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 - 20250771MN000000C12F

क	फ़ाइलसंख्या FILE NO.	S/49-04/CUS/AHD/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-134-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.07.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	47/AP/JRS-AC/SVPIA/2023-24, dated 21.02.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	04.07.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Kantilal Patel, Village – Vagpur, Post – Jawas, Kherwara, Udaipur, Rajasthan - 313001.

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)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपर उतारेनगएमालयाउसगन्तव्य 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 तथाउसकेअधीनबनाएगएनियमोंकेतहत शुल्कवापसीकीअदायगी.
(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.	

Shri Kantilal Patel, Village – Vagpur, Post – Jawas, Kherwara, Udaipur, Rajasthan - 313001 (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. 47/AP/JRS-AC/SVPIA/2023-24, dated 21.02.2024 (hereinafter referred to as "the impugned order") passed by Assistant Commissioner, SVPIA, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of specific Input the Officers of Air Intelligence Unit (AIU), SVPIA, Ahmedabad intercepted the appellant having Indian Passport No. T6755242 who arrived by Indigo Flight No. 6E 1754 from Kuwait to Ahmedabad on 22.09.2022. The appellant was trying to exit green channel without declaring any anything to Customs. The appellant was asked to walk through the DFMD machine installed near the green Channel of Arrival Hall Terminal-2, SVPI, Airport, Ahmedabad after removing all metallic items he was wearing on his body. The appellant removed all the metallic objects such as belt, mobile etc., and kept them in the tray placed on the table and walked through the DFMD, one beep sound/alert was generated. On being asked by the AIU officer about the beep sound/alert generated by the said DFMD machine, the appellant denied saying the he did not have any metallic object on his body/clothes. Then the appellant was again asked to pass through the DFMD machine to which the appellant again passed through the DFMD, again one beep sound/alert was generated and red light blinks below knees of the appellant. The AIU officers asked the appellant about this been sound to which the appellant denied again saying that he did not have any metallic object nor he had anything declarable to Customs like gold etc. Then, AIU officers asked the appellant to remove his sports shoes and then pass through the DFMD machine. The appellant removed his sport shoes hesitantly and passed through the DFMD machine, however, this time no beep sound/alert was generated. Then, the AIU officer asked to the appellant to put his sport shoes in the tray kept on table to which the appellant put his sports shoes in the tray. Then, both the trays containing all his metallic objects and sport shoes were scanned. while scanning the trays, one dark black coloured image with yellow outline appeared in one shoe and nothing objectionable was noticed in another tray. Then, again the appellant was asked whether the shoe was having any metallic object to which the appellant remained silent. Then, the appellant was again asked that what was hiding in the shoe to which the appellant hesitantly revealed that one cut gold bar was hiding in

his right sports shoe. The appellant, on being asked by the AIU officers, took out one packet wrapped with black adhesive tape from the shoe and removed the black adhesive tape and took out one cut gold bar from the transparent plastic cover and put it in the tray. It was observed that the said one cut bar was a piece of some gold bar.

2.1 The Govt approved valuer, Shri Soni Kartikey Vasantrai, after detailed examination and testing submitted a valuation Certificate No. 671/2022-23 dated 22.09.2022 and certified that Gold bar weighing 200.090 Grams having purity 999.0/24 kt is valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value). The value of the gold bar has been calculated as per the Notification No. 77/2022-Customs (N.T.) dated 15.09.2022 (gold) and Notification No. 78/2022-Customs (N.T.) dated 15.09.2022 (exchange rate).

2.2 On being asked, in presence of panchas, the appellant admitted that he consciously didn't declare the above said gold bar totally weighing 200.090 Grams to the Customs authority when he arrived at red channel to evade Customs duty and attempted to pass through the Green Channel where he was intercepted by the AIU officers.

2.3 From the facts mentioned above, it appeared that the appellant intentionally did not declare the above said cut gold bar totally weighing 200.090 Grams to the Customs authority when he arrived at red channel to evade Customs duty and attempted to pass through the Green Channel where he was intercepted by the AIU officers and the same came to the light only when the appellant was intercepted and he was thoroughly checked. Therefore, on a reasonable belief that the above said cut gold bar, recovered from the appellant which was attempted to be smuggled was liable for confiscation as per the provisions of Customs Act, 1962, were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Order dated 22.09.2022 under Panchnama proceedings dated 22.09.2022.

2.4 Statement of the appellant was recorded on 22.09.2022 under Section 108 of the Customs Act,1962, wherein he, inter-alia, admitted that he was working as casual labourer in Kuwait since last 10 years. He further stated that as his wife was not feeling well, he had to visit his native place Vagpur urgently. Therefore, he returned back that day i.e. on 22.09.2022 by Indigo Flight No. 61 1754. His tickets were arranged by one Mr. Bhansi Lal, as he was not having money. He has never indulged in any illegal activities, that was his first time to carry one gold cut bar hidden in his shoe. He further stated that in Dubai, he met a person named Mr.

Bhansi Lal and he arranged his ticket to visit India for travelling on 22.09.2022 and gave him the gold wrapped in black adhesive tape and asked him to hide it in his shoe. He didn't know the actual quantity of the gold. He didn't know Mr. Bhansi Lal's address, his mobile no. was +96566690576. He further confessed that he was aware of that smuggling of gold without payment of customs duty is an offence. He was aware of the concealed cut gold bar, but he did not make any declaration in this regard and opted for green channel so that he could attempt to smuggle the cut gold bar hidden in his shoes without paying customs duty.

2.5 The appellant had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The appellant had improperly imported gold weighing 200.090 grams having purity of 995.0/24Kt., having Tariff Value of Rs. 8,83,189/- and Market value of Rs. 10.25,461/. The said cut gold bar was concealed in his shoe and not declared to Customs. The appellant opted for green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported 200.090 Grams of gold bar of purity 995.0/24 Kt by the appellant by way of concealment in his shoe without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The appellant has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

2.6 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. 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 gold weighing 200.090 grams having Tariff Value of Rs. 8,83,189/- and Market value of Rs. 10,25,461/- recovered from the appellant concealed in his

shoe and attempted to clear without declaring it to the Customs, are not smuggled goods, is upon the appellant.

2.7 A Show Cause Notice dated 01.02.2023 was issued to the appellant proposing for confiscation of gold bar having purity 995.0 (24 Kt) totally weighing 200.090 grams, valued at Rs 8,83,189/- (Tariff value) and Rs. 10,25,461/- (Market value) seized under Panchnama dated 22.09.2022, for confiscation of black coloured adhesive tape and transparent plastic cover used for packing and concealment of the above mentioned cut gold bar under Section 118(b) and 119 of the Customs Act, 1962 and for imposition of penalty upon the appellant under Section 112 of the Customs Act, 1962.

2.8 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of gold bar having purity 995.0 (24 Kt) totally weighing 200.090 grams, valued at Rs 8,83,189/- (Tariff value) and Rs. 10,25,461/- (Market value) under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. The Adjudicating authority ordered for absolute confiscation of black coloured adhesive tape and transparent plastic cover used for packing and concealment of the above mentioned cut gold bar under Section 118(b) and 119 of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 90,000/- on the appellant under Section 112 (a) & (b) 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 ShabbirTaherallyUdaipurwala

  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.

- 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.90,000/- on the appellant.

- The appellant finally prayed for release the goods on payment of redemption fine or allow for re-export and reduction in penalty.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 18.06.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. The advocate during personal hearing also relied upon the following case laws:

(i) OIA No. AHD-CUSTM-000-APP-332-23-24 Dated 13.12.2023 In c/a Mr. Kachhadia Mahipal Vitthalbhai V/s. Additional Commissioner of Customs Ahmedabad. (Rhodium coated Gold Case granted RF, PP).

(ii) OIA No. AHD-CUSTM-000-APP-364-23-24 DT 10.01.2024 IN c/a Mr. Ankit Kamleshkumar Shah V/s Commissioner of Customs (Appeals), Ahmedabad. (Gold Case granted RF, PP.

(iii) OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms. Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

(iv) OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023 in c/a Mr. Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

(v) OIA No. AHD-CUSTM-000-APP-161-24-25 DT 26.07.2024 in c/a Mr. Subhan Gulab Pathan V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

(vi) Order No 140/2021 CUS(WZ)/ASRA/MUMBAI DT.25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF, PP).

(vii) Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT.29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad.(Ingenious Concealed Silver Coated Case granted RF, PP).

(viii) Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP).

(ix) Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP).

(x) Order No. 516-517/2023-CUS(WZ)/ASRA/MUMBAI DT 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP).

(xi) Order No. 907-909/2023-CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a (1) Mr. Shahrukkhan Muniruddin Pathan (2) Mr. Rushabhbhai Pravinbhai Goswami (3) Mr. Mahendrasinh Zala V/s. Pr. Commissioner of Customs, SVPI Airport, Ahmedabad. (Gold Weighing 1778.980 grams Case granted on RF, PP).

(xii) Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP).

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 orderdirecting absolute confiscation of the seized gold bar having purity 995.0 (24 Kt) totally weighing 200.090 grams, valued at Rs 8,83,189/- (Tariff value) and Rs. 10,25,461/- (Market value) 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. 90,000/- imposed on the appellant, under Section 112(a)&(b) of the Customs

Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant, on the basis of specific Input the Air Intelligence Officers (AIU), SVPIA, Ahmedabad intercepted the appellant having Indian Passport No. T6755242 who arrived by Indigo Flight No. 6E 1754 from Kuwait to Ahmedabad on dated 22.09.2022. The appellant was trying to exit green channel without declaring any anything to Customs. The appellant was asked to walk through the DFMD machine installed near the green Channel of Arrival Hall Terminal-2, SVPI, Airport, Ahmedabad after removing all metallic items he was wearing on his body. The appellant removed all the metallic objects such as belt, mobile etc., and kept them in the tray placed on the table and walked through the DFMD, one beep sound/alert was generated. On being asked by the AIU officer about the beep sound/alert generated by the said DFMD machine, the appellant denied saying the he did not have any metallic object on his body/clothes. Then the appellant was against asked to pass through the DFMD machine to which the appellant again passed through the DFMD, again one beep sound/alert was generated and red light blinks below knees of the appellant. The AIU officers asked the appellant about this been sound to which the appellant denied again saying that he did not have any metallic object nor he had anything declarable to Customs like gold etc. Then, AIU officers asked the appellant to remove his sports shoes and then pass through the DFMD machine. The appellant removed his sport shoes hesitantly and passed through the DFMD machine, however, this time no beep sound/alert was generated. Then, the AIU officer asked to the appellant to put his sport shoes in the tray kept on table to which the appellant put his sports shoes in the tray. Then, both the trays containing all his metallic objects and sport shoes were scanned. while scanning the trays, one dark black coloured image with yellow outline appeared in one shoe and nothing objectionable was noticed in another tray. Then, again the appellant was asked whether the shoe was having any metallic object to which the appellant remain silent. Then, the appellant was again asked that what was hiding in the shoe to which the appellant hesitantly revealed that one cut gold bar was hiding in his right sports shoe. The appellant, on being asked by the AIU officers, took out one packet wrapped with black adhesive tape from the shoe and removed the black adhesive tape and took out one cut gold bar from the transparent plastic cover and put it in the tray. It was observed that the said one cut bar was a piece of some gold bar. The Govt approved valuer, Shri Soni Kartikey Vasantrai, after detailed examination and testing submitted a valuation Certificate No. 671/2022-23 dated 22.09.2022 and certified that Gold bar weighing 200.090 Grams

having purity 995.0/24 kt is valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value). The said gold bar was seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 22.09.2022. 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 bar wrapped with black adhesive tape kept in shoes in transparent plastic cover 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.

5.2 I find that it is undisputed that the appellant had not declared the seized gold bar wrapped with black adhesive tape kept in shoes in transparent plastic cover to the Customs on his arrival in India. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of gold bar wrapped with black adhesive tape kept in shoes in transparent plastic cover. The appellant had, in his confessional statement, accepted the fact of non-declaration of gold before Customs on arrival in India. Therefore, the confiscation of gold by the adjudicating authority was justified as the applicant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112(a) of the Customs Act, 1962.

5.3 I have also perused the decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India submitted by the appellant 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 condition of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant are consequently liable for penalty. Thus, it is held that the undeclared gold weighting 200.090 Grams having purity 995.0/24 kt is valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value), are liable to confiscation under Section 111(d) of the Customs Act, 1962 and the appellant is also liable to penalty under Section 112(a) & (b) ibid.

5.4 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....."*

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

5.5 It is further observed that the adjudicating authority in the instant case had 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)] discussed in paras 27 to 32 of the impugned order, had held that smuggling of gold was done by the appellant and had ordered for absolute confiscation of undeclared gold weighing 200.090 Grams having purity 995.0/24 kt, wrapped with black adhesive tape kept in shoes in transparent plastic cover, and valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value).

5.6 It is also observed from the facts and records of the present case that the appellant had ingeniously concealed gold wrapped with black adhesive tape kept in shoes in transparent plastic cover with an intention

to smuggle the same without payment of duty. The gold wrapped with black adhesive tape kept in shoes in transparent plastic cover was detected when the appellant passed through DFMD Machine and on sustained interrogation and personal search of the appellant. The appellant in his statement recorded under Section 108 of the Customs Act, 1962 on 22.09.2022 had admitted his offence. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold was concealed ingeniously wrapped with black adhesive tape kept in shoes in transparent plastic cover. Therefore, the case laws relied upon by the appellant in the appeal memorandum are not applicable in the instant case.

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

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

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

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

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

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

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

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

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

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

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

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

5.8 I also rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of Ismail Ibrahim Versus Commissioner of Customs, Bangalore

[2019 (370) ELT 1321 (Tri Bang)], whereinthe Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold i.e. 200.090 grams wrapped with black adhesive tape kept in shoes in transparent plastic cover was concealed discreetly.

5.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 217/2024-Cus, dated 16.10.2024on identical issue i.e. attempt to bring undeclared gold in paste form in the case of Riswan Kochupurayil Nazeer,has upheld theabsolute confiscation of 788.940 grams of gold extracted from gold paste weighing 874.760 grams valued at 30,29,931/- (Assessable Value) and Rs 34,99,286/- (market value). The penalty imposed was also upheld. The relevant paras are reproduced as under:

"8. The Government has examined the matter. It is observed that the Applicant has not declared the possession of impugned gold in his Customs declaration form and it was only through persistent enquiry and examination of the Applicant, that the body concealment of the impugned gold in paste form came to light. The Appellate Authority has also observed that the Applicant in his voluntary statement dated 04.01.2021 under Section 108 of the Customs Act, 1962 admitted that he knew that importing of gold without payment of duty is an offence; that he had committed an offence by concealing the gold and not declaring the same to evade payment of Customs duty; that the impugned gold was handed over to him by a person at Dubal with instructions to smuggle the same to India and promised the Applicant a remuneration of Rs. 30,000/- in return. The Applicant in his second voluntary statement recorded on 16.01.2021 reiterated his earlier statement. The Appellate Authority in para (11) of the said O-I-A, has also noted that, on 11.07.2022, the Authorised representative of the Applicant, Shri Nazeer, who is the father of the Applicant, has admitted to his son's offence and has also stated the Applicant has committed this offence knowingly for financial gains. The impugned gold items smuggled into India via ingenious body concealment cannot be considered as bonafide baggage. The entire proceedings have also been covered under a Mahazar in presence of independent witnesses which also corroborates the sequence of events.

9. As per Section 123 of the Act, ibid, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. Leave alone declaring the gold as required under Section 77 of the Customs Act, 1962, the Applicant chose to ingeniously conceal it in his rectum

and this was detected only upon during his search & examination. Had be been the owner of the gold and had intended to declare the gold to Customs, he would not have had to resort to such ingenious concealment. Thus, the lack of any documents establishing ownership and non-declaration is not surprising. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the adjudicating & appellate authorities that the impugned goods were liable to confiscation under Section 111 ibid and that the penalty was imposable on the Applicant.

10.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, Import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors (1971 AIR 293), the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi (2003(155) ELT423(SC)), the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Further, in the case of UOI &Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that "any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."

10.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennal [2016(341) ELT65(Mad.)), the Hon'ble Madras High Court (le the Hon'ble Jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962---."

10.3 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that "A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". Hence, there is no doubt that the goods seized in the present case are to be treated as "prohibited

goods", within the meaning of assigned to it under Section 2(33) of the Act, ibid.

10.4 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

11. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 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 the Adjudging Officer". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

12.1 As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles Imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj vs Commissioner of Customs (P), Lucknow(2019(365) ELT 695(All.)), held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80 of the Act, ibid. In this case, the Applicant had not made a true declaration under Section 77.

12.2 Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs. UOI (2009 (241) ELT 621 (Del.)), held that re-export is not permissible when article is recovered from the passenger while attempting to smuggle it. Hence, the question of allowing re-export does not arise.

13. The case laws relied upon by the Applicant, in support of his various contentions, are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

14. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods as upheld by Commissioner Appeals does not require any interference. The quantum of penalty imposed on the Applicant is neither harsh nor excessive.

15. The revision application is rejected for the reasons aforesaid."

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

5.11 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Sh Rafi Syed, Order No. 175/2024-CUS, dated 28.08.2024 wherein absolute confiscation of 39 gold bars of 24 carat purity weighing 3800 grams valued at Rs 1,16,58,400/-, concealed inside plastic pouches containing dates, was upheld. The penalty imposed was also upheld.

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

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

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

released on payment of redemption fine and duty under Section 125 of the Act."

In the present case also the appellant, concealed the seized gold in the shoes wrapped in black adhesive tape kept in transparent plastic cover discreetly in his shoes with an intention to smuggle the same into India. The gold was detected when the appellant passed through the DFMD Machine and on sustained interrogation on the basis of intelligence input. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold. The appellant in the present case was acting as a carrier of gold.

6.16 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the concealment in this case was ingenious as substantial quantity of gold bar weighing 200.090was intentionally and ingeniously concealed in the shoes wrapped in black adhesive tape kept in transparent plastic cover to evade detection by the Customs authorities. The appellant did not intend to declare the said gold and the same was detected only on when he passed through DFMD Machine and on sustained interrogation on his personal search. He also admitted that in Dubai, he met a person named Mr. Bhansi Lal and he arranged his ticket to visit India for travelling on 22.09.2022 and gave him the gold wrapped in black adhesive tape and asked him to hide it in his shoe. He didn't know the actual quantity of the gold. He further confessed that he was aware of that smuggling of gold without payment of customs duty is an offence. He was aware of the concealed cut gold bar, but he did not make any declaration in this regard and opted for green channel so that he could attempt to smuggle the cut gold bar hidden in his shoes without paying customs duty. The appellant has requested for release of the said gold but not claimed ownership of gold and has not submitted any evidence to this effect. The appellant as stated by him was not owner of the gold but was acting as a carrier of the seized gold. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned and intentional smuggling of gold into India and the appellant was a carrier. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of seized gold of 24 kt/995.0 purity weighing 200.090in form of gold bar concealed in shoes wrapped in black adhesive tape kept in a transparent plastic cover valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value) under Customs Act, 1962. In view of above, the absolute confiscation of gold of 24 kt weighing 200.090 in form of gold bar concealed

in shoes wrapped in black adhesive tape kept in a transparent plastic cover valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value) is upheld.

6.17 Further, in respect of imposition of penalty amounting to Rs 90,000/- on the appellant for bringing undeclared gold weighing 200.090 in form of gold bar concealed in shoes wrapped in black adhesive tape kept in a transparent plastic cover valued at Rs. 8,83,189/- (Tariff Value) and Rs 10,25,461/- (Market Value), the appellant has attempted to bring gold into India without declaring the same and concealing the same ingeniously in shoes wrapped in black adhesive tape kept in transparent plastic cover. The quantum of gold is substantial and the appellant acting as a carrier had smuggled gold by ingeniously and intentionally concealing the same in shoes wrapped in black adhesive tape kept in transparent plastic cover. The appellant was aware that smuggling of gold without payment of customs duty is an offence and also admitted that he was carrying the said gold and intendent to clear the same without paying Customs duty from the SVPIA, Ahmedabad. Thus, I am of the considered view, that the penalty of Rs 90,000/- imposed on the appellant under Section 112(a)& (b) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112(a) & (b) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellant. Therefore, there is no infirmity in the impugned order and the same is upheld.

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

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

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

By Registered Post A.D.

F. No. S/49-04/CUS/AHD/2024-25Dated –04.07.2025

2313

To,

(i) Shri Kantilal Patel, Village – Vagpur,
Post – Jawas, Kherwara, Udaipur, Rajasthan - 313001

(ii) Rishikesh J Mehra, B/1103, Dev Vihaan,
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Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs,Ahmedabad.
3. The Assistant/Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. Guard File