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 - 20251071MN0000520674

क	फ़ाइलसंख्या FILE NO.	S/49-212/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-285-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.10.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	141/ADC/SRV/O&A/2025-26 dated 07.10.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	27.10.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Anasbhai Yusufbhai Nodsola, 89, Chaudhari Vas, AT-Nedra, TA-Siddhapur, Patan-384151 (Gujarat).

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

Shri Anasbhai Yusufbhai Nodsola, 89, Chaudhari Vas, AT-Nedra, TA-Siddhapur, Patan-384151 (Gujarat) (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. 141/ADC/SRV/O&A/2025-26 dated 07.10.2025 (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 on the basis of spot profiling, the appellant having Indian Passport No. U8652939 was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU") on arrival at SVP International Airport, Ahmedabad from Jeddah by Indigo Airlines Flight No 6E 76 on 20.02.2025 while he was attempting to exit through green channel without making any declaration to the Customs. The appellant was asked by the AIU Officers whether he was carrying any dutiable/contraband goods in person or in his baggage, to which he denied. Thereafter, the appellant was made 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 appellant readily kept his mobile, wrist watch and wallet in a plastic tray and passed through the DFMD Machine During DFMD strong beep sound was heard at the middle part of the metal detector machine indicating that there was some objectionable/ metallic item on his body/clothes. Thereafter, during detailed frisking of the appellant, it was observed that he was carrying two thick chains of yellow metal wrapped with black printed plastic and kept and concealed in the right-side pocket of the white trouser he was wearing.

2.1 The Government Approved Valuer Shri Soni Kartikey Vasantrai, after testing the said items, vide his Certificate No. 1628/2024-25 dated 20.02.2025 certified that the 02 Nos. of thick gold chains, weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs.41,45,960/-, which has been calculated as per the Notification No. 10/2025-Customs (N.T.) dated 14.02.2025 (gold) and Notification No. 18/2024 dated 06.02.2025 (exchange rate).

2.2 Accordingly, the said Gold items i.e. 02 Nos. of thick gold chains totally weighing 500.00 Grams and having purity 999.00/24 Kt. wrapped with the black printed plastic and kept and concealed in the right side pocket of the white trouser worn by the appellant was carried by him

without any legitimate Import documents inside the Customs Area, therefore the same falls under the category of Smuggled Goods and stands liable for confiscation under the Customs Act, 1962. Therefore, the said gold chains, weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market value of Rs.44,75,000/- and Tariff value as Rs. Rs.41,45,960/-, was placed under seizure vide Order dated 20.02.2025 issued under the provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject gold items are liable for confiscation under Section 111 of the Customs Act, 1962.

2.3 Statement of the appellant was recorded on 20.02.2025 under Section 108 of the Customs Act,1962, wherein he, inter-alia, stated that he is educated up to class 8th and working as salesman in the electrical. shop at Hari Chokdi, Siddhapur on fixed monthly salary of Rs. 15,000/-. He further stated that he went to Jeddah to perform Umrah on 25.01.2025 and returned from Jeddah to Ahmedabad on 20.02.2025 by Indigo Flight No. 6E76 and that he carried 02 pieces of thick Gold chain (totally weighing 500.00 grms and having purity 999.0/24Kt.) wrapped in black printed plastic bag which was kept and concealed in the right side pocket of his white trouser that worn by him, so as to evade payment of Customs Duty without declaring the same to the Customs and illicitly clear through the green channel. He also stated that this is the first instance of his indulgement in smuggling of gold activity by way of concealing the two thick gold chains having purity 999.0/24Kt. On being asked, he further stated he did not have the bill for the said two thick gold chains as these gold items did not belong to him and he had not paid for the same/purchased the same. These two gold chains were handed over to him by one person outside the King Abdulaziz International Airport, popularly known as Jeddah International Airport with direction to hand over the same to one person who would contact him outside the SVPI Airport, Ahmedabad and would come to receive these gold chains from him. He also stated that he has no personal details of the person who gave him the gold chains at Jeddah as well as the person who could come to receive the same at Ahmedabad Airport. He further clarified that the bill dated 19.2.2025 of Al Balad United Trading Co. of Jeddah issued in his name, was also given to him by the person who handed over the two gold chains to him and that item shown in the bill do not correspond to the gold items recovered from his possession. He perused the Panchnama dated 20.02.2025 and stated that the facts narrated therein are true and correct. He further admitted that smuggling of gold without payment of customs duty is an offence but as he had intention to evade customs duty, he tried to smuggle the gold by carrying these two gold chains having purity 999.0, 24 Kt. by way of

concealing/ hiding the same under his clothes that he was wearing. He further stated that as he was to evade payment of customs duty and smuggle the gold by concealing/hiding the same, he did not declare the goods brought by him before the Customs officer. He was fully aware that clearing Gold in any form in excess of the eligible quantities for passenger without declaring before Customs, with an intent to evade payment of customs duty is an offence, under the provisions of Customs Act, 1962, Foreign Trade Policy, 2023 and Rules and Regulations made there under. He also did not file any declaration form for declaring dutiable goods ie. 02 Nos. of Gold chains to Customs, carried by him on 20.02.2025 at SVPI Airport, Ahmedabad. He also admitted that he was aware that smuggling of gold without payment of Customs duty is an offence. He did not make any declarations in this regard and opted for green channel so that he can attempt to smuggle the gold chains without paying customs duty.

2.4 The appellant had attempted to smuggle/improperly import 02 Nos. of thick gold chains totally weighing 500.00 Grams having purity 24Kt./999.0 and having the Market Value of Rs. 44,75,000/- and Tariff value as Rs.41,45,960/-, which was wrapped with black printed plastic bag and kept and concealed in the right side pocket of the white trouser worn by the appellant, with a deliberate intention to evade payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The appellant had knowingly and intentionally smuggled the said gold items by way of concealment, on his arrival from Jeddah to Ahmedabad on 20.02.2025 by Indigo Flight No. 6E76 at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold items by the appellant, by way of concealment and without declaring it to 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, as amended. The appellant by not declaring the gold items brought by him in the form of 02 Nos. of thick Gold chain totally weighing 500.00 gms having purity of 24Kt/999.0 which was wrapped with black printed plastic bag and kept and concealed in the right side pocket of the white trouser worn by him, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

2.5 The improperly imported/smuggled gold by the appellant, in the form of 02 Nos. of thick Gold Chains totally weighing 500.00 gms having purity of 24Kt/999.0 which was wrapped With black printed plastic bag and kept and concealed in the right side pocket of the white trouser worn by him, before arriving from Jeddah to SVPI Airport, Ahmedabad, on 20.02.2025 via Indigo Flight No. 6E76 at Terminal 2, SVPIA Ahmedabad on 20.02.2025, for the purpose of the smuggling without declaring it to the Customs 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), 2(33), 2(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962. The appellant by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962. As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon the appellant.

2.6 The appellant vide his letter dated 23.03.2025 received through his Advocate Shri H. B. Bhansali submitted a request for waiver of SCN and early hearing of the case respectively, wherein the appellant stated that he has been explained the provisions of the Customs Act, 1962 to be included in the Show Cause Notice orally and after understanding the same he is ready and willing to pay applicable/assessed duty and penalty and his case may be decided on merits without the issuance of Show Cause Notice and by providing the opportunity of personal hearing in the case before the final outcome of the case and also requested to take lenient view.

2.7 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/- recovered and seized from the appellant vide Seizure Order dated 20.02.2025 under Panchnama proceedings dated 20.02.2025 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 11,00,000/- on the appellant under Section 112 (a)(i) and 112(b)(i) of the Customs Act,1962.

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

- As regards confiscation of the goods under Section 125 of the Customs Act 1962, the Ld. Adjudicating Authority, while admitting that there is no option to the Adjudicating Authority if the goods are

not prohibited, but to release the goods on payment of redemption fine, and if the goods are prohibited he has a discretion to either release the goods on payment of redemption fine or confiscate the goods absolutely. The case laws relied upon by the adjudicating authority are not applicable in the facts and circumstances of the case.

- A reading of Paras of the findings of the adjudicating authority clearly shows that the adjudicating Authority was pre-decided to absolutely confiscate the gold in question, without applying himself to the crucial fact that he had a discretion to either permit release of gold on Redemption fine or absolutely confiscate them only when the goods were "prohibited". Though not admitting, even if for a moment it is presumed that the goods in question were prohibited, the Ld. Adjudicating Authority is required to exercise his discretion and how such discretion is to be exercised is laid down in the case of Commissioner of Customs (Air) vs P.Sinnasamy in CMA No.1638 of 2008, before the Hon High Court of Madras decided on 23 August, 2016.
- In the instant case it is very clear that the Ld. Adjudicating Authority started on a wrong premise of the fact that the Appellant in this case is a smuggler, and that he has concealed the gold in this case, all of which are erroneous findings as discussed above. Taking into consideration these erroneous findings, the Ld. Adjudicating Authority has got biased and decided that the gold in question should be absolutely confiscated and penalty imposed.
- There are plethora of Judgements both for and against the release of gold seized in Customs Cases. A combined reading of all the cases with specific reference to the policy/Rules in vogue at the relevant times, will show that depending on circumstances of each case in hand and the profile of the person involved, the goods in question may become "Prohibited" which are otherwise not listed in the prohibited categories. However, despite the goods being prohibited the same can be released or re-exported in the discretion of the Adjudicating Authority, which discretion has to be exercised as per the canons laid down by the Hon. Apex Court as discussed above. In this connection, following case laws are submitted relied upon by the appellant: -

(i) Yakub Ibrahim Yousuf 2011 (263) ELT-685 (Tri. Mum) and subsequently 2014-TIOL-277-CESTST-MUM.

(ii) ShaikJameel Pasha Vs Govt of India 1997 (91) ELT 277 (AP);

(iii) V.P. Hamid vs Commissioner of Customs, 1994(73)ELT 425 (Tri);

(iv) T.Elavarasan vs Commissioner of Customs(Airport) Chennai 2011 (266) ELT 167 (Mad);

(v) Union of India Vs Dhanak M. Ramji 2009 (248) ELT 127 (Bom); upheld by Hon. Supreme Court vide its judgement dated 08-03-2010, reported in 2010 (252) ELT A102 (SC)

(vi) A.Rajkumari vs CC (Chennai) 2015 (321) ELT 540 (Tri-Chennai);This case was also affirmed by the Hon. Apex Court vide 2015 (321) ELT A207 (SC).

- It is also submitted that impugned goods are not prohibited for use by the society at large and release of the same will not cause to the society and its import and / or redemption would not be dangerous or detrimental to health, welfare or morals of the people, in any circumstances.
- There is a catena of cases where the orders of absolute confiscation were successfully challenged and gold released either for re-export or on redemption fine u/s 125 of Customs Act 1962. Some of the judgements can be cited as under:
  1. S Rajgopal vs CC Trichy 2007 (219) ELT 435
  2. P.Sinnaswamy vs CC Chennai 2007 (220) ELT 308
  3. M.Arumugam vs CC Thiruchirapally 2007 (220) ELT 311
  4. Krishna Kumari vs CC Chennai 2008 (229) ELT 222.
- Following are the list of latest revision authority's orders relied upon by the appellant:

1. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI, DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s ShabbirTaherallyUdaipurwala

3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI, DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri

4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI, DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar.

5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI, DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.

6. 2019(369) E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma.

7. Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI, DT. 30.09.2021 in c/a FaithimthRaseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai.

8. Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI, DT 24.08.2022 in c/a (1) PradipSevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad.

- Coming to the penalties imposed it may be stated that since the goods in question were not prohibited, the penalty under section 112 (a) and (b) of Customs Act 1962 could not have been more than the duty involved which in this case is Rs.11,00,000/- on the appellant.
- The appellant finally prayed for release the goods on payment of redemption fine or allow for re-export and reduction in penalty.

4. Shri Rishikesh Mehra, Advocate, on behalf of the appellant vide letter dated 21.10.2025 requested that he does not want personal hearing in the matter and requested to decide the appeal on merits as per grounds of Appeal in above mentioned case.

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

(a) Whether the impugned order directing absolute confiscation of the impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/- without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;

(b) Whether the quantum of penalty amounting to Rs. 11,00,000/- imposed on the appellant, under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that on the basis of spot profiling, the appellant having Indian Passport No. U8652939 was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU") on arrival at SVP International Airport, Ahmedabad from Jeddah by Indigo Airlines Flight No 6E 76 on 20.02.2025 while he was attempting to exit through green channel without making any declaration to the Customs. The appellant was asked by the AIU Officers whether he was carrying any dutiable/contraband goods in person or in his baggage, to which he denied. Thereafter, the appellant was made 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 appellant readily kept his mobile, wrist watch and wallet in a plastic tray and passed through the DFMD Machine During DFMD strong beep sound was heard at the middle part of the metal detector machine indicating that there was some objectionable/ metallic item on his body/clothes. Thereafter, during detailed frisking of the appellant, it was observed that he was carrying two thick chains of yellow metal wrapped with black printed plastic and kept and concealed in the right-side pocket of the white trouser he was wearing. The Government Approved Valuer Shri Soni Kartikey Vasantrai, after testing the said items, vide his Certificate No. 1628/2024-25 dated 20.02.2025 certified that the 02 Nos. of thick gold chains, weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs.41,45,960/-. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act,1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

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

6.2 I have also perused the decision of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India submitted by the appellant and other decisions also. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed 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 impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/- are liable to confiscation and the appellant is also liable to penalty.

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

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

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.

6.4 In respect of absolute confiscation of impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/-, it is observed that the adjudicating authority in the instant

case relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker), Hon'ble High Court of Madras in the case of SamynathanMurugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS],Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)], Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu and Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) and other decisions in paras 25 to 26 of the impugned order, had ordered for absolute confiscation of impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/-.

6.5 I find that the Hon'ble CESTAT, Ahmedabad has in the case of Commr. of C. Ex., Cus. & S.T., Surat-II Vs Dharmesh Pansuriya [2018 (363) E.L.T. 555 (Tri- Ahmd)] considered the decision of Hon'ble High Court of Madras in the case of Commissioner of Customs (Air) Chennai-I Vs P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad)] and the decision of Hon'ble High Court of Bombay in the case of Commissioner Vs Alfred Menezes [2009 (242) E.L.T. 334 (Bom)], and were of the view that in case of prohibited goods as defined under Customs Act, 1962, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. The relevant paras are reproduced hereunder:

"8. *It is the argument of the Revenue that under the aforesaid provision, once the goods in question are prohibited goods under the Act, no discretionary power is left with the adjudicating authority for imposition of fine. We are afraid that the said plea of the Revenue may not find support from the principle of law laid down by the Hon'ble Bombay High Court in the case of Alfred Menezes case (supra). Their Lordships after analyzing the said provision of Section 125 of the Customs Act observed as follows:*

3. It is, therefore, clear that Section 125(1) deals with two situations (1) the importation and exportation of prohibited goods and (2) the importation and exportation of any other goods. Insofar as importation or exportation of prohibited goods, the expression used is that where the goods were confiscated, the officer "may". In the case of any other goods, which are confiscated, the officer "shall".

4. It is, therefore, clear that insofar as the prohibited goods are concerned, there is discretion in the officer to release the confiscated goods in terms as set out therein. Insofar as other goods are concerned, the officer is bound to release the goods. In the instant case, we are concerned with prohibited goods. The officer has exercised his discretion. The Tribunal [2009 (236) E.L.T. 587 (Tri. - Mum.)] has upheld the order of the adjudicating officer.

9. *This principle is later followed by the Hon'ble Madras High Court recently in P. Sinnasamy's case (supra). Thus, in view of the aforesaid principle, even if the goods in question are considered as prohibited goods as defined under the Customs Act, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. In these premises, thus to consider the issue raised at the bar that whether the gold bars removed from the Unit in SEZ without permission and contrary to the Circulars issued by RBI and Customs, became prohibited goods, or otherwise, in our view, becomes more an academic exercise and hence need not be resorted to.*

10. *The other argument advanced by the Ld. AR for the Revenue is that in view of the judgment of Hon'ble Madras High Court in P. Sinnasamy's case, discretion conferred under the provision cannot be arbitrary and it is to be exercised in judicious manner. From the finding of the Ld. Commissioner, we notice that even though he has not considered the goods as prohibited ones, observing it in the sense that these are not arms, ammunitions, narcotic substance, but after examining the fact that the gold bars were imported for its authorized use in the SEZ and after considering other extenuating circumstances, exercised discretion in directing confiscation of the gold bars removed unauthorizedly from the SEZ Unit with option to redeem the same on payment of fine. We find that in P. Sinnasamy's case (supra), the adjudicating authority has directed absolute confiscation of the gold smuggled into the country, which was set aside by the Tribunal, with a direction to the adjudicating authority to consider imposition of fine, which did not find favour from the Hon'ble High Court. Their Lordships observed that once the adjudicating authority has reasonably and correctly applied the discretion, it is not open to the Tribunal to give positive direction to the adjudicating authority to exercise option in a particular manner. Even though the facts and circumstances in the said case are different from the present one, inasmuch as in the said case the Commissioner has directed absolute confiscation, but in the present case option for payment of fine was extended by the Commissioner;*

however, the principle laid down therein is definitely applicable to the present case. Therefore, we do not find merit in the contention of the Revenue that the Adjudicating authority ought to have directed absolute confiscation of the seized goods."

6.6 I have also gone through the judgement of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Nagpur-I Vs Mohd. Ashraf Armar [2019 (369) E.L.T. 1654 (Tri Mumbai)] wherein the Hon'ble Tribunal, after considering the decision of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), has upheld the order of Commissioner (A) who set aside the order of absolute confiscation ordered by the adjudicating authority and allowed redemption of 1200.950 gm of concealed gold valued at Rs. 27,02,137/- on payment of fine of Rs 5,50,000/-. The relevant paras are reproduced hereunder:

"4. *We have perused the case record as well as judgment passed by the Hon'ble Supreme Court, Delhi in Om Prakash Bhatia's case. Relevant interpretation of "prohibited goods", as made in para 9 of the said judgment is reproduced below for ready reference:*

" From the aforesaid definition, it can be stated 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. This is also made clear by this Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import (Control) Order, 1955. The Court negatived the said contention and held

thus: -

'...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the words "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import (Control) Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues".

5. *Going by the bare reading of the said interpretation, it can be said that in the definition of prohibited goods in terms of Section 2(33) of the Customs Act, 1962, any such goods means any such restricted and prohibited goods and not any other goods. It is in this contest the whole analyses of prohibited goods is made by the Hon'ble Apex Court and not in respect of any other goods other than prohibited and restricted goods. Gold being a permitted goods for importation, cannot be said to be restricted goods in applying such an interpretation but ceiling on the maximum quantity that could be imported could never be equated with restriction or prohibition to such importation. Admittedly, appellant's intention to evade duty by suppressing such import is apparent on record for which Commissioner (Appeals) has rightly confirmed fine and penalty under relevant provisions of the Customs Act but absolute confiscation of gold, which is permitted to be imported to India, solely on the ground that it was brought in concealment cannot be said to be in confirmity to law or contradictory to decision of Hon'ble Apex Court given in Om Prakash Bhatia's case. Hence the order.*

6. *Appeal is dismissed and the Order-in-Original No. 1/SBA/JC/CUS/2014, dated 27-5-2014 passed by the Commissioner (Appeals) is hereby confirmed."*

6.7 It is further observed that in respect of absolute confiscation of gold bar, the judgment pronounced on 05.05.2023 in respect of Civil Misc. Review Application No. 156/2022 filed at Hon'ble High Court of Allahabad sitting at Lucknow, by the Commissioner of Customs, Lucknow is relevant

wherein the Hon'ble High Court has upheld the decision of Hon'ble Tribunal who had upheld the decision of Commissioner (Appeals) that gold is not prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act,1962 and thus rejected the review application filed by the Commissioner of Customs, Lucknow . The relevant paras of the judgment are reproduced hereunder:

"16. In the present case, the Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act. The Tribunal has recorded that the respondents had brought impugned Gold from Bangkok to Gaya International Airport without declaring the same to Customs Authorities and there was nothing to explain as to how the Customs authorities posted at Gaya International Airport could not detect such huge quantity of gold being removed from Gaya International Airport by passengers on their arrival and there was no explanation as to how the respondents procured gold before they were intercepted at Mughalsarai Railway Station and the Tribunal has dismissed the Appeals for the aforesaid reason and has affirmed the order passed by the Commissioner (Appeals) holding that the import of gold was not prohibited under the Foreign Trade Policy or any other law and, therefore, there is no sufficient ground for absolute confiscation of the gold.

17. Nothing was placed before this Court to challenge the finding of the Commissioner (Appeals), which was upheld by the Tribunal, that Gold is not a prohibited item, and nothing was placed before this Court to establish that this finding of the Commissioner (Appeals) was wrong or erroneous.

18. Even if the goods in question had been brought into India without following the conditions prescribed therefore and those fall within the category of prohibited condition, Section 125 of the Act provides that the Adjudicating Officer may give to the owner of such goods an option to pay fine in lieu of confiscation. Section 128 A of the Act confers powers on the Commissioner (Appeals) to pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. In the present case, the Commissioner (Appeals) has modified the order of absolute confiscation by imposing penalty in lieu thereof, which was well within his power as per Section 128 A. The Tribunal has affirmed the

order of the Commissioner (Appeals). This Court dismissed the further Appeal filed by the Department, finding no illegality in the judgment passed by the Tribunal.

19. In view of the aforesaid discussion, we are of the view that the order passed by this Court refusing to interfere with the aforesaid order passed by the Tribunal does not suffer from any error, much less from an error apparent on the face of the record.

20. The review application lacks merits and, accordingly, the same is dismissed. "

6.8 Further, It is observed that in the decision vide Order No.355/2022-CUS (WZ)/ASRA/MUMBAI, dated 07.12.2022 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger had brought 02 gold bars of 01 kg each and 02 gold bars of 10 tolas each totally weighing 2233.2 grams wrapped with white coloured self-adhesive marking tape and concealed in both the watch pockets of black coloured trousers worn by him, relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

"16. Once goods are held to be prohibited, Section 125 still provided discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s Raj Grow Impex (CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020- Order dated 17.06.2021) has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below:

71. Thus; 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; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying

conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

17.1 Government further observes that there are catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of ShikMastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad) upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passanger.

18.1 For the reasons cited above, Government finds that this is not a case of impersonation as construed by the lower authorities. Also, for the reasons cited above, it would be inappropriate to term the appellant as habitual offender. In the instant case, the impugned gold bars were kept by the applicant on his person i.e., in the pockets of the pants worn by him. Government observes that sometimes passengers resort to such innovative methods to keep their valuables / precious possessions safe. Also, considering the issue of parity and fairness as mentioned above, Government finds that this is a case of non-declaration of gold.

18.2 Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating the (02) two FM gold bars of I kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/-. Also, observing the ratio of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of gold bars but allows the impugned gold bars to be redeemed on payment of a redemption fine.

19 The Government finds that the penalty of Rs 6,00,000/- imposed under Section 112 (a) & (b) by the original authority and upheld by the AA is commensurate with the omission and commissions committed. Government finds the quantity of the penalty as appropriate.

20. In view of the above, the Government modifies the OIA passed by the AA to the extent of absolute confiscation of the gold bars i.e. (02) two FM gold bars of I kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/- and grants an option to the applicant to redeem the same on payment of a redemption fine of Rs 12,00,000/- (Rupees Twelve Lakhs only). The penalty of Rs 6,00,000/- imposed by OAA and upheld by AA is sustained.

21 Accordingly, Revision Application is decided on the above terms."

6.9 Further, It is observed that in the recent decision vide Order No 516-517/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.06.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger was wearing brown coloured cloth belt

fastened around her abdomen and when the belt was cut open resulted in recovery of brown coloured powder with water pasted in glue, purported to containing gold weighing 2800 grams (gross). The Hon'ble revisionary authority relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

"10. Once goods are held to be prohibited, Section 125 still provided discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s Raj Grow Impex (CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP© Nos. 14633-14634 of 2020- Order dated 17.06.2021) has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below:

71. Thus, 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; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

11. A plain reading of Section 125 shows that the Adjudicating Authority is bound to give an option of redemption when the goods are not subject to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of goods and the nature of prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as condition of import have not been satisfied, may not be harmful to the society at large. Thus, Adjudicating Authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine.

12.1 Government further observes that there are catena of judgements, over a period of time, of the Hon'ble Courts and other

forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be excercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of ShikMastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad) upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passanger.

12.2 Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

13 Government notes that the quantity of impugned gold dust (converted into bars) under import, is neither substantial nor in commercial quantity. The appellant claimed ownership of the impugned gold and stated that the same was brought for marriage purpose. There are no other claimants of the said gold. There is no allegation that the appellants are habitual offenders and was involved in similar offence earlier. The fact of the case indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. The absolute confiscation of the impugned gold, leading to dispossession of the gold in the instant case is therefore harsh and not reasonable. Government considers granting an option to the appellant to redeem the gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

14. In view of above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned gold seized from the appellant. The seized gold from the appellant 1 i.e. impugned gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster

weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and totally valued at Rs 41,07,735/- is allowed to be redeemed on payment of a fine of Rs 8,10,000/- (Rupees Eight Lakh Ten Thousand only).”

6.10 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 380/2022-CUS (WZ)/ASRA/MUMBAI, dated 14.12.2022, wherein the applicant was carrying 270 grams of gold dust which has been ingeniously concealed by pasting it with glue in between two t shirt worn by him, had finally held that since the appellant is not a habitual offender and was not involved in the similar offence earlier and it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine.

6.11 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 67/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.01.2023,on recovery of two gold bars of 01 kg each and 02 gold bars of 10 tolas each concealed in the pant worn, totally weighing 2232 grams valued at Rs 58,23,846/- upheld the decision of Appellate Authority allowing redemption of gold bars on payment of redemption fine of Rs 11,00,000/- and upheld the penalty of Rs 6,00,000/- imposed by the Original Adjudicating Authority and upheld by the Appellate Authority observing that the concealment was not ingenious, the passenger was not habitual offender and involved in the similar offence earlier, there was nothing on record that he was part of an organised smuggling syndicate. The Government found that this was a case of non-declaration of gold and held that absolute confiscation of the impugned gold leading to dispossession of gold would be harsh and not reasonable. With this observation the order of Appellate Authority granting an option to redeem the gold on payment of redemption fine was upheld.

6.12 Further, the Hon'ble High Court of Allahabad in the case of Commissioner of Customs, Aliganj, Lucknow Versus Rajesh Jhamatmal Bhat [2022 (382) ELT 345 (All)] had upheld the decision of Hon'ble Tribunal wherein the Hon'ble Tribunal had upheld the decision of Commissioner (Appeal) wherein 4076 grams of gold bars recovered from the specially designed cavities made in the shoes, valued at Rs. 1,09,98,018/- was allowed to be redeemed on payment of redemption fine and penalty. The Hon'ble Tribunal had reduced the redemption fine from 25,00,000/- to Rs 15,00,000/- and penalty was also reduced from 10,00,000/- to 5,00,000/- as ordered by the Commissioner (Appeal). The Hon'ble High Court

observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold upheld the decision of Hon'ble Tribunal.

6.13 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the recent decision vide Order No 68/2024-CUS (WZ)/ASRA/MUMBAI, dated 24.01.2024, in the case of Mr Kasmani Asif Abdul Aziz wherein the passenger had kept three gold kadiwali chains and two gold pendants in a transparent plastic pouch kept in pant pocket totally weighing 1200 grams of 24 kt having 999.0 purity valued at Rs. 35,22,816/- (Tariff value) and Rs. 39,02,400/- (Market value) had finally held that since quantum of gold is not commercial and the applicant was in possession of invoice for purchase of gold jewellary, concealment was not ingenious, the passanger is not a habitual offender and was not involved in the similar offence earlier and not a part of organised smuggling syndicate, it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine.

6.14 In view of above decisions of the Principal Commissioner & ex-officio Additional Secretary to Government of India, I am of the considered view that in present case also there is no allegation that the appellant is habitual offender and was involved in similar offence earlier. The appellant was not a part of organised smuggling syndicate. The appellant during adjudication as recorded in the impugned order has submitted that the gold was not ingenious concealment and gold was purchased by him from his personal savings and borrowed money from his relative. Due to ignorance of law the gold was not declared by the him. Thus, the appellant was not a carrier. There is nothing on record to suggest that the concealment was ingenious. The investigation of the case has not brought any smuggling angle but the investigation suggest that this is case of non-declaration of gold with intention of non-payment of Customs duty. The fact of the present case also indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial consideration. The absolute confiscation of impugned gold, leading to dispossession of the gold in the instant case is, therefore, harsh. Therefore, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad and

Mumbai as detailed in the above paras, I am of the considered view that the absolute confiscation of impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/- is harsh. I, therefore, set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allow redemption of impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/-, on payment of fine of Rs. 8,00,000/- in addition to the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962.

6.15 Further, in respect of imposition of penalty amounting to Rs 11,00,000/- on the appellant for non-declaration of impugned gold items i.e. 02 gold chains weighing 500.00 grams (Net Weight) having purity 999.0/24 Kt. and having Market Value of Rs.44,75,000/- and Tariff value as Rs. 41,45,960/-, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad, Mumbai and Allahabad as detailed in the above paras, I am of the considered view that penalty of Rs. 11,00,000/- ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty to Rs. 4,00,000/-.

6.16 The fine and penalty of the above amount will not only eliminate any profit margin, if any, but will also have a positive effect on the applicant to ensure strict compliance of law in future.

7. In view of above the appeal filed by the appellant is disposed off in the above terms.

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

By Registered Post A.D.

F.No. S/49-212/CUS/AHD/2025-26 4043 Dated –27.10.2025

To,

(i) Shri Anasbhai Yusufbhai Nodsola,
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TA-Siddhapur, Patan-384151 (Gujarat),

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

(ii) Rishikesh J Mehra, B/1103,Dev Vihaan,
Behind 3rd Eye Residency, Motera Stadium Road,
Motera, Sabarmati, Ahmedabad-380005

Copy to:

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