सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250471MN00001631A5

क	फ़ाइलसंख्या FILE NO.	S/49-284/CUS/AHD/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-007-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.04.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	115/ADC/VM/O&A/2023-24, dated 19.07.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	04.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Mr Ibrahim Khaleel Iliyal, Raisla Manzil Eriyal, P.O. Kudlu, Kasargod, Kerala - 671124

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

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

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

ORDER-IN-APPEAL

Mr. Ibrahim Khaleel Iliyal, Raisla Manzil Eriyal, P.O. Kudlu, Kasargod, Kerala - 671124 (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. 115/ADC/VM/O&A/2023-24, dated 19.07.2023 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, holding Indian Passport No. U 5164248, had arrived at SVPI Airport, Ahmedabad from Abu Dhabi by Etihad Flight No. EY 284 on 01.07.2023. On the basis of information received from Director General of Revenue Intelligence (DGRI) and on suspicious movement, the appellant was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU"), SVP International Airport, Ahmedabad while exiting through Green Channel without making any declaration to the Customs at Red Channel. The appellant was asked whether he was having anything to declare to the customs authorities, to which he denied. The appellant, as directed by the AIU officers, removed all metallic objects such as mobile, purse, etc. and kept the same in the plastic tray and passed through the Door Frame Metal Detector (DFMD) machine and while passing through the DFMD Machine, beep sound was heard indicating that something metallic were present on his person/cloth. The AIU officers again asked the appellant, whether anything objectionable/dutiable on his body or not, to which he denied. The AIU officer in presence of panchas conducted frisking of the appellant and found something suspicious being hidden under his underwear. On sustained interrogation, in presence of pancha, the appellant admitted that he carried and concealed one plastic pouche in his underwear. On being asked by AIU officer, the appellant took out one plastic pouche from his underwear and handed over to AIU officer. On unwrapping of the said one plastic pouche, three gold chains were found. Further, on scanning the baggage of the appellant on X-ray bag scanning machine and on detailed examination 11000 sticks of cigarette was recovered.

2.1 The Government Approved Valuer, Shri Soni Kartikay Vasantrai, vide Certificate No. 223/2023-24, dated 01.07.2023, certified that 03 gold chains weighing 299.400 grams were of 24Kt/999.0 purity having Tariff Value of Rs. 15,21,748/- and Market Value of Rs. 18,02,987/- calculated as per the Notification No. 47/2023-Customs (N.T.), dated 30.06.2023

(Gold) and Notification No. 44/2023-Customs (N.T.), dated 15.06.2023 (Exchange Rate).

2.2 Further, 11000 Cigarette sticks (5000 of Gold Flake hidden under the cover of PINX PINK brand & 6000 of Platinum Seven brand) having market value of Rs. 1,75,000/- have also been recovered from the baggage of the appellant. The appellant has not declared gold and cigarette carried by him.

2.3 The recovered gold articles i.e. three gold chains weighing 299.400 grams of 24kt/999.00 purity, values at Rs. 15,21,748/- (Tariff Value) and Rs.18,02,987/- (market value) which were concealed in one plastic pouch in the underwear worn by the appellant as well as 11000 sticks of cigarette (5000 of Gold Flake hidden under the cover of PINX PINK brand & 6000 of Platinum Seven brand) concealed in baggage, which were not declared and were recovered from the appellant, appeared to be smuggled into India with willful intention to evade payment of Customs duty is a clear violation of the provisions of Customs Act, 1962. Therefore, the AIU officers, on a reasonable belief that the said gold chains and cigarette which were attempted to be smuggled by the appellant are liable for confiscation as per the provisions of Customs Act, 1962, seized them under Section 110 of the Customs Act, 1962, vide Seizure Order under Panchnama proceedings both dated 01.07.2023.

2.3 Statement of the appellant was recorded on 01.07.2023 under Section 108 of the Customs Act,1962, wherein he, inter-alia, stated that he can speak, read, write & understand English and Hindi language and his monthly income is approximately Rs. 20,000/-. He visited Dubai on 10.06.2023 for business purpose and himself arrange flight ticket. He further stated that he had purchased gold and cigarette from Dubai and the same was purchased for his personal use and for selling some quantity in local market in Mumbai & Kerala. He confessed that he concealed gold chains and cigarette to evade payment of Customs duty. He concealed 5000 sticks of gold flak brand cigarette under the cover of Pinx Pink brand in order to mis-declare the brand name. He was aware that carrying gold and other dutiable goods without declaring before Customs is an offence and he has carried the same for the first time.

2.4 The appellant had actively involved himself in the instant case of smuggling of gold and cigarette into India. The appellant had improperly imported gold i.e. three gold chains totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs.15,21,748/- and market value of Rs. 18,02,987/- by hiding in one plastic pouch in his

underwear and 11000 sticks of cigarette by concealing in baggage without declaring it to the Customs. He opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported gold by way of hiding in one plastic pouch in his underwear worn and cigarettes by concealing in baggage by the passenger without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects the appellant has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

2.5 The appellant has not declared the value, quantity and description of the goods imported by him, the appellant has violated the provisions of Baggage Rules, 2016, read with the section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013. The improperly imported gold and cigarettes by the appellant, found hiding under his clothes and baggage without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111 (f), (111), 111), 111(1) & 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act. 1962, and the appellant is liable to penalty under Section 112 of the Customs Act, 1962.

2.6 Further, as per Section 123 of Customs Act 1962, the burden of proving that the said improperly imported gold totally weighing 299.400 grams having tariff value of Rs.15,21,748/- and market value of Rs.18,02,987/ by way of hiding in one plastic pouch in his underwear and 11000 sticks of cigarette (5000 of Gold Flake hidden under the cover of PINX PINK brand & 6000 of Platinum Seven brand) having value of Rs.1,75,000/- by way of concealing in baggage without declaring it to the Customs, are not smuggled goods, is upon the appellant.

2.6 The appellant, vide his letter/email dated 06.07.2023, submitted that he is claiming the ownership of the gold and cigarettes recovered from him. He is ready to pay Customs duty and other amount order by adjudicating authority. He understood the charges leveled against him. He requested to adjudicate the case without issuance of Show Cause Notice, which was accepted by the department.

2.7 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of 11000 sticks of cigarette (5000 of Gold Flake hidden under the cover of PINX PINK brand & 6000 of Platinum Seven brand) valued at Rs.1,75,000/- under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. The adjudicating authority also ordered for confiscation of three gold chains totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs. 15,21,748/- and market value of Rs. 18,02,987/-, under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. The adjudicating authority has further given an option to the appellant to redeem the seized three gold chains, having tariff value of Rs. 15,21,748/- and market value of Rs. 18,02,987/- on payment of redemption fine of Rs. 4,25,000/- under Section 125(1) of the Customs Act, 1962 in addition to the duty chargeable and any other charges payable in respect of the imported gold as per Section 125(2) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 1,00,000/- on the appellant under Section 112 (a)(i) of the Customs Act,1962.

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

- There was no concealment. In the second para of the impugned order, it is alleged that appellant was intercepted by the customs officers after passed through the green channel. The appellant completely deny the allegation made in the OIO. The passengers will come out of the Aircraft through Aerobridge with their hand bags, they undergo the immigration check and later they have to pass through customs Area and the passengers hand bags are scanned next to the immigration. On 01.07.2023 after immigration check when appellant was intercepted by the customs officers and the appellant declared to the customs officers that he his carrying three gold chains in his pant pocket and also carrying cigarettes in his check-in baggage These gold jewelery was not concealed in under ware as recorded in the OIO and it was in pant pocket. The Customers never asked the appellant go through the metal detector. The customs officer asked appellant bill for the purchase of gold chains and appellant informed them that gold chain by exchanging my old gold which I carried from India. The appellant also informed them the cigarette carried is for distributions among family members and friends.
- As per Section 77 of the Customs Act, 1962, the declaration is to be made to the proper officer. The proper officers is Inspector of

Customs who is posted at red channel to assess the goods. The red channel and Green channel are located in the ground floor at the exit from the arrival hall. Since the appellant was asked by the Customs officers to handover the gold which he was carrying in pant pocket near hand bag scanning machine itself, the appellant never had any opportunity to declare. The Customs declaration form prescribed under Regulation No.3 in form-I under Customs declaration regulations is printed and provided to all passengers by the CBIC and it given to the passenger at the ground floor on demand if goods are required to be declared. In this case, the Customs Authorities not given me any declaration to declare as soon as the appellant came out of the Aircraft. Moreover, the Customs declaration form is to be handed over to the Officer before exit from the Arrival hall at the Green Channel. The appellant was detained by the Customs officers at the hand bag scanning machine itself, and was not given any opportunity to declare the baggage. It is a false allegation that the appellant has not declared the goods. In this regard the appellant relied upon the decision in the case of SHALU CHADHA Versus ADDITIONAL COMMISSIONER OF CUSTOMS, GOA 2018 (359) E.L.T. 28 (Bom.).

- Gold or gold article (jewellery) enjoy free entry into India under Export-Import Policy. However, its entry into India is subject to fulfilling of certain conditions under FEMA because of which it becomes restricted as per RBI guidelines. It is his further submitted that any goods, not only gold or articles of gold when assume the characteristics of smuggled, they qualify to be treated as prohibited depending on the facts and circumstances of a case. It is further submitted that in the present case, the appellant was carrying the jewellery in the pant pocket without concealment besides being not frequent flyer and also ignorant of the legal provisions in respect of the same, deserve lenience. It is further submitted that hiding or concealing of items in unusual and ingenious manner like rectum concealment, shoe sole concealment, false bottom concealment, concealment inside mixie, concealment inside refrigerator/TV/motor etc. of the kind are held to be concealment done consciously. These kinds of concealments have been recognized as concealment by interpreting law and facts. In support of this submission, the appellant relied upon the following decisions:

  (i) R. N. Palaksha V. Commissioner of Customs, Bangalore 2019 (370) E.L.T. 590 (Tri. - Bang.)

(ii) DRI v. Pushpa Lekhumal Tolani [2017 (353) E.L.T. 129 (S.C.)]

(iii) Pushpa Lekhumal Tolani v. Addl. Commissioner of Customs [2008 (227) E.L.T. 368 (Del.)]

(iv) Mohammad Hussain Ayyub Chilwan [2017 (358) E.L.T. 1275 (Commissioner Appeals)]

(v) Yakub Ibrahim Yusuf v. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mum)]

- The gold articles namely three layer gold chain and cigarette are apparently not of commercial quantity. The purchase of these articles by the applicant from my own income source is also not dispute in the OIO. Above all it is not established in this case that the the appellant has concealed these three articles in baggage or in body parts. On the contrary the appellant was carrying gold chain in his pant pocket and these could be seen by any person with the naked eyes. As a result, the element of concealment of gold is not established. Therefore, the above three articles are certainly not liable for confiscation under Section 111 of the Customs Act. However, in case if the appellate authority not in agreement with arguments placed, the appellant request to order for re-export of the goods for the above stated reasons.
- The goods imported by the appellant does not fall under prohibited goods and are not liable for absolute confiscation. The appellant relied upon the following decisions:

(i) DRI v. Pushpa Lekhumal Tolani [2017 (353) E.L.T. 129 (S.C.)]

(ii) Mohammad Hussain Ayyub Chilwan [2017 (358) E.L.T. 1275 (Commissioner Appeals)]

(iii) Yakub Ibrahim Yusuf v. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mum)]

(iv) Vignshwaran Sethuraman Vs UOI [2014 (308) ELT 394 (Ker)]

(v) Mohd Zia Haque (2014 (314) E.L.T. 849 (GOI)]

(vi) ROSHNI MATHURDAS KOTHADIA2019 (369) E.L.T. 1784 (Tri. Hyd.)

(vii) ASHOK KUMAR VERMA2019 (369) E.L.T. 1677 (G.O.I.)

(viii) MOHD. ASHRAF ARMAR2019 (369) E.L.T. 1654 (Tri. Mumbai)

- Going by the stipulations in Section 112 of the Act, penalty can be levied only if the goods are liable to confiscation under Section 111 of the Act.

4. Shri K. V. Srinivas Prasad, Advocate, appeared for personal hearing on 26.03.2025 on behalf of the appellant through virtual mode. He

reiterated the submissions made in the respective appeal memorandum. He submitted that he is not contesting the confiscation of cigarettes. He further submitted that redemption fine and penalty imposed is very high. The duty on the value has already been paid and there is no concealment hence, redemption fine and penalty cannot be imposed.

5. Before going into the merits of the case, it is observed that the present appeal, 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 submitted that he could not trace any good consultant at his native place to defend the case and found one only after expiry of two months and therefore the appeal could not be filed in time and there is delay of 29 days in filing the appeal. The appellant has requested to condone the delay of 29 days which was not caused due to any intentional misconduct. Therefore, taking a lenient view to meet the end of justice, I allow the appeals, as admitted condoning the delay in filing the appeals beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

6. 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 quantum of Redemption Fine of Rs. 4,25,000/- imposed in the impugned order for redeeming confiscated three gold chain totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs.15,21,748/- and market value of Rs. 18,02,987/- under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise; and

(b) Whether the quantum of penalty amounting to Rs. 1,00,000/- 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.

7. It is observed that the facts and circumstances leading to interception of the appellant, holding an Indian Passport No U 5164248, by the officers of Customs, AIU, at SVP International Airport, Ahmedabad, on 01.07.2023 and recovery of seized three gold chains totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs. 15,21,748/- and market value of Rs. 18,02,987/- and 11000 sticks of cigarettes (5000 of Gold Flake hidden under the cover of PINX PINK brand

& 6000 of Platinum Seven brand) valued at Rs.1,75,000/- is undisputed. The appellant did not declare the said gold and cigarette before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement dated 01.07.2023 of the appellant recorded under Section 108 of the Customs Act, 1962. There is no disputing the facts that the appellant had not declared possession of gold and cigarette at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. It is observed that the appellant, in his statement, had admitted the knowledge, possession, carriage, non-declaration and recovery of the said gold and cigarette. Therefore, the confiscation of gold and cigarette by the adjudicating authority was justified. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112 (a)(i) of the Customs Act, 1962.

7.1 It is observed that the appellant is not contesting the absolute confiscation of Cigarettes. The appellants are in the appeal only for the redemption fine imposed in respect of redeeming seized gold and penalty. Hence, my finding will be restricted to the quantum of redemption fine and penalty.

7.2 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 on similar issue. I find that the Revisionary Authority has taken a view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared three gold chains totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs.15,21,748/- and market value of Rs. 18,02,987/- are liable to confiscation and the appellant is also liable to penalty.

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

".....(a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean

that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods....."

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

7.4 It is observed that the adjudicating authority in the instant case had ordered for confiscation of seized three gold chains totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs.15,21,748/- and market value of Rs. 18,02,987/-. The adjudicating authority using his discretion gave an option to the appellant to redeem the seized gold on payment of redemption fine as provided under Section 125 of the Customs Act 1962.

7.5 In respect of allowing redemption of the seized gold on payment of fine, it is observed that the adjudicating authority after considering facts and circumstances of the case at Para 29 to 32 of the impugned order has held that:

"29. I further find that ingenious concealment is one of the important aspects for deciding on the redemption / non-redemption of the goods. Further, while deciding the case, the CBIC Circular/ Instruction F. No: 275/17/2015-CX. 8A dated 11.03.2015 is also looked into, which emphasized that Judicial discipline should be followed while deciding pending show cause notices/appeals.

30. I find that the option to redemption has been granted and absolute confiscation is set-a-side vide order No. 12/2021-CUS(WZ)/ASAR dated 18.01.2021 by the Revision authority, GOI issued under F. No: 371/44/B/2015-RA/785 dated 29.01.2021. Similar view was taken by Revision Authority vide Order No. 287/2022-CUS(WZ)/ASAR/Mumbai dated 10.10.2022; Order No. 245/2021- CUS(WZ)/ASAR dated 29.09.2021 issued under F. No: 371/44/B/15-RA/2020 dated 06.10.2021 and Order No: 314/2022-Cus(WZ)/ASAR/Mumbai dated 31.10.2022 issued from F. No:

371/273/B/WZ/2018 dated 03.11.2022. Further, this section has requested RRA Section of Ahmedabad Customs to intimate whether the above mentioned 3 orders of RA has been accepted by the department or otherwise. In response to same RRA Section of Ahmedabad Customs vide email dated 24.04.2023, intimated that the above mentioned 3 orders of RA has been accepted by the department.

31. I also find that in Order No: 245/2021-CUS9WZ)/ASAR/MUMBAI dated 29.09.2021 in case of Shri Memon Anjum, the Revisionary Authority set aside the order of absolute confiscation. The Revisionary Authority in Para 14 observed as under:

> *"Government notes that there is no past history of such offence/violation by the applicant. The part of impugned gold jewellery was concealed but this at times is resorted to by travellers with a view to keep the precious goods secure and safe. The quantity/type of gold being in form of gold chain and 3 rings is jewellery and is not commercial in nature. Under the circumstance, the Government opines that the order of absolute confiscation in the impugned case is in excess and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allows redemption on suitable redemption fine and penalty."*

32. I find that hiding the seized goods in one plastic pouch in his underwear cannot be considered as an ingenious concealment even though the charge of non-declaration of the seized gold is established. Further, the ownership of the seized gold by Shri Ibrahim Khaleel Eriyal cannot be denied, as he claims ownership of seized gold in his statement dated 01.07.2023, recorded under section 108 of Customs Act, 1962. Further, he brought gold for the first time for his family use and hence it is not a case of habitual offender. Looking to the facts of the case, this is not a case of ingenious concealment, I am of the considered opinion that under section 125 of the Customs Act, 1962, the option for redemption of three gold chain can be granted....."

7.6 It is further observed that the appellant has relied upon some decisions in the grounds of appeal wherein it was held that in such cases of alleged non declaration under Section 77 of Customs Act 1962, confiscation was upheld but gold was allowed to be released on payment of redemption fine. In the present case also the adjudicating authority after considering all the submissions advanced by the appellant and relying upon the decisions of the Hon'ble revisionary authority and using his discretion gave an option to the appellant to redeem the seized gold on payment of redemption fine of Rs 4,25,000/- as provided under Section 125 of the Customs Act, 1962. The appellant in the appeal before me has had relied upon the decisions were also gold was allowed to be redeemed on payment of fine. The appellant has not given any grounds for challenging the quantum of redemption fine imposed by the adjudicating

authority. Thus, in my considered view, the adjudicating authority after judiciously exercising his discretion had imposed redemption fine of Rs. 4,25,000/- in lieu of confiscation of seized gold.

7.7 In respect of penalty imposed, it is observed that the adjudicating authority after considering facts and circumstances of the case at Para 33 of the impugned order has held that:

"I further find that the passenger had involved himself and abetted the act of carrying three gold chain made up of 999.0/24Kt. gold having net weight of 299.400 Grams hiding in one plastic pouch in his underwear and 11000 sticks of cigarette (5000 of Gold Flake hidden under the cover of PINX PINK brand & 6000 of Platinum Seven brand) by way of concealing in baggage. He has agreed and admitted in the statement recorded that he travelled with three gold chain of 999.0/ 24Kt. Purity having net weight of 299.400 Grams hiding in one plastic pouch in his underwear worn and 11000 sticks of cigarette by way of concealing in baggage from Abu Dhabi to Ahmedabad. Despite his knowledge and belief that the gold carried by him by hiding in one plastic pouch in his underwear as well as 11000 sticks of cigarette by way of concealing in baggage and undeclared in his person is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to carry the said gold. The passenger in his statement dated 01.07.2023 stated that he did not declare the impugned gold and cigarettes as he wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has involved himself in carrying, removing, keeping, concealing and dealing with the undeclared gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under provisions of Sections 112 of the Act and I hold accordingly."

7.8 Further, in respect of quantum of penalty amounting to Rs 1,00,000/- imposed on the appellant for non-declaration of seized three gold chain totally weighing 299.400 grams made of 24kt/999.00 purity gold, having tariff value of Rs.15,21,748/- and market value of Rs. 18,02,987/-, I am of the considered view, that the penalty of Rs. 1,00,000/- 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.

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

(AKHILESH KUMAR)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

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F. No. S/49-284/CUS/AHD/2023-24/237 Dated –04.04.2025

To,

(i) Mr Ibrahim Khaleel Iliyal,
Raisla Manzil Eriyal, P.O. Kudlu,
Kasargod, Kerala - 671124,

(ii) K.V. Srinivasa Prasad, 126 24th Cross,
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1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Additional/Joint Commissioner of Customs, SVPIA, Ahmedabad.
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