



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद -380009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-185/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-185/SVPIA-A/O&A/HQ/2024-25 dated: 29.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	287/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	20.03.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	20.03.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Puneet Kumar Lalwani, H-13/8 Near Jhulelal Mandir, Bairagarh, Bhopal PIN-462030, Madhya Pradesh, India.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Shri Puneet Kumar Lalwani (hereinafter referred to as the said “passenger/ Noticee”), residing at H-13/8 Near Jhulelal Mandir, Bairagarh, Bhopal, Pin - 462030, Madhya Pradesh, India (as per Passport), holding an Indian Passport No. W5414779 arrived from Abu Dhabi to Ahmedabad by

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Etihad Airways Flight No. EY 286 (Seat No: 28C) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific Input Shri Puneet Kumar Lalwani S/o- Narayandas Lalwani, who arrived by Etihad Airways Flight No. EY286 (Seat No. 24D) on 27.02.2024 from Abu Dhabi to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad was intercepted by the officers of DRI, AZU, Ahmedabad/ Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad when he was trying to exit through Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. Accordingly, two independent Panchas were called for passenger's personal search and examination of his baggage under Panchnama proceedings dated 28.02.2024.

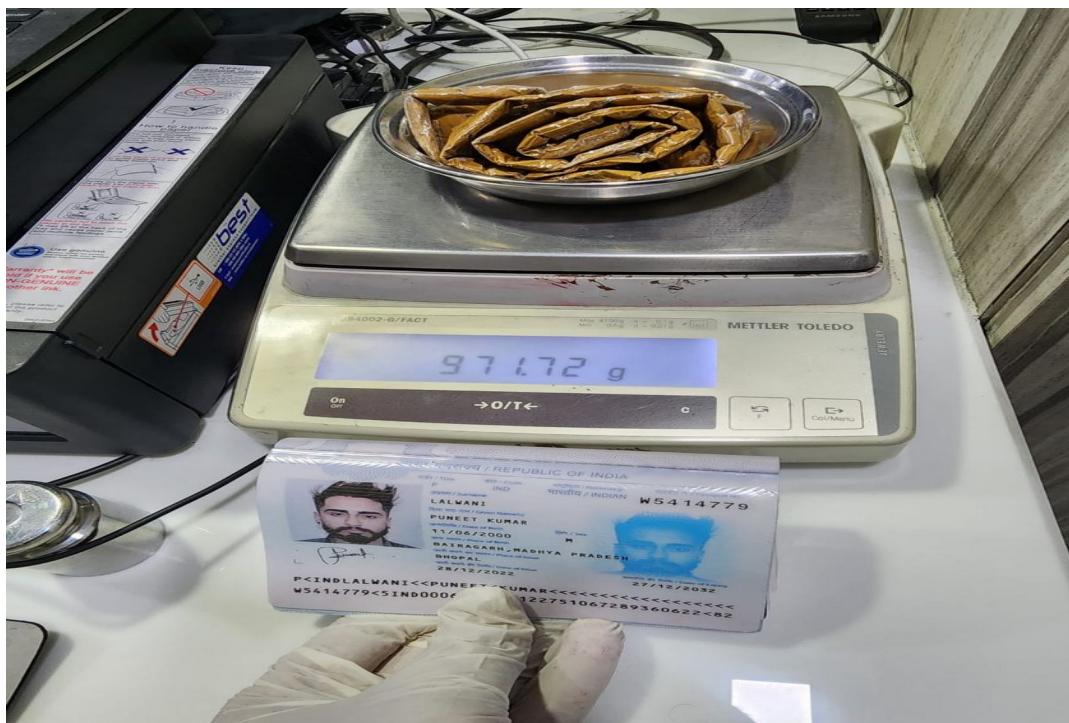
2. In presence of the Panchas, on being asked about his identity by the DRI/AIU officers, the passenger identified himself as Shri Puneet Kumar Lalwani and showed his Indian Passport bearing No. W5414779 and that he had travelled from Abu Dhabi to Ahmedabad on 27.02.2024 having Boarding Pass which showed that he has arrived by Etihad Flight No. EY286 (Seat No. 24D) on 27.02.2024 at SVPI Airport, Ahmedabad. The DRI/AIU officers asked Shri Puneet Kumar Lalwani if he has anything to declare, in reply to which he denied. The DRI/AIU officers informed the passenger that he along with his accompanied officers would be conducting his personal search and detailed examination of his baggage. Thereafter, the DRI/AIU officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent for personal search in front of the Superintendent of Customs.

2.1 In presence of two independent Panchas the DRI/AIU officers asked the said passenger 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 his body/ clothes. The passenger removed all the metallic objects such as mobile, belt etc. and kept in a plastic tray and passed through the DFMD Machine, however, no beep sound was heard indicating that there was nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the said passenger, the Panchas and the officers of DRI/AIU moved to the AIU Office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The DRI/AIU officers checked the baggage of the passenger, however, nothing objectionable was found. The

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

officers again asked the said passenger if he is having anything dutiable which is required to be declared to the Customs to which the passenger denied.

2.2 In presence of the Panchas, the AIU Officers questioned and interrogated the said passenger and upon sustained interrogation, the passenger finally confessed that he was carrying one strip wrapped with white colour tape consisting of gold and chemical mix paste concealed inside his underwear. Thereafter, the officers of AIU asked to remove the same for testing purpose. Thereafter, in presence of the Panchas, the passenger Shri Puneet Kumar Lalwani removed the strip and handed over the same to the DRI/AIU officers. The officers of DRI/AIU also checked his baggage thoroughly but nothing objectionable was noticed. In presence of the Panchas it is found that the weight of the said one strip wrapped with white colour tape consisting of gold and chemical mix paste was measured, which came to approximately **971.72 grams**. In presence of the Panchas the DRI/AIU officers took the photograph of the said strip wrapped with white colour tape which is as under:



2.3 Thereafter, the DRI/AIU officers called the Government Approved Valuer and informed him that one strip wrapped with white colour tape consisting of gold and chemical mix paste had been recovered from a passenger and the passenger has informed that it is of gold in paste form and hence, he was needed to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the DRI/AIU officers that the testing of the said material is only possible at his

workshop as gold has to be extracted from such semi solid/ paste form by melting it and also informed the address of his workshop. Thereafter the Panchas along with the passenger and the DRI/AIU officers left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located at Shree Ambica Touch, Gold Sook Complex, Near Iscon Arcade, C.G. Road, Ahmedabad.

2.4 On reaching the above referred premises, the DRI/AIU officers introduced the Panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. In presence of the Panchas, after weighing the said semi solid substance covered with black coloured adhesive tape on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said one strip wrapped with white colour tape consisting of gold and chemical mix paste is weighing **971.72 grams**. Thereafter, Shri Kartikey Vasantrai Soni led the officers, the Panchas and the passenger to the furnace. Thereafter, Shri Kartikey Vasantrai Soni started the process of converting the said semi solid material into solid gold, accordingly the white-coloured tape of the strip was removed and substance packed inside the tape was obtained and put into the furnace and upon heating the said substance turned into liquid material. The said substance in liquid state was taken out of furnace, and poured in a mould and after cooling for some time, it became golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that gold bar weighing 808.34 grams having purity 999.0 is derived from the 971.72 grams of capsule containing gold paste and chemical mix. After testing the said golden coloured metal, the Government Approved Valuer confirmed that it is of pure gold. Further, he informed that the Market Value of the said recovered gold bar having net weight of **808.34 Grams** derived from Semi Solid substance Material Consisting of Gold & Chemical Mix is **Rs.51,83,076/-** (Rupees Fifty-one lac Eighty-three thousand and Seventy-Six Only) and Tariff Value is **Rs.43,33,680/-** (Rupees Forty-Three Lacs Thirty-Three Thousand Six Hundred and Eighty only). The value of the gold bar was calculated as per the Notification No. 12/2024-Customs (N.T.) dated 15.02.2024 (Gold) and Notification No. 13/2024-Customs (N.T.) dated 15.02.2024 (Exchange Rate). The details of the Valuation of the said gold bar is tabulated in below table:

Sr. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs)	Tariff Value (Rs)
1	Gold Bar	1	808.340	999.0 24Kt	51,83,076/-	43,33,680/-

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

2.5 in presence of the Panchas the DRI/AIU officers placed the recovered gold bar derived from one strip wrapped with white colour tape consisting of gold and chemical mix paste on a table and took a photograph of it which was as under:



2.6 Thereafter, on completion of the proceedings of the extraction of gold at the workshop the Panchas, DRI/AIU officers and the passengers came back to the Airport in government vehicle along with the extracted gold bar. In presence of the Panchas asked the passenger Shri Puneet Kumar Lalwani to produce the identity proof documents and accordingly the passenger produced the same as under:

- (i) Copy of Passport No. W5414779 issued at Surat on 14.07.2022 valid up to 13.07.2032.
- (ii) Boarding pass of Etihad Airways Flight No. EY286 (SEAT NO.24D) from Abu Dhabi to Ahmedabad dated 27.02.2024 having seat no.24D.

2.7 The DRI/AIU Officers informed the Panchas as well as the passenger, that the gold bar of 24Kt. with purity 999.0 weighing 808.34 grams derived from one strip wrapped with white colour tape consisting of gold and chemical mix paste having the Market Value of Rs.51,83,076/- (Rupees Fifty one lac Eighty three thousand and Seventy Six Only) and Tariff Value is Rs.43,33,680/- (Rupees Forty Three Lacs Thirty Three Thousand Six Hundred and Eighty only) recovered from the above said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act,

1962. Thus, the DRI/ AIU officers informed that they have a reasonable belief that the above said gold is being attempted to be smuggled by Shri Puneet Kumar Lalwani and is liable for confiscation as per the provisions of the Customs Act, 1962 and hence the same was placed under seizure. The officers, then, in presence of the Panchas and in the presence of the said passenger placed the said 24 kt. gold bar of 999.0 purity weighing 808.34 grams recovered from Shri Puneet Kumar Lalwani in one transparent plastic box and after placing the packing list on the same, tied it with white thread and seals it with the Customs lac seal.

3. The copies of travelling documents and identity proof documents mentioned above have been taken into possession for further investigation of the case and the Panchas as well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the passenger manifest, as a token of having seen and agreed to the same.

4. A Statement of Shri Puneet Kumar Lalwani, residing at H-13/8 Near Jhulelal Mandir, Bairagarh, Bhopal, Pin - 462030, Madhya Pradesh, India (as per Passport), holding an Indian Passport Number No. W5414779 was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 28.02.2024, wherein he *inter alia* stated that he went to Abu Dhabi on 25.02.2024 from CSMI, Airport, Mumbai, Maharashtra; that he went to Abu Dhabi for Tour and Travel purpose only; that the to and fro tickets were booked by the person who handed over the gold in Abu Dhabi; that he had intentionally not declared the seized items which was concealed in his underwear before the Customs Authorities on his arrival at SVP International Airport Ahmedabad; that he wanted to clear it illicitly and evade payment of Customs Duty. On being asked he stated that he is fully aware that clearing gold illicitly without payment of Customs duty is an offence, under the provisions of the Customs Act, 1962 and Regulations; that he agreed that he had evaded Customs duty on total 808.34 grams of 24Kt, with purity 999.0 involving Market Value of Rs.51,83,076/- (Rupees Fifty one lac Eighty three thousand and Seventy Six Only) and Tariff Value is Rs.43,33,680/- (Rupees Forty Three Lacs Thirty Three Thousand Six Hundred and Eighty only) which were recovered from his possession.

5. The above said gold bar with a net weight of 808.34 grams having purity of 999.0/24 Kt. involving Tariff Value is Rs.43,33,680/- (Rupees Forty-Three Lacs Thirty-Three Thousand Six Hundred and Eighty only) and

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Market Value of Rs.51,83,076/- (Rupees Fifty-one lac Eighty three thousand and Seventy Six Only) recovered from the said passenger which was attempted to be smuggled into India with an intent to evade payment of Customs duty by of concealment of the gold in one strip wrapped with white colour tape consisting of gold and chemical mix paste form in his underwear, which was in clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief the Gold bar totally weighing 808.34 grams which was attempted to be smuggled by Shri Puneet Kumar Lalwani, is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said gold bar weighing 808.34 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 28.02.2024, issued from F. No. VIII/10-326/AIU/A/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

6. In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold amounted to Rs.51,83,076/- (Rupees Fifty-one lac Eighty-three thousand and Seventy-Six Only) weighing 808.34 grams recovered from Shri Puneet Kumar Lalwani is more than Rs.50,00,000/-, hence this case is fit for arrest of the said passenger under Section 104 of the Customs Act, 1962. Hence, the passenger was arrested on 29.02.2024 and released on Bail bond amount Rs.83,830/- paid by him vide Foll No. 39365 dated 29.02.2024 as the offence is bailable under provision of Section 104(6)&(7) of customs Act, 1962.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. —*In this Act, unless the context otherwise requires, —*

(22) "goods" includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

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

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section 11A – Definitions -In this Chapter, unless the context otherwise requires,

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) Section 77 – Declaration by owner of baggage. –The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

IV) Section 79. Bona fide baggage exempted from duty. -

(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

V) Section 110 – Seizure of goods, documents and things. –(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"

VI) Section 111 – Confiscation of improperly imported goods, etc. –The following goods brought from a place outside India shall be liable to confiscation:-

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation."

VIII)Section 112 – Penalty for improper importation of goods, etc.–
Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111,
shall be liable to penalty.

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) Section 3(2) - The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."

II) Section 3(3) - All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."

III) Section 11(1) - No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

Contravention and violation of laws:

8. It therefore appears that:

(a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar weighing 808.34 grams having purity 999.0/24 Kt. by concealing in one strip wrapped with white colour tape consisting of gold and chemical mix paste form in his underwear, totally weighing 808.34 grams and involving Tariff Value is Rs.43,33,680/- (Rupees Forty-Three Lacs Thirty-Three Thousand Six Hundred and Eighty only) and Market Value of Rs.51,83,076/- (Rupees Fifty-one lac Eighty-three thousand and Seventy-Six Only). The said gold was concealed in one strip wrapped with white colour tape consisting of gold and chemical mix paste form in his underwear and not declared to the Customs. The passenger opted not to declare before Customs and denied for any declaration even though he was repeatedly suggested to declare if anything dutiable/ prohibited/ restricted are in his possession 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 808.340 grams of gold bar of purity 999.0/24 Kt. by the passenger by way of concealment of one strip wrapped with white colour tape consisting of gold and chemical mix paste form in his underwear without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects as per Section 79 of the Customs Act, 1962. The passenger 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.

(b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

- (c) The improperly imported gold by the passenger, Shri Puneet Kumar Lalwani, found concealed in one strip wrapped with white colour tape consisting of gold and chemical mix paste form in his underwear, without declaring it to the Customs and now converted into gold bar is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) 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 Customs Act, 1962.
- (d) Shri Puneet Kumar Lalwani, by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) As per Section 123 of the Customs Act 1962, the burden of proving that the gold bar weighing 808.340 Grams having purity 999.0/24 Kt. and involving Tariff Value is Rs.43,33,680/- (Rupees Forty-Three Lacs Thirty-Three Thousand Six Hundred and Eighty only) and Market Value of Rs.51,83,076/- (Rupees Fifty-one lac Eighty-three thousand and Seventy-Six Only), which was concealed in one strip wrapped with white colour tape consisting of gold and chemical mix paste form in his underwear by the passenger, totally weighing 808.340 Grams without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee Shri Puneet Kumar Lalwani.

9. Accordingly, a Show Cause Notice vide F.No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25 dated 29.07.2024 was issued to **Shri Puneet Kumar Lalwani**, residing at H-13/8 Near Jhulelal Mandir, Bairagarh, Bhopal, Pin-462030, Madhya Pradesh, India holding an Indian Passport No. W5414779, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why: -

- (i) One Gold Bar weighing **808.340 grams** having purity 999.0/24 Kt. and involving Tariff Value is **Rs.43,33,680/-** (Rupees Forty-Three Lakhs Thirty-Three Thousand Six Hundred and Eighty only) and Market Value of **Rs.51,83,076/-** (Rupees Fifty one lakh Eighty

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

three thousand and Seventy Six Only), derived from one strip wrapped with white colour tape consisting of gold and chemical mix paste form in the passenger's underwear was placed under seizure under Panchnama proceedings dated 28.02.2024 and Seizure Order dated 28.02.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) The packing material i.e. strip and white coloured adhesive tape, used for packing and concealment of the above-mentioned gold which was attempted to be smuggled into India in violation of Section 77, Section 132 and Section 135, of the Customs Act, 1962, seized under Panchnama dated 28.02.2024 and Seizure memo order dated 28.02.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger Shri Puneet Kumar Lalwani holding Indian Passport No. W5414779 under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has submitted his written submission dated 20.01.2025 received on 03.02.2025 wherein he stated that he holds an Indian passport having passport No. W5414779. He has arrived from Jeddah to Ahmedabad from Etihad Airways flight no. EY286 on 28.02.2024 and on his arrival he was intercepted by the Custom Officers of Air intelligence Unit, SVPI Airport, Terminal-2, Ahmedabad on 28.02.2024. He mentioned that as he is a layman and not conversant with the practice and procedure of the Customs Act and Baggage Rules, therefore, did not declare the said gold before customs officers on duty. Since the above goods belongs to him and the aforesaid act was done exclusively without any intention to evade customs duty, accordingly tender an apology and request for justice for which detailed submissions will be made by him later on, after receipt of the copy of SCN, Panchnama and Statement recorded by the officers. He submitted that the copy of panchnama and statement alongwith the Seizure Memo was received alongwith the SCN. He submitted that he is ready to pay applicable customs duty and claimed the ownership on the gold. He further submitted that Customs officers entered the said flight and taken away his passport which was given back to him at the time of immigration. Further he

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

submitted that he was informed by the official that he was carrying Gold items which were not allowed as per customs Act. He further stated that he realised that the gold article or jewellery he was carrying needs to be declared so he was moving towards the red channel from baggage hall, however, he was intercepted before he could reach the red channel.

He further submits that he was not supplied the copy of his statement and copy of the Panchnama at the time of seizure of the gold. Due to this he was devoid of his right to retract from his statement which were recorded by the customs officers. He submitted that he was supplied the panchnama and copy of the statement along with SCN only not before issuance of the SCN. He denied all the allegation levelled against him in the said SCN. He submitted that the gold brought by the him is not prohibited but restricted therefore requested to not to confiscate the gold and allow him the redemption of the said gold on payment of the appropriate redemption fine. In his defense, he relied upon the following judgement of various Tribunals.

- (i) *Jt. Secretary, Govt. of India Order No.69/ 14 Cus dated 07.04.2014 under Revision Application filed under Section 129DD of Customs Act, 1962 in the case of Badrul Muneer Ambidattil.*
- (ii) *2009(237)ELT 280(Tri-Mum) Dhanak Madhusudan Ramji Vs Commissioner of Customs(Airport), Mumbai.*
- (iii) *2011(263)ELT 685(Tri-Mum) Yakub Ibrahim Yusuf Vs Customs, Mumbai.*
- (iv) *2008(230)ELT 305(Tri-Mum) Sapna Sanjeev Kohli Vs Customs(Airport), Mumbai.*
- (v) *In Gauri Enterprises v. CC, Pune - 2002 (145) E.L.T. 706 (Tri.-Bang.) the CESTAT held that if similar goods have been released on fine earlier, selective absolute confiscation is not called for absolute confiscation should be an exception rather than a rule.*
- (vi) *In Shaik Jamal Basha v. Government of India - 1997 (91) E.L.T. 277 (A.P.) the Hon'ble High Court held that gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorized can be redeemed.*
- (vii) *In VP Hameed v. Collector of Customs, Mumbai - 1994 (73) E.L.T. 425 (Tri.) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason.*
- (viii) *In P. Sinnasamy v. Commissioner of Customs, Chennai - 2007 (220) E.L.T. 308 (Tri. - Chennai), the Hon'ble Court allowed redemption of absolutely confiscated gold observing that option to redeem the gold to be given as there is no bar against such option by reason of goods being an item notified under Section 123 of Customs Act, 1962 or for any other reason.*
- (ix) *In Union of India Vs Dhanak M. Ramji - 2009 (248) E.L.T. 127 (Bom.) affirmed vide 2010 (252) E.L.T. A102 (S.C.) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.*

(x) *In A. Rajkumari v. CC (Chennai) - 2015 (321) E.L.T. 540 (Tri.-Chennai)* the redemption of 70 gold bars brought by concealing in air conditioner was allowed and fine was reduced to 14%.

(xi) *In Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal - 2001 (136) E.L.T. 758* it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed.

(xii) *In Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai - 2008 (230) E.L.T. 305* the Tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.

(xiii) *In Vatakkal Moosa v. collector of Customs, Cochin - 1994 (72) E.L.T. 473 (G.O.I.); Halithu Ibrahim v. CC [2002-TIOL 195-CESTAT-MAD. = 2002 (148) E.L.T. 412 (Tribunal); Krishnakumari v. CC, Chennai - 2008 (229) E.L.T. 222 (Tri-Chennai); S. Rajagopal v. CC, Trichy - 2007 (219) E.L.T. 435 (Tri-Chennai); M. Arumugam v. CC, Tiruchirappalli, 2007 (220) E.L.T. 311 (Tri-Chennai)* also it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

(xiv) *In the latest Judgement in reported in 2018 (359) E.L.T 265 (Tri-All.) COMM.R. OF C. EX. & S.T., LUCKNOW V/s MOHD. HALIM MOHD. SHAMIM KHAN*

It is interalia held “Redemption fine - Only prohibited goods cannot be released on payment of redemption fine - Gold not prohibited goods and cannot be confiscated absolutely - Order permitting release of such gold on payment of redemption fine in lieu of confiscation upheld - Section 125 of Customs Act, 1962. [paras 4, 5].

He submitted that in the case of *Yakub Ibrahim Yusuf v. Commissioner* – 2011 (263) E.L.T. 685 (Tribunal), it has been held that prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation. It does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine. The gold does not fall under the prohibited category and therefore it cannot be absolutely confiscated.

Further in the case of *Mohd. Zia Ul Haque*, the Revisionary Authority in identical circumstances has held that if the gold ornaments are brought by passenger without declaration, then the same are not liable to absolute confiscation without giving any option to redeem the same. It is further held that when the goods are not prohibited, the adjudicating officer shall give option to pay redemption fine in lieu of confiscation, as the officer thinks fit, which discretion has to be exercised judiciously and if the passenger is not a habitual offender and not carrying the said goods for somebody else, nor did

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

he conceal the goods in any ingenious manner, should be given option to redeem the goods on payment of redemption fine

In the case of 2019 (370) E.L.T. 590 (Tri.-Bang) [20-08-2018] 2019 (370) E.L.T. 590 (Tri. - Bang.), it is interalia held that "Therefore keeping in view of my above discussion, I am of the considered view that in the present case considering the facts and circumstances, the order of absolute confiscation is not sustainable in law and therefore I set aside the order of absolute confiscation in both the cases and give an option to the appellant to redeem the goods on payment of redemption....." ..

He further, mentioned that the case is at adjudication stage and Gold is seized by the department, and unless it is confiscated in the Adjudication Proceeding the department has no right to Dispose of the Goods, in view of the recent judgment of Hon'ble MUMBAI HIGH COURT in the case of Ms. Leyla Mahmoodi & Mr. Mojtaba Gholami vs Union of India and others - WP NO 467 of 2023 decided on 21-12-2023 & reported in (2023) 13 CENTAX 291 (BOM).

He, therefore, 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 nominal redemption fine and personal penalty as the violation, if any, is of technical in nature.

In view of aforesaid submissions and facts on records, it is evidently crystal clear that the he is the bonafide owner of impugned goods and he had requested the concerned officers to allow the release impugned goods. As already stated hereinabove, the gold jewellery is eligible to be released on payment of customs duty and no justice can be met out by absolute confiscation. Further, in his support he relied upon the following judgments as :-

- (2023) 11 Centax 123 (Tri.-All)/2024 (387) E.L.T. 91 (Tri.-All) [06-09-2023] (2023) 11 Centax 123 (Tri.-All) Waqar *Versus* Commissioner of Customs (Preventive)

He further mentioned that, the dutiable goods brought by the him are neither restricted nor prohibited and can be released on redemption fine under section 125 of the Customs Act, 1962. He submitted that the violation, if any was out of ignorance and technical in nature. He 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 and for he relied on the mentioned judgments as :-

- 2014 (314) E.L.T. 849 (G.O.I.) Before GOI, in matter of Mohd.Zia Ul Haque Order No. 336/2012-Cus., dated 8-8-2012 in F. No. 373/1/B/2012-RA

He submitted that the Hon'ble Supreme Court in the judgement passed in the matter of Om Prakash Bhatia vs. Commissioner of Customs, Delhi [2003(155) ELT 423 SC], has observed no irregularity and illegality in imposing Fine and Penalty on the Exporter in his repeat offence, even though the goods impugned therein were held to be "Prohibited". At Para 22 of the order, Hon'ble Supreme Court has come to the conclusion that :

"22. Considering the aforesaid facts and also the fact that this was the second case belonging to the same exporter, the authorities arrived at the conclusion that it was an organized racket to claim fraudulent drawback or an act of deliberate over-invoicing the readymade garments. Hence, the authority imposed redemption fine as well as levied penalty. In our view, this finding arrived at by the authorities below cannot be said to be, in any way, unreasonable which would call for interference by this Court in this appeal."

Further, in this context, the reliance is placed on the following case laws :-

(i) *The Hon'ble Supreme Court of India in Hargovind Das K. Joshi Versus Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.) has observed that:-*

Redemption Fine - Customs - Absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having discretion to do so - Matter remanded to Collector for consideration of exercise of discretion for imposition of redemption fine - Section 125 of Customs Act, 1962.

Further, he relied on the following case laws as :-

- Reliance is also placed in the Hon'ble Tribunal judgement in the case of ALFRED MENEZES v/s COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (236) E.L.T. 587 (Tri. - Mumbai) held that "Redemption fine - Prohibited/restricted goods, confiscation of - Power of adjudicating authority under provisions of Customs Act, 1962 to offer redemption fine in lieu of confiscation of prohibited/restricted goods confiscated - Section 125(1) *ibid* clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods - Order of Commissioner not giving any reason for concluding that adjudicating authority's order is wrong, set aside - Section 125 *ibid*. [para 6]"
- The Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF v/s COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri. - Mumbai) held that "Confiscation - Prohibited goods - Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation - It does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health - Sections 111 and 125 of Customs Act, 1962. [para 5.5]

Redemption fine - Option of - Owner of goods not known - Option of redemption has to be given to person from whose possession impugned goods are recovered - On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership - Section 125 of Customs Act, 1962. [para 5.6]"

- In Gauri Enterprises v. CC, Pune - 2002 (145) E.L.T. 706 (Tri.-Bang.) the CESTAT held that if similar goods have been released on fine earlier, selective absolute confiscation is not called for absolute confiscation should be an exception rather than a rule.
- In Shaik Jamal Basha v. Government of India - 1997 (91) E.L.T. 277 (A.P.) the Hon'ble High Court held that gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorized can be redeemed.
- In VP Hameed v. Collector of Customs, Mumbai - 1994 (73) E.L.T. 425 (Tri.) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason.
- In A. Rajkumari v. CC (Chennai) - 2015 (321) E.L.T. 540 (Tri.-Chennai) the redemption of 70 gold bars brought by concealing in air conditioner was allowed and fine was reduced to 14%.
- In Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal - 2001 (136) E.L.T. 758 it was held that in view of the liberalized gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed.
- In Vatakkal Moosa v. collector of Customs, Cochin - 1994 (72) E.L.T. 473 (G.O.I.); Halithu Ibrahim v. CC [2002-TIOL 195-CESTAT-MAD. = 2002 (148) E.L.T. 412 (Tribunal); Krishna Kumari v. CC, Chennai - 2008 (229) E.L.T. 222 (Tri-Chennai) ; S. Rajagopal v. CC, Trichy - 2007 (219) E.L.T. 435 (Tri-Chennai); M. Arumugam v. CC, Tiruchirappalli, 2007 (220) E.L.T. 311 (Tri-Chennai) also it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

He prayed to kindly not to dispose of the seized goods and/or not to initiate any action under Section 110 (1A) r/w Section 150 of the Customs Act, 1962 till the adjudication/Appeal, as the case may be, is over; that the Customs department may kindly release the goods on payment of duty, as the violation, if any, is of technical in nature. Fine and penalty may kindly be waived, as it is for the first time I have brought the said goods; that Fine and penalty may kindly be waived, as he is a poor person and innocent and have done the above acts out of ignorance and lack of knowledge and due to poverty and responsibilities of family; that opportunity of personal hearing may be granted;

Further, he also prayed to provide the copy of SCN as he had misplaced the Show Cause Notice.

In this regard, vide mail dated 19.02.2025, a scanned copy of SCN was mailed to provided mail id.

11. The noticee was given opportunity for personal hearing on 20.01.2025, 07.02.2025, 18.02.2025 & 28.02.2025 and same was delivered through speed post to his mentioned address, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he does not have anything to say in his defence. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

Discussion and Findings:

12. I have carefully gone through the facts of the case. Though sufficient opportunity for personal hearing had been given, neither the Noticee nor any of his authorised representative appeared for the personal hearing opportunities offered to him. Although the noticee has submitted his written submission vide its letter dated 20.01.2025 received on 03.02.2025. I, therefore, take up the case for adjudication, on the basis of evidences and submission available on record.

13. In the instant case, I find that the main issue to be decided is whether the **808.34 grams** of 01 gold bar having purity of 999.0/24KT, derived from gold and chemical mix paste in one strip wrapped with white colour tape concealed in underwear, having tariff value of **Rs. 43,33,680/-** and Market value of **Rs.51,83,076/-** alongwith the packing material (Strip and White colored adhesive tape) having market value Nil seized vide Seizure Memo/Order under Panchnama proceedings both dated 28.02.2024, on a reasonable belief that the same is liable for confiscation under Section 111 and Section 119 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the panchnama dated 28.02.2024 clearly draws out the fact that the noticee, who arrived from Abu Dhabi to Ahmedabad by Etihad Airways Flight No. EY286 (SEAT NO. 24D) was intercepted by the DRI & Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of specific input, while noticee was attempting to exit through green channel without making any declaration to the Customs. The DRI/AIU officers asked Shri Puneet Kumar Lalwani if he has anything to declare, in reply to which he denied. The DRI/AIU officers informed the

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

passenger that he along with his accompanied officers would be conducting his personal search and detailed examination of his baggage. In presence of two independent Panchas the DRI/AIU officers asked the said passenger 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 his body/ clothes. The passenger removed all the metallic objects such as mobile, belt etc. and kept in a plastic tray and passed through the DFMD Machine, however, no beep sound was heard indicating that there was nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the said passenger, the Panchas and the officers of DRI/AIU moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The DRI/AIU officers checked the baggage of the passenger, however, nothing objectionable was found. The officers again asked the said passenger if he is having anything dutiable which is required to be declared to the Customs to which the noticee denied.

Upon sustained interrogation, the noticee confessed that he was carrying one strip wrapped with white colour tape consisting of gold and chemical mix paste concealed inside his underwear. Thereafter, the officers of AIU asked to remove the same for testing purpose. Thereafter, in presence of the Panchas, the passenger Shri Puneet Kumar Lalwani removed the strip and handed over the same to the DRI/AIU officers. The officers of DRI/AIU also checked his baggage thoroughly but nothing objectionable was noticed.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantrai Soni weighs the said items recovered from the Noticee and informed that the said one strip wrapped with white colour tape consisting of gold and chemical mix paste is weighing **971.72 grams**. After completion of extraction process, the Government Approved Valuer Shri Kartikey Vasantrai Soni informed that 1 Gold bar totally weighing 808.34 Grams having purity 999.0/24kt is derived from 971.72 grams of paste and submitted his valuation report vide certificate No. 1425/2023-24 dated 28.02.2024, wherein he mentioned that the total tariff value of said gold bar was **Rs.43,33,680/-** (Rupees Forty-Three Lacs Thirty Three Thousand Six Hundred and Eighty Only) and Market value of **Rs.51,83,076/-** (Rupees Fifty-One Lacs Eighty-Three Thousand and Seventy-Six Only). The value of the gold bar has been calculated as per the Notification No.12/2024-Customs (N.T.) dated 15.02.2024 (Gold) and Notification No.13/2024-Customs (N.T.) dated 15.02.2024 (Exchange Rate). The details are as:-

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Sr. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs)	Tariff Value (Rs)
1	Gold Bar	1	808.340	999.0 24Kt	51,83,076/-	43,33,680/-

15. I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. I also not find any retraction filed by the noticee at any stage of proceeding. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he had clearly admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. I find from the statement that he clearly admitted that the gold was not purchased by him and some unknown person gave him the gold at a Hotel in Dubai and for carry the same he would get Rs. 10,000/-. Under his submission, I find that the noticee has claimed that the gold was belonged to him and purchased by him from a shop and it was for his personal use, however on contrary, I find that in his statement which was voluntary tendered under Section 108 of Customs Act, 1962 in which he clearly admitted that the gold in paste form was not belong to him and not purchased by him, moreover, I noticed that he has not provided any documents viz. copy of purchase invoice, bank statement or other documents which establish his claimed that the seized gold belongs to him and purchased by him and therefore, without any documentary evidences, contention of the noticee that he had purchased the gold is not tenable and far from the truth.

15.1 Under his submission, the noticee has mentioned that the statement recorded was not voluntary and same was recorded forcefully as per their own sweet will and wordings. I find from the content of the statement dated 28.02.2024 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Also, I have not found any kind of retraction filed by the noticee even after lapse of more than one year. Therefore, I don't find any force in the contention of the noticee in this regard and it is afterthought. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his dated signature on the Statement.

Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him in Hindi as well as English. He clearly admitted in his statement that the gold was not purchased by him and someone else gave the gold in semi solid form which was concealed in underwear. The offence committed is admitted by the noticee in his statement recorded on 28.02.2024 under Section 108 of the Customs Act, 1962. It is on the record that the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that "It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA"

Moreover, the allegation made in the SCN was not based merely on the basis of Statement, rather the noticee has not provided any documentary evidences which support their claim on Gold at the time of interception or any later stage. He admitted in his statement that he intentionally done this

illegal carrying of gold of 24KT in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted in his statement that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

16. Further, I find under his submission that on one hand the noticee claimed that being a layman and not well versed with the customs provisions, he was not able to declare the gold before customs officers and on other hand he alleged that the officers intercepted him in the flight itself before declaring the same at red channel which he wants to declare and ready to pay the applicable duty. The both statement of noticee contradicts himself. Further, I noticed that the noticee mentioned that being a layman, he did not know the practice and procedure of Indian customs and hence non-declaration was just a procedural lapse. *The explanation given by the noticee cannot be held to be genuine and creditworthy as he himself in the statement mentioned that he had visited abroad many times. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.* It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

17. From the facts discussed above, it is evident that the noticee had carried gold weighing 808.34 grams, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24Kt/999.00 purity totally weighing 808.34 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold in form of semi sold paste in one strip wrapped with white colour tape concealed in underwear and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. It is seen that the noticee had not declared any goods to Customs and specifically had not declared the said derived gold bar which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold concealed in underwear by the noticee without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger 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.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the Gold Bar weighing 808.34 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 43,33,680/- and market value of Rs. 51,83,076/- derived from semi solid paste in one strip wrapped in white colour tape recovered from the noticee and seized, under Panchnama dated 28.02.2024 and seizure memo order dated 28.02.2024 is liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealment of gold in form of paste concealed in underwear, it is observed that the noticee was fully aware that the import of said goods is offending in

nature. It is therefore very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same was liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

19. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e. Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013* and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 808.34 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Also, the noticee has failed to comply with the conditions prescribed under Notification No. 50/2017-Customs dated 30.06.2017 for import the gold and therefore, does not cover under the definition of "eligible passenger". The noticee 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 808.34 grams, having Tariff

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Value of Rs.43,33,680/- and Market Value of Rs.51,83,076/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 28.02.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using such modus of concealing the gold, it is observed that the noticee was fully aware that the import of said goods is offending in nature.

20. I find that the passenger/noticee has confessed of carrying gold weighing 808.34 grams and attempted to remove the said gold by concealing the gold in form of paste in strip wrapped in white tape concealed in underwear and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the para 2.26 of 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 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

21. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One Gold Bar weighing 808.34 grams of 24Kt./ 999.0 purity, having total Market Value of Rs.51,83,076/- and Tariff Value Rs.43,33,680/- retrieved/ derived from gold paste in strip form wrapped with white tape concealed in underwear, were placed under seizure vide panchnama dated 28.02.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by concealing in the form of paste in underwear and by deliberately

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) & 112 (b) of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

22. I further find that gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger trying to smuggle the same was not eligible passenger to bring or import gold into India in baggage. The gold was recovered in a manner concealed in form of paste in underwear in form of strip wrapped in white tape and kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

23. I find that, the burden of proving that the seized gold bar and jewellery was not smuggled goods lie on the person who claims to be the owner of the goods so seized or from whose possession the goods were seized. Section 123 of the Customs Act, 1962 stipulates that:-

Section 123. Burden of proof in certain cases. -

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

*(a) in a case where such seizure is made from the possession of any person, -
(i) on the person from whose possession the goods were seized; and
(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

(2) This section shall apply to gold, 2 [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

In the instant case, the onus, for proving that the seized gold bar weighing 808.34 grams of 24Kt./ 999.0 purity and of foreign origin are not smuggled in nature lie on the noticee from whose possession of impugned goods were seized on 28.02.2024. The gold bar derived from the gold paste in strip wrapped in white tape concealed in underwear was recovered from noticee and he admitted to have smuggled it into India. The test report also shows that gold bar was found to be purity of 999.00/24Kt. In view of the above discussions, I find that the manner of concealment, in this case clearly of **ingenious in nature** and shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, the noticee could not produce any licit or valid documents regarding the legal importation/acquisition/possession/ transportation of the gold found in his possession. By merely claiming the ownership on the gold without any documentary evidences does not make the noticee a legitimate owner. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123 and also not declared the same to the Customs in the prescribed Indian Customs Declaration Form.

24. Under his submission, the noticee has requested to redeem the gold on payment of redemption fine and relied on the various case law as mentioned hereinabove at Para 10. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods¹ [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:

² [**Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed]:

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

The noticee has submitted various judgment wherein Redemption fine is allowed for release of Gold. The ratio of case laws relied upon by the noticee are not applicable in the instant case. On contrary, I find that it is settled by

the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.". Also Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Further, in the latest judgment the Hon'ble Delhi High Court in its order dated 21.08.23 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 Adjudicating Officer."

Therefore, keeping in view the judicial pronouncement above and facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

25. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

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

The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

26. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

said case of smuggling of gold, the High Court of Madras has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

27. Further I find that in a case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUSin respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

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

28. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)] has held-

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

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

29. In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

30. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

"23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-reas."

24.....

25......

26. *The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country."*

31. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in the form of gold paste in strip wrapped with white tape concealed in underwear, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 808.34 gms of 24 Kt retrieved/derived from gold paste concealed in underwear in form of strip wrapped with white tape, is therefore, liable to be **confiscated absolutely**. **I therefore hold in unequivocal terms that the gold weighing 808.34 gms of 24 Kt, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.**

32. I further find that the passenger had involved himself in the act of smuggling of gold weighing 808.34 gms of 24 Kt retrieved from gold paste concealed in underwear. Further, it is fact that the passenger/noticee has travelled with gold weighing 808.34 gms of 24 Kt, in form gold paste in a strip wrapped with white tape concealed in underwear, from Abu Dhabi to Ahmedabad despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-reas on behalf of noticee is established. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bar weighing 808.34 grams having purity of 999.0 and 24kt. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112(a)(i) & 112(b)(i) of the Customs Act, 1962 and I hold accordingly.

33. Accordingly, I pass the following Order:

ORDER

i.) I order absolute confiscation of the one Gold Bar weighing **808.34 grams** of purity 999.0/24KT having Market Value at **Rs.51,83,076/-** (Rupees Fifty One Lakhs Eighty Three Thousand Seventy Six Only) and Tariff Value is **Rs.43,33,680/-** (Rupees Forty-Three Lakhs Thirty Three Thousand Six Hundred and Eighty Only) derived from one strip

OIO No:287/ADC/SRV/O&A/2024-25
F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25

wrapped with white colour tape consisting of gold and chemical mix paste form concealed in underwear by the passenger/noticee Shri Puneet Kumar Lalwani and placed under seizure under panchnama dated 28.02.2024 and seizure memo order dated 28.02.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I order absolute confiscation of packing material i.e. strip and white coloured adhesive tape, used for packing and concealment of the above-mentioned gold, under Section 119 of the Customs Act, 1962;

iii.) I impose a penalty of **Rs. 13,00,000/-** (Rupees Thirteen Lakh Only) on Shri Puneet Kumar Lalwani under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25 dated 29.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-185/SVPIA-A/O&A/HQ/2024-25 Date:20.03.2025

DIN: 20250371MN000000C1F0

By SPEED POST A.D.

To,
Shri Puneet Kumar Lalwani,
H-13/8 Near Jhulelal Mandir,
Bairagarh, Bhopal PIN-462030,
Madhya Pradesh, India

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.