

OIO No.21/AB/ADC/SRT-AIRPT/2024-25  
F.No.VIII/26-43/AIU/CUS/2023-24

	<b>अपर आयुक्त, सीमा शुल्क कार्यालय</b> <b>OFFICE OF THE ADDITIONAL COMMISSIONER</b> <b>OF CUSTOMS</b> <b>सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT</b> 4 <sup>th</sup> Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 ; Tel. No. - 0261-2990051 Email: <a href="mailto:customs-suratairport@gov.in">customs-suratairport@gov.in</a>	
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**PREAMBLE**

A	डी आई एन/DIN	<b>20250371MN0000999D8F</b>
B	फ़ाइल संख्या / File No.	F. No. VIII/26-43/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-43/AIU/CUS/2023-24 Dated 30.05.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	21/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	10.03.2025
F	जारी करने की तिथि/ Date of Issuance	11.03.2025
G	द्वारा पारित / Passed by	Shri Anunay Bhati, Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and address of Passenger	Smt. Poonam Talreja LIG 06, Shiv Janki Vatika, Kolar Road, Bhopal, PIN-462042, Madhya Pradesh

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

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

2. इस आदेश से अपने को व्यक्तिगत महसुस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4<sup>th</sup> मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट का स्टाम्प लगा होना चाहिए।

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

3. अपील के साथ निम्नलिखित चीजे संलग्न की जाए।

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

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

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

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

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Smt. Poonam Talreja (hereinafter referred to as the "Passenger/Noticee"), aged 30 years, daughter of Shri Hemraj Gohil, and wife of Shri Manish Talreja, residing at LIG 06, Shiv Janki Vatika, Kolar Road, Bhopal, PIN-462042, Madhya Pradesh, India, holding passport No. U5284554, arrived at Surat International Airport on 28.01.2024 from Sharjah on Air India Express Flight No. IX 172.

**2.** Based on passenger profiling, Smt. Poonam Talreja, an international passenger suspected of carrying high-value dutiable or prohibited goods, was intercepted by officers from the Air Intelligence Unit (AIU) and Customs officers at Surat International Airport (hereinafter referred to as the "officers"), in the presence of panchas under Panchnama dated 28/29.01.2024. The passenger was found to be carrying three pieces of baggage, namely, two blue trolley bags and one brown purse. The officers asked the passenger if she had anything to declare, to which she replied in the negative. The officer informed her that a personal search and detailed baggage examination would be conducted. Although the officer offered to conduct her personal search, the passenger politely declined. The officers then inquired whether she wished to be searched in the presence of a Magistrate or the Superintendent (Gazetted Officer) of Customs, to which she consented to be searched before the Superintendent of Customs. During the frisking and physical search by the lady Customs officer, the passenger was found to be wearing two unstudded bangles and two earrings, which appeared to be made of gold. She was also found to be wearing a golden amulet (Tabeez) around her neck. Subsequently, the lady officer scanned her body with a hand-held metal detector. During the scanning process, a beep sound was detected from the upper part of the passenger's body. The passenger was asked to remove her black inner (slip), which was then scanned with the hand-held metal detector, again resulting in a beep sound. This garment was subsequently passed through the XBIS scanner located in the arrival hall of Surat International Airport, where a dark image indicating the presence of a metallic object in her garment was observed in the scanner machine.

**3.** Subsequently, the Customs officers scanned the passenger's luggage using the XBIS Scanner machine and also examined the contents of the bags; however, nothing objectionable was found in the luggage.

**4.** Thereafter, the officers took the passenger to the Sunshine Global Hospital, Surat, for a CT scan/X-Ray after obtaining her consent to ascertain whether she had concealed any contraband item in her body. In the X-ray of Smt. Poonam Talreja, no contraband item was seen.

**5.** Subsequently, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery for the burning of the garment of the passenger for extraction of metal concealed therein. Thereafter, the garment was burnt in the furnace, and the ashes were collected and again melted in the furnace, upon which gold in bar form was obtained and also some ashes remained in the process. The gold bar and the remaining ashes so obtained were packed in a plastic pouch, put in a green envelope and sealed in such a manner that it could not be tampered with.

**6.** The approved government valuer was unreachable at that time; therefore, in the presence of the passenger and the panchas, the Customs officers opened the sealed green envelope and weighed the gold bar using the weighing machine available in the Customs office located in the arrival hall of Surat International Airport. The other gold items recovered from the passenger were also weighed. The details of all gold items recovered from the passenger were provided as follows:

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Name of pax	Item	Weight (approx.)	Purity
Smt. Poonam Talreja	01 gold bar (nugget)	188.62 grams	Not ascertained
	02 ear-rings	20.03 grams	Not ascertained
	02 unstudded gold bangles	60.50 grams	Not ascertained
	01 gold tabeez (amulet)	100.81 grams	Not ascertained

**7.** The above-mentioned gold items recovered from the passenger appeared to have been smuggled inside India in clear violation of the provisions of Customs Act, 1962. Therefore, the officers placed the said gold items under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 29.01.2024 under Panchnama proceedings dated 28/29.01.2024, on the reasonable belief that the same were attempted to be smuggled by Smt. Poonam Talreja and were liable for confiscation as per the provisions of the Customs Act, 1962.

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

- i) Boarding Pass from Sharjah to Surat of Air India Express Flight No. IX-172 dated 28.01.2024, Seat No. 28F, PNR No. Q183SV.
- ii) Copy of Passport No. **U5284554** issued at Bhopal on 09.04.2021 and valid up to 08.04.2031. Address as per passport was LIG 06, Shiv Janki Vatika, Kolar Road, Bhopal, PIN-462042.

**9.** A statement of Smt. Poonam Talreja was recorded on 29.01.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she inter alia stated:

- that she was residing at LIG 06, Shiv Janki Vatika, Kolar Road, Bhopal, PIN-462042 with her husband, children, father-in-law & mother-in-law; that she was studying in B. Tech (Mechanical) 2nd year and also ran a boutique; that she could read, write and understand English and Hindi Languages.
- that she was shown and explained the panchnama dated 28/29.01.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, she put her dated signature on the panchnama in token of acceptance of the facts stated therein.
- that earlier she had made 20-21 visits to Dubai to examine the designs of garments for her boutique; that for the current trip, she had gone to Dubai on 26.01.2024 from International Airport, Mumbai; that the impugned gold recovered from her possession belonged to her and she was the owner of said gold; that one inner (slip) containing gold belonged to her and purchased by her from Gold market, Dubai; that she also purchased two gold bangles, one gold amulet (in Tabeez form) and two ear-rings from Gold Market, Dubai; that she intended to sell the gold recovered from her possession to any person at Zaveri market, Mumbai; that she had paid Rs. 21,00,000/- (approx.) for the purchase of gold items recovered from her possession; that the money used for said purchase belonged to her and she had saved the same from the profit earned from her boutique; that she had made the payment through cash in USD, which she had got converted in Mumbai by some local agents whose names she did not remember then; that during her previous trip to Dubai, she had met an unknown person, who gave her idea of such kind of activity.
- that she was aware that import of gold without payment of Customs duty was an offence, but she tried to smuggle the same for some monetary benefit on

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account of such activity; that as she had intended to smuggle the gold by concealing the same, that she did not declare the same upon her arrival before any Customs officer; that after clearing the immigration procedures, she collected her baggage and during checkout, she was intercepted by the Customs officials and further procedures as stated in Panchnama dated 28/29.01.2024 was carried out.

- that she was aware that she had committed an offence by smuggling gold for which she would have to face the consequences as prescribed under the Customs Law.

**10.** Shri Vikasraj Juneja, the government-approved valuer, was requested vide letter F. No. VIII/26-42/AIU/CUS/2023-24 dated 29.01.2024, to visit Surat International Airport on 30.01.2024 for the testing and valuation of the Gold that was recovered and seized from the passenger on 29.01.2024. The valuer arrived at Surat International Airport on 30.01.2024 and, after examining the aforementioned items under the panchnama proceedings dated 30.01.2024, certified them to be gold items of 99% purity. The details of the gold items certified by the government-approved valuer were provided as under:

**TABLE-II**

<b>Sr. No.</b>	<b>Item</b>	<b>Weight (grams)</b>	<b>Purity</b>	<b>Market Value (Rs.)</b>	<b>Tariff Value (Rs.)</b>
1.	01 gold nugget	188.620	99%	12,11,902/-	
2.	02 gold bangles	60.500	99%	3,88,719/-	
3.	02 gold earrings	20.00	99%	1,28,502/-	
4.	01 gold tabeez (amulet)	100.00	99%	6,42,510/-	
	<b>TOTAL</b>	<b>369.12</b>		<b>23,71,633/-</b>	<b>19,92,141/-</b>

The above-mentioned gold items viz, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams and 01 gold tabeez (amulet) weighing 100.00 grams, each of purity 99%, totally weighing 369.12 grams had total market value of **Rs. 23,71,633/-** (Rupees Twenty-Three Lakh Seventy One Thousand Six Hundred Thirty Three only) and total tariff value of **Rs. 19,92,141/-** (Rupees Nineteen Lakh Ninety Two Thousand One Hundred Forty One only) as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024. Thereafter, the valuer issued valuation certificate No. 30.01.2024/2.

## **11. LEGAL PROVISIONS RELEVANT TO THE CASE**

- a)** As per para 2.26 of Foreign Trade Policy 2015-20-“Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.”
- b)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 – “the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.”
- c)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992-“All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that

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Act shall have effect accordingly.”

- d)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 – “no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”
- e)** As per Section 11(3) of the Customs Act, 1962-“Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.”
- f)** As per Section 2(3) of the Customs Act, 1962 – “baggage” includes unaccompanied baggage but does not include motor vehicles.
- g)** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
  - a. vessels, aircrafts and vehicles;
  - b. stores;
  - c. baggage;
  - d. currency and negotiable instruments; and
  - e. any other kind of movable property;
- h)** As per Section 2(33) of Customs Act 1962-“prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”
- i)** As per Section 2(39) of the Customs Act 1962 –“smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113.”
- j)** As per Section 77 of the Customs Act 1962-“the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.”
- k)** As per Section 110 of Customs Act, 1962-“if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.”
- l)** Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation under section 111 (d) of the Customs Act 1962.
- m)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.
- n)** Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under

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Section 111 (j) of the Customs Act 1962.

- o)** As per Section 112 of the Customs Act 1962-“any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”
- p)** As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- q)** As per Section 123 of Customs Act 1962 (Burden of proof in certain cases)
  - (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-
    - (a) in a case where such seizure is made from the possession of any person -
    - (i) on the person from whose possession the goods were seized; and
    - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
  - (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.
- (2) This section shall apply to gold, [and manufactures thereof,] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.
- r)** As per Customs Baggage Declaration Regulations, 2013- “all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.”
- s)** As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold in any form, other than monetary gold and silver in any form, is amended from ‘Free’ to ‘Restricted’; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

## **12. CONTRAVENTION AND VIOLATION OF LAWS**

It therefore appeared that:

- (a)** Smt. Poonam Talreja had actively involved herself in the instant case of smuggling of gold into India. Smt. Poonam Talreja had improperly imported Gold items totally weighing 369.12 grams (net weight), having market value of Rs. 23,71,633/- and tariff value of Rs. 19,92,141/-, as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024, without declaring it to the Customs, by way of concealment in-person as well as in paste form in the inner garments worn by her. She concealed the said gold with a deliberate and mala fide intention to smuggle the same into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other Allied Acts, Rules and Regulations. The gold improperly imported by her with commercial considerations without declaration before the proper officer of Customs cannot

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be treated as bona fide household goods or personnel effects. Smt. Poonam Talreja has thus contravened the Foreign Trade Policy 2015-20, Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.

- (b)** By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c)** The gold items improperly imported by the passenger Smt. Poonam Talreja, by concealing the same in-person as well as in paste form in her garment without declaring it to the Customs, was thus liable for confiscation under Section 111(d), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- (d)** Smt. Poonam Talreja, by her above-described acts of omission and commission, had rendered herself liable to penalty under Section 112 of the Customs Act, 1962.
- (e)** As per Section 123 of the Customs Act 1962, the burden of proving that the said improperly imported gold, totally weighing 369.12 grams (net weight), having a market value of Rs. 23,71,633/- and tariff value of Rs. 19,92,141/- without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, namely Smt. Poonam Talreja.

**13.** Accordingly, a Show Cause Notice bearing F. No. VIII/26-43/AIU/CUS/2023-24 dated 30.05.2024 was issued to Smt. Poonam Talreja calling upon her to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on the 4<sup>th</sup> Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:

**(i)** The recovered gold items viz, 01 gold nugget of purity 99% weighing 188.620 grams, 02 gold bangles of purity 99% weighing 60.500 grams, 02 gold earrings of purity 99% weighing 20.00 grams and 01 gold tabeez (amulet) of purity 99% weighing 100.00 grams, all gold items totally weighing 369.12 grams having a total market value of **Rs. 23,71,633/-** (Rupees Twenty-Three Lakh Seventy-One Thousand Six Hundred Thirty-Three only) and total tariff value of **Rs. 19,92,141/-** (Rupees Nineteen Lakh Ninety-Two Thousand One Hundred Forty-One only), seized vide Seizure Order dated 29.01.2024 under Panchnama proceeding dated 28/29.01.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;

**(ii)** A penalty should not be imposed upon her under Section 112 of the Customs Act, 1962.

#### **14. DEFENCE REPLY**

In the Show Cause Notice dated 30.05.2024, the noticee was asked to submit her written reply/defence submission to the Notice within the stipulated time. In response, defence submission dated 04.07.2024 was filed by Authorized Representative of the notice, Advocate Shivangi Kherajani.

- The noticee, in her defence submission dated 04.07.2024, has denied each and

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every allegation, contentions, averments, and submission and stated that nothing should be deemed to have been admitted by her client unless and until it is specifically done so and shall be presumed to have been denied by her client. The noticee has reproduced the extracts of the show cause notice. In addition, she has submitted:

- that she is a Fashion Designer and has her own Boutique of Fashion Garments in Bhopal, Madhya Pradesh. She had been to Dubai many times before this to promote her business of Fashion Garments; during her visit to Dubai, she had carried with her the legally permissible foreign currency for her expenses and personal shopping;
- that as she was also promoting her business of fashion garments in Dubai, she got various orders for the same. Towards the said orders she also received advance payments from the clients. Instead of carrying the cash and seeing that the value of gold was much lesser than in India she thought of purchasing the said gold which was for her own personal use. She also purchased gold dust as it was much cheaper than buying jewellery and it would help her in making personal jewellery as she intended to make good designer jewellery for herself. Thus, the gold purchased by her in jewellery form was worn by her on her person and gold dust was kept in a pouch. The said gold pouch was kept by her in the pocket of her inner garment, i.e. a slip which she was wearing under her kurta and in the same pocket. She had kept the pouch in the said pocket. The said gold dust was thus not concealed in any manner;
- that noticee, being a bona fide passenger, she went to the officer to declare the gold and informed the officer that she was wearing gold and was also carrying a small pouch of gold in dust form. But before the officer could check her and calculate the amount of duty to be paid by her, she was frisked away by another officer in civil dress who was watching her. Surprisingly, on going through the SCN, it was seen that her client was trying to evade duty and did not declare the gold. The said fact is absolutely false and denied in toto by her client;
- that the noticee had in no way concealed the Gold as the Gold jewellery was worn by her on herself and the Gold dust was in a pouch which was kept by her in the pocket of her inner slip, which she was wearing for safekeeping. The said fact is mentioned in the SCN in para no. 2. Thus, the gold was not concealed in any manner, and the statement mentioned in the Show Cause Notice that the said gold was concealed is absolutely false and denied as when the gold is worn on a person or kept in the pocket, it does not amount to concealment;
- that at the most, the noticee has committed a technical offence of non-declaration though she had gone to declare the same as a bona fide passenger but being frisked away by the officer, no opportunity was given to her to declare the said gold though she had informed the officer of the same;
- that her client, the noticee, admits the possession and recovery of the said gold and denies non-declaration and concealment of the same. She is claiming the said gold as the said gold belonged to her, and she had purchased the same with her own money, and it was for personal use. She told the officer that the said Gold belonged to her and she had purchased the same from Dubai for her personal use;
- that the noticee vehemently opposes the contention of the Show Cause Notice that the Gold was concealed;
- that the said gold belonged to her and was for her own personal use, and the same is not liable to be confiscated u/s 111(d),111(i) and 111(j) of the Customs Act, 1962., being personal effects;

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- that her client, i.e. the noticee on her arrival at the airport, being a bona fide passenger/citizen, directly went to the counter to declare her gold and oral declaration is as good as declaration u/s 77 of the Customs Act. The officer, during her personal search with a handheld metal detector, while scanning her body, detected that she was wearing gold. The said fact was already mentioned by her when she was at the counter declaring the gold. Subsequently, her statement came to be recorded in which a few general questions were asked to her and further statement was being typed on computer by the officer, which was being typed without putting any questions to her. Her client objected to the same but was forced to sign the panchnama as well as the statement without allowing her to read the contents;
- that the 02 Gold Bangles 99% Purity having net weight 60.500 grams valued at Rs. 3,88,719/-, 02 Gold Earrings 99% Purity having net weight 20.00 grams valued at Rs. 1,28,502/- and 01 Gold Tabeez (amulet) 99% Purity having net weight 100.00 grams valued at Rs. 6,42,510/-, 99% Purity 01 gold bar (nugget) having net weight 188.620 grams valued at Rs.12,11,902/-, collectively weighing 369.12 grams and totally valued at Rs. 23,71,633/- brought by her client i.e. noticee was not ingeniously concealed but was worn by her on herself and the gold dust in wax in a pouch was in the pocket of her inner slip for safe keeping. As stated above, this was the first time that she had brought gold to India from abroad;
- that the said Gold brought by her client i.e., noticee, is neither restricted nor prohibited and can be released on applicable customs duty u/s. 125 of the Customs Act;
- that the quantity of Gold brought by her client, i.e. noticee, is small, which indicates that the same was not in commercial quantity and not for commercial purposes but for personal use only;
- that the plain reading of the show cause notice revealed that the impugned goods are dutiable goods and thus fall under restricted goods having the restriction of declaration;
- that as per the conclusions in the Show Cause Notice issued, the said act/omission on the part of her client i.e. noticee was to evade customs duty. The evasion of customs duty can be done only in respect of dutiable goods, and once the same is concluded that the goods are dutiable, the option of redemption of goods as provided u/s. 125 of the Customs Act will have to be given to her client i.e. notice;
- that a bare perusal of the sub-section of (1) of Section 125 of the Customs Act, 1962, makes it clear that the Customs Officer is required to give her client/ noticee an option to pay a fine in lieu of confiscation in respect of the impugned goods which even as per this department are dutiable goods;
- that the said Gold found from her was not for sale but was for her own personal use;
- that it is pertinent to note that nowhere under the Customs Act, it is mentioned that the declaration has to be only done in writing. It can be given orally also, and oral declaration is as good as a declaration under the Customs Act;
- that it is settled norms of law that, in various judgments passed by various authorities, the redemption of goods has been granted even when the goods were not declared u/s. 125 of the Customs Act. Thus, her client i.e. noticee is praying for the

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redemption of the same;

- that her client is not a carrier for anybody, nor she intended to sell the same in local market for profit, as she had got the said goods for personal use only;
- that as per the facts and circumstances of the present case, absolute confiscation of the Gold / Impugned dutiable goods would only mean and interpret sub-section (1) of Sec. 125 of the Customs Act in a manner neither authorized nor intended by the act. Thus, the redemption of Gold on payment of the fine in lieu of confiscation is what is enacted by the legislature under Section 125 of the Customs Act;
- that without prejudice of the above contentions, there are a number of judgments of the Hon'ble Apex Court, Hon'ble High Court and the Hon'ble Tribunal, Adjudicating Authority, Appellate Authority and Revisional Authority, wherein it is held that Gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely but an option to redeem the same on redemption fine be given to the person from whom it is recovered. Some of the judgments are hereby mentioned below;
  - 1993 (67) E.L.T. 1000, it is stated that 'gold imported under the new gold scheme – failure of the importer to declare of gold on his arrival- absolute confiscation not necessary – confiscated gold redeemable on payment of a fine.
  - CESTAT, WZB Mumbai, in the case of Dhanak Madhududhan Ramji a similar view was taken for releasing of gold on redemption fine in lieu of confiscation.
  - Kusumbhai Dayabhai Patel v/s Commissioner of Customs 1995 (79) E.L.T 292 tribunal Mumbai. In this case, the appellant was also a foreign national and pleaded for the re-export of confiscated jewellery. The same came to be allowed by way of redemption in lieu of confiscation and re-export thus allowed.
  - A.K. Jewellers V/s Commissioner of Customs Mumbai, Tribunal larger bench. In the said case also, the tribunal came to a conclusion that irrespective of goods being prohibited, redemption of such goods is permitted.
- It is submitted that various Revisional orders to name a few under;
  - Revision order no. 38/2008 in case of Mrs. Majeeda Mohammed Yonus.
  - Revision order no. 178/2008 of Mr. Ravinder Saduram Dulari.
  - Revision order no. 733/2023-CUS(WZ)/ASRA/MUMBAI of Mr. Mohammed Rafiq.
  - Revision order no. 480/2023-CUS(WZ)/ASRA/MUMBAI of Mrs. Afsa Imran Havaldar.
- that the same adjudicating authority in the past has allowed the release of Gold by way of redemption on payment of fine and penalty, and now different views cannot be taken to cause injustice to the abovementioned client i.e. notice;
- that there have been no allegations that her client, the noticee, is a habitual offender or that she is involved in similar offences earlier. Considering the quantity of Gold, the same not being concealed in any manner, and her client, the noticee, not being a habitual offender, absolute confiscation of the said Gold is not justified;

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- that her client i.e. noticee submitted and prayed that the 02 Gold Bangles 99% Purity having net weight 60.500 grams valued at Rs. 3,88,719/-, 02 Gold Earrings 99% Purity having net weight 20.00 grams valued at Rs. 1,28,502/- and 01 Gold Tabeez (amulet) 99% Purity having net weight 100.00 grams valued at Rs. 6,42,510/-, 99% Purity 01 gold bar (nugget) having net weight 188.620 grams valued at Rs.12,11,902/-, collectively weighing 369.12 grams and totally valued at Rs. 23,71,633/- which was seized from her should not be absolutely confiscated but allowed to be redeemed on payment of duty on the same or in the alternative a token amount of penalty and fine imposed which shall meet the ends of justice;
- that to grant a personal hearing at an earliest by way of issuing a Personal Hearing Memo to her and her client for putting her submissions.

## **15. RECORD OF PERSONAL HEARING**

***“Audi alteram partem”*** is an important principle of natural justice that mandates to hear the other side before passing any order. Consequently, the Adjudicating Authority granted the noticee an opportunity to be heard in virtual mode for a persona hearing scheduled on 11.12.2024 vide office letter F. No. VIII/26-43/AIU/CUS/2023-24 dated 25.11.2024. The personal hearing took place on 17.12.2024, attended by the noticee's Authorized Representative, Shri Shivangi Khejrajani, Advocate, who reiterated the written submission dated 04.07.2024.

## **16. DISCUSSION AND FINDINGS**

I have thoroughly examined the facts of this case, the relied-upon documents, relevant legal provisions, and the defence submission of the noticee. Therefore, I shall now proceed to decide the present case based on the evidence and documents available on record.

**17.** In the instant case, I find that the main issues to be decided are:

- (i)** whether the recovered gold items viz, 01 gold nugget of purity 99% weighing 188.620 grams, 02 gold bangles of purity 99% weighing 60.500 grams, 02 gold earrings of purity 99% weighing 20.00 grams and 01 gold tabeez (amulet) of purity 99% weighing 100.00 grams, all gold items totally weighing 369.12 grams having a total market value of Rs. 23,71,633/- (Rupees Twenty-Three Lakh Seventy-One Thousand Six Hundred Thirty-Three only) and total tariff value of Rs.19,92,141/- (Rupees Nineteen Lakh Ninety-Two Thousand One Hundred Forty-One only), seized vide Seizure Order dated 29.01.2024 under panchnama proceeding dated 28/29.01.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962 or otherwise;
- (ii)** Whether a penalty should be imposed upon her under Section 112 of the Customs Act, 1962 or otherwise.

**18.** I find that the Panchnama has accounted for the facts that, based on passenger profiling, Smt. Poonam Talreja, an international passenger suspected of carrying high-value dutiable/prohibited goods, was intercepted by the officers of the Air Intelligence Unit (AIU) and Customs officers at Surat International Airport in the presence of panchas under Panchnama proceedings dated 28/29.01.2024. The passenger was found to be carrying three pieces of baggage, namely two blue trolley bags and one brown purse. When asked if she had anything to declare, the passenger denied this. Upon frisking and physically searching the passenger, two unstudded bangles, two earrings, and an amulet (Tabeez) around her neck were recovered. Further scanning of

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her baggage revealed that she had some metallic items in her innerwear (black slip). However, nothing objectionable was found in the baggage. Subsequently, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery to burn the passenger's garment to extract the metal concealed therein. Thereafter, the garment was burnt in the furnace, and the ashes were collected and melted again in the furnace, resulting in the recovery of gold in bar/nugget form. Shri Vikasraj Juneja, the government-approved valuer, was requested to visit Surat International Airport on 30.01.2024 for testing and valuation of the gold recovered from the passenger. The valuer arrived and, following the examination of the items under Panchnama proceedings dated 30.01.2024, certified them as gold items with 99% purity. The details of the gold items certified by the Government-approved valuer are given below:

<b>Sr. No</b>	<b>Item</b>	<b>Weight</b>	<b>Purity</b>	<b>Market Value (Rs.)</b>	<b>Tariff Value (Rs.)</b>
1.	01 gold nugget	188.620 grams	99%	12,11,902/-	<b>9,92,141/-</b>
2.	02 gold bangles	60.500 grams	99%	3,88,719/-	
3.	02 gold earrings	20.00 grams	99%	1,28,502/-	
4.	01 gold tabeez (amulet)	100.00 grams	99%	6,42,510/-	
<b>TOTAL</b>		<b>369.12 grams</b>		<b>23,71,633/-</b>	

The seized gold items, comprising of 1 gold nugget weighing 188.620 grams, 2 gold bangles weighing 60.500 grams, 2 gold earrings weighing 20.00 grams, and 1 gold tabeez (amulet) weighing 100.00 grams, each with a purity of 99%, have a total weight of 369.12 grams. The market value of these items is Rs. 23,71,633 (Rupees Twenty-Three Lakh Seventy-One Thousand Six Hundred Thirty-Three only), while the total tariff value is Rs. 19,92,141 (Rupees Nineteen Lakh Ninety-Two Thousand One Hundred Forty-One only), as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus (NT) dated 18.01.2024. Subsequently, the valuer issued a Valuation Certificate No. 30.01.2024/2 to this effect.

The above-mentioned gold items recovered from the said passenger appeared to have been attempted to smuggle into India in clear violation of the provisions of the Customs Act of 1962. Therefore, the officers placed the said gold items under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 29.01.2024 under Panchnama proceedings dated 28/29.01.2024, on the reasonable belief that the same were attempted to be smuggled by Smt. Poonam Talreja and were liable for confiscation as per the provisions of the Customs Act, 1962.

**19.** Further, I find that Statement of Smt. Poonam Talreja was recorded on 29.01.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she has *inter alia* stated:

➤ that earlier she had made 20-21 visits to Dubai to examine the designs of garments for her boutique; that for the current trip, she had gone to Dubai on 26.01.2024 from International Airport, Mumbai; that the impugned gold recovered from her possession belonged to her and she was the owner of said gold; that one inner (slip) containing gold belonged to her and purchased by her from Gold market, Dubai; that she also purchased two gold bangles, one gold amulet (Tabeez) and two ear-rings from Gold Market, Dubai; that she intended to sell the gold recovered from her possession to any person at Zaveri market, Mumbai; that she had paid Rs. 21,00,000/- (approx.) for the purchase of gold items recovered from her possession; that the money used for said purchase belonged to her and she had saved the same from the profit earned from her boutique; that she had made the payment through cash in USD, which she had got converted in Mumbai by some local agents whose

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names she did not remember; that during her previous trip to Dubai, she had met an unknown person, who gave her idea of such kind of activity.

➤ that she was aware that import of gold without payment of Customs duty was an offence, but she tried to smuggle the same for some monetary benefit on account of such activity; that as she intended to smuggle the gold by concealing the same, she did not declare the same upon her arrival before any Customs officer; that after clearing the immigration procedures, she collected her baggage and during checkout, she was intercepted by the Customs officials and further procedures as stated in Panchnama dated 28/29.01.2024 was carried out.

➤ that she was aware that she had committed an offence by smuggling gold for which she would have to face the consequences as prescribed under the Customs Law.

**20.** I find that the noticee has filed a defence submission dated 04.07.2024 wherein she has stated that:

- She is a Fashion Designer with a Boutique in Bhopal and frequently visits Dubai to promote her business; During her trips, she carries legally permissible foreign currency for expenses and shopping; that while in Dubai, she decided to buy gold for personal use as it was cheaper than in India; that she also purchased gold dust to create her own designer jewellery; that the gold jewellery was worn, and the gold dust was kept in a pouch in the pocket of her slip under her kurta, not concealed in any way. I find that the statement furnished by the noticee regarding the purpose of her visit to Dubai, purportedly in connection with her fashion design business, does not automatically exempt her from adhering to the statutory requirements under the Customs Act, 1962 and other applicable regulations. Even if the noticee had been traveling frequently for legitimate business reasons, it is incumbent upon her to strictly comply with the import restrictions, disclosure requirements, and declaration procedures prescribed under the provisions of the Customs Act, 1962 and the Allied Act for any gold or precious metal brought into the country. I note that the noticee's claim to have purchased gold and gold dust for personal use is premised on the rationale that gold in Dubai was cheaper. While the price differential may be a motivating factor, it does not exempt the noticee from ensuring compliance with the provisions of the Act, the Baggage Rules, 2016, and the Foreign Trade Policy, as applicable. Further, under the Baggage Rules 2016, any passenger who brings gold into India is required to declare such items at the time of arrival if they exceed the permissible free allowance or if the nature/quantity of the items demands. Merely labelling the gold as "personal jewellery" or "personal use" does not negate or diminish the obligation to declare it. I am not convinced by the contention of the noticee that the gold dust was kept in a pouch in the pocket of her slip under her kurta, not concealed in any way. I find that the gold dust was carried in a pouch and kept in the pocket of her "inner garment (slip)." Any such method of storage, particularly in an inner garment, can be deemed a *prima facie* act of concealment, as it is not the usual manner in which passengers carry or present valuable items for proper declaration at Customs. I further find that the mere fact that the pouch was capable of being accessed does not establish that it was openly disclosed or offered for inspection. For purposes of customs enforcement, concealment is judged not solely by whether an item is "visible" but by whether the passenger took adequate and lawful steps to declare said item and subject it to Customs scrutiny.

- Further, the noticee has submitted that being a bona fide passenger, she approached the officer to declare the gold she was wearing and the pouch of gold dust; however, before the officer could inspect her and calculate the duty, she was frisked by another office; that surprisingly, the SCN suggests her client attempted to evade duty and did not declare the gold, which her client completely denies. I find that the noticee's *ex post facto* assertion, claiming to have attempted a lawful declaration

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before being frisked, appears to be an unsubstantiated defence. I understand that had the noticee indeed intended to truthfully declare and pay the Customs duty, clear and conclusive documentary or witness-based evidence of such an attempt would have been readily available. Further, the noticee, in her voluntary statement dated 29.01.2024 recorded under Section 108 of the Customs Act, 1962, admitted that she had not declared the gold items, brought with her by way of concealment on her person as well as in paste form in the inner (garment) worn by her, to Customs as she wanted to get some monetary benefit by selling the same in the market in Mumbai. Thus, I believe the Show Cause Notice has correctly outlined allegations that the noticee attempted to evade payment of duty and failed to declare the gold in a prescribed manner. I find that the noticee's claim of bona fide conduct is not borne out by the facts and circumstances of the case, nor by any substantive evidence.

- Further, the noticee's assertion that she did not conceal the gold, as the jewellery was worn by her and the gold dust was kept in a pouch in the pocket of her inner slip for safekeeping and therefore, the claim in the Show Cause Notice that the gold was concealed is false, as wearing gold or keeping it in a pocket does not constitute concealment. I find that the noticee's assertion that she did not conceal the gold, as the jewellery was worn by her and the gold dust was kept in a pouch in the pocket of her inner slip for safekeeping, lacks credibility. I find that in the present case, the noticee is alleged to have been discovered carrying gold dust in the pocket of her innerwear slip, which is not a conventional place to keep items intended for straightforward inspection or easy declaration. The necessity of an inner pocket suggests an intent to avoid immediate detection or scrutiny rather than a mere casual act of "safe-keeping." I further note that if the noticee genuinely intended to disclose the gold, the standard practice would be to either present it openly at the Customs counter or ensure it was readily visible in carry-on baggage or personal effects while declaring the same to the officer before any search or interception. I find that the record does not indicate that she made any effort to declare the gold items carried by her to the Customs Authorities.
- Further, the defence has argued that the noticee has committed a technical offence of non-declaration, despite intending to declare the gold as a bona fide passenger; she was frisked by an officer before having the chance to declare it, even though she had informed the officer. I find that the argument has already been rebutted above. The material on record unequivocally proves that not at any point in time has the noticee made any effort to make a declaration of gold items in baggage before the Customs Authorities. Further, the voluntary statement dated 29.01.2024 of the noticee clearly reads that the noticee did not make any declaration to Customs with a view to evading the Customs Duty applicable.
- Further, the defence has admitted that possession and recovery of the gold but denied non-declaration and concealment; she claims that the gold was hers, bought with her own money in Dubai for personal use, and informed the officer of the same. I note that the noticee's admission of possession and recovery of the gold in question. However, a mere statement that the gold was "purchased with her own money" for "personal use" does not, in and of itself, absolve the noticee of liability under the Customs Act, 1962 and the applicable Baggage Rules, 2016. Whether the gold was purchased with lawfully obtained funds or for personal use is a separate issue from the obligation to declare such goods upon arrival in India if they exceed permissible limits or otherwise attract customs duty. I also note that the noticee, in her voluntary statement dated 29.01.2024, stated that she had not made any declaration to Customs with a view to evading the Customs Duty as the gold items were not for personal use rather commercial purposes. She further stated in her statement that she intended to sell the gold items recovered from her in Zaveri Market, Mumbai, to get some monetary benefit. I hereby note the conflicting versions of the noticee.
- Further, the defence has vehemently opposed the contention of the Show Cause Notice that the Gold was concealed. I find the defence's contention that the gold was

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not concealed is unconvincing. Mere denial by the noticee does not negate the factual scenario and the legal framework under which the allegation of concealment has been raised. Under the Customs Act, 1962, the term “concealment” covers not only those situations where goods are hidden in a secret compartment but also any situation where goods are carried in a manner intended to circumvent transparent declaration and lawful assessment of duty. Section 77 of the Customs Act, 1962, imposes upon every passenger arriving in India the obligation to declare all dutiable and prohibited goods in their possession. The Baggage Rules, 2016, further specify the procedure for such declaration. It is to note that if goods, especially gold, are not proactively disclosed at the time of arrival and are subsequently discovered during examination, search or frisking, this creates a clear presumption that they were *not* declared as required, which in turn supports an inference of concealment. I reckon that in the instant case, the gold was found in a manner or location (for instance, within pockets of an inner garment or otherwise not voluntarily presented) that deviates from ordinary forms of transparent self-declaration. I further find that the noticee’s blanket denial of concealment overlooks the fact that Customs officers only became aware of the gold upon conducting a search or further examination rather than through the noticee’s voluntary disclosure. I find that the noticee’s assertion that the gold was for personal use, which is not as discussed above, does not absolve her of the requirement to declare such items. The question of whether the gold is for personal use or commercial purposes is separate from the obligation of disclosure. I further find that even if the gold is genuinely for personal use if it is carried in a manner that avoids or delays detection by Customs authorities, the behaviour may lawfully be construed as concealment under the Customs Act, 1962. Thus, I am of the considered view that the noticee’s vehement denial of concealment is unsupported by the sequence of events and the statutory norms governing baggage and declaration. I believe that the manner of carriage and the lack of declaration indicate concealment within the meaning of the relevant provisions of the Customs Act, 1962. Consequently, the noticee’s contention that there was no concealment is rejected and that the allegations raised in the Show Cause Notice are upheld as per law.

- Further, the defence has argued that the said gold belonged to her and was for her own personal use, and the same is not liable to be confiscated u/s 111(d),111(i) and 111(j) of the Customs Act, 1962 being personal effects. I find that the defence’s contention that the gold belonged to the noticee and were personal effects, therefore, not liable to confiscation, lacks validity. I believe that “Personal effects” means things required for satisfying daily necessities but do not include jewellery. Further, I, hereat, refer to Customs Baggage Declaration Regulations, 2013- which reads- *“all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.”* As discussed above, the passenger in this instant case has not made any declaration to the Customs. I refer to the “Travellers for Guide” issued by CBIC, housing FAQs wherein it has been clarified that the passengers arriving from countries other than Nepal, Bhutan or Myanmar, who are Indian Residents and Foreigners residing in India are eligible for Duty-Free Allowances on (a) used personal effects and travel souvenirs; (b) articles up to the value of Rs.50,000 of Gold or silver in the form of ornaments (relevant portion extracted). In the instant case, I note that the market value of gold items recovered from the noticee are Rs. 23,71,633/- . The noticee was eligible for the exemption from Customs Duty up to the limit of 50,000/- subject to a declaration made before the Customs Authorities by filling up the prescribed Customs Declaration Form. Further, the duty-free allowance includes the value of only gold or silver in the form of jewellery. Whereas in the instant case, I note that the gold items recovered from the noticee are inclusive of gold dust. Further, I would like to reproduce the relevant Para No. 3 of Circular No. 9/2001-CUS dated 22.02.2001 as under:

*3 In this connection, attention is once again drawn to Boards instructions issued vide F.No.495/6/97-Cus.VI dated 6-5-96 and reiterated in letter*

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*F.No.495/19/99-Cus.VI dated 11.4.2000. It was clearly stated that the import of goods in commercial quantities would not be permissible within the scope of the Baggage Rules, even on payment of duty. It was also stated that suitable redemption fine/personal penalties would need to be imposed in all such cases,*

Further, as already discussed above, the noticee in her voluntary statement dated 29.01.2024, stated that she had not made any declaration to Customs with a view to evading the Customs Duty as the gold items were not for personal use rather commercial purposes. She has further stated in her statement that she intended to sell the gold items recovered from her in Zaveri Market, Mumbai, to get some monetary benefit. The discussion in the foregoing paras leads me to the conclusion that the goods recovered from the noticee were not for personal use but was intended for commercial purposes. Thus, I find that the gold items in question are liable for confiscation under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962, since they were imported in contravention of the Foreign Trade Policy, the Baggage Rules, 2016, and other applicable regulations.

- Further, the defence has submitted that the noticee, upon arrival at the airport as a bona fide passenger, went directly to the counter to declare her gold and her oral declaration is valid under Section 77 of the Customs Act; that nowhere under the Customs Act, it is mentioned that the declaration has to be only done in writing; that it can be given orally also, and oral declaration is as good as a declaration under the Customs Act; that during a personal search, a metal detector revealed she was wearing gold, which she had already mentioned at the counter; that later, her statement was recorded, but it included general questions, and further content was typed without her being questioned; that despite objections, she was forced to sign the panchnama and statement without being allowed to read it. I find that the noticee's claim that she "directly went to the counter to declare her gold" contending that an oral declaration is sufficient compliance under Section 77 of the Customs Act, 1962, is without substance. I note that Section 77, read with the Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013, envisages a clear and proactive declaration procedure in the form of Indian Customs Declaration Form I for passengers carrying dutiable/prohibited items. Further, I, hereat, refer to Customs Baggage Declaration Regulations, 2013- which reads- "*all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*" Typically, such declaration must be made by choosing the Red Channel and following the formalities prescribed, including filing a Customs declaration form and making an explicit statement about the nature and quantity of goods. The prescribed rules require a more formal and documented declaration. I, on examining the material on record, do not find any oral declaration made by the noticee. I feel that this oral declaration is just an afterthought to deviate the case. I further find that the noticee's claim that her statement was typed without questions being put to her and that she was forced to sign the panchnama and statement without reading, lacks corroboration. I am aware that the process of recording panchnama is typically witnessed by *panch witnesses* or is otherwise documented in the presence of an independent witness to ensure fairness. If the noticee had any objection to the manner in which her statement was recorded, she could have raised it immediately or refused to sign until its contents were accurately reflected. I find that there is no evidence on record that the noticee exercised this right at the relevant time. Furthermore, it is standard practice for Customs officers to allow the passenger to read or have the statement read out before obtaining signatures, precisely to avoid subsequent allegations of coercion. The claim of a coerced or improperly recorded statement similarly stands unsubstantiated. The record supports the Department's position that proper procedures were followed; the discovery of gold by personal search indicates a failure on the noticee's part to declare it in the prescribed manner. I find that the contention of the noticee bites the dust here.

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• Further, the defence has submitted that the 02 Gold Bangles 99% Purity having net weight 60.500 grams valued at Rs. 3,88,719/-, 02 Gold Earrings 99% Purity having net weight 20.00 grams valued at Rs. 1,28,502/- and 01 Gold Tabeez (amulet) 99% Purity having net weight 100.00 grams valued at Rs. 6,42,510/-, 99% Purity 01 gold bar (nugget) having net weight 188.620 grams valued at Rs.12,11,902/-, collectively weighing 369.12 grams and totally valued at Rs. 23,71,633/- brought by her client i.e. noticee was not ingeniously concealed but was worn by her on herself and the gold dust in wax in a pouch was in the pocket of her inner slip for safe keeping; that this was the first time that she had brought gold to India from abroad. I find that the noticee's contention that the gold was neither "ingeniously" nor "deliberately" concealed overlooks the broader legal requirement under the Customs Act, 1962, and the Baggage Rules, 2016, which mandate a clear, proactive, and truthful declaration of all dutiable goods carried by incoming passengers. It is evident from the Show Cause Notice (SCN) record that, despite being specifically asked whether she had anything to declare, the Noticee categorically denied carrying any dutiable or prohibited goods. I further find that the mere fact that some gold items (bangles, earrings, tabeez) were worn on her person or that gold dust (nugget) was cleverly concealed in a pouch inside her inner slip does not exempt the noticee from the obligation to declare such goods, particularly when the total quantity and value far exceed the permissible free allowances as prescribed under Baggage Rules, 2016. Under Section 77 of the Customs Act, 1962, in conjunction with the Baggage Rules, 2016, all passengers are required to disclose any items liable to duty or restrictions. I find that, according to the SCN, the Noticee was found carrying gold that was not voluntarily declared to the Customs authorities but was instead discovered in her clothing following scans and a personal search. This manner of carriage, coupled with the noticee's initial denial of having anything to declare, strongly suggests an attempt to avoid detection. Furthermore, it is immaterial whether the gold was "ingeniously" hidden or simply placed in a slip pocket. The legal question is whether the noticee complied with the legally mandated declaration requirements—which, given the facts, she did not. The noticee's assertion that this was her first time bringing gold into India does not absolve her of liability. The Customs Act, 1962, does not distinguish between first-time and repeat offenders; all arriving passengers must adhere to the declaration formalities when carrying goods over permissible limits. Ignorance of the law is no defence. Moreover, the SCN states that the noticee had travelled to Dubai multiple times previously, which undermines her claim of unfamiliarity with baggage and customs procedures. The record shows that the noticee, in her statement recorded under Section 108 of the Customs Act, 1962, admitted to purchasing the gold from Dubai with the intention of selling it in India for monetary gain. This admission itself indicates a commercial (rather than mere personal) motive, further negating the argument that the gold was a simple "personal effect." The noticee also acknowledged that she was aware that importing gold without payment of customs duty is an offence and that she did not declare the gold "upon her arrival before any Customs officer," as required by law. In view of the foregoing, it is unequivocally proven that the gold items in question are liable for confiscation under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962, since they were imported in contravention of the Foreign Trade Policy, the Baggage Rules, 2016, and other applicable regulations. I find that the noticee's claims regarding the nature of "safekeeping" or "lack of ingenious concealment," as well as her alleged first-time status, are irrelevant to her failure to declare the gold properly.

• Further, the defence has submitted that the said Gold brought by her client, i.e. noticee is neither restricted nor prohibited and can be released on applicable customs duty u/s. 125 of the Customs Act; the quantity of Gold brought by her client, i.e. noticee, is small, which indicates that the same was not in commercial quantity and not for commercial purposes but for personal use only; that the plain reading of the show cause notice revealed that the impugned goods are dutiable goods and thus fall under restricted goods having the restriction of declaration. I

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note that the defence's contention that the gold in question, being of comparatively small quantity and intended for personal use, is not prohibited or restricted. However, I find that this claim is not tenable in light of the legal provisions governing the import of gold into India. The manner in which the gold was brought and the absence of proper declaration underscores non-compliance with the Customs Act, 1962, the Baggage Rules, 2016, and the DGFT notification(s) relating to the restricted import of gold. Under the Foreign Trade Policy (2015-2020/2023) and DGFT Notification No. 36/2015-2020 dated 18.12.2019, gold other than monetary gold is categorized as "restricted" unless imported through specified, nominated agencies. This stipulation is enforced under Section 11 of the Customs Act, 1962, and Section 3 of the Foreign Trade (Development & Regulation) Act, 1992. Therefore, merely characterizing gold as "dutiable" does not obviate the fact that it is also a *restricted* item for import purposes, necessitating compliance with the conditions and procedures prescribed under the law. The Noticee's argument that the quantity is small and for personal use does not exempt such import from the statutory declaration and compliance requirements under Section 77 of the Customs Act, 1962, read with the Baggage Rules, 2016. Even small quantities of gold beyond permissible free allowances must be declared and subjected to appropriate duty assessment. Moreover, any failure to abide by the mandated procedure, particularly where there is concealment or non-disclosure, renders the goods liable to confiscation under the relevant provisions of the Customs Act, 1962. I find that while Section 125 of the Customs Act, 1962, empowers an Adjudicating Authority to offer redemption of confiscated goods upon payment of fine and duty, this does not negate the liability of the goods to confiscation under Sections 111(d), 111(i), or 111(j). Confiscation is a legal consequence of improper importation. I further find that the Show Cause Notice (SCN) alleges that the noticee attempted to import the gold in contravention of the relevant law. I find that the defence's argument purporting that the gold is not restricted and can be straightforwardly released on payment of duty, overlooks the legal framework declaring gold to be a "restricted" commodity requiring authorized channels for import, in addition to mandatory baggage declaration requirements. Literal interpretation of the words, —prohibited goods and the contention that gold is 'restricted' and therefore, to be released, would cut down the wide ambit of the inbuilt prohibitions and restrictions in the Customs Act, 1962 and any other law for the time being in force. It is pertinent to note that any interpretation that allows a person to benefit from their wrongdoing or undermine the objectives of a statute should be rejected. I find it appropriate at this stage to refer to relevant case laws where the Hon'ble Courts have provided guidance on the interpretation of the statute.

- In ***Poppatla Shah v. State of Madras*** reported in AIR 1953 SC 274, the Supreme Court held that,

— "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

- The observation of the Hon'ble Supreme Court in the case of ***Raj Krishna v. Bonod Kanungo*** reported in AIR 1954 SC 202, -

- "It is well settled that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act, so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within the statute or between a Section or other parts of the statute."

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- In the **State of W.B. v. Union of India reported in AIR 1963 SC 1241**, the Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.
- In **Balram Kumawat v. Union of India reported in (2003) 7 SCC 628**, the Supreme Court held that,
  - “Contextual reading is a well-known proposition of interpretation of statute. The classes of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of —**ex visceribus actus** should be resorted to in a situation of this nature.”
- In **A.N. Roy Commissioner of Police v. Suresh Sham Singh reported in (2006) 5 SCC 745 : AIR 2006 SC 2677**, the Apex Court held that,
  - “It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.”
- Further, the defence has submitted that as per the conclusions in the SCN issued, the said act/omission on the part of her client i.e. noticee was to evade customs duty; the evasion of customs duty can be done only in respect of dutiable goods, and once the same is concluded that the goods are dutiable, the option of redemption of goods as provided u/s. 125 of the Customs Act will have to be given to her client i.e. noticee; that a bare perusal of the sub-section of (1) of Section 125 of the Customs Act, 1962, makes it clear that the Customs Officer is required to give her client/ noticee an option to pay a fine in lieu of confiscation in respect of the impugned goods which even as per this department are dutiable goods; that it is settled norms of law that, in various judgments passed by various authorities, the redemption of goods has been granted even when the goods were not declared u/s. 125 of the Customs Act. Thus, her client i.e. noticee is praying for the redemption of the same; that as per the facts and circumstances of the present case, absolute confiscation of the Gold / Impugned dutiable goods would only mean and interpret sub-section (1) of Sec. 125 of the Customs Act in a manner neither authorized nor intended by the act. Thus, the redemption of Gold on payment of the fine in lieu of confiscation is what is enacted by the legislature under Section 125 of the Customs Act.

I note the noticee's contention that once goods are concluded to be dutiable, the only course under Section 125 of the Customs Act, 1962, is to grant an option of redemption upon payment of a fine. I maintain that Section 125 does not mandate automatic redemption in every instance; the provision expressly vests discretion in the Adjudicating Authority to consider the facts and circumstances of each case before deciding the manner of confiscation. The relevant text of Section 125(1) of the Customs Act, 1962, states that “*where confiscation is authorised by this Act, the officer adjudicating the matter may give to the owner of the goods...*” an option to pay a fine in lieu of confiscation. The language “*may give*” rather than “*shall give*” underscores that it is not an absolute or mandatory right of the noticee to claim redemption in all circumstances. The Hon’ble Courts have consistently held that the

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power to allow redemption under Section 125 is discretionary, to be exercised based on factors such as the nature of goods, any restrictions or prohibitions on their import, past conduct of the importer, and the overall facts of the case. Where the imported goods are “restricted” or the infringement is egregious, the Department or the Adjudicating Authority may consider absolute confiscation appropriate. The gold in question is restricted for import under the Foreign Trade Policy (2015–2020/2023) and the relevant DGFT Notifications. Its import is permissible only through nominated agencies or specific channels, subject to compliance with the Customs Act, 1962, and allied regulations. The Show Cause Notice (SCN) details that the noticee failed to declare the gold, concealed it on her person, and attempted to evade duty. These actions constitute a serious contravention of customs law beyond mere non-payment of duty and bring into play the possibility of absolute confiscation. The SCN and the noticee’s own statement recorded under Section 108 of the Customs Act, 1962, show a *deliberate* attempt to circumvent legal requirements (e.g., no proper declaration, concealment in garments). Such conduct goes beyond a simple case of failing to pay duty on “dutiable goods.” It clearly evidence smuggling as defined under Section 2(39) of the Customs Act, 1962, thereby attracting the provisions of Sections 111(d), (i), (j) and potential absolute confiscation where the Adjudicating Authority finds it fit. I find while the defense asserts that “various judgments” have upheld redemption, it is well-settled that courts also recognize the Adjudicating Authority’s discretion to order absolute confiscation in appropriate cases, particularly when the goods are restricted or where the nature of the offence is grave. I find that no judicial precedent compels the Department to invariably grant redemption where the facts demonstrate intentional smuggling or gross non-compliance with import restrictions. It seems to me that the noticee’s argument—claiming that Section 125(1) compels the Department to offer redemption upon payment of a fine—misreads the statute. The provision states “*may*” not “*shall*,” reflecting the discretionary power of the Adjudicating Authority to decide whether redemption is appropriate or whether absolute confiscation is warranted given the facts. I find that in the instant matter, the SCN highlights the noticee’s deliberate violations, including failure to declare, concealment, and intent to evade customs duty. Moreover, gold is a restricted commodity, subject to import through authorized channels only. These considerations may justifiably lead to an order of absolute confiscation if deemed necessary to uphold the objectives of the Customs Act of 1962 and to deter similar future offences.

- Further, the defence has submitted that without prejudice to the above contentions, there are a number of judgments of the Hon’ble Apex Court, Hon’ble High Court and the Hon’ble Tribunal, Adjudicating Authority, Appellate Authority and Revisional Authority, wherein it is held that Gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely but an option to redeem the same on redemption fine be given to the person from whom it is recovered. Some of the judgments cited by the noticee in her defence submission are furnished below;

- 1993 (67) E.L.T. 1000, it is stated that ‘gold imported under the new gold scheme – failure of the importer to declare of gold on his arrival- absolute confiscation not necessary – confiscated gold redeemable on payment of a fine.
- CESTAT, WZB Mumbai, in the case of Dhanak Madhududhan Ramji a similar view was taken for releasing of gold on redemption fine in lieu of confiscation.
- Kusumbhai Dayabhai Patel v/s Commissioner of Customs 1995 (79)E.L.T 292 tribunal Mumbai. In this case, the appellant was also a foreign national and pleaded for the re-export of confiscated jewellery. The same came to be allowed by way of redemption in lieu of confiscation and re-export thus allowed.

➤ A.K. Jewellers V/s Commissioner of Customs Mumbai, Tribunal larger bench. In the said case also, the tribunal came to a conclusion that irrespective of goods being prohibited, redemption of such goods is permitted.

- Revision order no. 38/2008 in case of Mrs. Majeeda Mohammed Yonus.
- Revision order no. 178/2008 of Mr. Ravinder Saduram Dulari.
- Revision order no. 733/2023-CUS(WZ)/ASRA/MUMBAI of Mr. Mohammed Rafeeq.
- Revision order no. 480/2023-CUS(WZ)/ASRA/MUMBAI of Mrs. Afsa Imran Havaldar.

As previously discussed, Section 125 does not mandate automatic redemption in every instance; the provision expressly vests discretion in the Adjudicating Authority to consider the facts and circumstances of each case before determining the manner of confiscation. I have reviewed the judgments and Revision Orders relied upon by the defence. Upon examination of these orders, I find that these judgments/orders are not applicable to the present case. The facts and circumstances of this case differ significantly from those cited by the noticee. I acknowledge that there is a technical violation regarding the non-declaration of dutiable/prohibited items before the Customs Authorities in this case and the referenced judgments/orders. However, considering the factual context of this matter, I note that in her statement dated 29.01.2024, the noticee has claimed ownership and admitted to the recovery of the aforementioned gold items, namely, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams, and 01 gold tabeez (Amulet) weighing 100.00 grams, each with a purity of 99%, totalling 369.12 grams with a total market value of Rs. 23,71,633/- (Rupees Twenty-Three Lakh Seventy-One Thousand Six Hundred Thirty-Three only). The noticee, in her statement dated 29.01.2024 recorded under Section 108 of the Customs Act, 1962, has confessed that she was aware that importing gold without paying Customs duty is an offence, even so, she attempted to smuggle it for monetary gain by way of concealment in-person as well as in paste form in the inner (garment) worn by her. She has further confessed that she intended to sell the gold items at Zaveri Market in Mumbai and, therefore, did not declare them to the Customs authorities upon her arrival at Surat Airport. Consequently, after clearing immigration procedures, she retrieved her baggage, and during checkout, she was intercepted by Customs officials, leading to further actions as outlined in the Panchnama dated 28/29.01.2024. Thus, it is conclusively established that the gold items recovered from her were not intended for personal use but rather for commercial purposes. These facts make the instant case distinguishable from the cases relied upon by the notice in her defence. Therefore, I find that the aforementioned judgments and orders cited by the noticee do not apply to this case.

- Further, the defence has asserted that the same adjudicating authority in the past has allowed the release of Gold by way of redemption on payment of fine and penalty, and now different views cannot be taken to cause injustice to the abovementioned client, i.e. noticee. Further, there have been no allegations that her client, the noticee, is a habitual offender or that she is involved in similar offences earlier. Considering the quantity of Gold, the same not being concealed in any manner, and her client the noticee not being a habitual offender, absolute confiscation of the said Gold is not justified. I find this assertion of the noticee is flawed reasoning. I believe that the Adjudicating Authority is neither bound by its own past decisions in the strict sense of precedent nor restrained from arriving at a different conclusion based on the specific facts and circumstances of each individual case. A prior decision, wherein gold was allowed to be redeemed upon payment of fine and penalty,

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cannot ipso facto curtail the Authority's discretion in the present matter, especially if fresh material with different factual matrix, or changed legal considerations are involved. I further find that it is a settled principle of law that adjudication must be premised on the facts, evidence, and legal provisions relevant to each proceeding. The facts and circumstances of the present case materially differ from those in the previously cited matter. Accordingly, there can be no blanket application of the earlier decision to the present proceeding. Moreover, the Adjudicating Authority is obligated to exercise its discretion judicially. Where a differing factual situation or subsequent developments in law or policy are demonstrated, a distinct or stricter approach may be warranted in the interests of justice. In addition, the doctrine of consistency does not imply that an authority must forever adhere to a prior course of action, irrespective of differing facts or intervening legal considerations. Rather, consistency requires that the Authority furnishes reasons for any divergence. In the present case, the decision to adopt a different view is supported by rational grounds particular to the noticee's conduct, the extent of liability, and other factors that may not have been present or relevant in the earlier scenario. I maintain that insofar as the claim of "injustice" is concerned, the noticee's right to defend themselves remains intact, and any penalty, confiscation, or denial of redemption would still be subject to judicial scrutiny and review, thereby safeguarding fairness and due process. Hence, I find the above assertion by the noticee does not have a point. I further find that the absence of prior similar offences or habitual offending does not automatically shield the noticee from the statutory consequences of any contravention. The Customs Act, 1962, does not limit the remedy of absolute confiscation solely to habitual offenders. Even a single, first-time contravention can attract confiscation if the circumstances so warrant. Reliance on the noticee's clean record, while potentially relevant as a mitigating factor in certain cases, does not ipso facto negate the authority's power to order absolute confiscation where the infraction is deemed serious enough or falls squarely within the ambit of provisions prescribing such a penalty.

**21.** Further, I find that the noticee has never retracted her aforesaid statement dated 29.01.2024 and the offence committed by the passenger is clearly confessed by her in her statement. Therefore, I consider her statement to be material evidence in this case, and for that, I place my reliance on the following judgements/case laws;

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

**22.** Further, I find that the noticee has neither questioned the manner of the Panchnama proceedings at the relevant time nor disputed the facts detailed in the

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Panchnama during her statement. Every procedure conducted during the Panchnama by the Officers was thoroughly documented and carried out in the presence of the panchas as well as the passengers. In fact, in her statement, the noticee clearly confessed that she was aware that importing gold items/gold paste without paying customs duty constituted an offence. However, as she sought to evade customs duty, she carried the gold items by way of concealment on her person as well as in paste form in the inner (garment) worn by her and did not declare this with the sole intention of smuggling the gold into the country, as she was attempting to gain monetary benefit by smuggling gold, as admitted by the passenger in her statement dated 29.01.2024. Thus, the passenger has violated provisions of the Customs Act 1962, the Baggage Rules 2016, the Foreign Trade (Development & Regulations) Act 1992, the Foreign Trade (Development & Regulations) Rules 1993, and the Foreign Trade Policy 2015-2020/2023.

**23.** Further, I find that the passenger failed to declare the gold items by way of concealment on her person as well as in paste form in the inner (garment) worn by her upon her arrival to the Customs authorities, as she sought to evade customs duty. She concealed and did not declare these items with the sole intention of smuggling the gold into the country, attempting to gain a monetary benefit by smuggling, as admitted by the passenger in her statement dated 29.01.2024. This presents a clear case of non-declaration with the intent to smuggle the gold into Indian territory. Accordingly, there is sufficient evidence to state that the passenger retained possession of the gold and neglected to declare it before the Customs Authorities upon her arrival at Surat International Airport, Surat. The case of gold smuggling recovered from her possession, which was kept undeclared with the intention of smuggling to evade payment of Customs duty, is conclusively proven. Thus, the passenger has violated Section 77 and Section 79 of the Customs Act for the import of gold not meant for bona fide use, thus also violating Rule 11 of the Foreign Trade Regulation Rules 1993 and paras 2.26 and 2.27 of the Foreign Trade Policy 2015-20/2023. Since gold is a notified item, when goods notified thereunder are seized under the Customs Act, 1962, on reasonable belief of being smuggled goods, then according to Section 123 of the Customs Act, 1962, the burden of proof that they are not smuggled lies with the person from whose possession the goods have been seized. In the present case, the passenger has confessed in her statement that she was attempting to gain monetary benefit by selling the gold items in the market, and therefore, she did not declare the gold items to the customs authorities on her arrival at Surat airport.

**24.** Further, I also find that from the facts discussed above, it is evident that Smt. Poonam Talreja had carried gold items viz, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams and 01 gold tabeez (amulet) weighing 100.00 grams, each of purity 99%, totally weighing 369.12 grams by way of concealment on her person as well as in paste form in the inner (garment) worn by her, while arriving from Sharjah to Surat, with the sole intention to smuggle and remove the same without payment of Customs duty and to make some monetary gain by selling the gold items in the market in Mumbai as stated by her in her statement. The offence committed by her has rendered the aforesaid gold items liable for confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. By concealing the said gold items on her person as well as in paste form in the inner (garment) worn by her and not declaring the same before Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of the above acts has made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**25.** Further, I find that the noticee had not filled up the baggage declaration form and had not declared the said gold items in her possession, as envisaged under

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Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It has been also observed that the import was also for non-bona fide purposes as the same was carried by way of concealment on her person as well as in paste form in the inner (garment) worn by her for monetary gain, as admitted in her statement. Therefore, the said improperly imported gold jewellery/dust by the passenger Smt. Poonam Talreja without declaring to the Customs on her arrival in India cannot be treated as bona fide household goods or personal effects. The passenger thus has contravened Para 2.26 of the Foreign Trade Policy 2015-20/Para 2.27 of 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. It is, therefore, proved that by the above acts of contravention, the noticee has rendered the gold items viz, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams and 01 gold tabeez (amulet) weighing 100.00 grams, each of purity 99%, totally weighing 369.12 grams seized under Panchnama dated 29.01.2024, liable for confiscation under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.

**26.** Further, I find that the noticee, in her statement, has admitted to carrying gold by way of concealment on her person as well as in paste form in the inner (garment) worn by her and attempted to remove the said gold from the Surat Airport for commercial purpose without declaring it to the Customs Authorities and thereby has violated the provisions of para 2.26/2.27 of the Foreign Trade Policy 2015-20/2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. As per Section 2(33), "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import has thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

**27.** Further, I find that gold is not on the list of prohibited items, but the import of the same is controlled. The view taken by the ***Hon'ble Supreme Court in the case of Om Prakash Bhatia***, in very clear terms, lays down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of '*prohibited goods*'. Non-fulfilment of the conditions has made the gold seized in the present case "*prohibited goods*" as the passenger trying to smuggle it was not an eligible passenger to bring it into India or import gold into India in baggage. Smt. Poonam Talreja has confessed to carrying the said gold paste and keeping it undeclared with the intention of smuggling the same and evading payment of customs duty. By using this modus, it is proved beyond doubt that the goods are offending in nature and, therefore, prohibited their importation. Thus, the conditions are not fulfilled by the passenger.

**28.** In view of the foregoing discussions, I hold that the gold items viz, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams and 01 gold tabeez (amulet) weighing 100.00 grams, each of purity 99%, totally weighing 369.12 grams carried by way of concealment on her person as well as in paste form in the inner (garment) worn by her and kept undeclared by the passenger Smt. Poonam Talreja, with an intention to clear the same illicitly from Customs Airport and evade payment of Customs duty as she was trying to make clearance of goods attempted to smuggle into India to make some monetary gain by selling the gold items in the market., is liable for absolute confiscation. In the instant case, I am, therefore, not inclined to use my discretion to give the option to

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redeem the aforesaid gold items, on payment of redemption fine, as envisaged under Section 125 of the Act.

**29.** Further, I would like to derive support in favour of my stand from the view expressed by the Hon'ble High court in the case of ***Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)]***, wherein the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*“Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act.”*

**30.** Further, I would like to gather support in favor of my position from the case of ***Samynathan Murugesan [2009 (247) ELT 21 (Mad)]***, the **High Court** upheld the absolute confiscation ordered by the adjudicating authority in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samyanathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**31.** Further, I seek to strengthen support for my argument from the case of ***Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd***, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that “restriction” also means prohibition. In Para 89 of the order, it was recorded as under;

*89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, “restriction”, also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**32.** Furthermore, I would like to reinforce my stand by placing my reliance on the case of ***The Hon'ble High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.)*** held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 gram of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to*

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*decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

**33.** Further, in 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993, wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

**34.** Given the facts of the present case and the judgements and rulings cited above, I find that the gold items viz, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams and 01 gold tabeez (amulet) weighing 100.00 grams, each of purity 99%, totally weighing 369.12 grams carried by way of concealment on her person as well as in paste form in the inner (garment) worn by the noticee, are liable to be confiscated absolutely. Moreover, the noticee, in her statement dated 29.01.2024 has confessed that she had concealed the gold items on her person as well as in paste form in the inner (garment) worn by her with the intention to smuggle the same into the country as she was trying to make monetary gains by making the gold clearance into India and subsequently selling the gold items in the market. I, therefore, hold in unequivocal terms that the gold weighing 369.12 grams (net weight) carried by the noticee and placed under seizure vide Seizure Order/Memo under Panchnama dated 29.01.2024, is liable for absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962.

**35.** After a careful evaluation, I find that in the present case, the noticee by utilizing the modus of concealing gold items viz, 01 gold nugget weighing 188.620 grams, 02 gold bangles weighing 60.500 grams, 02 gold earrings weighing 20.00 grams and 01 gold tabeez (amulet) weighing 100.00 grams, each of purity 99%, totally weighing 369.12 grams carried by her, on her person as well as in paste form in the inner (garment) worn by the noticee and not making a declaration of it to the Customs Officers, the passenger has involved herself in the act of smuggling of gold total weighing 369.12 grams (net weight), thereby violating the statutory requirements envisaged under the Customs Act and other relevant provisions related to legal importation of gold into India by a passenger. After a comprehensive and detailed review of the aforementioned, I am decisively led to the conclusion that such an act on the part of the passenger has rendered the goods liable for confiscation under Section 111 of the Act. It would be relevant to refer to Section 112(b)(i) of the Customs Act, 1962, which imposes penalties on any person who acquires, possesses, stores, sells, or transports goods that they know or have reason to believe are liable for confiscation under Section 111 of the Customs Act. In the instant case, I find that the deliberate act of concealing the gold by the noticee unequivocally establishes her '**mens rea**' and demonstrates a wilful intent to evade Customs regulations, leaving no room for doubt regarding her knowledge and involvement in the attempted act of smuggling. I find it irrefutably established that her actions fall squarely within the ambit of Section 112(b)(i), attracting penal liability, in addition to the confiscation of the smuggled goods. Accordingly, I hold the noticee liable for a penalty under the said provision.

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

**ORDER**

- (i)** I order **absolute confiscation** of the recovered gold items viz, 01 gold nugget of purity 99% weighing 188.620 grams, 02 gold bangles of purity 99% weighing 60.500 grams, 02 gold earrings of purity 99% weighing 20.00 grams and 01 gold Tabeez (Amulet) of purity 99% weighing 100.00 grams, all gold items totally weighing 369.12 grams having a total market value of **Rs. 23,71,633/-** (Rupees Twenty-Three Lakh Seventy-One Thousand Six Hundred Thirty-Three only), seized vide Seizure Order dated 29.01.2024 under Panchnama dated 28/29.01.2024 under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii)** I impose a penalty of Rs. 23,71,633/- (Rupees Twenty-Three Lakh Seventy-One Thousand Six Hundred Thirty-Three only) on Smt. Poonam Talreja under Section 112(b)(i) of the Customs Act, 1962.

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

**(Anunay Bhati)**

Additional Commissioner,  
Surat International Airport,  
Customs, Surat

**BY SPEED POST AD/E.MAIL/WEBSITE**

F.No.VIII/26-43/AIU/CUS/2023-24

Date: 10.03.2025

**DIN: 20250371MN0000999D8F**

To

Smt. Poonam Talreja  
LIG 06, Shiv Janki Vatika, Kolar Road,  
Bhopal, PIN-462042, Madhya Pradesh

**Copy to:**

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