



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20251171MN000000E3A3

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| क | फ़ाइलसंख्या FILE NO. | S/49-250/CUS/AHD/2024-25 |
| ख | अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) : | AHD-CUSTM-000-APP-304-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 03.11.2025 |
| ङ | उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | 158/ADC/VM/O&A/2024-25, dated 13.09.2024 |
| च | अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON: | 03.11.2025 |
| छ | अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT: | Mrs. Ruhi Karan Raghani, Flat No. 101, 1st Floor, Radhey Krishna Apartment, Pawai Chowk, Ulhas Nagar, Maharashtra. |



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| 1. | यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. |
| | This copy is granted free of cost for the private use of the person to whom it is issued. |
| 2. | सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) |

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| | संसदमार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं. |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. |
| | निम्नलिखित सम्बन्धित आदेश/Order relating to : |
| (क) | बैगेज के रूप में आयातित कोई माल. |
| (a) | any goods imported on baggage. |
| (ख) | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो. |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination. |
| (ग) | सीमा शुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी. |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder. |
| 3. | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए : |
| | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by : |
| (क) | कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए. |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870. |
| (ख) | सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो |
| (b) | 4 copies of the Order-in-Original, in addition to relevant documents, if any |
| (ग) | पुनरीक्षण के लिए आवेदन की 4 प्रतियां |
| (c) | 4 copies of the Application for Revision. |
| (घ) | पुनरीक्षण आवेदन दायर करने के लिए सीमा शुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/- |
| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-. |
| 4. | मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : |
| सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अति-अधिकरण, पश्चिमी क्षेत्रीय पीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench |



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| | दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016 | 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| 5. | सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए(1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए- | |
| | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of - | |
| (क) | अपील से सम्बन्धित मामले में जहाँ किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तालगाया गया दंड की रकम पाँच लाख रुपये या उससे कम हो तो एक हजार रुपये. | |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees; | |
| (ख) | अपील से सम्बन्धित मामले में जहाँ किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तालगाया गया दंड की रकम पाँच लाख रुपये से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो, पाँच हजार रुपये. | |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ; | |
| (ग) | अपील से सम्बन्धित मामले में जहाँ किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तालगाया गया दंड की रकम पचास लाख रुपये से अधिक हो तो, दस हजार रुपये. | |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees | |
| (घ) | इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहाँ शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहाँ केवल दंड विवाद में है, अपील रखा जाएगा। | |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. | |
| 6. | उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए. | |
| | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |



ORDER-IN-APPEAL

Mrs. Ruhi Karan Raghani, Flat No. 101, 1st Floor, Radhey Krishna Apartment, Pawai Chowk, Ulhas Nagar, Maharashtra (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 158/ADC/VM/O&A/2024-25, dated 13.09.2024 (hereinafter referred to as "the impugned order") passed by Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, on the basis of suspicious movement, holding Indian Passport No. Y7431724, had arrived from Dubai to Sardar Vallabhbhai Patel International Airport, Ahmedabad by Emirates Flight No. EK 540 on 24.12.2023 was intercepted by the officers of Air Intelligence Unit (AIU), Sardar Vallabhbhai Patel International Airport, Ahmedabad under Panchnama proceedings dated 24.12.2023 in presence of two independent witnesses while the appellant attempted to exit through the Green Channel at the SVPI Airport, Ahmedabad, without making any declaration to the Customs. The AIU officers asked the appellant, if she had anything to declare to the Customs, in reply to which she denied. The AIU officers asked the appellant to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/clothes. Further, the appellant readily removed all the metallic objects such as mobile, wallet, etc. and kept in a plastic tray and passed through the DFMD machine. A Beep sound was heard in DFMD machine indicating there was something objectionable/dutiable on her body/ clothes. On being asked, the appellant told the officers that she has a gold ring and a gold chain on her body and handed over the same to the AIU officers. Further, on frisking, the appellant was examined thoroughly by the AIU officers. The AIU officers asked the appellant to change all her clothes. During examination of her clothes, the officers found that blue coloured underwear and blue coloured vest worn by the appellant was unusually heavy. On further examination, it was found that the said underwear and vest had two layers stitched on the inner side. The officer in presence of the Panchas and the appellant cut opens the stitched layer wherein yellow semi solid paste was found spread. On being asked, the appellant told the officer that the said yellow semi solid paste is semi solid paste of gold and chemical mix.

2.1 The Govt approved valuer, Soni Kartikey Vasantrai after detailed examination and testing issued a Report No. 1032/2023-24 dated



24.12.2023, wherein it is certified that it is pure gold and submitted the details which is as under:

| Sr No | Details of Items | Net Weight in Grams | Purity | Market Value (in Rs) | Tariff Value (in Rs) |
|-------|--|------------------------|-------------|-------------------------|-------------------------|
| 01 | One Gold Bar (derived from 1380.200 grams of semi solid paste of gold and chemical mix) | 528.500 | 999.0/24 Kt | 34,29,965/- | 29,18,599/- |
| 02 | One Gold Chain | 60.150 | 999.0/24 Kt | 3,90,374/- | 3,32,174/- |
| 03 | One Gold Ring | 19.990 | 999.0/24 Kt | 1,29,735/- | 1,10,393 |
| | Total | 608.640 | | 39,50,074/- | 33,61,166/- |

The value of the gold items as detailed above had been calculated as per the Notification No. 91/2023-Customs (N.T.) dated 15.12.2023 (gold) and Notification No. 93/2023-Customs (N.T.) dated 21.12.2023 (exchange rate).

2.2 Accordingly, the recovered Gold items, totally weighing 608.640 grams, (as discussed above), from the appellant was seized vide Panchnama dated 24.12.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold was smuggled into India by the appellant with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

2.3 Statement of the appellant was recorded on under Section 108 of the Customs Act, 1962, on 24.12.2023 wherein she, inter-alia, admitted that she went to Dubai on 21.12.2023 and returned back on 24.12.2023 by Emirates Flight No. EK 540 from Dubai to Ahmedabad; that she borrowed the money from her friends living in Dubai and her saving to purchase the gold from there; that she had never indulged in any smuggling activity in the past and this was first time she had carried gold. She further stated that gold in Dubai is cheaper than India. So, she supposed to purchase gold from there and sell it in India at higher rates to earn good profit. She had been present during the entire course of the Panchnama dated 24.12.2023 and he confirmed the events narrated in the said Panchnama drawn on 24.12.2023 as true and correct. She was aware that smuggling of gold without payment of Customs duty is an offence; she



was aware of the gold concealed in the form semi solid yellow paste, but she did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty. She confirmed the recovery of Gold totally weighing 608.640 grams having purity 999.0/24 KT valued at Rs.33,61,166/- (Tariff value) and Market value of Rs.39,50,074/- from him under the Panchnama dated 24.12.2023; she had opted for green channel to attempt to smuggle the gold hidden in Underwear and vest as semi solid yellow paste without paying Customs duty.

2.4 The above said 01 gold bar (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain & 01 gold ring, having tariff value of Rs.33,61,166/- and market value of Rs.39,50,074/-, recovered from the appellant, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of semi solid yellow paste in Underwear and vest, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the 01 gold bar (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain & 01 gold ring, totally weighing 608.640 grams which was attempted to be smuggled by the appellant, is liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said 01 gold bar, 01 gold chain & 01 gold ring, totally weighing 608.640 grams derived from semi solid yellow paste was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 24.12.2023.

2.5 The appellant had dealt with and actively indulged herself in the instant case of smuggling of gold into India. The appellant had improperly imported gold weighing 608.640 Grams, purity 999.0/24kt, tariff value of Rs.33,61,166/- and market value of Rs.39,50,074/-. The said gold was concealed in Underwear and vest as semi solid yellow paste by the appellant. The appellant opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported one gold bar, one gold chain & one gold ring weighing 608.640 grams of purity 999.0/24 Kt. by the appellant by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The appellant has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and



Regulation) Act, 1992. By not declaring the value, quantity and description of the goods Imported by her, the appellant has violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

2.6 The Improperly imported gold by the appellant found concealed in Underwear and vest as semi solid yellow paste by the appellant, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(1), 111(j), 111(1) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962. The appellant by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962. As per Section 123 of the Customs Act, 1962, the burden of proving that the one gold bar, one gold chain & one gold ring total weighing 608.640 Grams, purity 999.0/24kt, tariff value of Rs.33,61,166/- and market value of Rs.39,50,074/-, concealed in Underwear and vest as semi solid yellow paste by the appellant without declaring it to the Customs, is not smuggled goods, is upon the appellant.

2.7 A Show Cause Notice was issued to the appellant proposing for confiscation of One Gold Bar, One gold chain & One gold ring, totally weighing 608.640 Grams, having purity 999.0/24kt, and tariff value of Rs.33,61,166/- and market value of Rs.39,50,074/-, concealed in Underwear and vest as semi solid yellow paste by the appellant and placed under seizure under Panchnama proceedings dated 24.12.2023 and Seizure Memo Order dated 24.12.2023, under the provision of Section 111(d), 111(f), 111(1), 111(j), 111(1) and 111(m) of the Customs Act, 1962 and for imposition of penalty upon the appellant under Section 112 of the Customs Act, 1962.

2.8 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of impugned One Gold Bar, one gold chain and one gold ring totally weighing 608.6400 grams having Tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/- recovered from the appellant and placed under seizure under panchnama dated 24.12.2023 and seizure memo order dated 24.12.2023 under Section 111(d), 111(1), 111(1) and 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs 12,00,000/- on the appellant under Section 112(a)(i) of the Customs Act, 1962.

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



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- The Appellant humbly submits that the order of the absolute confiscation of the gold/jewellery was not at all justified. The Appellant had clearly stated that the Gold/jewellery was meant for his personal & household use & it was not brought for any sale or trade purpose & that he had not contravened any provisions of C.A. 1962 or any other allied laws for the time being in force and he had no malafide intention to hide anything from Customs to avoid payment of duty as wrongly alleged. Moreover, the lower authority had stated in the record of personal hearing that the appellant did not attend the personal hearing. Whereas, the Appellant had submitted their written submission dated 16.04.2024 as well as Written submissions dated 11.09.2024 which was sent through speed post as well as emailed to cus-ahmd-adj@gov.in which government mail id of the Customs Ahemedabad. Thus, the Appellant have been devoid of natural justice. Further, in view of the above facts, it cannot be said that the appellant had any malafide intention to hide or conceal the Gold jewellery/bar to avoid payment of duty.
- The Appellant humbly submits that she had claimed the ownership of the Gold bar/Jewellery. Furthermore, the Gold bar/Jewellery was neither banned nor restricted under the Baggage Rules, (Amendment) 2016. The appellant is earning more than sufficient income & all the Gold jewellery were purchased out of his own earnings & savings as well as stridhan. She is the real owner of her own personal Gold jewellery and bar & all the Gold articles etc. were worn on his body (which is a normal place & it was not concealed in any manner whatsoever). It further proves that she is the real owner of the confiscated Gold Jewellery.
- The Appellant humbly submits that she had not implicated anybody in any manner whatsoever & furthermore nobody else had claimed the ownership of the Gold. Hence it further proves that the appellant is only the owner of the Gold. Hence the justice demands that the personal Gold Jewellery/bar be ordered to be released on duty or at the most on very nominal fine & penalty. The Appellant commands good respect in the society, and hence it is below her dignity to bring the goods for somebody else or misuse the Baggage Rules.
- The Appellant, therefore, hopes that she would not be denied the justice at Your Honour's hands and after perusing the records and genuine circumstances of the case, the appellant would be exonerated of all the charges and allegations and he would be given



the benefit of doubt. Your Honour has already taken a lenient view in number of such type of cases by ordering the release of the Gold wherein the Gold was worn on the body of the passengers. Even the release of the un-declared Gold has been considered & decided by the Courts, Tribunal & Govt. of India in the past such as (i) Sapna Sanjiv Kohli v/s CC of Customs AP Mumbai - 2008 (230) ELT 305; (ii) Union of India v/s Dhanak Ramji 2009 (248) ELT 127 (BOM) by Bombay High Court; wherein the circumstances of the case were similar and the undeclared Gold Bars and Gold Jewellery was allowed to the green channel passenger on fine for clearance here in India simply on the grounds that the Gold jewellery were worn on the body of the passengers & it was not concealed in any manner whatsoever. The copy of the order no. 345/2022-CUS(WZ)/ASRA/MUMBAI dt. 28/11/22 is enclosed wherein the circumstances of the case were similar, the undeclared crude Gold Jewellery was allowed to the passenger who had crossed the Green Channel & had not declared the Gold Jewellery. Hence on this count also, the Gold articles under absolute confiscation are liable for release on token fine, duty & penalty particularly when all the goods (ie. Gold Jewellery) were covered under the Baggage Rules (Amendment) 2016, and hence no import license was required for import of the Gold Jewellery and other form of gold. The Appellant humbly submits that the case referred by the lower authority (Om Prakash Bhatia), reported at 2003(155) ELT423(SC), is not relevant in the instant case as that case relates to over invoicing of export consignments & thus distinguishable. The Appellant has suffered economically, mentally & physically.

- The Applicant submits that the allegation of Concealment in his clothes is totally incorrect as the alleged concealment is neither supported with any X-Ray report nor with a Doctor's examination report. This requirement is mandatory under Section 103 of the Customs Act, 1962 to clearly establish ingenious concealment. In absence of any supporting confirmation and in light of denial by the Applicant that the gold was ever concealed by her, the said allegation even if leveled under a panchnama, loses its credibility and cannot withstand. However, the same was not considered by Adjudication Authority and gold was absolutely confiscated.
- The Adjudicating Authority ought to have appreciated that once the department or respondent accepts that the goods are dutiable, the option of redemption of goods as provided under section 125 of the Customs Act, 1962 will have to be given to the Appellant.



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- The Appellant submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The appellant relied upon the following decisions in this regard:

- (i) Hargovind Das K. Joshi Versus Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.)
- (ii) ALFRED MENEZES v/s COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (236) E.L.T. 587 (Tri. Mumbai)
- (iii) T. ELVARASAN v/s COMMISSIONER OF CUSTOMS (AIRPORT), reported in 2011 (266) E.L.T. 167 (Mad)
- (iv) YAKUB IBRAHIM YUSUF v/s COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri. - Mumbai)
- (v) Hon'ble Revision Authority In case of Mr.Abdul Razack Abdul Bakki vide its Order No. 166/10-CUS Dated 15.04.2010.
- (vi) Hon'ble Revision Authority In case of Mr.Ameer Ali Sarpudeen vide its Order No. 167/10-CUS Dated 15.04.2010.
- (vii) Mohini Bhatia Vs Commissioner of Customs reported in 1999 (106) E.L.T. 485 (Tri. - Mumbai).
- (viii) Universal Traders v. Commissioner 2009 (240) E.L.T. A78 (S.C.).
- (ix) Gauri Enterprises v. CC, Pune 2002 (145) E.L.T. 706 (Tri.- Bang.)
- (x) Shaik Jamal Basha v. Government of India 1997 (91) E.L.T. 277 (A.P.)
- (xi) VP Hameed v. Collector of Customs, Mumbai - 1994 (73) E.L.T. 425 (Tri.)
- (xii) P. Sinnasamy v. Commissioner of Customs, Chennai 2007 (220) E.L.T. 308 (Tri. Chennai)
- (xiii) Union of India Vs Dhanak M. Ramji 2009 (248) E.L.T. 127 (Bom.) affirmed vide 2010 (252) E.L.T. A102 (S C.)
- (xiv) A. Rajkumari v. CC (Chennai) - 2015 (321) E.L.T. 540 (Tri. - Chennai)
- (xv) Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal -2001 (136) E.L.T. 758
- (xvi) Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai -2008 (230) E.L.T. 305
- (xvii) Vatakkal Moosa v. collector of Customs, Cochin - 1994 (72) E.L.T. 473 (G.O.I.);
- (xviii) Halithu Ibrahim v. CC [2002-TIOL 195-CESTAT-MAD. = 2002 (148) E.L.T. 412 (Tribunal);



- (xix) Krishnakumari v. CC, Chennai - 2008 (229) E.L.T. 222 (Tri-Chennai);
- (xx) S. Rajagopal v. CC, Trichy - 2007 (219) E.L.T. 435 (Tri-Chennai);
- (xxi) M. Arumugam v. CC, Tiruchirappalli, 2007 (220) E.L.T. 311 (Tri-Chennai)

- The appellant submit that the appellant had no malafide intention to hide anything from Customs to avoid payment of duty as wrongly alleged in the impugned Order-In-Original. Gold Bar, Chain and Ring was carried in person. The Appellant say and submit that in view of the aforesaid submissions, the Customs department shall release the goods u/s. 125 of Customs Act, 1962 on duty, nominal redemption fine and reduced penalty as the violation, if any, is of technical in nature and the penalty of Rs. 12,00,000/- is exorbitantly high.

4. Shri Omprakash Rohira, Advocate, appeared for personal hearing on 15.10.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. Before going into the merits of the case, I find that the appeal filed by the appellant, have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant has requested for condoning the delay in filing the said appeals on the grounds that her child is of tender age and was not well causing delay in filing the appeal. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

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

- (a) Whether the impugned order directing absolute confiscation of the seized gold i.e. One Gold Bar, one gold chain and one gold ring of 24 kt/999.0 purity totally weighing 608.6400 grams having Tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/- without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;



(b) Whether the quantum of penalty amounting to Rs. 12,00,000/- imposed on the appellant, under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that the appellant, on the basis of suspicious movement, holding Indian Passport No. Y7431724, had arrived from Dubai to Sardar Vallabhbhai Patel International Airport, Ahmedabad by Emirates Flight No. EK 540 on 24.12.2023 was intercepted by the officers of Air Intelligence Unit (AIU), Sardar Vallabhbhai Patel International Airport, Ahmedabad under Panchnama proceedings dated 24.12.2023 in presence of two independent witnesses while the appellant attempted to exit through the Green Channel at the SVPI Airport, Ahmedabad, without making any declaration to the Customs. The AIU officers asked the appellant, if she had anything to declare to the Customs, in reply to which she denied. The AIU officers asked the appellant to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/clothes. Further, the appellant readily removed all the metallic objects such as mobile, wallet, etc. and kept in a plastic tray and passed through the DFMD machine. A Beep sound was heard in DFMD machine indicating there was something objectionable/ dutiable on her body/clothes. On being asked, the appellant told the officers that she has a gold ring and a gold chain on her body and handed over the same to the AIU officers. Further, on frisking, the appellant was examined thoroughly by the AIU officers. The AIU officers asked the appellant to change all her clothes. During examination of her clothes, the officers found that blue coloured underwear and blue coloured vest worn by the appellant was unusually heavy. On further examination, it was found that the said underwear and vest had two layers stitched on the inner side. The officer in presence of the Panchas and the appellant cut opens the stitched layer wherein yellow semi solid paste was found spread. On being asked, the appellant told the officer that the said yellow semi solid paste is semi solid paste of gold and chemical mix. The Govt approved valuer, Soni Kartikey Vasantrai after detailed examination and testing issued a Report No. 1032/2023-24 dated 24.12.2023, wherein it is certified that the seized gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams is of pure gold having purity 999.0/24kt, totally weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/-. The said gold was seized under the provisions of the Customs Act, 1962, under



Panchnama proceedings dated 24.12.2023. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold in paste form concealed in the underwear and blue coloured vest worn by the appellant at the time of her arrival in India. Thereby, she has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

6.1 I find that it is undisputed that the appellant had not declared the seized gold in paste form concealed in the underwear and blue coloured vest worn by the appellant to the Customs on her arrival in India. Further, in her statement, the appellant had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of gold in paste form concealed in the underwear and blue coloured vest worn by the appellant. The appellant had, in her confessional statement, accepted the fact of non-declaration of gold before Customs on arrival in India. Therefore, the confiscation of gold by the adjudicating authority was justified as the applicant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered herself liable for penalty under Section 112(a) of the Customs Act, 1962.

6.2 I have also perused the decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India relied upon by the appellant and other decisions also. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed condition of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant are consequently liable for penalty. Thus, it is held that the undeclared gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/-, are liable to confiscation under Section 111 of the Customs Act, 1962 and the appellant is also liable to penalty under Section 112(a) ibid.



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

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

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

6.4 It is further observed that the adjudicating authority in the instant case had relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker), Hon'ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)] and Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue – Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu discussed in paras 22 to 28 of the impugned order, had held that smuggling of gold was done by the appellant and had ordered for absolute confiscation of undeclared gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/-.



6.5 It is also observed from the facts and records of the present case that the appellant had ingeniously concealed gold in paste form in the underwear and blue coloured vest worn by the appellant with an intention to smuggle the same without payment of duty. The gold in paste form was detected during personal search of the appellant. The appellant in her statement recorded under Section 108 of the Customs Act, 1962 admitted that she had concealed gold as semi-solid gold paste in her the underwear and blue coloured vest worn by her. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold was concealed ingeniously in paste form. Therefore, the case laws relied upon by the appellant in the appeal memorandum are not applicable in the instant case.

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

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

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

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

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

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



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

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

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

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

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

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

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

[2019 (370) ELT 1321 (Tri Bang)], wherein the Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally weighting 608.640 grams was concealed discreetly in the underwear and blue coloured vest worn by her.

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

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



9. As per Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. Leave alone declaring the gold as required under Section 77 of the Customs Act, 1962, the Applicant chose to ingeniously conceal it in his rectum and this was detected only upon during his search & examination. Had he been the owner of the gold and had intended to declare the gold to Customs, he would not have had to resort to such ingenious concealment. Thus, the lack of any documents establishing ownership and non-declaration is not surprising. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the adjudicating & appellate authorities that the impugned goods were liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

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

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

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

10.3 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of *Kiran*



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Juneja Vs. Union of India & Ors. has held that "A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". Hence, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid*.

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

11. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of *Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi* [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. Hon'ble Delhi High Court has, in the case of *Raju Sharma* [2020 (372) ELT 249 (Del)], held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that ".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

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

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

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

14. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods as upheld by Commissioner Appeals does not require any interference.



The quantum of penalty imposed on the Applicant is neither harsh nor excessive.

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

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

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

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

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

"6. After hearing both sides and after considering the statutory provisions, we do not think the appellant, as a matter of right, can claim release of the goods on payment of redemption fine and duty. Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. There is no need for us in this case to consider the conditions on which import is permissible and whether the conditions are satisfied because the appellant attempted to smuggle out the goods by concealing the same in emergency light, mixie, grinder and car horns etc. and hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal



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

In the present case also the appellant, concealed the seized gold in paste form discreetly in the underwear and blue coloured vest worn by her with an intention to smuggle the same into India. The gold was detected only on the personal search of the appellant on the basis of her suspicious movement. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.13 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the concealment in this case was ingenious as substantial quantity of gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/- was intentionally and ingeniously concealed in the underwear and blue coloured vest worn by her to evade detection by the Customs authorities. The appellant did not intend to declare the said gold and the same was detected only on his personal search. The appellant in her statement recorded under Section 108 of the Customs Act, 1962 admitted that she had concealed gold as semi-solid gold paste in the underwear and blue coloured vest worn by her. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned and intentional smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of seized gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/- under Customs Act, 1962. In view of above, the absolute confiscation of seized gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally

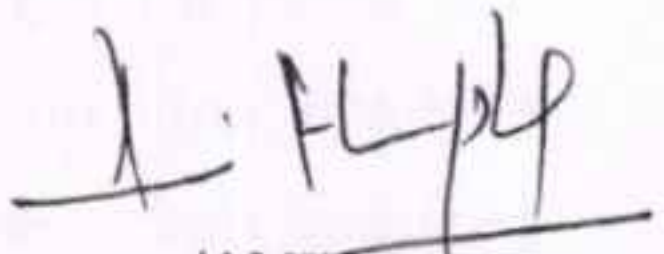


weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/- is upheld.

6.14 Further, in respect of imposition of penalty amounting to Rs 12,00,000/- on the appellant for bringing undeclared gold consisting of 01 gold bar weighing 528.500 grams (derived from 1380.200 grams of semi solid paste of gold and chemical mix), 01 gold chain weighing 60.150 grams and 01 gold ring weighing 19.990 grams having purity 999.0/24kt, totally weighting 608.640 grams, having tariff value of Rs.33,61,166/- and Market value of Rs.39,50,074/-, the appellant has attempted to bring gold into India without declaring the same and concealing the same ingeniously in paste form in the underwear and blue coloured vest worn by the appellant. The quantum of gold is substantial and the appellant had smuggled gold by ingeniously and intentionally concealing the same in paste form. The appellant was aware that smuggling of gold without payment of customs duty is an offence and also admitted that she concealed the gold paste in the form of semi solid paste in the underwear and blue coloured vest and the same was clearly meant for commercial purposes. Thus, I am of the considered view, that the penalty of Rs 12,00,000/- imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112(a)(i) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellant. Therefore, there is no infirmity in the impugned order and the same is upheld.

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




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

By Registered Post A.D.

F.Nos. S/49-250/CUS/AHD/2024-25
To, 4245


Dated -03.11.2025

- (i) Mrs. Ruhi Karan Raghani, Flat No. 101,
1st Floor, Radhey Krishna Apartment,
Pawai Chowk, Ulhas Nagar, Maharashtra,

Copy to:

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

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

S/49-250/CUS/AHD/2024-25