000/- by that person. Although he did not receive any call regarding the same after reaching Ahmedabad Airport. He had never carried any gold item before this and have never indulged in any smuggling activity in the past. He was aware that smuggling of gold without payment of Customs duty is an offence. He was well aware about concealed gold kada, but did not make any declaration to evade the Custom duty. He opted for the green channel so as to attempt to smuggle the gold without paying the Customs duty.

2.4 The appellant was actively involved in the instant case of smuggling of gold into India. The appellant had improperly imported Gold Kada, weighing 75.29 grams made of 24kt/999.00 purity gold, having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/-, by without declaring it to the Customs. The appellant opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported gold by the appellant by

way of not declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The appellant has thus contravened the Foreign Trade Policy 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. By not declaring the value, quantity and description of the goods imported by him, the appellant has violated the provisions of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

2.5 The improperly imported gold by the appellant found concealed without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962. The appellant, by his above-described acts of omission/commission and/or abetment on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962. As per Section 123 of Customs Act, 1962, the burden of proving that the said improperly imported gold articles weighing 75.29 grams having Tariff Value of Rs. 6,22,044/- and Market Value of Rs. 6,82,880/- without declaring it to the Customs, are not smuggled goods, is upon the appellant.

2.6 The advocate of the appellant, Shri Rishikesh Mehra, vide his letter dtd. 27.09.2025 submitted that while coming back to India, he had purchased the Gold Kada weighing 75.29 Gram for his family. He further reiterates that he had purchased gold kada from M/s Dayal Gold Jewellery vide invoice no. 2639 dated 03.03.2025 and requested that the goods seized in question may be allowed for release on payment of Redemption Fine and penalty.

2.7 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/- under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 1,50,000/- on the appellant under Section 112 (a)(i) of the Customs Act,1962.

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

- As regards confiscation of the goods under Section 125 of the Customs Act 1962, the Ld. Adjudicating Authority, while admitting that there is no option to the Adjudicating Authority if the goods are

not prohibited, but to release the goods on payment of redemption fine, and if the goods are prohibited he has a discretion to either release the goods on payment of redemption fine or confiscate the goods absolutely. The case laws relied upon by the adjudicating authority are not applicable in the facts and circumstances of the case.

- A reading of Paras of the findings of the adjudicating authority clearly shows that the adjudicating Authority was pre-decided to absolutely confiscate the gold in question, without applying himself to the crucial fact that he had a discretion to either permit release of gold on Redemption fine or absolutely confiscate them only when the goods were "prohibited". Though not admitting, even if for a moment it is presumed that the goods in question were prohibited, the Ld. Adjudicating Authority is required to exercise his discretion and how such discretion is to be exercised is laid down in the case of Commissioner of Customs (Air) vs P.Sinnasamy in CMA No.1638 of 2008, before the Hon High Court of Madras decided on 23 August, 2016.
- In the instant case it is very clear that the Ld. Adjudicating Authority started on a wrong premise of the fact that the Appellant in this case is a smuggler, and that he has concealed the gold in this case, all of which are erroneous findings as discussed above. Taking into consideration these erroneous findings, the Ld Adjudicating Authority has got biased and decided that the gold in question should be absolutely confiscated and penalty imposed.
- There are plethora of Judgements both for and against the release of gold seized in Customs Cases. A combined reading of all the cases with specific reference to the policy/Rules in vogue at the relevant times, will show that depending on circumstances of each case in hand and the profile of the person involved, the goods in question may become "Prohibited" which are 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. Apex Court as discussed above. In this connection, following case laws are submitted relied upon by the appellant: -

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

(ii) ShaikJameel Pasha Vs Govt of India 1997 (91) ELT 277 (AP);

(iii) V.P. Hamid vs Commissioner of Customs, 1994(73) ELT 425 (Tri);

(iv) T. Elavarasan vs Commissioner of Customs (Airport) Chennai 2011 (266) ELT 167 (Mad);

(v) Union of India Vs Dhanak M. Ramji 2009 (248) ELT 127 (Bom); upheld by Hon. Supreme Court vide its judgement dated 08-03-2010, reported in 2010 (252) ELT A102 (SC)

(vi) A. Rajkumari vs CC (Chennai) 2015 (321) ELT 540 (Tri-Chennai); This case was also affirmed by the Hon. Apex Court vide 2015 (321) ELT A207 (SC).

- It is also submitted that impugned goods are not prohibited for use by the society at large and release of the same will not cause to the society and its import and / or redemption would not be dangerous or detrimental to health, welfare or morals of the people, in any circumstances.
- There is a catena of cases where the orders of absolute confiscation were successfully challenged and gold released either for re-export or on redemption fine u/s 125 of Customs Act 1962. Some of the judgements can be cited as under:
  1. S Rajgopal vs CC Trichy 2007 (219) ELT 435
  2. P. Sinnaswamy vs CC Chennai 2007 (220) ELT 308
  3. M. Arumugam vs CC Thiruchirapally 2007 (220) ELT 311
  4. Krishna Kumari vs CC Chennai 2008 (229) ELT 222.
- Following are the list of latest revision authority's orders relied upon by the appellant:

1. Order No: 58/2020-CUS (WZ)/ASRA/MUMBAI, DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala

3. Order No: 61/2020-CUS (WZ)/ASRA/MUMBAI, DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri

4. Order No: 126/2020 CUS (WZ)/ASRA/MUMBAI, DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar.

5. Order No: 123-124/2020-CUS (WZ)/ASRA/MUMBAI, DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.

6. 2019(369) E.L.T. 1677(G.O. I) in c/a Ashok Kumar Verma.

7. Order No: 10/2019 CUS (WZ)/ASRA/MUMBAI, DT. 30.09.2021 in c/a FaithimthRaseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai.

8. Order No. 243 & 244/2022 CUS (WZ)/ASRA/MUMBAI, DT 24.08.2022 in c/a (1) PradipSevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad.

9. OIA No. AHD-CUSTM-000-APP-445-23-24 dated 19.02.2024 In c/a Ms. Monika Bharatbhai Prajapati V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export).

10 OIA No. AHD-CUSTM-000-APP-477-23-24 Dated 11.03.2024 In c/a Ms. Gita Yashvantkumar Zinzuwadia V/s. Additional Commissioner of Customs Ahmedabad. (Gold Case granted RF, PP).

11 OIA No. AHD-CUSTM-000-APP-260-23-24 Dated 23.10.2023 In c/a Ms. Truptiben Solanki V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export).

12 Order No 61/2020-CUS (WZ)/ASRA/MUMBAI dated 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export).

13 Order No: 58/2020-CUS (WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export).

14 Order No. 404 & 405/2023 CUS (WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniiwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP).

15 Order No. 287/2022 CUS (WZ)/ASRA/MUMBAI DT 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr.

Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).

16 Order No. 284/2022 CUS (WZ)/ASRA/MUMBAI DT 04.10.2022 in c/a Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP),

17 Order no: 281/2022-CUS (WZ)/ASRA/MUMBAI/DATED. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP)

18 Order no: 389/2023-CUS (WZ)/ASRA/MUMBAI/ DATED. 29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 200.00 grams Concealed Re-Export Nee Case granted RF, PP)

19 Order no: 65/2023-CUS (WZ)/ASRA/MUMBAI/ DATED. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP)

20 Order no: 402/2022-CUS (WZ)/ASRA/MUMBAI/DATED. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP)

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

- Coming to the penalties imposed it may be stated that since the goods in question were not prohibited, the penalty under section 112 (a) and (b) of Customs Act 1962 could not have been more than the duty involved which in this case is Rs. 1,50,000/- on the appellant.
- The appellant finally prayed to quash and set aside the impugned order in so far as the absolute confiscation is concerned and in so far as the penalties under section 112 Customs Act is concerned. The appellant also requested for re-export of the impugned gold.

3.1 The appellant further vide letter dated 20.02.2026 submitted that:

- He is residing at Kuwait since long and is in possession of Civil ID No. 288070211511. The appellant had carried the gold from Kuwait to India from his hard-earned saving for the purpose of providing financial help towards his parent's medical expenses since his family is not financially strong. In fact, the very reason for him going to find work in Kuwait was to become financially stable so that he could support his elderly parents. The appellant is illiterate and is engaged in labor work at Kuwait. He was given to understand by some person in Kuwait that an Indian residing in the foreign country for more than one year then can carry the gold item without custom duty. Accordingly, he had carried the gold as a financial aid to his elderly parents.
- It is submitted that the act of non-declaration of the gold was not intentional. The appellant was under the bonafide belief that only dutiable goods were required to be declared and as such he made no declaration of the gold under the impression that the same did not attract customs duty.
- The allegation that the appellant had an intention of smuggling the gold is fallacious since he has been staying in Kuwait since long but has never brought gold during any of his previous visits. The said fact can be verified from the records in as much as no case of smuggling has been booked against the appellant prior to this incident. If at all the appellant had the intention of smuggling the gold he could have brought substantial quantity of gold instead of bringing non-commercial quantity of 75.29 grams. Further, the same shows that the appellant intended to financially help the family as it is the prime duty to meet the medical expenses of his ailing parents. Accordingly, it is submitted that the act of non-declaration was merely owing to ignorance on the part of the appellant and there was no intention to smuggle gold without payment of duty.
- As regards the allegation of concealment is concerned, it is submitted that there was no concealment at all. In fact, the panchnama as well as the impugned order clearly indicates that the gold kada was worn on the right hand of the appellant. It is common knowledge that a kada is an ornament meant to be worn on the hand and the case records clearly mention that the same was indeed found to be worn on the right hand of the appellant. In such cases where the kada was found at the place where it is meant to be worn, the allegation of concealment is not sustainable.

- It is further submitted that the appellant seeks to re-export of the goods under consideration. In this regard, it is the stand of the Government that option to redeem the goods on payment of redemption fine has to be exercised which is evident from the judgment in the case of Ashok Kumar Verma reported at 2019 (339) ELT 1677 (GOI) wherein the option to redeem the smuggled gold was given. The facts of the said case reveals that it was a case of concealment of gold but the Government exercised the powers under Section 125 to offer redemption fine instead of absolute confiscation.

- The Hon'ble Tribunal has also taken cognisance of the stand of the Government in the case of Ashwini Kumar Alias Amanullah reported at 2021 (376) ELT 321 (T) and upheld the action of offering redemption fine on the smuggled gold.

- Further, in the case of Phornchanok Namaliwani reported at 2018 (364) ELT 1135 (GOI), the Additional Commissioner had exercised the power under Section 125 and had offered redemption of the smuggled gold on payment of redemption fine @ 15% of the value of the goods and the said action has been upheld by the Government.

- The appellant has placed reliance on a plethora of judicial pronouncements, as listed at para 11.6 of the impugned order, wherein it has been consistently held that option to redeem unauthorisedly imported gold has to be offered under Section 125 of the Customs Act. The adjudicating authority has not considered the plethora of judicial pronouncements but proceeded to order absolute confiscation of the gold under consideration. In view of the above judicial pronouncements, it is clear that the option of redeeming the goods on payment of redemption fine under Section 125 of the Customs Act is a norm accepted by the Government of India. Accordingly, in the instant case, the adjudicating authority ought to have allowed redemption of goods on payment of the redemption fine under Section 125 of the Customs Act and the order for absolute confiscation of the gold deserves to be set aside on the above grounds.

- The appellant also placed reliance on the following judgements

  (i) AK Jewellers Vs Commissioner of Customs, Mumbai [2003(155) E.L.T.585 (Tribunal-Larger Bench)],

  (ii) Collector of Customs, Mumbai Vs. Elephanta Oil and Industries Limited, reported at 2003 (152) ELT 257 (SC)

(iii) Preeti Exim Vs CC, New Delhi 2007(214) E.L.T. 555(Tri-Del.)

(iv) Simla Trading Corp 2003 (151) E.L.T.102 (Tri-Chennai)

(v) CC Vs Mansi Impex 2011 (270) E.L.T. 631 (SC)

- It is further submitted that the adjudicating authority has imposed a huge penalty amounting to Rs. 1,50,000/- in the instant case. While imposing such penalty, the adjudicating authority had not considered the fact that the appellant was in Kuwait since the last 6 years and was under the bonafide belief that he was allowed to carry gold upto 1 kg. There was no malafide intention to bring gold into India by evading customs duty.
- Further, the appellant is not financially sound which is evident from the fact that he has sought re-export of the goods owing to non-availability of funds to pay the customs duty thereon.

4. Shri Ashish Kumar Jain and Shri John F Christian, Consultant, appeared for personal hearing on 27.02.2026 on behalf of the appellant. They reiterated the submissions made in the appeal memorandum and additional submission dated 20.02.2026. They during personal hearing requested for release and re-export of impugned gold and also relied upon the case laws mentioned in the grounds of appeal and further submission.

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

(a) Whether the impugned order directing absolute confiscation of impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/-, without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;

(b) Whether the quantum of penalty amounting to Rs. 1,50,000/- imposed on the appellant, under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that on the basis of profiling, the appellant, holding Indian Passport No. R9909995, arrived from Kuwait to Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad by Indigo Airlines Flight No. 6E-1244 on 17.03.2025, was intercepted by AIU officers while he was attempting to exit through green channel without making any declaration

to the Customs. Appellant's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the Panchnama dated 17.03.2025. The appellant was questioned by the AIU officers as to whether he was carrying any dutiable/contraband goods in person or in his baggage, to which he denied. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the appellant removed all metallic objects from his body/clothes such as mobile, purse etc. and kept them in a plastic tray placed on the table. The appellant then passed through the DFMD Machine and a beep sound was heard in the DFMD machine indicating there was something objectionable/dutiable on his body/clothes. On proper frisking of the appellant 01 Gold kada was recovered which was worn in the right hand of the appellant. Further, the AIU officers scan all the baggage of the appellant in the X-Ray baggage scanning machine, and checked his baggage thoroughly however, nothing objectionable was found in the luggage. The Government Approved Valuer, Shri Kartikey Vasantrai Soni vide Certificate No. 1781/2024-25 dated 17.03.2025 certified that the said 01 gold kada, weighing 75.29 grams, having purity 999.0/24 Kt is having total Market Value of Rs. 6,82,880/- and Tariff Value of Rs. 6,22,044/-. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

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

6.2 I have also perused the decision of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the

Government of India submitted by the appellant and other decisions also. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/- are liable to confiscation and the appellant is also liable to penalty.

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

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

It is apparent from the above judicial pronouncement that even though gold is not enumerated as prohibited goods under Section 11 of the Customs Act, 1962, but it is to be imported on fulfilment of certain conditions, still, if the conditions for such import are not complied with, then import of gold will fall under prohibited goods.

6.4 In respect of absolute confiscation of undeclared impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/-, it is observed that the adjudicating authority in the instant case relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker),

Hon'ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS],Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)] and Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue – Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu and other decisions in the impugned order, had ordered for absolute confiscation of undeclared impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/-.

6.5 I find that the Hon'ble CESTAT, Allahabad has in the case of COMMR. OF C. EX. & S.T., LUCKNOW V/s MOHD. HALIM MOHD. SHAMIM KHAN [2018 (359) E.L.T. 265 (Tri. – All.] and in the case of COMMISSIONER OF C. EX. & S.T., LUCKNOW V/s ISLAHUDDIN KHAN [2018 (364) E.L.T. 168 (Tri. – All.] has held that only prohibited goods cannot be released on payment of redemption fine and gold is not prohibited goods under the Customs Act or any other law in force and therefore cannot be absolutely confiscated in terms of Section 125 of the Customs Act, 1962 and upheld the order permitting release of such gold on payment of redemption fine in lieu of confiscation.

6.6 I have perused Section 125 of the Customs Act, 1962 and the same is reproduced as under:

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 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

*[**Provided** that 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, [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.*

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-

section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

***Explanation.** — For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

A plain reading of the above section shows that the Adjudicating Authority has no discretion in respect of goods which are not prohibited goods and he is bound to give an option of redemption. In case of prohibited goods, the Adjudicating Authority may allow redemption or may not allow redemption.

6.7 In this regard, I rely upon the decision of Hon'ble High Court of Allahabad in the case of COMMISSIONER OF CUS., ALIGANJ, LUCKNOW V/s RAJESH JHAMATMAL BHAT [2022 (382) E.L.T. 345 (All.] wherein the Hon'ble High Court has held that Gold does not fall within the category of 'prohibited goods' and upheld the decision of Hon'ble Tribunal and Commissioner(Appeal) that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act, 1962. The Hon'ble High Court had upheld the decision of Hon'ble Tribunal wherein the Hon'ble Tribunal had upheld the decision of Commissioner (Appeal) wherein 4076 grams of gold bars recovered from the specially designed cavities made in the shoes, valued at Rs. 1,09,98,018/- was allowed to be redeemed on payment of redemption fine and penalty. The Hon'ble Tribunal had reduced the redemption fine from 25,00,000/- to Rs 15,00,000/- and penalty was also reduced from 10,00,000/- to 5,00,000/- as ordered by the Commissioner (Appeal). The Hon'ble High Court observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold upheld the decision of Hon'ble Tribunal. The relevant paras are reproduced as under:

"19. Having given our thoughtful consideration to the rival submission made on behalf of the parties, we find that although as per the provisions contained in Section 2(1) of the Act, the Commissioner (Appeals) or the Appellate Tribunal are not included within the definition of the term "adjudicating authority" and, therefore, they cannot exercise the powers vested in the "officer adjudging" but the power conferred by

Section 128A(3)(a) of the Act to "modify" the decision or order appealed against, is not at all curtailed by Section 2(1) of the Act and thus, in our considered opinion, the Commissioner (Appeals) has not exceeded his jurisdiction while modifying the order passed by the "adjudicating authority". The submission of Sri. Seth that Section 2(1) if the Act is a special provision and Section 128A is a general provision, is fallacious is this case for the reason that provisions of the entire Act have to be taken into consideration in their entirety to decipher the exact scheme of the Act as contemplated by the Legislature.

20. Moreover, we find that in the order dated 27-8-2018, the Commissioner (Appeals) has held that the import of gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold. This finding has not been reversed by the Tribunal as the Tribunal has affirmed the order passed by Commissioner (Appeals). Nothing has been placed before this Court to establish that this finding of the Commissioner (Appeals) is wrong or erroneous and that gold falls within the category of 'prohibited goods'. Therefore, we proceed to decide the appeal on the factual premise that Gold does not fall within the category of 'prohibited goods'.

21. Section 125 of the Act deals with confiscation of two separate categories of goods. It provides that in the case of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, the Officer adjudicating may give an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in case of any other goods, the officer adjudicating shall give an option to pay in lieu of confiscation such fine as the said officer thinks fit. The Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act and this finding has not been assailed by the Appellants in this Appeal.

22. In view of the aforesaid discussion, our answer to the first substantial question of law framed in this Appeal is that the Additional Commissioner, Customs (P.) Commissionerate, Lucknow had passed the order of confiscation of Gold without taking into consideration the fact that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act and thus the Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the

Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

6.8 I find that the Hon'ble CESTAT, Ahmedabad has in the case of Commr. of C. Ex., Cus. & S.T., Surat-II Vs Dharmesh Pansuriya [2018 (363) E.L.T. 555 (Tri- Ahmd)] considered the decision of Hon'ble High Court of Madras in the case of Commissioner of Customs (Air) Chennai-I Vs P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad)] and the decision of Hon'ble High Court of Bombay in the case of Commissioner Vs Alfred Menezes [2009 (242) E.L.T. 334 (Bom)], and were of the view that in case of prohibited goods as defined under Customs Act, 1962, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. The relevant paras are reproduced hereunder:

"8. *It is the argument of the Revenue that under the aforesaid provision, once the goods in question are prohibited goods under the Act, no discretionary power is left with the adjudicating authority for imposition of fine. We are afraid that the said plea of the Revenue may not find support from the principle of law laid down by the Hon'ble Bombay High Court in the case of Alfred Menezes case (supra). Their Lordships after analyzing the said provision of Section 125 of the Customs Act observed as follows:*

3. It is, therefore, clear that Section 125(1) deals with two situations (1) the importation and exportation of prohibited goods and (2) the importation and exportation of any other goods. Insofar as importation or exportation of prohibited goods, the expression used is that where the goods were confiscated, the officer "may". In the case of any other goods, which are confiscated, the officer "shall".

4. It is, therefore, clear that insofar as the prohibited goods are concerned, there is discretion in the officer to release the confiscated goods in terms as set out therein. Insofar as other goods are concerned, the officer is bound to release the goods. In the instant case, we are concerned with prohibited goods. The officer has exercised his discretion. The Tribunal [2009 (236) E.L.T. 587 (Tri. - Mum.)] has upheld the order of the adjudicating officer.

9. *This principle is later followed by the Hon'ble Madras High Court recently in P. Sinnasamy's case (supra). Thus, in view of the aforesaid principle, even if the goods in question are considered as prohibited goods as defined under the Customs Act, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. In these premises, thus to*

consider the issue raised at the bar that whether the gold bars removed from the Unit in SEZ without permission and contrary to the Circulars issued by RBI and Customs, became prohibited goods, or otherwise, in our view, becomes more an academic exercise and hence need not be resorted to.

10. *The other argument advanced by the Ld. AR for the Revenue is that in view of the judgment of Hon'ble Madras High Court in P. Sinnasamy's case, discretion conferred under the provision cannot be arbitrary and it is to be exercised in judicious manner. From the finding of the Ld. Commissioner, we notice that even though he has not considered the goods as prohibited ones, observing it in the sense that these are not arms, ammunitions, narcotic substance, but after examining the fact that the gold bars were imported for its authorized use in the SEZ and after considering other extenuating circumstances, exercised discretion in directing confiscation of the gold bars removed unauthorizedly from the SEZ Unit with option to redeem the same on payment of fine. We find that in P. Sinnasamy's case (supra), the adjudicating authority has directed absolute confiscation of the gold smuggled into the country, which was set aside by the Tribunal, with a direction to the adjudicating authority to consider imposition of fine, which did not find favour from the Hon'ble High Court. Their Lordships observed that once the adjudicating authority has reasonably and correctly applied the discretion, it is not open to the Tribunal to give positive direction to the adjudicating authority to exercise option in a particular manner. Even though the facts and circumstances in the said case are different from the present one, inasmuch as in the said case the Commissioner has directed absolute confiscation, but in the present case option for payment of fine was extended by the Commissioner; however, the principle laid down therein is definitely applicable to the present case. Therefore, we do not find merit in the contention of the Revenue that the Adjudicating authority ought to have directed absolute confiscation of the seized goods."*

6.9 I have also gone through the judgement of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Nagpur-I Vs Mohd. Ashraf Armar [2019 (369) E.L.T. 1654 (Tri Mumbai)] wherein the Hon'ble Tribunal, after considering the decision of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), has upheld the order of Commissioner (A) who set aside the order of absolute confiscation ordered by the adjudicating authority and allowed redemption of 1200.950 grams of concealed gold valued at Rs. 27,02,137/-

on payment of fine of Rs 5,50,000/-. The relevant paras are reproduced hereunder:

"4. We have perused the case record as well as judgment passed by the Hon'ble Supreme Court, Delhi in Om Prakash Bhatia's case. Relevant interpretation of "prohibited goods", as made in para 9 of the said judgment is reproduced below for ready reference:

" From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import (Control) Order, 1955. The Court negatived the said contention and held thus: -

'...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the words "any prohibition" in Section 111(d) of

the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import (Control) Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues".

5. *Going by the bare reading of the said interpretation, it can be said that in the definition of prohibited goods in terms of Section 2(33) of the Customs Act, 1962, any such goods means any such restricted and prohibited goods and not any other goods. It is in this contest the whole analyses of prohibited goods is made by the Hon'ble Apex Court and not in respect of any other goods other than prohibited and restricted goods. Gold being a permitted goods for importation, cannot be said to be restricted goods in applying such an interpretation but ceiling on the maximum quantity that could be imported could never be equated with restriction or prohibition to such importation. Admittedly, appellant's intention to evade duty by suppressing such import is apparent on record for which Commissioner (Appeals) has rightly confirmed fine and penalty under relevant provisions of the Customs Act but absolute confiscation of gold, which is permitted to be imported to India, solely on the ground that it was brought in concealment cannot be said to be in confirmity to law or contradictory to decision of Hon'ble Apex Court given in Om Prakash Bhatia's case. Hence the order.*

6. *Appeal is dismissed and the Order-in-Original No. 1/SBA/JC/CUS/2014, dated 27-5-2014 passed by the Commissioner (Appeals) is hereby confirmed."*

6.10 It is further observed that in respect of absolute confiscation of gold bar, the judgment pronounced on 05.05.2023 in respect of Civil Misc. Review Application No. 156/2022 filed at Hon'ble High Court of Allahabad sitting at Lucknow, by the Commissioner of Customs, Lucknow is relevant wherein the Hon'ble High Court has upheld the decision of Hon'ble Tribunal who had upheld the decision of Commissioner (Appeals) that gold is not prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act,1962 and thus rejected the review application filed by the Commissioner of Customs, Lucknow . The relevant paras of the judgment are reproduced hereunder:

"16. In the present case, the Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act. The Tribunal has recorded that the respondents had brought impugned Gold from Bangkok to Gaya International Airport without declaring the same to

Customs Authorities and there was nothing to explain as to how the Customs authorities posted at Gaya International Airport could not detect such huge quantity of gold being removed from Gaya International Airport by passengers on their arrival and there was no explanation as to how the respondents procured gold before they were intercepted at Mughalsarai Railway Station and the Tribunal has dismissed the Appeals for the aforesaid reason and has affirmed the order passed by the Commissioner (Appeals) holding that the import of gold was not prohibited under the Foreign Trade Policy or any other law and, therefore, there is no sufficient ground for absolute confiscation of the gold.

17. Nothing was placed before this Court to challenge the finding of the Commissioner (Appeals), which was upheld by the Tribunal, that Gold is not a prohibited item, and nothing was placed before this Court to establish that this finding of the Commissioner (Appeals) was wrong or erroneous.

18. Even if the goods in question had been brought into India without following the conditions prescribed therefore and those fall within the category of prohibited condition, Section 125 of the Act provides that the Adjudicating Officer may give to the owner of such goods an option to pay fine in lieu of confiscation. Section 128 A of the Act confers powers on the Commissioner (Appeals) to pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. In the present case, the Commissioner (Appeals) has modified the order of absolute confiscation by imposing penalty in lieu thereof, which was well within his power as per Section 128 A. The Tribunal has affirmed the order of the Commissioner (Appeals). This Court dismissed the further Appeal filed by the Department, finding no illegality in the judgment passed by the Tribunal.

19. In view of the aforesaid discussion, we are of the view that the order passed by this Court refusing to interfere with the aforesaid order passed by the Tribunal does not suffer from any error, much less from an error apparent on the face of the record.

20. The review application lacks merits and, accordingly, the same is dismissed. "

6.11 Further, It is observed that in the decision vide Order No.355/2022-CUS (WZ)/ASRA/MUMBAI, dated 07.12.2022 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger had brought 02 gold bars of 01 kg each and 02 gold bars of 10 tolas each totally weighing 2233.2 grams wrapped with white coloured self-adhesive marking tape and concealed in both the watch pockets of black coloured trousers worn by him, relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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

17.1 Government further observes that there are catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of ShikMastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad) upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passanger.

18.1 For the reasons cited above, Government finds that this is not a case of impersonation as construed by the lower authorities. Also, for the reasons cited above, it would be inappropriate to term the appellant as habitual offender. In the instant case, the impugned gold bars were kept by the applicant on his person i.e., in the pockets of the pants worn by him. Government observes that sometimes passengers resort to such innovative methods to keep their valuables / precious possessions safe. Also, considering the issue of parity and fairness as mentioned above, Government finds that this is a case of non-declaration of gold.

18.2 Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating the (02) two FM gold bars of I kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/-. Also, observing the ratio of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of gold bars but allows the impugned gold bars to be redeemed on payment of a redemption fine.

19 The Government finds that the penalty of Rs 6,00,000/- imposed under Section 112 (a) & (b) by the original authority and upheld by the AA is commensurate with the omission and commissions committed. Government finds the quantity of the penalty as appropriate.

20. In view of the above, the Government modifies the OIA passed by the AA to the extent of absolute confiscation of the gold bars i.e. (02)

two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/- and grants an option to the applicant to redeem the same on payment of a redemption fine of Rs 12,00,000/- (Rupees Twelve Lakhs only). The penalty of Rs 6,00,000/- imposed by OAA and upheld by AA is sustained.

21 Accordingly, Revision Application is decided on the above terms."

6.12 Further, It is observed that in the recent decision vide Order No 516-517/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.06.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger was wearing brown coloured cloth belt fastened around her abdomen and when the belt was cut open resulted in recovery of brown coloured powder with water pasted in glue, purported to containing gold weighing 2800 grams (gross). The Hon'ble revisionary authority relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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

11. A plain reading of Section 125 shows that the Adjudicating Authority is bound to give an option of redemption when the goods are not subject to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of goods and the nature of prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as condition of import have not been satisfied, may not be harmful to the society at large. Thus, Adjudicating Authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine.

12.1 Government further observes that there are catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be excercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of ShikMastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad) upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passanger.

12.2 Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

13 Government notes that the quantity of impugned gold dust (converted into bars) under import, is neither substantial nor in commercial quantity. The appellant claimed ownership of the impugned gold and stated that the same was brought for marriage purpose. There are no other claimants of the said gold. There is no allegation that the appellants are habitual offenders and was involved in similar offence earlier. The fact of the case indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. The absolute confiscation of the impugned gold, leading to dispossession of the gold in the instant case is therefore harsh and not reasonable. Government considers granting an option to the appellant to redeem the gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

14. In view of above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned gold seized from the appellant. The seized gold from the appellant 1 i.e. impugned gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and totally valued at Rs 41,07,735/- is allowed to be redeemed on payment of a fine of Rs 8,10,000/- (Rupees Eight Lakh Ten Thousand only)."

6.13 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 380/2022-CUS (WZ)/ASRA/MUMBAI, dated 14.12.2022, wherein the applicant was

carrying 270 grams of gold dust which has been ingeniously concealed by pasting it with glue in between two T shirt worn by him, had finally held that since the appellant is not a habitual offender and was not involved in the similar offence earlier and it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine

6.14 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 67/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.01.2023, on recovery of two gold bars of 01 kg each and 02 gold bars of 10 tolas each concealed in the pant worn, totally weighing 2232 grams valued at Rs 58,23,846/- upheld the decision of Appellate Authority allowing redemption of gold bars on payment of redemption fine of Rs 11,00,000/- and upheld the penalty of Rs 6,00,000/- imposed by the Original Adjudicating Authority and upheld by the Appellate Authority observing that the concealment was not ingenious, the passenger was not habitual offender and involved in the similar offence earlier, there was nothing on record that he was part of an organised smuggling syndicate. The Government found that this was a case of non-declaration of gold and held that absolute confiscation of the impugned gold leading to dispossession of gold would be harsh and not reasonable. With this observation the order of Appellate Authority granting an option to redeem the gold on payment of redemption fine was upheld.

6.15 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the recent decision vide Order No 68/2024-CUS (WZ)/ASRA/MUMBAI, dated 24.01.2024, in the case of Mr Kasmani Asif Abdul Aziz wherein the passenger had kept three gold kadiwali chains and two gold pendants in a transparent plastic pouch kept in pant pocket totally weighing 1200 grams of 24 kt having 999.0 purity valued at Rs. 35,22,816/- (Tariff value) and Rs. 39,02,400/- (Market value) had finally held that since quantum of gold is not commercial and the applicant was in possession of invoice for purchase of gold jewellary, concealment was not ingenious, the passanger is not a habitual offender and was not involved in the similar offence earlier and not a part of organised smuggling syndicate, it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine.

6.16 In view of above decisions of the Principal Commissioner & ex-officio Additional Secretary to Government of India, I am of the considered view that in present case also there is no allegation that the appellant is habitual offender and was involved in similar offence earlier. The appellant was not a part of organised smuggling syndicate. The appellant during adjudication as recorded in the impugned order has submitted vide his letter dtd. 27.09.2025 that while coming back to India, he had purchased the Gold Kada weighing 75.29 Gram for his family. He further reiterates that he had purchased gold kada from M/s Dayal Gold Jewellery vide invoice no. 2639 dated 03.03.2025 and requested that the goods seized in question may be allowed for release on payment of Redemption Fine and penalty. Thus, there is no dispute in respect of the ownership of the seized gold. The appellant was not a carrier. There is nothing on record to suggest that the concealment was ingenious. The investigation of the case has not brought any smuggling angle but the investigation suggest that this is case of non-declaration of gold with intention of non-payment of Customs duty. Further, a copy of appeal memorandum was forwarded to the adjudicating authority for his comment and submission of case laws on similar matter but no reply was received till date. The fact of the present case also indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial consideration. The absolute confiscation of impugned gold, leading to dispossession of the gold in the instant case is, therefore, harsh. Therefore, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad and Mumbai as detailed in the above paras, I am of the considered view that the absolute confiscation of impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/- is harsh. I, therefore, set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allow redemption of impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/-, on payment of fine of Rs1,25,000/- in addition to any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962.

6.16 In respect of request for re-export of the impugned gold, it is observed that the appellant was holding Civil Identity Card ID No 288070211511 of State of Kuwait valid upto 14.09.2027. The appellant

had claimed ownership of gold and desired to take it back. I have also gone through the recent decision vide Order No 404-405/2023-CUS (WZ)/ASRA/MUMBAI dated 30.03.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after observing that the passenger was having resident status of Doha/Qatar, allowed re-export of goods. In view of above, I allow re-export of seized gold on payment of redemption fine as discussed above and any other charges payable in respect of the impugned gold.

6.17 Further, in respect of imposition of penalty amounting to Rs1,50,000/- on the appellant for non-declaration of impugned gold articles of 999.0/24 Kt. weighing 75.29 Grams and having Tariff Value of Rs. 6,22,044/- and Market value of Rs. 6,82,880/-, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad, Mumbai and Allahabad as detailed in the above paras, I am of the considered view that penalty of Rs. 1,50,000/- ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty to Rs. 60,000/-.

6.18 The fine and penalty of the above amount will not only eliminate any profit margin, if any, but will also have a positive effect on the applicant to ensure strict compliance of law in future.

7. In view of above the appeal filed by the appellant is disposed of in the above terms.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.No. S/49-544/CUS/AHD/2025-26 Dated –06.03.2026

To,

(i) Shri Ishwar Lal,
Kasota Village Asariwada,
Post-Thana, Kherwara, Udaipur, Rajasthan - 313804,

Copy to:

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