



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

“सीमाशुल्कभवन ,”पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – **380009.**

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**DIN:20251271MN0000222767**

**PREAMBLE**

A	फ़ाइल संख्या/ File No.	:	VIII/10-53/SVPIA-A/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-53/SVPIA-A/O&A/HQ/2025-26 Dated 16.10.2025
C	मूलआदेश संख्या/ Order-In-Original No.	:	<b>188/ADC/SRV/O&amp;A/HQ/2025-26</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>31.12.2025</b>
E	जारी करने की तारीख/ Date of Issue	:	<b>31.12.2025</b>
F	द्वारा पारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<b>Shri Narendra Girdharlal Pala</b> <b>House No. 806, Sai Bhupat Raw House</b> <b>Paligram Road, Sachin, Surat,</b> <b>Gujarat-394230</b>  <b>Alternate Address:</b>  <b>Shri Narendra Girdharlal Pala,</b> <b>Milimani, B4, Kisumu, Kenya</b> <b>Mob. No. +254 722516202,</b> <b>E-Mail: alfa.kisumu@gmail.com</b>
(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)चौथी मंज़िल, हुडको 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 इयूटी 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:**

On the basis of APIS profiling, the passenger namely **Shri Narendra Girdharlal Pala**, aged 52 years (DOB: 20.04.1973) holding Passport No. CK06511 having Kenyan nationality and residing at Milimani, B4, Kisumu, Kenya who arrived from Sharjah to Ahmedabad by Air Arabia Flight No. G9-418 dated 23.04.2025 (Seat No. 19E) was intercepted by the officers of AIU, SVPI Airport, Ahmedabad that he was carrying gold in any form. Accordingly, a thorough personal search of the passenger and examination of his baggage were conducted in the presence of two independent witnesses. The entire procedure was duly documented under a **Panchnama dated 23.04.2025**.

**2.** The pax **Shri Narendra Girdharlal Pala** was questioned by the AIU officers as to whether he was carrying any contraband goods in person or in his baggage to which he denied. Not being satisfied with the reply of the passenger, personal search and examination of the baggage was conducted in the presence of the panchas. The said passenger was carrying one black colored luggage bag and one green hand bag. The officer requested the passenger to put his entire luggage on the X-Ray Bag Scanning Machine installed near the Green Channel at terminal 2 of SVPI Ahmedabad for scanning. On scanning of his baggage in the X-ray machine some suspicious images were seen in the green hand bag. Thereafter, the AIU officers once again asked the passenger to declare if he was carrying any contraband/ Restricted/dutiable goods, but the passenger still replied in negative. Subsequently, the AIU officers conducted physical examination of the baggage. Upon opening the green handbag, they found three packets marked as 'Piston Ring Set'. Inside these packets, they found eight broken pieces of thick coated wire which were heavy in weight and suspected to be gold. Further, they found three coated bangles kept in a plastic pouch and one ring concealed inside the said bag which was also suspected to be made of Gold. Thereafter, the passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine; before passing through the said DFMD Machine, the passenger instructed to remove all the metallic objects he was wearing on his body/clothes. No beep sound was heard while the passenger passed through the DFMD Machine which indicated that there was nothing objectionable/ dutiable goods/ items on his clothes/body. Thereafter a thorough frisking of the said passenger was carried out by the AIU officer, wherein nothing objectionable was found.

**2.1** Thereafter, the AIU officers telephonically requested Shri Soni Kartikey Vasantrai, Government Approved Valuer to come at the office of the AIU situated at SVPI Airport, Ahmedabad for valuation and to ascertain the purity of the aforesaid suspected gold articles recovered from the said passenger. Shri Soni Kartikey Vasantrai arrived at the AIU office at about 07.30 am. After weighing and examining the aforesaid gold articles, the Government Approved Valuer certified vide Certificate No. 097/2025-26 dated 23.04.2025 that the 08 broken pieces of thick gold wire coated with white rhodium weighing 648.200 grams having purity 750.00/18k



having market value of Rs.48,90,669/- and tariff value of Rs.43,34,747/-, 03 gold bangles coated with white rhodium weighing 150.800 grams having purity 999.00/24k having market value of Rs.15,17,048/- and tariff value of Rs.13,44,605/- and 01 gold ring weighing 16.600 grams having purity 999.00/24k having market value of Rs.1,66,996/- and tariff value of Rs.1,48,014/-, total weighing 815.600 grams having total market value of Rs.65,74,713/- and total tariff value of Rs.58,27366/-. Photograph at the time of weighment done by Shri Soni Kartikey Vasantrai is as under:

The market value of the aforesaid Gold & tariff value was taken as per the Notification No. 24/2025-Customs (N.T.) dated 15.04.2025 (gold) and Exchange Rate Notification No.: 25/2024 dated 18.04.2025, the calculation of total market value based on the unit market value of gold @ 100600 per 10 grams (999.0 24Kt) and the calculation of total tariff value based on the tariff value of gold prevailing at the time of valuation @ 89164.80 Rs. per 10 grams (999.0 24Kt) were as given below:

Sr. No.	Details of Items	Pcs.	Net Weight in Gram	Purity	Market Value (Rs)	Tariff Value (Rs)
1	Broken Pieces of Thick Gold Wire Coated with White Rhodium	8	648.200	750.0/18Kt	48,90,669/-	43,34,747/-
2	Gold Bangles Coated with White Rhodium	3	150.800	999.0/24Kt	15,17,048/-	13,44,605/-
3	Gold Ring	1	16.600	999.0/24Kt	1,66,996/-	1,48,014/-
Total		12	815.600		65,74,713	58,27,366

On being asked by the AIU officer, the passenger **Shri Narendra Girdharlal Pala** produced the travel documents which are as under:

- i) Boarding Pass, from Sharjah to Ahmedabad of Air Arabia Flight No. G9 418 dated 23.04.2025, bearing Seat No. 19E
- ii) Copy of Passport No. CK06511

3. **SEIZURE OF THE ABOVE SAID GOODS:**

The above-mentioned goods approximately having market value of **Rs. 65,74,713/-** which was recovered from **Shri Narendra Girdharlal Pala** were attempted to be smuggled inside India with an intent to evade payment of Customs duty. Thus, the AIU officers having a reasonable belief that the said gold articles such as eight (08) broken pieces of thick coated wire having net weight of 648.200 grams, three (03) coated bangles having net weight of 150.800 grams and one (01) ring having net weight of 16.600 grams which were suspected to be made of Gold and concealed inside the green hand bag were attempted to be smuggled by **Shri Narendra Girdharlal Pala** are liable for confiscation, and since the same were in violation of the provisions of Customs Act, 1962, they are being placed under seizure memo dated 23.04.2025 and handed over to the Ware house in-charge, SVPI Airport, Ahmedabad vide Ware house entry number 7345 dated 23.04.2025. Intimation U/s 150 of Customs act 1962 for disposal of seized Gold has been issued to the accused on 23.04.2025.

4. **STATEMENT OF SHRI NARENDRA GIRDHARLAL PALA:**

Statement of **Shri Narendra Girdharlal Pala** was recorded on 23.04.2024 wherein he inter alia stated as under:

**4.1** He gave his personal details like name, address, profession, family details and education etc.

**4.2** His name is **Shri Narendra Girdharlal Pala**, son of Shri Girdharlal Jerambhai Pala, age: 52 years and residing at Milimani, B4, Kisumu, Kenya. He is a businessman and running a firm namely M/s. Alfa Machineries Ltd. in Kisumu town in Kenya. He has been living in Kenya since 1991. He and his wife Smt. Sonal

Narendra Pala age: 50 Years, working as housewife are living in Kenya and his daughter Ms. Shivani Narendra Pala, age: 24 years, student is presently studying in University of Nottingham, UK. He had completed his education upto 10<sup>th</sup> Standard from Ganesh Vidyalaya, Rajkot. His PAN No. is GWEPP3934E. His address in India is House No. 806, Sai Bhupat Raw House, Paligram Road, Sachin Surat-394230.

**4.3** On being asked for his overseas travel, he stated that he is living in Kenya and came to India frequently for various social functions as well as for business purpose. Last time he had travelled to India on 23.01.2025 and returned to Kenya on 03.02.2025. Thereafter, he had come to India on 23.04.2025.

**4.4** He has perused the said Panchnama dated 23.04.2025 drawn at Terminal-2 of SVPI Airport, Ahmedabad and he stated that he has been present during the entire course of the said panchnama and he agree with the contents of the said Panchnama. In token, he put his dated signature on every page of the panchnama. He further stated that while he came to India, he brought 08 broken pieces of thick gold wire coated with white rhodium weighing 648.200 grams having purity 750.00/18k which was disguised as Piston rings and kept in Piston ring boxes with intent to smuggle the same into India. Further he brought 03 gold bangles coated with white rhodium weighing 150.800 grams having purity 999.00/24k and 01 gold ring weighing 16.600 grams having purity 999.00/24k with him while arriving at the SVPIA, Ahmedabad. However, he did not declare any of these items before the Customs authorities with intent to avoid payment of Customs duty and make some profit by selling the same. However, when he crossed the Customs Green Channel, the officers of Air Intelligence Unit, Customs apprehended him and found the aforesaid gold items in his possession. The Customs officers got the above items examined and evaluated by a government approved valuer and he gave a report indicating that 08 broken pieces of thick gold wire coated with white rhodium weighing 648.200 grams having purity 750.00/18k were having market value of Rs.48,90,669/- and tariff value of Rs.43,34,747/-, 03 gold bangles coated with white rhodium weighing 150.800 grams were having purity 999.00/24k having market value of Rs.15,17,048/- and tariff value of Rs.13,44,605/- and 01 gold ring weighing 16.600 grams having purity 999.00/24k was having market value of Rs.1,66,996/- and tariff value of Rs.1,48,014/-. As such the total weight of these items was 815.600 grams and these items were having total market value of Rs.65,74,713/- and total tariff value of Rs.58,27,366/-

**4.5** On being asked about where he had purchased the said gold, he stated that he had purchased gold from Kenya market and he converted the same into aforesaid different items in his shop.

**4.6** On being asked about Whether he was engaged in any smuggling activity in the past, he stated that while coming to India on his previous visit on 23.01.2025, he and his wife had carried 18 Kt gold bangles weighing appx. 200 grams. He had stated that at that time, he or his wife had not declared the same before the Customs authorities and they had not paid any duty on the same.

**4.7** On being asked about non declaration of dutiable items, he stated that he was aware that smuggling of gold without payment of Customs duty is an offence. He was well aware of the concealed goods but he did not make any declarations in this regard to evade the Customs duty. He had opted for green channel so that he can attempt to smuggle the gold without paying customs duty.

**4.8** On being asked about his bank account, property and PAN card number, he stated that he don't have any bank account or property in India but his wife had account no. 50100700141467 in HDFC Bank, Limda Chowk branch, Rajkot. His PAN No. is GWEPP3934E. His address in India is House No. 806, Sai Bhupat Raw House,

Paligram Road, Sachin Surat-394230, which is presently being used as residence of his sister Smt. Ramaben Shashikant Jogia. Her phone no. is 9909259111.

## **5. ARREST AND BAIL OF SHRI NARENDRA GIRDHARLAL PALA:**

**5.1** As the passenger **Shri Narendra Girdharlal Pala** attempted to smuggle gold items weighing 815.600 grams which having market value of Rs.65,74,713/- and total tariff value of Rs.58,27,366/- by way of not making any declaration to Customs regarding these gold items. He was intercepted when he tried to exit the Green Channel at the Ahmedabad International Airport. The said gold items were concealed by the said passenger inside his luggage mostly in different form (broken pieces of wire) with an intention to avoid detection by the Customs officers. Therefore, the said gold items recovered from the said passenger were liable for confiscation under the provisions of Section 111(d) and 111(l) of the Customs Act, 1962 and accordingly seized under Section 110 of the Customs Act, 1962. Further, as the said passenger has committed an offence punishable under Section 135 (1) (a) and (b) of the Customs Act, 1962 in relation to attempting to smuggle the gold items, therefore, an authorization of arrest has been issued by the competent authority and in that pursuance the said passenger has been placed under arrest on 23.04.2025.

**5.2** Subsequently, conditional Bail has been granted on 23.04.2025 to the accused after filing the Bail Bond on the following conditions:

- (i)** The accused shall deposit a sum of Rs. 70,000/- (rupees seventy thousand only) for release on bail on fulfillment of the said terms the following conditions are imposed.
- (ii)** That the accused shall mark his presence before the AIU section, customs, Ahmedabad, every 30th day for further investigation.
- (iii)** The accused shall not leave the country without permission from the department.
- (iv)** The accused shall fully co-operate with the investigating officer

Further, on 24.04.2025, the accused has submitted application for modification in the Bail conditions vide which he has requested for modification of bail conditions no. (ii) and (iii) regarding appearance at AIU office and not to leave India without prior permission of the department. The applicant has cited various judgments as well as provisions of Section 478 of the BNSS, 2023 in support of his request for modification of bail conditions. However, the application of the accused has not been entertained relying on the interpretation that Bail conditions can be imposed for grant of bail in bailable offences also.

- (v)** Aggravating from the same, the accused approached the Hon'ble High Court of Gujarat and vide its order fixed on 04.06.2025, Hon'ble Court stayed the condition number i.e. "The accused shall not leave the country without permission from the department". As per the latest available order on the website of Hon'ble Court i.e. <https://gujarathc-casestatus.nic.in/gujarathc/#>, the interim relief granted earlier to continue till further order.

## **6. SUMMATION:**

The aforementioned proceedings indicate that **Shri Narendra Girdharlal Pala** had attempted to smuggle above said goods inside India with an intent to evade payment of Customs duty. Thus, the said goods i.e. 08 broken pieces of thick gold wire coated with white rhodium weighing 648.200 grams having purity 750.00/18k having market value of Rs.48,90,669/- and tariff value of Rs.43,34,747/-, 03 gold bangles coated with white rhodium weighing 150.800 grams having purity 999.00/24k having market value of Rs.15,17,048/- and tariff value of Rs.13,44,605/- and 01 gold ring weighing 16.600 grams having purity 999.00/24k

having market value of Rs.1,66,996/- and tariff value of Rs.1,48,014/-, (total weighing 815.600 grams having total market value of Rs.65,74,713/- and total tariff value of Rs.58,27,366/-) which were attempted to be smuggled by **Shri Narendra Girdharlal Pala** are liable for confiscation in violation of the provisions of Customs Act, 1962 and therefore the same were placed under Seizure vide seizure memo dated 23.04.2025. Subsequently, the accused has been arrested and granted Bail.

## **7. LEGAL PROVISIONS RELEVANT TO THE CASE:**

### **Foreign Trade Policy 2015-20 and Foreign Trade (Development and Regulation) Act, 1992:**

**7.1** In terms of Para 2.26(a) of the Foreign Trade Policy 2015-20, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance.

**7.2** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

**7.3** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

**7.4** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

### **The Customs Act, 1962:**

**7.5** As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.

**7.6** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

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

**7.7** As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

**7.8** As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

**7.9** As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

**7.10** As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

**7.11** As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, she may seize such goods.

**7.12** Section 111. Confiscation of improperly imported goods, etc.:

*The following goods brought from a place outside India shall be liable to confiscation: -*

- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*
- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*
- (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;*
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*
- (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;*
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*
- (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];*
- (n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition were sanctioned by the proper officer;*

*(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

**7.13** 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 she knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

**7.14** As per Section 123 of Customs Act 1962,

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

*(a) in a case where such seizure is made from the possession of any person -*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

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

**7.15** All dutiable goods imported into India by a passenger in her baggage are classified under CTH 9803.

### **Customs Baggage Rules and Regulations:**

**7.16** As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passenger 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 under Section 77 of the Customs Act, 1962.

**7.17** As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in her bon-fide baggage of jewellery up to weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

### **Notifications under Foreign Trade Policy and The Customs Act, 1962:**

**7.18** As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.

**7.19** Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or the heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	i. Gold bars, other than tola bars, bearing manufacturer’s or refiner’s engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger  ii. Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

**Condition no. 41 of the Notification:**

If, - 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of their arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c ) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of their arrival in India declaring their intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before their clearance from customs. Explanation.- For the purposes of this notification, “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 and such passenger has

not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

8. From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 kt.) were restricted as per DGFT notification and import were permitted only by nominated agencies. Further, it appears that import of goods whereas it is allowed subject to certain conditions are to be treated as prohibited goods under section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. As such import of gold is not permitted under Baggage and therefore the same is liable to be held as prohibited goods.

## 9. CONTRAVENTION AND VIOLATION OF LAWS:

It therefore appears that:

- (i) **Shri Narendra Girdharlal Pala** had attempted to smuggle/improperly import said Gold Jewellery as detailed hereinabove, having total weight 815.600 grams and having total market value of Rs. 65,74,713/- with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. **Shri Narendra Girdharlal Pala** had knowingly and intentionally smuggled the said gold jewelries upon their arrival from Sharjah to Ahmedabad by Air Arabia Flight no. G9-418 on 23.04.2025 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold jewelries smuggled by **Shri Narendra Girdharlal Pala**, cannot be treated as bonafide household goods or personal effects. **Shri Narendra Girdharlal Pala**, thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.
- (ii) **Shri Narendra Girdharlal Pala**, by not declaring the said gold item before the proper officer of the Customs have contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (iii) The said gold item smuggled by **Shri Narendra Girdharlal Pala**, without declaring it to the Customs are liable for confiscation under Section 111(d), 111(l) and 111(m) read with Section 2(22), 2(33), 2(39) of the Customs Act, 1962.
- (iv) **Shri Narendra Girdharlal Pala** 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.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon **Shri Narendra Girdharlal Pala**, who are the Noticee in this case.

10. Accordingly, a Show Cause Notice vide F. No. VIII/10-53/SVPIA-A/O&A/HQ/2025-26 dated 16.10.2025 was issued to the Noticee i.e. **Shri Narendra Girdharlal Pala**, as to why:

- (i) 08 Broken Pieces of Thick Gold Wire Coated With White Rhodium Weighing 648.200 Grams Having Purity 750.00/18k Having Market Value Of Rs.48,90,669/- (Rupees Forty-Eight Lakh Ninety Thousand Six Hundred Sixty-Nine Only) and Tariff Value of Rs.43,34,747/- (Rupees Forty-Three Lakh Thirty-Four Thousand Seven Hundred Forty-Seven Only), 03 Gold Bangles Coated With White Rhodium Weighing 150.800 Grams Having Purity 999.00/24k Having Market Value of Rs.15,17,048/- (Rupees Fifteen Lakhs

Seventeen Thousand and Fourty-Eight Only ) and Tariff Value of Rs.13,44,605/-(Rupees Thirteen Lakhs Fourty-Four Thousand Six Hundred and Five Only) and 01 Gold Ring Weighing 16.600 Grams Having Purity 999.00/24k Having Market Value of Rs.1,66,996/-(Rupees One Lakh Sixty-Six Thousand Nine Hundred and Ninety-Six Only) and Tariff Value of Rs.1,48,014/-(Rupees One Lakh Fourty-Eight Thousand and Fourteen Only) **(Total Weighing 815.600 Grams having Total Market Value of Rs.65,74,713/- (Rupees Sixty-Five Lakh Seventy-Four Thousand Seven Hundred Thirteen Only) and Total Tariff Value of Rs.58,27,366/- (Rupees Fifty-Eight Lakh Twenty-Seven Thousand Three Hundred Sixty-Six Only)** recovered from **Shri Narendra Girdharlal Pala** which have been placed under Seizure under Panchnama proceedings dated 23.04.2025 and Seizure Memo Order dated 23.04.2025, should not be confiscated under the provision of section under the provision of **Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.**

- (ii) Penalty should not be imposed upon **Shri Narendra Girdharlal Pala** under **Sections 112 of the Customs Act, 1962**, for the omissions and commissions mentioned hereinabove.

### **DEFENSE REPLY:**

**11.** The noticee has submitted his written submission vide letter dated **07.11.2025** through Shri Rishikesh Mehra, Advocate and Authorized Representative wherein he denied all the allegation against his client made under the SCN. He said that it was true that his client had brought 08 Broken Pieces of Thick Gold Wire Coated with White Rhodium weighing 648.200 Grams having purity 750.00/18k, 03 Gold Bangles Coated with White Rhodium weighing 150.800 Grams having purity 999.00/24k and 01 Gold Ring weighing 16.600 Grams having purity 999.00/24k, Total Weighing 815.600 Grams having Total Tariff Value of Rs.58,27,366/- was placed under seizure. The statement recorded under Section 108 of the Customs Act 1962 was given under fear and duress of being arrested. The statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in the impugned SCN. From the facts and submissions narrated above, the gold is neither prohibited nor restricted, hence the goods in question are not liable for confiscation under section 111(d),111(i),111(l) and 111(m) of the Customs Act, 1962. The noticee is also not liable for penal action under section 112 of the Customs Act,1962.

**11.1** He submitted that his client Shri Narendra Girdharlal Pala, residing at Kenya since 1991; it was true that he had brought 08 Broken Pieces of Thick Gold Wire Coated with White Rhodium weighing 648.200 Grams having purity 750.00/18k, 03 Gold Bangles Coated with White Rhodium weighing 150.800 Grams having purity 999.00/24k and 01 Gold Ring weighing 16.600 Grams having purity 999.00/24k, Total Weighing 815.600 Grams having Total Tariff Value of Rs.58,27,366/- was placed under seizure. He further submitted that his client was coming back to India, gold was brought for to make gold jewellery for his Daughters Shivani Pala aged 24 years for Marriage to making Indian traditional Jewellers from Rajkot, Gold is not in commercial quantity, Noticee is Residing at **Kisumu Kenya Since 1991** that he is doing Business of Agriculture machineries in the name of Alfa Machineries Limited in Kenya, which was incorporated during the Statement, hence is an **NRI**, he is eligible passenger. his client is NRI Residing at **Kisumu Kenya since last 30 years**. He, further submitted that the statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons

cannot be relied to be true for the purpose of invoking the violations as alleged in present case. The gold was hidden due to safety purpose, as he was having the fear of Loot/Theft; as he to travel from his home town Kisumu to Nairobi International Airport which is 340 Kilometers, and from Ahmedabad to Rajkot around 250 km by Road ,through Jeep or Bus/ Train, he have to travelled through Tribal belt from his home town Kisumu Kenya were many cases of loot/theft /Murder/Highway Robbery and murder cases are booked as per police Record, hence the question of concealment does not arise., gold is not prohibited, as he was first time brought the gold along with him was unable to declare it, due to ignorance of Customs law/Rules. As he has orally declared but nobody has bothered to help him to file the declaration form, as noticee was in the airport premises, reference is invited to instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed. noticee is NRI Residing at **Kisumu Kenya since last 30 years**, that his client is Business man at Kenya, he brought gold of 18kt and 24kt. for his daughter's Marriage to making Indian traditional Jewellers from Rajkot, for his family, as Noticee has purchased from his hardworking and personal savings. also reference is invited to **Notification No. 12/2012-CUS dated 17.03.2012**. He submitted that the Noticee is an Illiterate Person and he study up to 10<sup>th</sup> standard from Ganesh Vidhalay Rajkot in Gujrati medium, he is not known the what is written in the panchnama and statement, which he was only asked the general questions about his family, he was forced to sign in fear of arrest, he simply signed the papers. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of fine, re-export of goods or as per the procedure laid down under the Customs Act, 1962.

**11.2** He further submitted that the statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interiliac stated that the gold was brought by Noticee the said gold Bars from his personal savings and hardworking earned money from Kenya, but prior to his declaration he was intercepted and resulting in booking of the case; as carrying of gold without payment of duty means smuggling as per the impugned SCN. It is therefore, very clear, that the goods in question clearly belongs to the noticee. Moreover, the noticee had repeatedly requested the officers to release the gold on payment of duty, fine and penalty, but the same fell on the deaf ears. However, some copies of Invoice at the time of Panchnama which noticee had produced in the name of noticee, which were send through what's App by his wife at time, he produced/recover from noticee; was not incorporated at any were during the Panchnama and statement u/s 108, shows noticee's is the legitimate purchaser of gold. Noticee has produced the gold bill. The noticee did not know what was written in panchnama as well as statement has been recorded in English, he was an Illiterate Person and he study up to 10<sup>th</sup> standard he was not known that what was written in the panchnama and statement which he was only asked the general questions about his family, he was forced to sign in fear of arrest, he simply signed the papers. It may also be reiterated that the instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed.

**11.3** He further stated that the Department has stressed upon declaration to be filed upon section 77 of the Customs Act, 1962 and which has not been filled by the noticee on his arrival in India; moreover, the airlines staff had neither bothered to provide the customs declaration form nor the same was handed during the time of disembarkation. The declaration form, if provided would have been definitely filed before the authorities and necessary duty payment would have been made without any difficulty; that the statement taken under section 108 of the Customs Act,1962 was given under duress and fear of being arrested and the threat was given by the officers as such; furthermore the same would have been immediately retracted after

knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

**11.4** The noticee had made very clear on dated 23.04.2025 that the seized goods belonged to him but to no avail and the officers were hell bent on booking a case against him i.e. the noticee had been given some more time, he would have definitely after discussing with officers filed a declaration as required under law. It is not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage. In addition to para of the said SCN, it has been stated as to why penalty should not be imposed upon him under section 112 of the Customs Act, 1962. The noticee has not acquired possession of or in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Also penalty has been proposed under section 112 of the Customs Act, 1962. It may be stated that the noticee is not a repeated offender that he has simply failed to declare the gold in the declaration.

**11.5** He further submitted that the statement taken under section 108 of the Customs Act, 1962 was given under duress and fear of being arrested and the threat was given by the officers and also not allowed to read and not allowed to write in his own handwriting which he knows very well as Gujarati such; furthermore, the same would have been immediately retracted after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law. It is further submitted that the statement was recorded under duress and threat and the statement recorded is not sustainable as can be seen from the below mentioned provisions of section 138B of the Customs Act, 1962. He further relied on the judgment of Hon'ble Supreme Court of India in case of Noor Aga v/s State of Punjab wherein Hon'ble Court stated as:

*There is another aspect of the matter which cannot also be lost sight of. A search and seizure or an arrest made for the purpose of proceeding against a person under the Act cannot be different only because in one case the authority was appointed under the Customs Act and in the other under another. What is relevant is the purpose for which such arrest or search and seizure is made and investigation is carried out. The law applicable in this behalf must be certain and uniform.*

Even otherwise Section 138B of the 1962 Act must be read as a provision containing certain important features, namely:

- (a) There should be in the first instance statement made and signed by a person before a competent custom official.*
- (b) It must have been made during the course of enquiry and proceedings under the Customs Act.*

Only when these things are established, a statement made by an accused would become relevant in a prosecution under the Act. Only then, it can be used for the purpose of proving the truth of the facts contained therein. It deals with another category of case which provides for a further clarification. Clause (a) of sub-section (1) of Section 138B deals with one type of persons and clause (b) deals with another. The Legislature might have in mind its experience that sometimes witnesses do not support the prosecution case as for example panch witnesses and only in such an event an additional opportunity is afforded to the prosecution to criticize the said witness and to invite a finding from the court not to rely on the assurance of the court

on the basis of the statement recorded by the Customs Department and for that purpose it is envisaged that a person may be such whose statement was recorded but while he was examined before the court, it arrived at an opinion that is statement should be admitted in evidence in the interest of justice which was evidently to make that situation and to confirm the witness who is the author of such statement but does not support the prosecution although he made a statement in terms of Section 108 of the Customs Act. We are not concerned with such category of witnesses. Confessional statement of an accused, therefore, cannot be made use of in any manner under Section 138B of the Customs Act. Even otherwise such evidence is considered to be of weak nature.

Article 20 (3) of the Indian Constitution. Clause (3) of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself. it is a protection against such compulsion resulting in his giving evidence against himself.

**11.6** He submitted that his client cannot be penalized under section 112 as the department has no evidence proving that he in any way has done any of the action enumerated above in the manner alleged contrary to the provisions of the Customs Act, 1962. It has been consistently held by the Hon'ble Courts, Tribunals and Revisionary Authority of Govt. of India that if the import of commodities is not completely banned, Gold is not prohibited then such commodities or articles could be released on redemption fine. Further, he submitted there is a 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. He submitted following case law in his defense: -

**1. *Yakub Ibrasher Yousuf 2011(263) ELT-685(Tri.Mum) and subsequently 2014-TIOL-277-Cestst-Mum:*** The Hon Tribunal while allowing redemption of gold not declared before Customs held: -

*Redemption Fine- option of- Option of redemption has to be given to person from whose possession impugned goods are recovered. – On the facts of the case option of redemption fine allowed to person who illicitly imported gold with a view to earn profit by selling it, even though she had not claimed its ownership - Section 125 of Customs Act 1962. [para5.6]*

**2. *Shaikh Jameel Pasha Vs Govt. Of India 1997(91) ELT277(AP):*** The Hon. High Court of Andhra Pradesh in the above case, while deciding the Scope of section 125 to allow redemption of gold brought by passenger unauthorisedly held that:

*Redemption Fine –Customs– Gold in the form other than ornaments imported unauthorisedly– Option to pay fine lieu of confiscation to be given to the importer in terms of the second part of section 125(1) of Customs Act, 1962, goods being otherwise entitled to be imported on payment of duty,*

**3. *Kadar Hisdeen V/s Commissioner of Customs (Preventive), West Bengal 2011(136) ELT 758:*** Gold brought as a baggage by the appellant not declared– Confiscation under section 111(d) of the Customs Act, 1962 sustainable– However, option given to appellant to redeem the same on payment of a fine of Rs.1.5 lakhs Section 125 ibid.

**4. Order No: 426/04 issued vide File No: 380/57/8 2004-RA Cus dated 21.9.2004** passed by the Revisionary Authority, Government of India, upholding the order of the Commissioner of Customs (Appeals) Mumbai Airport order redemption

of the non-declared seized gold imported by an eligible passenger on payment of fine, penalty and duty. Latest judgement of the Revisionary Authority, New Delhi are also enclosed herewith which is self-explanatory:

Further, he submitted the latest RA Orders: -

1. Order No: 73/2020-Cus (Wz)/Asra/Mumbai Dt. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)
2. Order No: 58/2020-Cus (Wz)/Asra/Mumbai Dt. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)
3. Order No: 61/2020-Cus(Wz)/Asra/Mumbai Dt. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
4. Order No: 126/2020 Cus(Wz)/Asra/Mumbai Dt. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Pocket Case granted RF, PP)
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: 20/2021-Cus(Wz)/Asra/Mumbai Dt. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)
8. Order No: 954/2018-CUS(Wz)/Asra/Mumbai Dt. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)
9. Order No: 29/2018-Cus(Wz)/Asra/Mumbai Dt. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)
10. Order No: 140/2021 Cus(Wz)/Asra/Mumbai Dt. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF,PP)
11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).
12. Order No: 245/2021-Cus(Wz)/Asra/Mumbai Dt. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
13. Order No: 214/2021-Cus(Wz)/Asra/Mumbai Dt. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
14. Order No: 10/2019-Cus(Wz)/Asra/Mumbai Dt. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)
16. Order No. 243 & 244/2022-Cus(Wz)/Asra/Mumbai Dt 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)

17. Order No. 282/2022-Cus(Wz)/Asra/Mumbai Dt. 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).
18. Order No. 287/2022-Cus(Wz)/Asra/Mumbai Dt 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).
19. Order No. 282/2022-Cus(Wz)/Asra/Mumbai Dt 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)
20. Order No. 284/2022-CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 In C/A Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)
21. Order No. 314/2022-Cus(Wz)/Asra/Mumbai Dt 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)
22. Order No. 56/2023-Cus(Wz)/Asra/Mumbai Dt 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)
23. Order No. 10/2019-Cus(Wz)/Asra/Mumbai Dt 30.09.2019 in C/A Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)
24. Order No. 404 & 405/2023-Cus(Wz)/Asra/Mumbai Dt 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)
25. Order No. 349/2022-Cus(Wz)/Asra/Mumbai Dt 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)
26. Order No. 395-396/2023-Cus(Wz)/Asra/Mumbai Dt 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
27. Order No. 352/2022-Cus(Wz)/Asra/Mumbai Dt 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
28. Order No. 309/2022-Cus(Wz)/Asra/Mumbai Dt 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
29. Order No. 380/2022-Cus(Wz)/Asra/Mumbai Dt 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
30. Order No. 516-517/2023-Cus(Wz)/Asra/Mumbai Dt 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)
31. Order No. 786/2023-Cus(Wz)/Asra/Mumbai Dt 25.10.2023 In C/A Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
32. Order No. 885/2023-Cus(Wz)/Asra/Mumbai Dt 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
33. Order No. 883/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)

34. Order No. 907-909/2023-Cus(Wz)/Asra/Mumbai Dt 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
35. Order No. 899/2023-Cus(Wz)/Asra/Mumbai Dt 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
36. Order No. 898/2023-Cus(Wz)/Asra/Mumbai Dt 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
37. Order No. 880-882/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
38. OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
39. OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023 IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
40. Order No. 961/2023-Cus(Wz)/Asra/Mumbai Dt 29.12.2023 in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
41. Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC-Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)
42. Order No. 830-831/2023-Cus(Wz)/Asra/Mumbai Dt 05.12.2023 in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

Further, he submitted the case law wherein NRI passenger had been allowed release of goods in lieu of RF and PP.

1. Order no: 404-405/2023-Cus (Wz) /Asra/Mumbai/ Dt. 30.03.2023 in C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Huzefa Khuzefa Mamuwala (2. Shri Shabbir Ranijiwala (10 Pieces of Gold Bars 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
2. Order no: 58/2020-Cus(Wz)/Asra/Mumbai/ Dt. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Shabbir Taherally Udaipurwala (Gold weighing 466.640 grams Concealed Re-Export Nee Case granted RF, PP)
3. Order no: 605/2023-Cus (Wz) /Asra/Mumbai/ Dated. 22.08.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Hitesh laxmichand gagani (1 Gold kada and 1 gold chain 350.890 grams Concealed Re-Export Nee Case granted RF, PP)
4. Order no: 61/2020-Cus (Wz) /Asra/Mumbai/ Dated. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Basheer Mohammed Mansuri (10 Pieces of Gold Bars 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
5. Order In Original No: JC/PK/ADJN/381/2021-22 Date Of Order 31.03.2022 And Date of Issue 12.04.2022 Joint Commissioner Of customs CSMI Airport Mumbai V/s Ms. Rashmi Satish Mandelia (3 Gold Biscuits (Bars) 349.000 Concealed Concealed Re-Export Nee Case granted RF, PP)
6. Order no: 280/2022-Cus(Wz)/Asra/Mumbai/ Dtd.26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Priyal Sanjay Chokshi (3 Pieces of crude Gold Bangles 140.00 Grams Concealed Re-Export Case granted RF, PP)

7. Order no: 281/2022-Cus (Wz) /Asra/Mumbai/ Dated. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP)
8. Order no: 389/2023-Cus (Wz) /Asra/Mumbai/ Dated. 29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 815.600 grams Concealed Re-Export Nee Case granted RF, PP)
9. Order no: 65/2023-Cus (Wz) /Asra/Mumbai/ Dated. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP)
10. Order no: 402/2022-Cus (Wz) /Asra/Mumbai/ Dated. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP)
11. Order no: 349/2022-Cus (Wz) /Asra/Mumbai/ Dated. 29.11.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Kakali Sardar (8 Gold Bangles 2 Gold Rings 550.000 Grams Concealed Re-Export granted on RF, PP)
12. OIA No. AHD-CUSTM-000-APP-082-25-26 Dated 18.06.2025 In c/a Mr. Ramesh Chandra Patel V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)
13. OIA No. AHD-CUSTM-000-APP-083-25-26 Dated 18.06.2025 In c/a Mr. Lokesh Kalal V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)
14. OIA No. AHD-CUSTM-000-APP-088-25-26 Dated 19.06.2025 In c/a Mr. Kesari Singh V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)
15. OIA No. AHD-CUSTM-000-APP-103-25-26 Dated 25.06.2025 In c/a Mr. Zaidkhan Qayyumkhan Pathan V/s. Additional Commissioner of Customs Ahmedabad. (Eligible passenger granted re-export)

It has also been held by the Hon'ble CESTAT: That there may be consistency in the approach of the adjudicating authorities while deciding similar issues. Reliance in this regard is placed on the decision rendered in the case of Copier Company Vs Commissioner of Customs, Chennai (2007 (218) ELT- 142 (Tribunal) order of the lower authority for the gold/absolutely: -"The word prohibited" occurring in sub-section-(1) above and the word prohibition' occurring in section 111(d) have to be construed on similar considerations as 'Prohibition' has been held to include (restriction' vide Shaikh Mohd. Omer (Supra). The word 'Prohibited' occurring in section 125(1) can also be understood in the sense of 'restricted'.

It would follow that in the case of second-hand photo-copiers restricted for import, the adjudicating authority, may, in its discretion, consider allowing the importer/owner of the goods to redeem the same against payment of fine. In exercising this discretion, the authority may take the relevant factors into account. We are of the view that these factors must be relatable to the goods in question. For instance, if the goods are unconditionally prohibited from importation, reasons for claiming redemption. On the other hand, if the goods are conditionally prohibited from importation (i.e. no importation without specific licence), the importer owner may claim redemption of easier grounds. In the instant case, absolute confiscation which has its roots in the provisions of section 125(1) of the Customs Act, 1962. For the reasons already recorded, we set aside the impugned orders and allow these appeals by way of remand directing the Commissioner to fine the appellants, can option to redeem the goods under section 125 of the Customs Act, 1962, against payment of a reasonable fine which shall be determined after shearing the party."

Further, he relied upon the judgments in cases as: -

- In the case of **Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.)** the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.
- **A. Rajkumari vs CC(Chennai)2015(321)ELT540(Tri-Chennai)** In this case redemption of absolutely confiscated gold was allowed against reasonable in despite the fact that 70(Seventy) gold bars (10 Tolas each) were found concealed in the Air Conditioner brought by the passenger. This case was also affirmed by the Hon. Apex Court vide 2015(321) ELTA 207 (SC). Therefore, what transpires from this recent judgement of the Hon. Supreme Court (Supra) is that even in case of clever (ingenious) concealment of gold, the option of redemption under section 125 of Customs Act 1962 can be exercised to secure ends of Justice. The ratio of this judgement is squarely applicable to the present case. Relying on the latest judgments in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been on redemption Fine and personal Penalty.

Further, relying on the latest judgements in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been released on redemption Fine and personal Penalty: -

- High Court of Judicature at Allahabad Sitting at Lucknow, in Civil Misc Review Application No.156 of 2022 in case of Sri Rajesh Jhamatmal Bhat and Another,
- Rajasthan High Court, Manoj Kumar Sharma S/o Late Shri ... vs Union of India on 17 February, 2022

He further submitted that the statement was recorded under duress and threat and that he had never on the previous occasion brought any gold or for that matter any offending goods while he travelled to India. Department has been unable to show that the noticee did travel on occasions with offending goods. This being the first instance on him entire life, he may be pardoned of the consequences just because he failed to seek timely directives from the customs officials at the airport. This prayer before the authority may be taken into consideration for causing justice and arriving at a favorable decision against the noticee. He submitted that his client has been accused of carrying goods himself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from his person which would remotely indicate his involvement in a transaction in the nature of smuggling. He further states that the goods may be released to his client at the earliest even provisionally for which his client is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN. It is also craved that if the same is not possible to release the gold on payment of fine and penalty, orders for Re-Export may be given too, for which his client is ready to pay penalty too and requested for a personal hearing in the matter.

### **PERSONAL HEARING:**

**12.** To follow the principle of natural justice, personal hearing in the matter was fixed on 25.11.2025. Shri Rishikesh Mehra, Advocate and Authorized Representative appeared for the personal hearing on 25.11.2025 on behalf of his client i.e. Shri Narendra Girdharlal Pala. He re-iterated his written submission dated 07.11.2025. He stated that the Noticee came from Kenya to India and Gold brought not in commercial quantity. He has produced the Bills of purchase gold. The noticee is NRI

and residing at Kenya since 1991. He is an eligible passenger and illiterate person was unable to declare goods due to ignorance of Customs Rules and regulations. Reference is invited under Circular No. 09/2001-Cus Dated 22.02.2001. He Requested to re-export the goods on payment of fine and penalty. He has relied on order of OIA NO. AHD/CUSTM-000-APP-088-25-26 DT. 25.06.2025 In case of Mr. Zaidkhan Qayyumkhan Pathan Vs. Additional Commissioner of Customs, Ahmedabad in which Commissioner (A), Ahmedabad has re-export was granted.

He, further, requested to take lenient view in the matter and allow to release the gold on payment of duty and fine and penalty.

### **DISCUSSION AND FINDINGS:**

**13.** I have carefully gone through the facts of the case. The Noticee had submitted his written submission through his Advocate and Authorized Representative, Sh. Rishikesh Mehra on dated 07.11.2025. The noticee has availed the opportunity of personal hearing granted to him on 25.11.2025 and reiterated the written submission dated 07.11.2025 in the personal hearing. Accordingly, I take up the case for adjudication on the basis of evidences available on record and submission made by the noticee during the personal hearing.

**14.** In the instant case, I find that the main issue to be decided is whether the 08 Broken Pieces of Thick Gold Wire Coated with White Rhodium weighing 648.200 Grams having purity 750.00/18k, 03 Gold Bangles Coated with White Rhodium weighing 150.800 Grams having purity 999.00/24k and 01 Gold Ring weighing 16.600 Grams having purity 999.00/24k, **Total Weighing 815.600 Grams** and having Total Market Value of **Rs.65,74,713/-** (Rupees Sixty-Five Lakhs Seventy-Four Thousand Seven Hundred Thirteen Only) and Total Tariff Value of **Rs.58,27,366/-** (Rupees Fifty-Eight Lakhs Twenty-Seven Thousand Three Hundred Sixty-Six Only), seized vide Seizure Memo/Order dated 23.04.2025 under Panchnama proceedings dated 23.04.2025 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

**15.** I find that the Panchnama has clearly drawn out the fact that on the basis of specific intelligence regarding carrying restricted/prohibited goods, the officers of AIU intercepted **Shri Narendra Girdharlal Pala** while he was attempting to exit through green channel without making any declaration. On being asked whether he had anything which required any declaration, he denied however on frisking and during the conducted physical examination of the baggage by the AIU Officers, upon opening, they found three packets marked as 'Piston Ring Set'. Inside these packets, they found **Eight Broken Pieces of Thick Coated Wire** which were heavy in weight and suspected to be gold. Further, they found **Three Coated Bangles** kept in a plastic pouch and **One Ring** concealed inside the green handbag, which was also suspected to be made of Gold. It is on record that Shri Kartikey Vasantraai Soni, the Government Approved Valuer, weighed the said gold items and certified vide **Certificate No. 097/2025-26 dated 23.04.2025** that the 08 Broken Pieces of Thick Gold Wire Coated With White Rhodium Weighing 648.200 Grams Having Purity 750.00/18k, 03 Gold Bangles Coated With White Rhodium Weighing 150.800 Grams Having Purity 999.00/24kt and 01 Gold Ring Weighing 16.600 Grams Having Purity 999.00/24kt, Total Weighing 815.600 Grams. which were hidden/concealed, inside the Green Handbag. Further, the Govt. Approved Valuer informed that the total Market Value was **Rs.65,74,713/-** and Tariff Value was **Rs.58,27,366/-** of the said gold bars. The details of the Valuation of the said Gold Items are tabulated as below:

Sr. No.	Details of gold Items	Pcs	Net Weight in Gram	Purity	Market Value (Rs)	Tariff Value (Rs)
1	Broken Pieces of Thick Gold Wire Coated with White Rhodium	08	648.200	750.00/18Kt	48,90,669/-	43,34,747/-
2	Gold Bangles Coated with White Rhodium	03	150.800	999.00/24Kt	15,17,048/-	13,44,605/-
3	Gold Ring	01	16.600	999.00/24Kt	1,66,996/-	1,48,014/-
<b>Total</b>		<b>12</b>	<b>815.600</b>		<b>65,74,713/-</b>	<b>58,27,366/-</b>

**16.** Under his submission, the noticee alleged that the statement recorded on 23.04.2025 was not voluntary and the same was recorded under duress and fear of arrest. In this regard, I find that the passenger/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 of his statement. The offence committed was admitted by the noticee in his statement recorded on 23.04.2025 under Section 108 of the Customs Act, 1962. It is on the record 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. I find from the content of the statement dated 23.04.2025 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. Therefore, I don't find any force in the contention of the noticee in this regard and an afterthought, as I also not find any retraction filed by the noticee. 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 he signed them after verifying the correctness of the facts, in full presence of mind. I find that the noticee has not submitted any documentary evidence to substantiate his claim that the statements were obtained under duress or threat of arrest. A retraction of a statement recorded under Section 108 of the Customs Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence, however the noticee has failed to submit any such documentary evidences which clearly indicates a calculated step to just mislead the proceedings. 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.

Further, the noticee alleged that he was asked to sign the statements and other documents without being allowed to read or understand their contents. He also claimed that he is an illietare person and studied upto 10<sup>th</sup> standard only and not well-versed in English language, whereas all the documents signed by him were in English and as per statement, he accepted that he can read, write and speak Hindi & English language, which contradicts his claim that he is not well-versed in the language. This contradiction renders his claim unconvincing and appears to be a deliberate attempt to mislead the adjudicating authority. The contention that the statements were obtained under duress and fear of arrest is clearly an afterthought and a strategic move to derail or misguide the adjudication process. On going through the records of the case, I find that in his voluntarily tendered statement, he disclosed detailed information about his profession, his family details and education background. I find that the statement of Shri Narendra Girdharlal Pala contain specific and intricate details, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statements. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statement in question. It is on the record that the noticee has tendered his statement volutarily under Section 108 of the Customs Act,

1962. In view of the above, I find that the statement given by noticee under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. In support of my view, I relied on the following judgements:

- (i) 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, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.***
- (ii) 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 evidence*"
- (iii) 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*"
- (iv) *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.*
- (v) 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."***
- (vi) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

*Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.*

- (vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed."

(viii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:  
*Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. **As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily.** When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

(ix) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

*"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."*

*(emphasis supplied)*

(x) Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh vs State of Punjab - AIR 1952 SC 214, Para 30.**

**17.** I find that the noticee has alleged in his submission that the instruction mentioned under Circular No: 9/2001-Cus dated 22.02.2001 was not followed. He further alleged that he had declared the gold orally but the same was not considered and as per Notification No. 12/2012-CUS dated 17.03.2012 and being an NRI, he is an eligible passenger to bring the gold into India which was purchased by him for personal use and from his hard-earned money. In this regard, I have carefully gone through the instruction mentioned in the Circular No. 09/2001-Cus dated 22.02.2001 and procedure for procurement of gold as mentioned in the Notification No. 12/2012-Cus dated 17.03.2012. I find that Circular No. 09/2001-Cus dated 22.02.2001 laid down the procedure/guidelines regarding verification and to stop unscrupulous passengers from bringing goods in commercial quantities. The circular discussed about the oral declaration specifically for the passenger who approach the

“Red Channel” and filed Oral declaration (OD) on the Disembarkation Card, however, in the instant case, the noticee has not filed any Disembarkation card and tried to exit through Green Channel without making any declaration. The noticee had opted for the Green Channel for customs clearance without declaring the aforesaid items in the customs declaration form as required for the goods which was in his possession. Therefore, the allegation of the noticee of not following the instruction of the said circular is far from the truth and not creditworthy.

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer’s or refiner’s engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1kg only when gold is carried by the “eligible passenger”. It has also been explained for purpose of the notifications, “eligible passengers” means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 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 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

I also take note that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger’s baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is “Restricted” and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

**17.1** Further, as per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that as per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a value cap of Rs.50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. Further, the Board has also issued instructions for compliance by “eligible passenger” and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

**17.2** A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold item having total weight 815.600 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary

statement that he wanted to clear the gold clandestinely without payment of eligible custom duty. In this connection, I also refer to Boards instructions issued vide F. No. 495/6/97-Cus.VI dated 06-05-1996 and reiterated in letter F. No. 495/19/99-Cus.VI dated 11.04.2000 wherein it was clearly stated that the import of goods (gold in the instant case) in commercial quantities would not be permissible within the scope of the Baggage Rules, **even on payment of duty**. From the above findings and guidelines, it is crystal clear that the noticee does not fall under the ambit of “eligible passenger” to bring the gold as claimed by him in his submission. Further, the manner of recovery of gold clearly indicates that the concealment was not only ingenious but also premediated. The noticee also admitted to possession, carriage, non-declaration, concealment and recovery of gold. I find that find that 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/noticee. Therefore, the allegation of noticee that instruction under Circular No. 09/2001-Cus dated 22.02.2001 and Notification No. 12/2012-Cus dated 17.03.2012 was not followed is frivolous.

**18.** I find under submission that the noticee mentioned that it was his first time to bring the gold and due to ignorance of Customs Laws, he was unable to declare the same before authority. The explanation given by the noticee cannot be held to be genuine and creditworthy. 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. Hon’ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that ignorance of law is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]. Further, he alleged that no declaration form was provided to him by airline staff and if same was provided he would surely declare the same. In this regard, I find that the noticee himself stated in his written submission that he is a businessman and running a firm namely M/s. Alfa Machineries Ltd. in Kisumu town in Kenya. He has been living in Kenya since 1991 and a frequent flier. Therefore, being a frequent flier, the plea that due to ignorance of law, he was unable to declare the same is appears false and not creditworthy. It is clear case of non-declaration with an intent to smuggle the gold. The plea taken by noticee seems not credit worthy as if he wants to declare the same, he may approach the airline staff at the time of journey and asked for the baggage declaration form, and also he may use the “Athithi App” for declaration which is available for the passenger in public domain. Being a frequent flier, making excuse of not providing declaration form, merits no consideration. Also, the panchnama narrates the fact that the impugned foreign origin gold was not declared by the noticee on his own and also not declared even after asking by the officers and it was recovered only after deep examination of the baggage of the noticee. Also, in his voluntary statement he admitted that he did not make any declaration before the authority and also not inclined to do so.

In view of the non-declaration and the fact of having admitted carriage and possession of the impugned gold, it was established that the noticee had failed to declare the said gold items to the customs as required under Section 77 of the Customs Act, 1962. It was therefore evident that the noticee intended to evade duty as he had not made true and correct declaration of the dutiable goods possessed by him. Moreover, the noticee had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel. Thus, it is proved that noticee 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 gold is a notified item and when goods notified thereunder are seized under the

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 in terms of Section 123 of the Customs Act, 1962.

**19.** Further, he alleged that the gold is not fall under the “Prohibited goods”. With respect to the prohibition of the goods, it is to submit that the Hon’ble Apex Court in case of *M/s. Om Prakash Bhatia Vs. Commissioner of Customs* Observed the following:

*“Further, Section 2(33) of the Act defines “Prohibited Goods” as under: - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with.” 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 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 the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 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 purpose 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 the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in *Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others* [(1970) 2 SSC 728] wherein it was contended that the expression ‘prohibited’ used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated 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 restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions ‘prohibiting’, ‘restricting’ or ‘otherwise controlling’, we cannot cut down the amplitude of the word “any prohibition” in Section 111(d) of Customs Act, 1962. “Any prohibition” means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition.

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

*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would*

*squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----*"

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". Relying on the ratio of the above judgments state above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, ibid.*

**19.1** Further, it was alleged by the noticee that it was not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage. He further contended that he was not allowed to declare the gold. In this regard, I find that, the noticee was carrying a very large quantity of **gold in form of 08 Broken Pieces of Thick Gold Wire Coated with White Rhodium, 03 Gold Bangles Coated with White Rhodium and 01 Gold Ring**, which were kept in Green Colored Handbag carried by him and had not declared the same to the Customs. Even after interception, when the noticee was asked about the possession of any gold or dutiable items, he had stoically denied that he was carrying any gold. The noticee had not declared the gold in his possession in the Customs declaration form. The noticee had not filed a true declaration to the Customs and had clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. *The noticee had cleverly and innovatively concealed the 08 Broken Pieces of Thick Gold Wire Coated with White Rhodium, 03 Gold Bangles Coated with White Rhodium and 01 Gold Ring, which were kept in Green Colored Handbag which reveals his mindset to smuggle the goods and evade the duty. The quantum of gold and the manner of attempting to smuggle indicates that the same was for commercial use. The method used by the noticee can be termed ingenious, as he had successfully passed through the security of the overseas departing airport and also tried of removing the same clandestinely at the arrival airport. The mode of concealment was clever and premediated and just to hoodwink the customs officers. The noticee did not intend to declare the gold in his possession to Customs. Had he not been intercepted, the noticee would have gotten away with such gold. I find that this kind of act of noticee abusing the liberalized facilitation process for genuine passengers and same should be dealt with firmly and deterrents available in the law are required to be strictly enforced in the instant case. Accordingly, I find that the confiscation of the gold is therefore justified and the noticee had rendered himself liable for penalty for his omissions and commissions.*

**20.** I find that the noticee has unequivocally admitted that he did not declare the gold, namely 08 broken pieces of thick gold wire coated with white rhodium, 03 gold bangles coated with white rhodium and 01 gold ring, which were concealed in a green-coloured handbag carried by him, to the Customs authorities. This is a clear case of non-declaration coupled with an intent to smuggle the gold. Accordingly, there is sufficient and cogent evidence on record to conclude that the noticee failed to declare foreign-origin gold before the Customs authorities upon his arrival at Sardar Vallabhbhai Patel International Airport, Ahmedabad.

In his statement, the noticee stated that the gold was purchased by him from the Kenya market and that he subsequently converted the same into the aforesaid items at his shop. However, in his written submission dated 07.11.2025, the noticee alleged that he had purchased the gold and had produced the purchase bill at the

time of interception, but that the same was not taken on record by the officers and that a case was wrongly booked against him.

On a careful examination of the records, I find that, at the material time, the noticee had categorically confessed in his statement that he did not intend to declare the gold before the Customs authorities and that he attempted to remove the same clandestinely without payment of applicable customs duty. In view of this clear admission, the subsequent contention that he was in possession of a purchase bill and was willing to declare the gold is untenable, self-serving, and clearly an afterthought, raised only to create a defence after interception.

Accordingly, I reject the said contention of the noticee as being devoid of merit and unsupported by contemporaneous evidence.

**20.1** Further, I deem it appropriate to refer to the conditions prescribed in Para 3 of Circular No. 06/2014-Cus dated 06.03.2014, wherein it has been explicitly stipulated that *“in case of gold in any other form, including ornaments, the eligible passenger must declare an item-wise inventory of the ornaments being imported. This inventory, duly signed by the eligible passenger and duly certified by the assessing officer, shall be attached with the baggage receipt.”* The said Circular further mandates that *“wherever possible, the field officers may ascertain the antecedents of such passengers, the source of funding for the gold, the manner of payment of duty in foreign currency, the person responsible for booking of tickets, etc., so as to prevent misuse of the facility by unscrupulous elements who may engage eligible passengers to carry gold on their behalf.”*

From the above stipulations, it is abundantly clear that even an eligible passenger is mandatorily required to declare an item-wise inventory of gold ornaments and to satisfactorily explain the source of funds used for purchase of such gold. In the present case, the noticee has admittedly failed to comply with any of these mandatory conditions.

Even assuming, for the sake of argument, that the noticee intended to declare the gold and pay applicable customs duty, such a contention is clearly untenable. On the one hand, the noticee claims that he wished to declare the gold but was allegedly not allowed to do so; on the other hand, it is an admitted fact that he was not carrying any foreign convertible currency at the time of arrival, which is a mandatory requirement for payment of duty in terms of Notification No. 12/2012-Cus dated 17.03.2012. This inherent contradiction clearly establishes that the plea of willingness to declare and pay duty is nothing but an afterthought, raised only after interception.

The noticee has further claimed ownership of the gold on the basis of a purported invoice, which was submitted belatedly at the stage of written submissions. I find that the said invoice lacks authenticity and is not supported by any corroborative documentary evidence such as bank transaction details, proof of remittance, source of funds, or any evidence demonstrating legitimate purchase for bona fide personal use. Mere production of an unverified invoice, without supporting financial or transactional evidence, does not establish lawful ownership or licit import.

Accordingly, I find that the act of bringing gold into India in the aforesaid concealed and undeclared manner, with the intent to evade payment of customs duty, stands conclusively proved. Thus, the noticee has violated the provisions of Section 77 and Section 79 of the Customs Act, 1962, and has imported/smuggled gold not

meant for bona fide use, thereby also contravening Rule 11 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.26 of the Foreign Trade Policy 2015–20.

Further, gold being a notified item, once such goods are seized under the Customs Act, 1962 on the reasonable belief that they are smuggled, the burden of proof that the goods are not smuggled squarely lies on the person from whose possession they are seized, in terms of Section 123 of the Customs Act, 1962. In the present case, the noticee has failed to discharge this statutory burden, as he has not produced any credible documentary evidence to establish that the seized gold was purchased through legitimate means or intended for bona fide personal use.

Therefore, I hold that the noticee has failed to substantiate his defence and that his claim of ownership and lawful acquisition of the gold is not tenable in the absence of supporting documentary evidence. The charge of smuggling against the noticee is thus fully established.

**21.** From the facts discussed hereinabove, it is evident that the passenger/noticee brought gold weighing 815.600 grams, in the form of 08 broken pieces of thick gold wire coated with white rhodium, 03 gold bangles coated with white rhodium and 01 gold ring, concealed in a green-coloured handbag, while arriving from Sharjah to Ahmedabad, with the clear and deliberate intention to smuggle the same into India and remove it without payment of applicable customs duty. Consequently, the said gold weighing 815.600 grams, seized under Panchnama dated 23.04.2025, is liable to confiscation under the provisions of Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962.

By deliberately secreting the impugned gold in the aforesaid concealed manner and by wilfully failing to declare the same to the Customs authorities upon arrival, it stands conclusively established that the passenger/noticee had a clear intention to smuggle the gold clandestinely, with the deliberate objective of evading payment of customs duty. The commission of the aforesaid acts squarely brings the impugned goods within the ambit of “smuggling” as defined under Section 2(39) of the Customs Act, 1962.

It is thus evident that the passenger/noticee knowingly carried the impugned gold and consciously failed to declare the same to the Customs authorities at the airport. He thereby involved himself in carrying, keeping, concealing and dealing with the impugned goods, which he knew or had reason to believe were liable to confiscation under the provisions of the Act.

Accordingly, I hold that the passenger/noticee has committed acts and omissions of the nature contemplated under Section 112 of the Customs Act, 1962, rendering him liable to penalty under Section 112 of the Customs Act, 1962.

**22.** It is observed that, for the purpose of customs clearance of arriving passengers, a two-channel system is in operation, namely the Green Channel for passengers not carrying dutiable or prohibited goods and the Red Channel for passengers carrying dutiable goods. All arriving passengers are required to make a true and correct declaration of the contents of their baggage.

In the present case, I find that the noticee neither filed the Baggage Declaration Form nor declared the gold items in his possession, as mandated under Section 77 of the Customs Act, 1962, read with the Baggage Rules and Regulation 3 of the Customs Baggage Declaration Regulations, 2013 (as amended). Instead, the noticee attempted to exit through the Green Channel, which clearly demonstrates a deliberate intention to evade payment of applicable customs duty.

I further note that the definition of “eligible passenger” is provided under Notification No. 50/2017-Customs, dated 30.06.2017, which defines an eligible passenger as a person of Indian origin or a valid passport holder coming to India after a continuous stay abroad of not less than six months, subject to limited exceptions. In the instant case, the noticee failed to declare the gold before the Customs authorities and has also not fulfilled the prescribed conditions to qualify as an “eligible passenger” under the said notification.

It is also evident from the facts on record that the import of the impugned gold was not for bona fide purposes. Consequently, the improperly imported gold weighing 815.600 grams, which was deliberately concealed and not declared to Customs upon arrival in India, cannot be treated as bona fide household goods or personal effects.

Accordingly, I hold that the noticee has contravened the provisions of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**23.** It is evident from the foregoing discussion that the impugned gold was deliberately concealed and not declared to the Customs authorities with the sole intention of smuggling the same into India and evading payment of applicable customs duty. The records before me clearly establish that the passenger/noticee, after arriving from a foreign destination, wilfully opted for the Green Channel for customs clearance and consciously refrained from declaring the prohibited goods, thereby demonstrating a clear and deliberate intent to smuggle the impugned goods.

The seized contraband comprised 08 broken pieces of thick gold wire coated with white rhodium, 03 gold bangles coated with white rhodium and 01 gold ring, having a total weight of 815.600 grams, a total market value of Rs. 65,74,713/- (Rupees Sixty-Five Lakhs Seventy-Four Thousand Seven Hundred Thirteen Only) and a total tariff value of Rs. 58,27,366/- (Rupees Fifty-Eight Lakhs Twenty-Seven Thousand Three Hundred Sixty-Six Only). The said goods were placed under seizure vide Panchnama dated 23.04.2025, having been found concealed in a green-coloured handbag carried by the passenger.

Further, the passenger/noticee has categorically admitted that, despite having full knowledge that the said goods were required to be declared and that such import was in contravention of the provisions of the Customs Act, 1962 and the Rules and Regulations made thereunder, he nevertheless attempted to remove the gold by deliberate concealment and non-declaration upon arrival at the airport, with the wilful intention to smuggle the same into India.

In view of the above facts and admissions, I find that the passenger/noticee has committed acts and omissions of the nature contemplated under Section 112 of the Customs Act, 1962, thereby rendering himself liable to penalty under the provisions of Section 112 of the Customs Act, 1962.

**24.** Further, I note that the noticee has placed reliance on various judicial pronouncements, as referred to above, in support of his plea for release of the seized gold on payment of redemption fine and penalty. While the conclusions arrived at in those decisions may be correct in the factual contexts in which they were rendered, I am of the considered view that such decisions cannot be applied mechanically or universally without examining the specific facts, circumstances, and modus operandi involved in the present case.

In particular, the reliance placed on *Dhanak Ramji v. Union of India* [2010 (252) ELT A102 (SC)] is misplaced, as the issue of ingenious and deliberate concealment of gold with intent to smuggle was not under consideration in the said case. Hence, the said judgment is clearly distinguishable on facts.

Similarly, the noticee has relied upon *A. Rajkumari v. Commissioner of Customs, Chennai* [2015 (321) ELT 540 (Tri.-Chennai)] to contend that the impugned gold ought to be released on payment of redemption fine, stating that the order was affirmed by the Hon'ble Supreme Court as reported at [2015 (321) ELT A207 (SC)]. However, I find that the Hon'ble Supreme Court dismissed the Revenue's appeal solely on the ground of delay, without examining the merits of the case. Therefore, the said order does not lay down any binding ratio applicable to the facts of the present case and is also clearly distinguishable.

The noticee has also relied upon the judgment of the Hon'ble Rajasthan High Court in *Manoj Kumar Sharma S/o Late Shri ... v. Union of India* (Order dated 17.02.2022 in D.B. Civil Writ Petition No. 12001/2020). On a careful perusal of the said judgment, I find that the Hon'ble High Court upheld the liability of the goods to confiscation and merely remanded the matter to the revisional authority for reconsideration of fine in lieu of confiscation, based on the facts of that case. The said decision, therefore, does not advance the case of the noticee in the present factual matrix.

I find that the noticee has cited multiple judgments in his written submissions without correlating the facts of those cases to the facts at hand, thereby attempting to rely upon general observations divorced from their factual context. It is a settled principle of law that judicial precedents must be applied with circumspection, keeping in view the facts and circumstances of each case.

In this regard, the Hon'ble Supreme Court in *CCE, Calcutta v. Alnoori Tobacco Products* [2004 (170) ELT 135 (SC)] has emphatically held that courts and authorities must examine how the facts of the precedent relied upon fit into the factual situation of the case in hand and must exercise caution while applying the ratio of one case to another. This principle has been reiterated in *Escorts Ltd. v. CCE, Delhi* [2004 (173) ELT 113 (SC)], wherein the Hon'ble Supreme Court observed that even one additional or distinguishing fact may lead to a different conclusion and that blind reliance on precedents is impermissible. Further, in *CC (Port), Chennai v. Toyota Kirloskar Motor Pvt. Ltd.* [2007 (213) ELT 4 (SC)], the Hon'ble Supreme Court held that a judgment is an authority for what it actually decides and not for what may logically follow from it, and that the ratio of a decision must be understood in the context of the factual matrix involved therein.

Applying the above settled principles, I find that the judgments relied upon by the noticee are not squarely applicable to the present case.

In the instant case, the manner of concealment adopted by the noticee clearly establishes a deliberate attempt to smuggle gold into India and evade detection by Customs authorities. No documentary evidence whatsoever has been produced to establish licit import or lawful acquisition of the seized gold at the time of interception. Mere assertion of ownership, without any documentary substantiation, does not establish that the goods were purchased through legitimate means or lawfully imported. Consequently, the noticee has failed to discharge the statutory burden cast upon him under Section 123 of the Customs Act, 1962.

Further, a combined reading of the Show Cause Notice, Panchnama, and the statements recorded under the Act clearly establishes that the noticee intentionally

chose not to declare the gold and attempted to remove it clandestinely with the sole objective of evading payment of customs duty.

It is well settled by the judgment of the Hon'ble Supreme Court in *Garg Woollen Mills (P) Ltd. v. Additional Collector of Customs, New Delhi* [1998 (104) ELT 306 (SC)] that the option to redeem prohibited goods on payment of redemption fine is purely discretionary. Further, in *Raj Grow Impex LLP* (supra), the Hon'ble Supreme Court has held that the exercise of discretion must be guided by law, reason, justice, and relevant considerations.

The Hon'ble Delhi High Court in *Raju Sharma v. Union of India* [2020 (372) ELT 249 (Del.)] has held that the exercise of discretion by judicial or quasi-judicial authorities warrants interference only when it is perverse, patently illegal, or actuated by oblique motives. Further, the Hon'ble Delhi High Court, in its order dated 21.08.2023 in W.P.(C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 and 8083/2023, has categorically held that an infraction of conditions governing import would bring the goods within the ambit of Section 2(33) of the Customs Act, 1962, thereby making their redemption and release subject to the discretionary power of the adjudicating authority.

In view of the aforesaid judicial pronouncements, the grave nature of the offence, the ingenious and premeditated concealment, the clear intent to smuggle, and the failure of the noticee to establish licit import, I am not inclined to exercise my discretion to allow redemption of the seized gold on payment of redemption fine under Section 125 of the Customs Act, 1962. Accordingly, the request of the noticee for grant of redemption option is rejected.

Further, to support my view, I also relied upon the following judgment which are as: -

**24.1** 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]*

**24.2** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

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

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

**24.4** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. Sinnasamy 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 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.*

**24.5** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 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 10.05.1993 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".

**24.6** 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-rea."*

**"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."*

**25.** In the present case, after careful consideration of all the facts on record and the submissions made, I find that the noticee has committed a deliberate and conscious violation of the statutory provisions by failing to make the mandatory declaration as required under Section 11 and Section 77 of the Customs Act, 1962, and has also contravened Para 2.20 of the Foreign Trade Policy, read with the Baggage Rules, 2016.

I further find that the noticee has failed to produce any cogent material evidence or satisfactory explanation regarding the source of funds used for the purchase of the impugned gold. The possession of gold in bullion form having a substantial market value of Rs. 65,74,713/- by a passenger, without compliance with the prescribed legal formalities, clearly indicates that the sole intention and purpose was to evade payment of applicable customs duty and circumvent the legal obligations governing the import of gold into India under the Customs Act, 1962 and other laws for the time being in force.

The impugned gold was found in the form of 08 broken pieces of thick gold wire coated with white rhodium, 03 gold bangles coated with white rhodium, and 01 gold ring, which were ingeniously and deliberately concealed in a green-coloured handbag carried by the passenger. The said contraband was detected only upon baggage scanning and subsequent detailed examination. The method of concealment adopted was premeditated, sophisticated, and intended to evade routine customs checks and surveillance.

Accordingly, based on the foregoing discussion and findings, the gold comprising 08 broken pieces of thick gold wire coated with white rhodium weighing 648.200 grams of 750/18K purity, 03 gold bangles coated with white rhodium weighing 150.800 grams of 999/24K purity, and 01 gold ring weighing 16.600 grams of 999/24K purity, having a total weight of 815.600 grams and a total market value of Rs. 65,74,713/-, which was concealed in the green-coloured handbag carried by the passenger, is held to be liable to absolute confiscation.

I therefore hold, in clear and unequivocal terms, that the seized gold weighing 815.600 grams is liable to absolute confiscation under Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962.

**26.** Further, the noticee has requested for allowing the said seized gold bar for re-export. Before, further discussion, I would like to reproduce the provisions envisaged under Section 80 of the Act as:

*“Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name”.*

**26.1** On a plain reading of the provisions, it is evident that a declaration under Section 77 of the Customs Act, 1962 is a mandatory pre-requisite for detention and re-export of goods in terms of Section 80 of the Act. The Hon’ble Allahabad High Court, in *Deepak Bajaj v. Union of India* [2019 (365) ELT 695 (All.)], has categorically held that a declaration under Section 77 is a sine qua non for permitting re-export under Section 80.

In the present case, the noticee admittedly did not make any written declaration under Section 77 in respect of the impugned gold. On the contrary, during investigation at the airport, the noticee initially denied possession of any gold. The contraband—namely, 08 broken pieces of thick gold wire coated with white rhodium, 03 gold bangles coated with white rhodium, and 01 gold ring—was recovered only after a thorough personal search of the noticee as well as detailed examination of his baggage. The said gold was found ingeniously concealed in a green-coloured handbag carried by the passenger.

The central issue in the present case is the manner and intent with which the impugned gold was sought to be brought into the country. The deliberate concealment of the gold, camouflaged as white rhodium-coated items, coupled with the complete failure and unwillingness of the noticee to declare the same before the Customs authorities, clearly establishes a premeditated and conscious attempt to smuggle the gold into India.

Thus, having regard to the facts on record and the serious, grave, novel and bold modus operandi adopted by the noticee, it is evident that his intention was to clandestinely remove the gold into India without payment of applicable customs duty by evading detection by the Customs officers.

Further, the Hon'ble Delhi High Court, in *Jasvir Kaur v. Union of India* [2019 (241) ELT 521 (Del.)], has unequivocally held that re-export cannot be claimed as a matter of right, and that a passenger cannot be permitted to "try his luck" in smuggling gold into the country and, upon detection, seek re-export as an escape route.

In view of the above legal position and the established facts of deliberate concealment and non-declaration, the benefit of re-export under Section 80 of the Customs Act, 1962 is clearly not available to the noticee. Accordingly, the request for re-export of the impugned gold is rejected as being untenable under the provisions of the Act.

**27.** In respect of the imposition of penalty under Section 112 of the Customs Act, 1962, I find that in the present case the existence of *mens rea* stands established beyond any doubt, on the basis of the documentary evidence on record and the detailed discussion hereinabove.

While determining the quantum and applicability of penalty, I have also taken into consideration the ratio laid down by the Hon'ble Supreme Court in *M/s. Hindustan Steel Ltd. vs. State of Orissa*, wherein it was held that the discretion to impose a penalty must be exercised judicially and that penalty is ordinarily warranted where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its statutory obligations, and not in cases of mere technical or venial breach or where the breach flows from a bona fide belief.

In the instant case, despite having full knowledge and clear belief that the gold carried by him was in contravention of the provisions of the Customs Act, 1962 and the Rules and Regulations framed thereunder, the noticee deliberately attempted to smuggle the same into India by concealment. The seized contraband comprised: 08 broken pieces of thick gold wire coated with white rhodium, weighing **648.200 grams**, of **750/18K purity**; 03 gold bangles coated with white rhodium, weighing **150.800 grams**, of **999/24K purity**; and 01 gold ring weighing **16.600 grams**, of **999/24K purity**; having a total weight of **815.600 grams** and a total market value of **Rs. 65,74,713/-**.

The method of concealment adopted by the noticee clearly establishes a deliberate and well-planned attempt to evade detection and customs control. Thus, it is evident that the noticee knowingly concerned himself with carrying, removing, keeping, concealing and dealing with smuggled goods, which he knew or had reason to believe were liable to confiscation under Section 111 of the Customs Act, 1962.

Further, the act of bringing goods into India in contravention of the provisions of the Customs Act and wilfully omitting to declare the same under Section 77 of the Customs Act, 1962 squarely falls within the ambit of the expression “*does or omits to do any act which would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act*”, as contemplated under Section 112(a) of the Customs Act, 1962. Additionally, the act of carrying and smuggling the goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the said Act.

Accordingly, I hold that the noticee is liable to penalty under both Sections **112(a) and 112(b)** of the Customs Act, 1962, and I order so.

**28. Accordingly, I pass the following Order:**

### O R D E R

- i. **I Order Absolute Confiscation of 08 broken pieces of thick gold wire coated with white rhodium weighing 648.200 grams having purity 750.00/18k, 03 gold bangles coated with white rhodium weighing 150.800 grams having purity 999.00/24k and 01 gold ring weighing 16.600 grams having purity 999.00/24kt (Total weighing 815.600 grams having total Market Value of Rs.65,74,713/- (Rupees Sixty-Five Lakh Seventy-Four Thousand Seven Hundred Thirteen Only) and total Tariff Value of Rs.58,27,366/- (Rupees Fifty-Eight Lakh Twenty-Seven Thousand Three Hundred Sixty-Six Only) recovered from Shri Narendra Girdharlal Pala,** placed under Seizure under Panchnama Proceedings dated 23.04.2025 and Seizure Memo Order dated 23.04.2025 under the provisions of Section 111(d), 111(l) and 111(m) of the Customs Act, 1962;
- ii. **I Impose a Penalty of Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand Only) on Shri Narendra Girdharlal Pala** under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

**29.** Accordingly, the Show Cause Notice No. VIII/10-53/SVPIA-A/O&A/HQ/2025-26 Dated 16.10.2025 stands disposed of.

+

**(Shree Ram Vishnoi)**  
**Additional Commissioner**  
**Customs Ahmedabad**

**DIN: 20251271MN0000222767**

**F. No. VIII/10-53/SVPIA-A/O&A/HQ/2025-26**

**Date: 31.12.2025**

By RPAD/E-Mail/ Notice Board/Other Legally Permissible Mode

To,

**Shri Narendra Girdharlal Pala**  
**House No. 806, Sai Bhupat Raw House**  
**Paligram Road, Sachin Surat-394230**

Alternate Address-

To,

**Shri Narendra Girdharlal Pala,**  
**Milimani, B4, Kisumu, Kenya**  
**Mob. No. +254 722516202,**  
**E-Mail: alfa.kisumu@gmail.com**

**Copy to:**

1. The Deputy/Assistant Commissioner of Customs, Ahmedabad (RRA Section)
2. The Deputy/Assistant Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy/Assistant 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.