



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
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DIN - 20251071MN000000D3C9

क	फ़ाइलसंख्या FILE NO.	S/49-12/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-276-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	13.10.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	15/NS/AC/SRT-AIRPT/2024-25 dated 16.01.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	13.10.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Sarfaraz Abdul Majid Shaikh S/o Shri Abdul Majid Mohamed Husain B-23, Twin House Colony, Park Site, Near Fire Brigade, Vikhroli West, Mumbai-400079, Maharashtra.
१.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
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2.	<p>सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं।</p> <p>Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.</p> <p>निम्नलिखितसम्बन्धितआदेश/Order relating to :</p> <p>(क) बैगेजकेरूपमेंआयातितकोईमाल।</p> <p>(a) any goods imported on baggage.</p> <p>(ख) भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो।</p> <p>(ब) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.</p> <p>(ग) सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी।</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p>
3.	<p>पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :</p> <p>The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :</p> <p>(क) कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए।</p> <p>(a) 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.</p> <p>(ख) सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र) ,जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क, मांगागयाव्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-</p> <p>(d) The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.</p>
4.	<p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं।</p> <p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p>

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



ORDER-IN-APPEAL

Shri Sarfaraz Abdul Majid Shaikh S/o Shri Abdul Majid Mohamed Husain B-23, Twin House Colony, Park Site, Near Fire Brigade, Vikhroli West, Mumbai-400079, Maharashtra (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 15/NS/AC/SRT-AIRPT/2024-25 dated 16.01.2025 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs, International Airport, Surat, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of profiling, the appellant having Indian Passport No. Z5563557 arriving from Dubai by Air India Express Flight No IX 186 ON 13.01.2024 was suspected to be carrying some high value dutiable/prohibited goods, was intercepted by the officers of the Air Intelligence Unit (AIU) and Customs of Surat International Airport, in the presence of panchas under Panchnama proceedings dated 13.01.2024, near the green channel of the Arrival Hall of the International Airport, Surat. The officers asked the appellant if he has anything to declare, in reply to which the appellant denied. Upon frisking and scanning of his body with the hand-held metal detector, a beep sound was heard near the neck area of the appellant and thereby one chain, which appeared to be made of gold, was recovered from his possession. The gold chain was found to be weighing 50.07 gms and appeared to be of 24 carats.

2.1 The Government Approved Valuer Shri Vikasraj Juneja, certified vide valuation certificate No. 26.01.2024/4 that the gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs. 2,79,390/- as per Notification No. 01/2024-Cus (NT) dated 04.01.2024 and 95/2023-Cus(NT) dated 29.12.2023.

2.2 Thereafter, the Customs officers scanned the baggages of the appellant viz, one black colour trolley bag and one bagpack through the XBIS Scanner machine located in the arrival hall of the Surat International Airport. When the black colour trolley bag was passed through the XBIS scanner machine, images showing electronic items and some goods in bulk quantity were seen in the scanner machine. Thereafter, the said luggage was opened and all its contents were withdrawn and checked, whereby the following items were found: -



Sr No	Details of Articles Recovered	Quantity	Value (in Rs)
01	Used and refurbished laptop of Dell brand (latitude), core i5	01	20,000x1=20,000
02	Refurbished Google Pixel 7 Pro mobile	02	14,000x2=28,000
03	Metaquest 128 GB game	02	20,000x2=40,000
04	e-cigarette pods	90 Pcs	1,67,400
05	e-cigarette	22 Pcs	15,345
06	Tobacco	60 Pcs	39,000

2.3 The above mentioned electronic items, e-cigarette pods/e-cigarette and tobacco as listed above, as well as gold chain recovered from the appellant appeared to have been smuggled inside India in clear violation of the provisions of Customs Act, 1962. Therefore, the officers placed the above said goods under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 13.01.2024 under Panchnama proceedings dated 13.01.2024, on a reasonable belief that the same attempted to be smuggled by the appellant are liable for confiscation as per the provisions of the Customs Act, 1962

2.3 Statement of the appellant was recorded on 13.01.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, shown and explained the panchnama dated 13.01.2024 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat which is in English and after understanding the same he put his dated signature on the panchnama in token of acceptance of the facts stated therein. He further stated that the items recovered from his possession viz, 01 gold chain weighing 50.07 gms, 01 used and refurbished laptop of Dell Brand core 15, 02 Google Pixel Mobile 7 pro, 02 Metaquest game, E cigarettes pods and Tobacco, belong to him and he had purchased the same from different shops in Dubai; that for the said purchases he made payment in cash in Dirham which he had taken from his shop situated at Sharjah. He further stated that he was aware that import of gold and other said items without payment of Customs duty is an offence, but he had intention to smuggle these items without payment of duty; that he was



aware that import of e-cigarette is prohibited, but he intended to smuggle the same for commercial purpose; that as he intended to smuggle the said items, he did not declare the same upon his arrival before any Customs officer, that after clearing the immigration procedures, he collected his baggage and during checkout, he was intercepted by the AIU officials and further procedures as stated in Panchnama dated 13.01.2024 was carried out. He was aware that he had committed an offence by smuggling gold and other goods for which he would have to face the consequences as prescribed under the Customs Law.

2.4 The appellant had actively involved himself in the instant case of smuggling of gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs. 2,79,390/-; electronic items viz, 01 used and refurbished laptop of Dell brand (latitude), core i5 having Market value of Rs. 20,000/-, 02 refurbished Google Pixel 7 Pro mobile having Market value of Rs. 28,000/- and 02 Metaquest 128 GB game having Market value of Rs. 40,000/- into India. The appellant had improperly imported the said goods concealed in his baggage/in-person without declaring it to the Customs, with a deliberate and malafide intention to smuggle the said goods and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The aforesaid items illicitly imported by him without declaration before the proper officer of Customs with a view to smuggle the same cannot be treated as bona fide household goods or personnel effects. The appellant has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and DGFT Notification No. 36/2015-2020 dated 18.12.2019. Further, the appellant appears to have contravened Section 79 of the Customs Act, 1962 read with Rule 3 of Baggage Rules, 2016 as the value of said electronic items exceeds the prescribed limit of fifty thousand rupees, which has already been availed for other goods. The appellant has also contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013 in as much as he did not declare the contents of the bag to the Customs officer at Surat International Airport.

2.5 The appellant has illicitly imported 90 pieces of e-cigarette pods and 22 pieces of e-cigarette, which are prohibited items, in contravention of the provisions of DGFT Notification No. 20/2015-2020 dated 26.09.2019. The appellant has illicitly imported 60 pieces of tobacco which do not bear

pictorial warning as mandated under Section 7 of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and Rule 3 of the cigarettes and Other Tobacco products (Packaging and Labelling) Rules, 2008 as amended, read with Circular No. 09/2017-Customs, issued under F. No. 711/07/2003-Cus(AS) dated 29.03.2017. Further, in terms of General Note 13 (regarding Import Policy) of the schedule to the Customs Tariff Act, 1975, the import of cigarettes or any other tobacco product are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009, as notified by the Ministry of Health & Family Welfare. Accordingly, all the cigarettes and tobacco products should have new specified health warning and new pictorial health warning on all cigarettes packets for sale in India when imported as prescribed in the Notification dated 27.05.2011 of Ministry of Health and Family Welfare. The impugned seized tobacco has thus been smuggled/imported, contrary to the prohibitions imposed by Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and in contravention of the provisions of Foreign Trade Policy 2015-20, DGFT Notification No. 18/2015-20 dated 01.08.2017 and Section 11(1) read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 as amended.

2.6 The impugned goods improperly imported by the appellant by concealing in his baggage/in-person without declaring it to the Customs are thus liable for confiscation under Section 111(d), 111(i) and 111(j) read with Section 2(22), & 2(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962. As per Section 123 of the Customs Act 1962, the burden of proving that the said goods improperly imported without declaring it to the Customs, are not smuggled goods, is upon the appellant. Thus, the appellant, by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962. As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon the appellant.

2.6 A Show Cause Notice was issued to the appellant proposing for confiscation of One gold chain of purity 99% weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs. 2,79,390/- recovered and seized from him vide Seizure order dated 13.01.2024 under Panchnama proceedings dated 13.01.2024 under Section 111(d), 111(i)



and 111(j) of the Customs Act, 1962, for confiscation of One used and refurbished laptop of Dell brand (latitude), core i5 having Market value of Rs. 20,000/-, two refurbished Google Pixel 7 Pro mobile having total Market value of Rs. 28,000/- and two Metaquest 128 GB game having total Market Value of Rs. 40,000/- recovered and seized from him vide Seizure order dated 13.01.2024 under Panchnama proceedings dated 13.01.2024 under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962, for confiscation of Ninety pieces of e-cigarettes pods and 22 pieces of e-cigarette recovered and seized from him vide Seizure order dated 13.01.2024 under Panchnama proceedings dated 13.01.2024 under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962, for confiscation of Sixty pieces of tobacco recovered and seized from him vide Seizure order dated 13.01.2024 under Panchnama proceedings dated 13.01.2024 under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 and for imposition of penalty upon the appellant under Section 112 of the Customs Act, 1962.

2.7 The Adjudicating authority, vide the impugned order, has ordered for

- (i) absolute confiscation of impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/-, seized under panchnama proceeding dated 13.01.2024 under the provisions of Sections 111(d), 111(i) and 111 (j) of the Customs Act 1962. The adjudicating authority has also imposed penalty of Rs. 3,21,700/- on the appellant under Section 112 (b)(i) of the Customs Act,1962.
- (ii) absolute confiscation of 90 pieces of e-cigarettes pods valued at Rs.1,67,400/-, 22 pieces of e-cigarette valued at Rs.15,345/- and 60 pieces of tobacco valued at Rs.39,000/-, all goods totally valued at Rs. 2,21,745/-, seized under panchnama proceeding dated 13.01.2024 under the provisions of Sections 111(d), 111(i) and 111 (j) of the Customs Act 1962. The adjudicating authority has also imposed penalty of Rs. 2,21,745/- on the appellant under Section 112 (b)(i) of the Customs Act,1962.
- (iii) confiscation of the two Metaquest 128 GB game having total Market Value of Rs. 40,000/-, seized under panchnama proceeding dated 13.01.2024 under the provisions of Sections 111(i) and 111 (j) of the Customs Act 1962 and also gave an option to redeem the same on payment of redemption fine of Rs. 10,000/- under Section 125(1) of the Customs Act, 1962. In addition to redemption fine, the appellant would also be liable for payment of Customs duty alongwith interest and other charges in terms

of Section 125(2) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 5,000/- on the appellant under Section 112 (b)(ii) of the Customs Act, 1962

(iv) unconditional release of unconditional release of one used and refurbished laptop of Dell brand (latitude) core i5 and two Refurbished Google Pixel 7 Pro mobile seized under panchnama proceeding dated 13.01.2024.

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

- The present case was made on 13.01.2024 by the Customs, Surat without giving an opportunity to the declare the goods viz. Gold item weighing 50.070 Grams to the Appellant; the fact remains that the applicant was stopped well before the Customs area and taken for check thus depriving the chance of filling the Declaration form and present the same to the Customs. The Para 2 of the SCN described that the appellant was intercepted but it is not mentioned where he was intercepted. Factually, the applicant was stopped well before the Immigration Counter.
- The appellant denies the allegation that the gold item was concealed in any manner. He was wearing the same around his neck and that is right place for a chain for a chain wearer. A ring is to be worn in a finger, necklace around the neck and similarly the chain is customary in that way, the appellant was wearing. The appellant categorically submits that gold chain was not concealed in cloths, bag, and purse or in a manner which can be termed as concealed. Therefore, the allegation made that the same was concealed is without any substance and thus, the allegation so made is baseless to increase the gravity of the allegation. The same is not sustainable.
- The appellant respectfully submits that the quantity of gold brought by him was weighing 50.070 Grams having market value of Rs. 3,21,700/- and tariff value of Rs. 2,79,390/-. Thus, it can be safely concluded that such a small quantity of gold cannot be for the purpose of sale and self-enrichment. The appellant deposed before the officials that it was meant for his family requirement.
It is further submitted that the applicant is not a part of any gold smuggling syndicate. No allegation is made in the impugned order to this effect. At no time in past and after this case, the applicant came to any adverse notice. The gold items brought were absolutely for personal and family use but the applicant was stopped well



before he could declare the same. Thus, the error committed was unintended and bonafide in nature and the same has been committed for the first time a lenient was requested to be taken, however, the Ld Adjudicating Authority has imposed hefty penalties.

- The applicant respectfully pray that the gold item weighing 50.070 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the applicant with payment of applicable duty and nominal penalty. In the matter, the applicant places his reliance of the following Orders of Ld R.A., Mumbai, where in more severe cases, the gold ornaments/ gold was ordered to be released with payment of duty and little penalty. The applicant prays for reduction of penalty substantially since the quantity of gold is very small, which is meant for personal use and the same was not concealed in any manner.

i) RE- Lokesh Panchal Vs. Pr Commissioner of Customs, Ahmedabad RA Order No. 371/40/WZ/2021-RA dated 4.1.2023
ii) RE- Hiral Janak Ramani Vs. Pr Commissioner of Customs, Ahmedabad RA Order No. 371/389/B/WZ/2022-RA/372 dated 12.2.2024

- In respect of penalty the appellant submitted that the appellant belongs to a lower middle class family and the penalty imposed of Rs. 3,21,700/- under the provisions of Section 112(b)(i) of the Customs Act 1962, in respect of goods namely gold and penalty of Rs. 2,21,745/- under the provisions of Section 112(b)(i) of the Customs Act 1962, in respect of other goods i.e. e-cigarettes pods, e-cigarettes and tobacco, and is highly excessive. The appellant had no ill intention and the goods were brought for exclusive personal use in ignorance of law and being unaware thus both the excessive penalties imposed under Section 112(b) may kindly be annulled with consequential relief to the applicant.

4. Shri Shubham Jhajharia, Advocate, appeared for personal hearing on 08.10.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. The advocate during personal hearing submitted that he is only contesting for absolute confiscation of gold items, related penalty and penalty imposed for absolute confiscation of e-cigarettes pods, e-cigarettes and tobacco.

5. Before going into the merits of the case, I find that the appeal filed by the appellant, have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section

128(1) of the Customs Act, 1962. Appellant has requested for condoning the delay in filing the said appeals on the grounds that his health was not good and doctor has advised to be rest. The appellant is located in Mumbai and at the time of receipt of the impugned order, the Appellant was out of Mumbai. Also, that the proceedings held at Surat and appeal lies in Ahmedabad. It took time to locate the required papers and consultant at Ahmedabad and in the bargain unintended delay occurred. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

5. It is observed from the grounds of appeal records of personal hearing that the appellant is only contesting for absolute confiscation of gold items, related penalty and penalty imposed for absolute confiscation of e-cigarettes pods, e-cigarettes and tobacco. Therefore, my findings will be restricted for absolute confiscation of gold items, related penalty and penalty imposed for absolute confiscation of e-cigarettes pods, e-cigarettes and tobacco. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in the present appeal are as under;

(a) Whether the impugned order directing absolute confiscation of the impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/- without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;

(b) Whether the quantum of penalty amounting to Rs. 3,21,700/- for absolute confiscation of the impugned one gold chain and penalty of Rs 2,21,745/- for absolute confiscation of e-cigarettes pods, e-cigarettes and tobacco imposed on the appellant, under Section 112(b)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that on the basis of profiling, the appellant having Indian Passport No. Z5563557 was suspected to be carrying some high value dutiable/prohibited goods, was intercepted by the officers of the Air Intelligence Unit (AIU) and Customs of Surat International Airport, in the presence of panchas under Panchnama proceedings dated 13.01.2024, near the green channel of the Arrival Hall of the International Airport,

Surat. The officers asked the appellant if he has anything to declare, in reply to which the appellant denied. Upon frisking and scanning of his body with the hand-held metal detector, a beep sound was heard near the neck area of the appellant and thereby one chain, which appeared to be made of gold, was recovered from his possession. The gold chain was found to be weighing 50.07 gms and appeared to be of 24 carats. Examination of the baggage of the appellant also resulted in recovery of some electronic items along with 90 pieces of e-cigarettes pods valued at Rs.1,67,400/-, 22 pieces of e-cigarette valued at Rs.15,345/- and 60 pieces of tobacco valued at Rs.39,000/-, all goods totally valued at Rs. 2,21,745/-. The Government Approved Valuer Shri Vikasraj Juneja, certified vide valuation certificate No. 26.01.2024/4 that the gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs. 2,79,390/-. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

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

6.2 I have also perused the decision of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India submitted by the appellant and other decisions also. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs.

3,21,700/- and tariff value of Rs.2,79,390/- are liable to confiscation and the appellant is also liable to penalty.

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

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



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

6.4 In respect of absolute confiscation of impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/-, it is observed that the adjudicating authority in the instant case relying on the decisions of Hon'ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)] and Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], in paras 17.1 to 17.4 of the impugned order, had ordered for absolute confiscation of impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/-.

6.5 I find that the Hon'ble CESTAT, Ahmedabad has in the case of Commr. of C. Ex., Cus. & S.T., Surat-II Vs Dharmesh Pansuriya [2018 (363) E.L.T. 555 (Tri- Ahmd)] considered the decision of Hon'ble High Court

of Madras in the case of Commissioner of Customs (Air) Chennai-I Vs P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad)] and the decision of Hon'ble High Court of Bombay in the case of Commissioner Vs Alfred Menezes [2009 (242) E.L.T. 334 (Bom)], and were of the view that in case of prohibited goods as defined under Customs Act, 1962, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. The relevant paras are reproduced hereunder:

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

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

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

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



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



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

“4. *We have perused the case record as well as judgment passed by the Hon'ble Supreme Court, Delhi in Om Prakash Bhatia's case. Relevant interpretation of "prohibited goods", as made in para 9 of the*

said judgment is reproduced below for ready reference:

"From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import (Control) Order, 1955. The Court negatived the said contention and held thus: -

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

5. Going by the bare reading of the said interpretation, it can be

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

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

6.7 It is further observed that in respect of absolute confiscation of gold bar, the judgment pronounced on 05.05.2023 in respect of Civil Misc. Review Application No. 156/2022 filed at Hon'ble High Court of Allahabad sitting at Lucknow, by the Commissioner of Customs, Lucknow is relevant wherein the Hon'ble High Court has upheld the decision of Hon'ble Tribunal who had upheld the decision of Commissioner (Appeals) that gold is not prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act, 1962 and thus rejected the review application filed by the Commissioner of Customs, Lucknow. The relevant paras of the judgment are reproduced hereunder:

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

the order passed by the Commissioner (Appeals) holding that the import of gold was not prohibited under the Foreign Trade Policy or any other law and, therefore, there is no sufficient ground for absolute confiscation of the gold.

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

18. Even if the goods in question had been brought into India without following the conditions prescribed therefore and those fall within the category of prohibited condition, Section 125 of the Act provides that the Adjudicating Officer may give to the owner of such goods an option to pay fine in lieu of confiscation. Section 128 A of the Act confers powers on the Commissioner (Appeals) to pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. In the present case, the Commissioner (Appeals) has modified the order of absolute confiscation by imposing penalty in lieu thereof, which was well within his power as per Section 128 A. The Tribunal has affirmed the order of the Commissioner (Appeals). This Court dismissed the further Appeal filed by the Department, finding no illegality in the judgment passed by the Tribunal.

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

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

6.8 Further, It is observed that in the decision vide Order No.355/2022-CUS (WZ)/ASRA/MUMBAI, dated 07.12.2022 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger had brought 02 gold bars of 01 kg each and 02 gold bars of 10 tolas each totally weighing 2233.2 grams wrapped

with white coloured self-adhesive marking tape and concealed in both the watch pockets of black coloured trousers worn by him, relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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

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

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

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad) upheld the order of the



Appellate Authority allowing re-export of gold on payment of redemption fine.

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

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

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

18.2 Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating the (02) two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/- Also, observing the ratio of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of gold bars but allows the impugned gold bars to be redeemed on payment of a redemption fine.

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

20. In view of the above, the Government modifies the OIA passed by the AA to the extent of absolute confiscation of the gold bars i.e. (02) two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/- and grants an option to the applicant to redeem the same on payment of a redemption fine of Rs 12,00,000/- (Rupees Twelve Lakhs only). The penalty of Rs 6,00,000/- imposed by OAA and upheld by AA is sustained.

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



6.9 Further, It is observed that in the recent decision vide Order No 516-517/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.06.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger was wearing brown coloured cloth belt fastened around her abdomen and when the belt was cut open resulted in recovery of brown coloured powder with water pasted in glue, purported to containing gold weighing 2800 grams (gross). The Hon'ble revisionary authority relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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

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



becomes prohibited as condition of import have not been satisfied, may not be harmful to the society at large. Thus, Adjudicating Authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine.

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

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

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

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

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

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

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

redeem the gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

14. *In view of above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned gold seized from the appellant. The seized gold from the appellant 1 i.e. impugned gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and totally valued at Rs 41,07,735/- is allowed to be redeemed on payment of a fine of Rs 8,10,000/- (Rupees Eight Lakh Ten Thousand only)."*

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

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

6.12 Further, the Hon'ble High Court of Allahabad in the case of Commissioner of Customs, Aliganj, Lucknow Versus Rajesh Jhamatmal Bhat [2022 (382) ELT 345 (All)] had upheld the decision of Hon'ble Tribunal wherein the Hon'ble Tribunal had upheld the decision of Commissioner (Appeal) wherein 4076 grams of gold bars recovered from the specially



designed cavities made in the shoes, valued at Rs. 1,09,98,018/- was allowed to be redeemed on payment of redemption fine and penalty. The Hon'ble Tribunal had reduced the redemption fine from 25,00,000/- to Rs 15,00,000/- and penalty was also reduced from 10,00,000/- to 5,00,000/- as ordered by the Commissioner (Appeal). The Hon'ble High Court observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold upheld the decision of Hon'ble Tribunal.

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

6.14 In view of above decisions of the Principal Commissioner & ex-officio Additional Secretary to Government of India, I am of the considered view that in present case also there is no allegation that the appellant is habitual offender and was involved in similar offence earlier. The appellant was not a part of organised smuggling syndicate. The appellant in his statement dated 13.01.2024 stated that all the items including gold belong to him and he had purchased the same from different shops in Dubai; that for the said purchases he made payment in cash in Dirham which he had taken from his shop situated at Sharjah. Thus, the appellant was not a carrier. There is nothing on record to suggest that the concealment was ingenious. The investigation of the case has not brought any smuggling angle but the investigation suggest that this is case of non-declaration of gold with intention of non-payment of Customs duty. Further, a copy of appeal memorandum was forwarded to the adjudicating authority for his comment and submission of case laws on similar matter but no reply was received till date. The fact of the present case also indicates that it is a case



of non-declaration of gold, rather than a case of smuggling for commercial consideration. The absolute confiscation of impugned gold, leading to dispossession of the gold in the instant case is, therefore, harsh. Therefore, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad and Mumbai as detailed in the above paras, I am of the considered view that the absolute confiscation of impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/- is harsh. I, therefore, set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allow redemption of impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/-, on payment of fine of Rs.50, 000/- in addition to the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962.

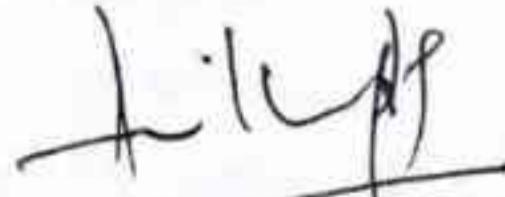
6.15 Further, in respect of imposition of penalty amounting to Rs 3,21,700/- on the appellant for non-declaration of impugned one gold chain of 99% purity weighing 50.070 gms having market value of Rs. 3,21,700/- and tariff value of Rs.2,79,390/-, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad, Mumbai and Allahabad as detailed in the above paras, I am of the considered view that penalty of Rs. 3,21,700/- ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty to Rs. 25,000/-.

6.16 Further, in respect of imposition of penalty amounting to Rs 2,21,745/- on the appellant for non-declaration of 90 pieces of e-cigarettes pods valued at Rs.1,67,400/-, 22 pieces of e-cigarette valued at Rs.15,345/- and 60 pieces of tobacco valued at Rs.39,000/-, all goods totally valued at Rs. 2,21,745/-, I am of the considered view that penalty of Rs. 2,21,745/- ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty to Rs. 25,000/-.

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



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


AMIT GUPTA
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.No. S/49-12/CUS/AHD/2025-26 3957

Dated -13.10.2025

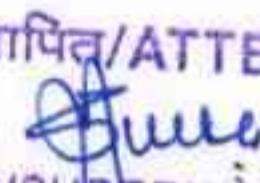
To,

(i) Shri Sarfaraz Abdul Majid Shaikh
S/o Shri Abdul Majid Mohamed Husain,
B-23, Twin House Colony, Park Site,
Near Fire Brigade, Vikhroli West,
Mumbai-400079, Maharashtra,

Copy to:

1. The Principal Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Assistant Commissioner of Customs, International Airport, Surat.
4. Guard File



सत्यापित/ATTESTED

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