



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

“सीमाशुल्कभवन ,”पहलीमंजिल ,पुरानेहार्डकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-278/SVPIA-A/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या एवं तारीख / Show Cause Notice No. and Date	:	VIII/10-278/SVPIA-A/O&A/HQ/2024-25 Dated 17.04.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	140/ADC/SRV/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	06.10.2025
E	जारी करने की तारीख/ Date of Issue	:	06.10.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	1. Shri Kiritkumar Laljibhai Patel S/o Shri Laljibhai Ambaram Patel 20, Sarjan Bungalows, Panchvati, Kalol, Distt-Gandhinagar-382721 2. Shri Parth Dashrathbhai Patel, S/o Shri Dashrathbhai Punji Patel 0, Gayatri Nagar, Mankanaj, Mehsana-384421 3. Patel Parulben Baldevbhai, 144, Shiv Ganesh Bungalows, Nr. Madhuram Plot, 100 Feet Ring Road, Shilaj Thaltej, Ahmedabad-380059 4. Patel Rasikbhai, 8/19, Khant Vas, Thol, Kadi, Mehasana-382715 5. Patel Babubhai Ambalal B/6 Vimal Nath Tenements, Nirnay Nagar Road, Ranip, Ahmedabad- 382480 6. Nayak Mangalbhai Shankarbhai Lal Vas, Opp. Khant Vas, Thol, Mehasana- 382715 7. Patel Ashaben Shaileshkumar 32 Siddhi Bunglows, GST Road, New Ranip, Ahmedabad-382480 8. Nayak Mansukhbhai Shankarbhai Lal Vas Opp. Khat Vas, Thol, Mehsana-382715

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		<div>9. Patel Upendrabhai Jivabhai, Ambaji Matanu Mandir Thol, Kadi, Mehasana-382715</div> <div>10. Patel Khodabhai Nagardas, A-101, Silicone Square Nr. Sukan Six Flats Oppt Solar Science City Sola Ahmedabad-380060</div> <div>11. Patel Jayantilal Madhabhai Khont Vas At Thol Kadi Mehasana-382715</div> <div>12. Patel Madhavlal Shankardas At And Post Thol Mehasana-382715</div> <div>13. Patel Jashodaben Babaubhai B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480</div> <div>14. Patel Baldevbhai Shakrabhai, 144 Shiv Ganesh Bungalows, Nr. Madhuras Plot, 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059</div> <div>15. Patel Vikrambhai Madhvas Ambaji Mata No Chok, Thol Kadi, Mehasana-382715</div> <div>16. Patel Navin Ranchhodbhai A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad-380015</div> <div>17. Patel Varshaben Navinbhai Sonivas Village Thol Kadi Mehasana-382715</div> <div>18. Nayak Hansabebn Mansukhabhai 2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440</div> <div>19. Patel Kaminaben Bhagvanbhai Thol Mehasana-382715</div> <div>20. Patel Kokilaben Rasikbhai 8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana-382715</div> <div>21. Patel Manjulaben Jayantilal Khont Vas At Thol-382715</div> <div>22. Patel Manjulaben Chandrakant Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715</div> <div>23. Nayak Shakutlaben Mangalbhai 2-64/ Lal Vas, Opposite Khant Vas, Thol Mehasana-382715, Gujarat</div> <div>24. Patel Sharmishthaben Ramanbhai B-201, Swastik Residency, RC Technical Road, Chandlodia, Ahmedabad-380061</div> <div>25. Patel Hasumatiben Dineshbhai C/2/205, Vishwas Apartment, Nr. Gulab Tower, Thaltej, Ahmedabad-380054</div>
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		<div>26. Patel Kapilaben Dineshbhai Bhav Vas Thol, Kadi Mehasana-382728</div> <div>27. Patel Vijaykumar Dhanabhai Khant Vas At Thol Kadi Mehasana-382715</div> <div>28. Patel Navinchandra Shivilal 11-A/Saraswati Nagar Society, Opp. Kr Rawal School, Ranip, Ahmedabad-382480</div> <div>29. Patel Ramanbhai Dhulabhai B-201,Swastik Residency, RC Technical Road, Chandlodia, Ahmedabad-380061</div>
1	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।	
2	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
3	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय 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 (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
4	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क जमा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

BRIEF FACTS OF THE CASE-

On the basis of an information received from a reliable source, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted tour operators namely Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and their 27 client passengers arriving by Air Arabia flight no. 3L -111 from Abu Dhabi to Ahmedabad at Terminal-2 of the SVP International Airport, Ahmedabad, while they were attempting to exit through green channel without making any declaration to the Customs. Both the tour operators and their 27 client passengers were asked by the AIU Officers whether they have made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which they replied in negative and informed that they were not carrying any dutiable items with them. Passenger's personal search and examination of their baggage was conducted in presence of two independent witnesses and the proceedings were recorded under **Panchnama dated 21.10.2024.**

2. The AIU officers and the Panchas waited near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport. Certain passengers who passed the red channel of the Customs area without making any declaration before the Customs Authority, were intercepted. The officers examined Shri Kiritkumar Laljibhai Patel s/o Laljibhai Ambaram Patel, (Passport No Z4418707.), and his partner Shri Parth Dashrathbhai Patel (Passport No-P4195251, however nothing objectionable is found from these 2 persons.

2.1 On being asked Shri Kiritkumar Laljibhai Patel informed that he is a tour operator running his business in the name of M/s. Raj Visa Travels, having registered office at 13-A, Platinum Plaza, Near College Road, Kadi, Distt: Mehsana. He is also having branches at 214, Second Floor, Tirupati Empire, Near Ambika Bus Stand, Kalol, District: Gandhinagar and S-3, Shyam Super Mall, Modhera Cross Roads, Mehsana. He stated that Shri Parth Dashrathbhai Patel is his partner in their Mehsana branch office and presently he and Shri Parth Dashrathbhai Patel are coming from Abu Dhabi to Ahmedabad alongwith their client passengers by Air Arabia Flight no. 3L-111.

2.2 Thereafter, the officers asked Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel whether they themselves or their client tourists have brought any dutiable items with them to which Shri Kiritkumar Laljibhai Patel stated that he had purchased certain 24 Kt. gold items in the UAE and handed over the same to their clients as detailed in the Annexure-I to the Panchnama. He further stated that the said client passengers were instructed by him to return the said gold items to him after coming out of the Ahmedabad Airport.

He stated that he had promised to give Rs. 13,000/- to each of the passenger for carrying the said gold items from Abu Dhabi to SVPIA Ahmedabad. Further, Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel inform that some of the passengers have carried their own gold items of 24 Kt also which was purchased by the concerned passengers during their tour of UAE from their own funds and the same was owned by them only. The details of the same are as per Annexure-II to the Panchnama. Thereafter, the officers examined the said client passengers as mentioned in the Annexure-I and II to the Panchnama and found them to be carrying gold items as per details given in these Annexures.

3. Thereafter, the AIU officers, called Government Approved Valuer Shri Soni Kartikey Vasantrai for conducting valuation of these gold items. The valuation of the gold items was conducted by the Government Approved Valuer Shri Soni Kartikey Vasantrai and the valuation report of the gold items carried by individual passengers is as under as TABLE-A:

TABLE-A

Sr No	Name	Passport No	Address	Gold In Grams(2 4 Carat)	Item	Certificate No.	Market Value (In Rs)
1	Patel Parulben Baldevbhai	R28285 82	144 Shiv Ganesh Bungalows Near Madhuram Plot , 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059	139.58	01 Gold Mangalsutra	1086	1123898
2	Patel Rasikbhai	W76009 89	8/19, Khant Vas Thol Kadi Mehasana-382715	139.99	01 Gold Chain	1087	1127199
3	Patel Babubhai Ambalal	N01823 49	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480	134.29	01 Gold Mangalsutra	1090	1081303
4	Nayak Mangalbhai Shankarbhai	W37206 87	Lal Vas Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat	139.94	01 Gold Chain	1092	1126797
5	Patel Ashaben Shaileshkumar	N65970 28	32 Siddhi Bungalows Gst Road New Ranip Ahmedabad-382480	140.7	01 Gold Mangalsutra	1093	1132916
6	Nayak Mansukhbhai Shankarbhai	W42588 16	Lal Vas Oppt Khat Vas Thol Mehsana-382715	139.9	01 Gold Chain	1098	1126475
7	Patel Upendrabhai Jivabhai	W00200 27	Ambaji Matanu Mandir Thol Kadi Mehasana-382715	139.93	01 Gold Chain	1099	1126716
8	Patel Khodabhai Nagardas	Y300219 5	A-101, Silicone Square Near Sukan Six Flats Oppt Solar Science City Sola Ahmedabad-380060	139.93	01 Gold Chain	1100	1126716
9	Patel Jayantilal Madhabhai	T760361 0	Khont Vas At Thol Kadi Mehasana-382715	139.94	01 Gold Chain	1103	1126797

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10	Patel Madhavlal Shankardas	B65541 59	At And Post Thol Mehasana-382715	139.94	01 Gold Chain	1104	1126797
11	Patel Jashodaben Babaubhai	N94209 49	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad- 382480	139.92	01 Gold Chain	1105	1126636
12	Patel Baldevbhai Shakrabhai	R28293 15	144 Shiv Ganesh Bunglows Near Madhuras Plot , 100feet Ring Road , Shilaj Thaltej, Ahmedabad- 380059	139.88	01 Gold Chain	1106	1126314
13	Patel Vikrambhai	C03381 30	Madhvas Ambaji Mata No Chok, Thol Kadi,Mehasana- 382715, Gujarat	139.93	01 Gold Chain	1107	1126716
14	Patel Navin Ranchhodbhai	S902661 7	A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad- 380015	140.04	01 Gold Chain	1108	1127602
15	Patel Varshaben Navinbhai	S865590 7	Sonivas Village Thol Kadi Mehasana-382715	140.23	01 Gold Mangalsutra	1109	1129132
16	Nayak Hansabebn Mansukhabhai	W42594 98	2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440	138.68	01 Gold Mangalsutra	1110	1116651
17	Patel Kaminaben Bhagvanbhai	S900596 2	Thol Mehasana- 382715	141.46	01 Gold Mangalsutra	1111	1139036
18	Patel Kokilaben Rasikbhai	W75986 43	8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana- 382715	140.03	01 Gold Mangalsutra	1112	1127522
19	Patel Manjulaben Jayantilal	T759946 9	Khont Vas At Thol	141.4	01 Gold Mangalsutra	1113	1138553
20	Patel Manjulaben Chandrakant	X47879 45	Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715	134.15	01 Gold Mangalsutra	1114	1080176
21	Nayak Shakutlaben Mangalbhai	W32784 07	2-64/ Lal Vas, Opposite Khant Vas, Thol , Mehasana- 382715, Gujarat	133.92	01 Gold Mangalsutra	1115	1078324
Total				2923.78 Grams			Rs. 2,35,42,276/-

Further, the following passengers have claimed to be carrying 24 Kt. Gold items owned by themselves. The details of valuation report of the gold items is as under as TABLE-B:

TABLE-B

Sr No	Name	Passport No	Address	Gold In Grams(24 Kt)	Item	Certificate No	Market Value (In Rs.)
1	Patel Sharmishthaben Ramanbhai	T7855586	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061	40.08	02 Gold Bangles	1085	322724
2	Patel Hasumatiben Dineshbhai	N0555916	C/2/205 Vishwas Apartment Near Gulab Tower, Thaltej, Ahmedabad-380054	110.02	01 Gold Chain+02 Gold Bangles	1088	885881
3	Patel Kapilaben Dineshbhai	C1134602	Bhav Vas Thol , Kadi Mehasana-382728	79.95	04 Gold Bangles	1089	643757
4	Patel Vijaykumar Dhanabhai	S0747135	Khant Vas At Thol Kadi Mehasana-382715	149.97	02 Gold Chains	1091	1207558
5	Patel Navinchandra Shivilal	T0387665	11-A/Saraswati Nagar Society Oppt Kr Rawal School , Ranip, Ahmedabad-382480	49.96	01 Gold Chain	1101	402278
6	Patel Ramanbhai Dhulabhai	T7839156	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061	40.05	01 Gold Kada	1102	322483
Total				470.03 Grams			Rs. 37,84,682/-

3.1 As per the valuation reports given by the said Govt. approved valuer, the net weight and value of the said gold items attempted to be smuggled by the **21 passengers (as referenced in Table A of Show Cause Notice)** on behalf of and under instructions of Shri Kirit Patel and Shri Parth Patel is **2923.78 Grams** and having Market Value of **Rs 2,35,42,276/-**. Similarly, the total weight of 24 Kt. gold items attempted to be smuggled by 6 passengers (**as per Table B above**) in their own capacity is **470.03 Grams** having Market Value of **Rs 37,84,682/-** and Tariff Value of **Rs 33,87,812/-**. Shri Soni Kartikey Vasantrai also submitted his valuation reports in 27 Certificates all dated 21.10.2024. Shri Soni Kartikey Vasantrai has given his valuation report of the said gold items as per the Notification No. 66/2024-Customs (N.T.) dated 15.10.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate).

SEIZURE OF THE ABOVE GOLD BAR:

4. The aforementioned gold items totally weighing **3393.8 grams (2923.78 Grams + 470.03 Grams)** having purity 999.0/24kt recovered from the aforesaid 27 passengers (as per Table A and Table B above) who had carried the same without declaring before the Customs Authorities amounts to smuggling of gold and therefore, the same is liable for confiscation under the provisions of the Customs Act, 1962. Accordingly, the said gold items were placed under seizure vide 27 Seizure Orders all dated 21.10.2024.

Further, the Seizure order dated 21.10.2024 issued in respect of Shri Patel Khodabhai Nagardas contained typing error whereby it was erroneously mentioned *"The 01 Gold Chain weighing 139.93 gms. is having purity 999.0/24kt and market value Rs. 402277.91/- and tariff value Rs. 360094.19/- only"* instead of *"The 01 Gold Chain weighing 139.93 gms. is having purity 999.0/24kt and market value Rs. 1126716/- and tariff value Rs. 1008566/- only"*. The same has been corrected vide **Corrigendum dated 23.03.2025** issued in this regard.

STATEMENTS OF KEY PERSONS: -

5. Statement of Shri Kiritkumar Laljibhai Patel was recorded under Section 108 of the Customs Act, 1962 on 21.10.2024, wherein he inter alia stated as under:

5.1 He submitted that he is tour operator and he is doing business in the name of M/s. Raj Visa Travels. The firm is a partnership firm. He alongwith his brother Shri SanjayKumar Laljibhai Patel are the partners in the said firm. He submitted that he travelled abroad as a tour guide as well as on personal visits with his family members. He organized 50-60 (approx.) trips per year under his

travel agency, out of which, he accompanies the tour abroad 6-7 times with the group.

5.2 He charged actual air ticket charges plus Rs. 2000/- service charges. He further charged land package amount in respect of the concerned country/ destination which includes Air ticket as well as stay, food and local sightseeing. Thus, the total cost to a passenger is Rs. 60,000/-80,000/- depending on the flight, date of booking and inclusions like places to visit and hotel type.

5.3 He further stated that he was present during the entire panchnama proceedings. He stated that it is true that the gold items recovered from the following **21 passengers (as referenced in Table A of Show Cause Notice)** were procured by him in the UAE and handed over to them for the purpose of carrying till outside SVPI Airport, Ahmedabad.

Sr No	Name	Passport No	Net Gold weight In Grams (24 Kt)	Item
1	Patel Parulben Baldevbhai	R2828582	139.58	01 Gold Mangalsutra
2	Patel Rasikbhai	W7600989	139.99	01 Gold Chain
3	Patel Babubhai Ambalal	N0182349	134.29	01 Gold Mangalsutra
4	Nayak Mangalbhai Shankarbhai	W3720687	139.94	01 Gold Chain
5	Patel Ashaben Shaileshkumar	N6597028	140.7	01 Gold Mangalsutra
6	Nayak Mansukhbhai Shankarbhai	W4258816	139.9	01 Gold Chain
7	Patel Upendrabhai Jivabhai	W0020027	139.93	01 Gold Chain
8	Patel Khodabhai Nagardas	Y3002195	139.93	01 Gold Chain
9	Patel Jayantilal Madhabhai	T7603610	139.94	01 Gold Chain
10	Patel Madhavlal Shankardas	B6554159	139.94	01 Gold Chain
11	Patel Jashodaben Babaubhai	N9420949	139.92	01 Gold Chain
12	Patel Baldevbhai Shakrabhai	R2829315	139.88	01 Gold Chain
13	Patel Vikrambhai	C0338130	139.93	01 Gold Chain
14	Patel Navin Ranchhodbhai	S9026617	140.04	01 Gold Chain
15	Patel Varshaben Navinbhai	S8655907	140.23	01 Gold Mangalsutra
16	Nayak Hansabebn Mansukhabhai	W4259498	138.68	01 Gold Mangalsutra
17	Patel Kaminaben Bhagvanbhai	S9005962	141.46	01 Gold Mangalsutra
18	Patel Kokilaben Rasikbhai	W7598643	140.03	01 Gold Mangalsutra
19	Patel Manjulaben Jayantilal	T7599469	141.4	01 Gold Mangalsutra
20	Patel Manjulaben Chandrakant	X4787945	134.15	01 Gold Mangalsutra
21	Nayak Shakutlaben Mangalbhai	W3278407	133.92	01 Gold Mangalsutra
	Total		2923.78Grams	

5.4 He stated that he had given Rs. 10,000/- to Rs. 13,000/- discount to each concerned passenger in their international tour package of UAE for carrying the said gold articles.

Statement of Shri Kiritkumar Laljibhai Patel recorded on 22.10.2024: -

5.5 Further statement of Shri Kiritkumar Laljibhai Patel was recorded on 22.10.2024, wherein he inter alia once again admitted that all the facts narrated by him in his statement dated 21.10.2024 were true and correct.

5.6. He provided the details of tour package charges collected by him from his clients for various destinations.

5.7. That he had handed over the 24 Kt. Gold items to 21 clients passengers and asked them to keep these with them so that these gold items are not visible. Subsequently these gold items were seized during the AIU officers.

5.8. He provided the details of the person from whom these gold items were purchased in the UAE on credit and the payment was to be made to him after these gold items were sold in India to Shri Darshan Bhai Soni of M/s. Darshan Travels. He also submitted that 06 passengers (as per the Table B above) had purchased the gold from the same Shop i.e. M/s. Darvesh Jewelers from their own funds and their own risk and responsibility.

Further Statement of Shri Kiritkumar Laljibhai Patel recorded on 15.12.2024.

5.9. Further statement of Shri Kiritkumar Laljibhai Patel was recorded on 15.12.2024, wherein he inter alia admitted the true and correct nature of his statements dated 21.10.2024 and 22.10.2024.

5.10. He submitted that he did not respond to earlier 03 summons issued to him as he was busy in purchase of house property and due to death of my close relative, he was unable to attend on give dates.

5.11 He provided the details of his banks, properties, PAN and Aadhar card nos. he stated that he accepts cash as well as cheques from his clients for group tours.

Statement of Shri Parth Dashrathbhai Patel:

6. Statement of Shri Parth Dashrathbhai Patel was recorded under Section 108 of the Customs Act, 1962 on 21.10.2024, wherein he inter alia stated as under:

6.1 He submitted that he is tour operator and a partner in M/s. Raj Visa Travel at Mehsana Branch. He submitted that he travelled abroad as a tour guide. He submitted that their firm organized 50-60 (approx.) trips per year under their travel agency, out of which, he accompanies the tours abroad 5 times with the group.

6.2 He submitted that they have charged actual air ticket charges plus Rs. 2000/- service charges. He further charged land package amount in respect of the concerned country/ destination which includes Air ticket as well as stay, food and local sightseeing. Thus, the total cost to a passenger is Rs. 60,000/- 80,000/- depending on the flight, date of booking and inclusions like places to visit and hotel type.

6.3 He further stated that he was present during the entire panchnama proceedings. He stated that it is true that the gold items recovered from the following **21 passengers (as referenced in Table A of Show Cause Notice)** were procured by Shri Kiritkumar Laljibhai Patel in the UAE and handed over to them for the purpose of carrying till outside SVPI Airport, Ahmedabad.

6.4 He stated that Shri Kiritkumar Laljibhai Patel had given Rs. 10,000/- to Rs. 13,000/- each discount to the concerned passenger in their international tour package of UAE for carrying the said gold articles.

Further Statement of Shri Parth Dashrathbhai Patel recorded on 22.10.2024: -

6.5. Further statement of Shri Parth Dashrathbhai Patel was recorded on 22.10.2024, wherein he inter alia once again admitted that all the facts narrated by him in his statement dated 21.10.2024 were true and correct.

6.6. He provided the details of tour package charges collected by them from their clients for various destinations.

6.7. He submitted that Shri Kiritkumar Laljibhai Patel had handed over the 24 Kt. Gold items to 21 client passengers and asked them to keep these with them so that these gold items are not visible. Subsequently these gold items were seized by the AIU officers.

6.8. He submitted that Shri Kiritkumar Laljibhai Patel had purchased the said gold items from M/s. Darvesh Jewelers, Gold Souq, Dera, Dubai which was owned by Shri Adil. He submitted that the gold was purchased from Shri Adil on Credit and Shri Kirit Patel was to make payment after selling the gold in India. He provided the details of the person from whom these gold items were purchased in the UAE on credit and the payment was to be made to him after these gold items were sold in India.

6.9 He submitted that they have distributed 24kt gold ornaments to their client passenger in small quantities so that none of them bear much risk and if they caught, they may get the gold released upon payment of customs duty.

Statements of the following 21 passengers (as referenced in Table A of Show Cause Notice) were recorded on 21.10.2024 wherein they inter alia stated as under:

Sr No	Name	Passport No	Address
1	Patel Parulben Baldevbhai	R2828582	144 Shiv Ganesh Bunglows Near Madhuram Plot, 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059
2	Patel Rasikbhai	W7600989	8/19, Khant Vas Thol Kadi Mehasana-382715
3	Patel Babubhai Ambalal	N0182349	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480
4	Nayak Mangalbhai Shankarbhai	W3720687	Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat
5	Patel Ashaben Shaileshkumar	N6597028	32 Siddhi Bunglows Gst Road New Ranip Ahmedabad-382480
6	Nayak Mansukhbhai Shankarbhai	W4258816	Lal Vas Opp. Khat Vas Thol Mehsana-382715
7	Patel Upendrabhai Jivabhai	W0020027	Ambaji Matanu Mandir Thol Kadi Mehasana-382715

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8	Patel Khodabhai Nagardas	Y3002195	A-101, Silicone Square Near Sukan Six Flats Opp. Solar Science City Sola Ahmedabad-380060
9	Patel Jayantilal Madhabhai	T7603610	Khont Vas At Thol Kadi Mehasana-382715
10	Patel Madhavlal Shankardas	B6554159	At And Post Thol Mehasana-382715
11	Patel Jashodaben Babaubhai	N9420949	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480
12	Patel Baldevbhai Shakrabhai	R2829315	144 Shiv Ganesh Bunglows Near Madhuram Plot , 100feet Ring Road , Shilaj Thaltej, Ahmedabad-380059
13	Patel Vikrambhai	C0338130	Madhvas Ambaji Mata No Chok, Thol Kadi,Mehasana-382715, Gujarat
14	Patel Navin Ranchhodbhai	S9026617	A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad-380015
15	Patel Varshaben Navinbhai	S8655907	Sonivas Village Thol Kadi Mehasana-382715
16	Nayak Hansabebn Mansukhabhai	W4259498	2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440
17	Patel Kaminaben Bhagvanbhai	S9005962	Thol Mehasana-382715
18	Patel Kokilaben Rasikbhai	W7598643	8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana-382715
19	Patel Manjulaben Jayantilal	T7599469	Khont Vas At Thol
20	Patel Manjulaben Chandrakant	X4787945	Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715
21	Nayak Shakutlaben Mangalbhai	W3278407	2-64/ Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat

7.1 Statement of pax **Patel Parulben Baldevbhai** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 139.58 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.2. Statement of pax **Patel Rasikbhai** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.99 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.3. Statement of pax **Patel Babubhai Ambalal** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item

namely **01 Gold Mangalsutra weighing 134.29 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.4. Statement of pax **NAYAK MANGALBHAI SHANKARBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.94 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.5. Statement of pax **PATEL ASHABEN SHAILESHKUMAR** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 140.7 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.6. Statement of pax **NAYAK MANSUKHBHAI SHANKARBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.9 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.7. Statement of pax **PATEL UPENDRABHAI JIVABHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.93 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said

gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.8. Statement of pax **PATEL KHODABHAI NAGARDAS** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.93 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.9. Statement of pax **PATEL JAYANTILAL MADHABHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.94 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.10. Statement of pax **PATEL MADHAVLAL SHANKARDAS** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.94 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.11. Statement of pax **PATEL JASHODABEN BABAOBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.92 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.12. Statement of pax **PATEL BALDEVBHAI SHAKRABHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.88 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.13. Statement of pax **PATEL VIKRAMBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 139.93 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.14. Statement of pax **PATEL NAVIN RANCHHODBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 140.04 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.15. Statement of pax **PATEL VARSHABEN NAVINBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 140.23 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.16. Statement of pax **NAYAK HANSABEBN MANSUKHABHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 138.68 grams** which was recovered from the said pax during the Panchnama dated

21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.17. Statement of pax **PATEL KAMINABEN BHAGVANBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 141.46 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.18. Statement of pax **PATEL KOKILABEN RASIKBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 140.03 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.19. Statement of pax **PATEL MANJULABEN JAYANTILAL** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 141.4 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.20. Statement of pax **PATEL MANJULABEN CHANDRAKANT** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 134.15 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

7.21. Statement of pax **NAYAK SHAKUTLABEN MANGALBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further stated that the owner of the 24 kt. Pure Gold item namely **01 Gold Mangalsutra weighing 133.92 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 is Patel KiritKumar Laljibhai. The same gold item was handed over to the said pax in Abu Dhabi. The pax further stated that the pax had accepted to carry the said gold item in lieu of discount promised by Shri Patel Kiritkumar Laji bhai Patel for UAE trip.

Statements of the following 6 passengers who claimed to be carrying 24Kt. Gold items owned by themselves, were recorded on 21.10.2024 wherein they inter alia stated as under:

Sr No	Name	Passport No	Address
1	Patel Sharmishthaben Ramanbhai	T7855586	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061
2	Patel Hasumatiben Dineshbhai	N0555916	C/2/205 Vishwas Apartment Near Gulab Tower, Thaltej, Ahmedabad-380054
3	Patel Kapilaben Dineshbhai	C1134602	Bhav Vas Thol , Kadi Mehasana-382728
4	Patel Vijaykumar Dhanabhai	S0747135	Khant Vas At Thol Kadi Mehasana-382715
5	Patel Navinchandra Shivilal	T0387665	11-A/Saraswati Nagar Society Opp. Kr Rawal School, Ranip, Ahmedabad-382480
6	Patel Ramanbhai Dhulabhai	T7839156	B-201,Swastik Residency, RC Technical Road, Chandlodia, Ahmedabad-380061

8. Statement of pax **PATEL SHARMISHTHABEN RAMANBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further claimed the ownership of the 24kt. Pure Gold item namely **02 Gold Bangles weighing 40.08 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 and that the same was purchased by the pax in the UAE under guidance from Shri Kiritkumar Laljibhai Patel.

9. Statement of pax **PATEL HASUMATIBEN DINESHBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further claimed ownership of the 24 kt. Pure Gold item namely **01 Gold Chain and 02 Gold Bangles weighing 110.02 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 and that the same was purchased by the pax in the UAE under guidance from Shri Kiritkumar Laljibhai Patel.

10. Statement of pax **PATEL KAPILABEN DINESHBHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further claimed ownership of the 24 kt. Pure Gold item namely **04 Gold Bangles weighing 79.95 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 and that

the same was purchased by the pax in the UAE under guidance from Shri Kiritkumar Laljibhai Patel.

11. Statement of pax **PATEL VIJAYKUMAR DHANABHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further claimed ownership of the 24 kt. Pure Gold item namely **02 Gold Chains weighing 149.97 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 and that the same was purchased by the pax in the UAE under guidance from Shri Kiritkumar Laljibhai Patel.

12. Statement of pax **PATEL NAVINCHANDRA SHIVLAL** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further claimed ownership of the 24 kt. Pure Gold item namely **01 Gold Chain weighing 49.96 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 and that the same was purchased by the pax in the UAE under guidance from Shri Kiritkumar Laljibhai Patel.

13. Statement of pax **PATEL RAMANBHAI DHULABHAI** was recorded on 21.10.2024, wherein the pax inter alia confirmed the veracity of the Panchnama dated 21.10.2024. The pax further claimed ownership of the 24 kt. Pure Gold item namely **01 Gold Kada weighing 40.05 grams** which was recovered from the said pax during the Panchnama dated 21.10.2024 and that the same was purchased by the pax in the UAE under guidance from Shri Kiritkumar Laljibhai Patel.

FURTHER INVESTIGATION CONDUCTED: -

14. During the course of recording of the statements of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel alongwith their client passengers wherein Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel has admitted that Shri Kiritkumar Laljibhai Patel has purchased the said seized gold items and handed over the same to their 21 client passengers (as per the Table-A above) and all 21 client passengers in their respective statements confirmed that the gold was not belong to them and not purchased by them and same was handed over to them by their trip organizer to carry/smuggle the same in India. Further, all 21 client passengers have admitted in their respective voluntary statements that they have intentionally not declare the same before Customs Authority as they want to clear the same clandestinely to evade the payment of custom duty. From the above, it evidently appears that all the 21 client passengers on the direction of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel involved in carrying the gold clandestinely to evade the payment of Customs Duty.

Further, the remaining 06 client passengers (as per the Table-B above) in their voluntary statements admitted that they have purchased the gold themselves and concealed the same with them on arrival at SVPIA Airport Ahmedabad and tried to exit through green channel without making any declaration to evade the payment of Customs Duty. In order to check the genuineness/correctness of details submitted/tendered in their statements, letters to all client passengers were issued on 13.01.2025 by Superintendent, AIU-A, SVPIA, Airport, Ahmedabad asking them to submit the detail viz. invoice from tour operator, mode of payment to operator, payment receipt alongwith proof of payment, Amount and form of money carried by them while going abroad, Customs Declaration, etc. In response to the above letters, on behalf of all **21 passengers (as referenced in Table A of Show Cause Notice)**, a reply was submitted by their common advocate/authorized representative vide letter dated 28.01.2025, wherein he submitted that his clients were the original owner of the gold jewellery. He submitted that this the first and only incident booked against their clients and they have not found involved in similar offence in earlier instances. He submitted that their clients have purchased the tickets in cash and purchased the gold jewellery on credit taken from their relatives living in UAE.

14.1. Further, to ascertain the correctness of the submission made by the advocate on behalf of all **21 passengers (as referenced in Table A of Show Cause Notice)** that they have purchased the gold on credit taken from the relatives at UAE, a letter dated 09.02.2025 followed by reminder letters dated 18.02.2025, 06.03.2025 & 10.03.2025, wherein the details have been sought regarding invoices issued by tour operator, mode of payment to operator, payment receipt alongwith proof of payment, Amount and form of money carried by them while going abroad, Customs Declaration and details of UAE based relatives from whom the passengers have taken credit to purchase the gold.

14.2. In response to the above letters, a reply letter dated 17.03.2025 was submitted by the advocate on behalf of all **21 passengers (as referenced in Table A of Show Cause Notice)** wherein he submitted that his clients are not so much educated and submitted the required details asked by the Department is not available as of now. He requested for 30 days' time to collect the required documents.

14.3. Whereas, remaining six passengers (Patel Vijaykumar Dhanabhai, Patel Navinchandra Shivilal, Patel Ramanbhai Dhulabhai, Patel Kapilaben Dineshbhai, Patel Hasumatiben Dineshbhai & Patel Sharmishthaben Ramanbhai) have submitted their response to letter dated 13.01.2025 through their advocate on 21.03.2025, wherein all have submitted that they have

visited Dubai for tour purpose and while return from Dubai they have purchased the gold jewellery for their family from their saving and borrowed money from their friends and relatives and requested for waiver of SCN and submitted that his clients are ready to pay applicable duty, fine and penalty and requested to take a lenient view as due to ignorance of law they are unable to declare the same before Customs Authority.

14.4. On detailed examination of the submissions made by all **21 passengers (as referenced in Table A of Show Cause Notice)** through their advocates, it appears the claims made by the noticees lack credibility and do not appear to be genuine. Despite repeated opportunities and ample time provided to them, the noticees/their advocate has failed to submit any documentary evidence which proves their claim. Specifically, letters dated 09.02.2025, 18.02.2025, 06.03.2025 & 10.03.2025 were issued by the Department requesting specific details such as invoices from the tour operator, mode of payment, payment receipts with proof, the amount and form of money carried during travel, customs declarations, and information regarding UAE-based relatives from whom credit was allegedly taken for the gold purchase. However, despite the passage of more than a month since the last reminder, no conclusive or credible response has been submitted by the noticees. Instead, a vague and non-committal reply dated 17.03.2025 was received through their advocate, wherein they have mentioned that the clients are not well-educated and hence unable to furnish the required details at the moment and asked requesting an additional 30 days' time to collect the said documents. This behaviour clearly indicates a lack of seriousness and cooperation on the part of the noticees and it appears that all 21 noticees tried to avoid joining the investigation for saving themselves from the clutches of law and it shows their non-cooperation in the investigation. It is pertinent to note that the seizure of gold took place on 21.10.2024 and as per the statutory requirement, the Show Cause Notice is to be issued within 180 days from the date of seizure. In this context, the request for an extension appears to be a calculated attempt to delay the investigation and push the matter beyond the limitation period, rendering the SCN time-barred. It highly improbable that none of the 21 noticees, all of whom are independent individuals, possess any documentary evidence or proof whatsoever to support their claims. The uniformity in their vague responses and their collective failure to produce even a single piece of relevant documentation raises serious doubts about the veracity of their submissions and suggests a deliberate, coordinated effort to mislead the authorities and stall the investigation process. In view of the above, it appears that the noticees are merely engaging in delaying tactics to derail the investigation by not providing the documents and it appears that they have contradicts themselves as on one hand they have admitted that they had

carried the gold jewellery which was provided their trip organizers to carry the same in India for which they would receive discount in their trip and on other hand in their submission they have claimed that the seized gold jewellery belongs to them, without submitting any supporting documents. Their failure to provide supporting documents despite repeated reminders, and their attempt to justify this with generic excuses, reflects a clear attempt to avoid accountability. This conduct further strengthens the findings of the investigation that the noticees were knowingly involved in the act of smuggling gold into India in violation of Customs laws.

SUMMATION:

15. From the investigation conducted in the case, it appears that Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel had attempted to smuggle total 2923.78 grams of 24kt. Pure gold items having total market value of Rs.2,35,42,276/- through their 21 client's passengers. Further, 6 of their client passengers had attempted to smuggle total 470.03 grams of 24kt. Pure gold items having total market value of Rs.37,84,681/-. Since these 24Kt. gold items were clearly meant for commercial purpose and hence do not constitute Bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Accordingly, the aforesaid 24Kt. Pure gold items having total weight of **3393.81 grams** and having total market value of **Rs.2,73,26,957/-** were seized under the provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that the same were liable to be confiscated in terms the provisions of Section 111 of the Customs Act, 1962.

15.1 Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel therefore, appear to have committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962 through aforesaid **21 passengers (as referenced in Table A of Show Cause Notice)** who had carried 24 kt. Gold items on behalf of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and therefore, Shri Parth Dashrathbhai Patel was arrested under Section 104 of the Customs Act, 1962 on 23.10.2024 and produced before the Hon'ble Court of ACJM, Ahmedabad City, Ahmedabad. Further, Shri Kiritkumar Laljibhai Patel was arrested under Section 104 of the Customs Act, 1962 on 16.12.2024 and produced before the Hon'ble Court of ACJM, Ahmedabad City, Ahmedabad.

16. Legal Provisions Relevant To the Case:

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

16.1 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.

- 16.2 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.
- 16.3 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.
- 16.4 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:

- 16.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 16.6 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;
- 16.7 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.
- 16.8 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.
- 16.9 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.

16.10 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.

16.11 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.

16.12 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 was 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.

16.13 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.

16.14 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.

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

Customs Baggage Rules and Regulations:

16.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

16.17 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 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.

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

16.18 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.

16.19 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 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 his 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 his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his 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.

- 17.** 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.) was restricted as per DGFT notification and import was 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.

18. CONTRAVENTION AND VIOLATION OF LAWS:

It therefore appears that:

- (i) Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the following **21 passengers** (as per Table-C above) in had entered into a conspiracy to smuggle/improperly import following 24 Kt. Pure gold items owned by Shri Kiritkumar Laljibhai Patel and distributed by Shri

Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel among the 21 client passengers and asked them to carry the same into India, 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.

Table-C

Sr. No.	Name of the Passenger	Weight (in Grams)	Market Value (in Rs.)
1	Patel Parulben Baldevbhai	139.58	1123898
2	Patel Rasikbhai	139.99	1127199
3	Patel Babubhai Ambalal	134.29	1081303
4	Nayak Mangalbhai Shankarbhai	139.94	1126797
5	Patel Ashaben Shaileshkumar	140.7	1132916
6	Nayak Mansukhbhai Shankarbhai	139.9	1126475
7	Patel Upendrabhai Jivabhai	139.93	1126716
8	Patel Khodabhai Nagardas	139.93	1126716
9	Patel Jayantilal Madhabhai	139.94	1126797
10	Patel Madhavlal Shankardas	139.94	1126797
11	Patel Jashodaben Babaubhai	139.92	1126636
12	Patel Baldevbhai Shakrabhai	139.88	1126314
13	Patel Vikrambhai	139.93	1126716
14	Patel Navin Ranchhodbhai	140.04	1127602
15	Patel Varshaben Navinbhai	140.23	1129132
16	Nayak Hansabebn Mansukhabhai	138.68	1116651
17	Patel Kaminaben Bhagvanbhai	141.46	1139036
18	Patel Kokilaben Rasikbhai	140.03	1127522
19	Patel Manjulaben Jayantilal	141.4	1138553
20	Patel Manjulaben Chandrakant	134.15	1080176
21	Nayak Shakutlaben Mangalbhai	133.92	1078324

(ii) Further, following 06 passengers (as per Table-D hereunder) had attempted to smuggle/improperly import 24 Kt. Pure gold items, 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 in their personal capacity.

Table-D

Sr. No.	Name of the Passenger	Weight (in Grams)	Market Value (in Rs.)
01	Patel Sharmishthaben Ramanbhai	40.08	322724
02	Patel Hasumatiben Dineshbhai	110.02	885881
03	Patel Kapilaben Dineshbhai	79.95	643757
04	Patel Vijaykumar Dhanabhai	149.97	1207558
05	Patel Navinchandra Shivilal	49.96	402278
06	Patel Ramanbhai Dhulabhai	40.05	322483

(iii) Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and their accomplice **21 passengers (as referenced in Table A of Show**

Cause Notice) as well as abovementioned 6 passengers in their personal capacity had knowingly and intentionally smuggled the said gold items upon their arrival from Abu Dhabi to Ahmedabad on 21.10.2024 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold items smuggled by Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the aforementioned 27 passengers (as per Table C and Table D above), cannot be treated as bonafide household goods or personal effects. Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the aforementioned 27 passengers have, thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.

- (iv) Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the aforementioned 27 passengers, by not declaring the said gold items 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.
- (v) The said gold items smuggled by Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the aforementioned 27 passengers, without declaring it to the Customs are liable for confiscation under Section 111 111(d), 111(l) and 111(m) read with Section 2 (22), (39) of the Customs Act, 1962.
- (vi) Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the aforementioned 27 passengers, 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.
- (vii) As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and the aforementioned 27 passengers, who are the Noticee in this case.

19. Investigation conducted and statements of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel alongwith the Statements of all 21 client passengers evidently led to the findings that, in a very planned manner, Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel distributed the said gold items in form of Mangalsutras and gold chains among their 21 client passengers and accordingly attempted to smuggle the total gold weighing

2923.78 grams (in form of Mangalsutras and gold chains), into India through SVPI Airport Ahmedabad from Abu Dhabi. The said gold weighing 2923.78 grams (in form of Mangalsutras and gold chains) were recovered by the officers of AIU during the course of interception & subsequently conducting physical examination of all 21 client passengers. **21 passengers (as referenced in Table A of Show Cause Notice)** (as per the Table A above) in their respective statements inter-alia stated that the said gold items were purchased by Shri Kiritkumar Laljibhai Patel and same were handed over to them to carry the same in India for which they would get discount in trip expense. In their respective statements, all **21 passengers (as referenced in Table A of Show Cause Notice)** accepted that the gold items were given by Shri Kiritkumar Laljibhai Patel for smuggling.

Apart from above, Gold weighing 470.03 grams (in form of Bangles, Kada and Chain) was recovered by the officers of AIU during the course of interception & subsequently conducting physical examination from the remaining six client passengers (as mentioned in Table-B above) who tried to smuggle the gold items in their own capacity. All the 6 client passengers have accepted in their respective voluntary statements that the gold items were purchased by them in UAE under guidance from Shri Kiritkumar Laljibhai Patel.

20. From the above, it evidently appears that process of smuggling of such gold items has been undertaken by all the 21 client passengers with the nexus of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel and involves in organized smuggling of above said gold total weighing **2923.78 grams**. Further, Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel in their respective statements inter-alia stated that the gold items were procured by the Kirit Patel on credit from UAE and handed/distributed over to their 21 client passengers by Shri KiritKumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, for purpose of carrying till outside SVPI Airport, Ahmedabad. From the above, it evidently appears that Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, appears to be kingpin/mastermind/beneficiary owner of the recovered gold items weighing 2923.78 grams recovered from their 21 client passengers who all undertook such smuggling activities in lieu of consideration/discount. Further, the remaining six client passengers (As per Table-B above) appear to attempt to smuggle the gold items total weighing 470.03 grams under the guidance of Shri Kiritkumar Laljibhai Patel. Hence, it appears that all the above persons involved in the instant case, had the common intention to smuggle the gold and evade the applicable custom duty. Hence, it appears that Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel alongwith all client

passengers are involved in organized smuggling of above-mentioned gold totally **weighing 3393.81 grams (2923.78 grams + 470.03 grams).**

21. In view of above, gold **weighing 3393.81 grams (2923.78 grams + 470.03 grams).** having purity of 999.0/24Kt, having a market value of Rs.2,73,26,957/- (Rs.2,35,42,276/- + Rs.37,84,681/-) recovered from all 27 passengers (as per Table A and Table B) are to be treated as smuggled goods as defined under Section 2(39) and prohibited goods as defined under Section 2(33) of the Customs Act, 1962 as the same were brought into India attempting to smuggle into India by violating the provisions of the Customs Act, 1962 and Foreign Trade Policy.

ROLE OF PERSONS IN THE ABOVE SMUGGLING OF GOLD:

22. Role of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel:

22.1 On carefully going through the evidences available on record and statement of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, as well as statements of the client passengers recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel were the masterminds to smuggle the said Gold items into India through SVPI Airport from Abu Dhabi. They had assigned the said work to their 21 client passengers (for which they had organized the trip) by distributing the same among them, for the purpose of such smuggling from Abu Dhabi to India offering them commissions/discounts. Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel were handed over the gold to their client passenger and directed them to hide the same so that the same not visible at Airport. Thus, they appear to be the mastermind in this entire smuggling racket of the above-mentioned gold.

22.2 Therefore, Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel have concerned themselves in the act of smuggling of foreign origin Gold in form of bangles/mangalsutras/kadas/gold chains and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

Role of 21 client passengers from whom gold items weighing 2923.78 grams recovered: The list of 21 client passenger is as: -

Sr. No.	Name of the Passenger	Weight (In Grams)	Market Value (In Rs.)
1	Patel Parulben Baldevbhai	139.58	11,23,898/-
2	Patel Rasikbhai	139.99	11,27,199/-
3	Patel Babubhai Ambalal	134.29	10,81,303/-
4	Nayak Mangalbhai Shankarbhai	139.94	11,26,797/-
5	Patel Ashaben Shaileshkumar	140.7	11,32,916/-
6	Nayak Mansukhbhai Shankarbhai	139.9	11,26,475/-
7	Patel Upendrabhai Jivabhai	139.93	11,26,716/-
8	Patel Khodabhai Nagardas	139.93	11,26,716/-
9	Patel Jayantilal Madhabhai	139.94	11,26,797/-
10	Patel Madhavlal Shankardas	139.94	11,26,797/-
11	Patel Jashodaben Babaubhai	139.92	11,26,636/-
12	Patel Baldevbhai Shakrabhai	139.88	11,26,314/-
13	Patel Vikrambhai	139.93	11,26,716/-
14	Patel Navin Ranchhodbhai	140.04	11,27,602/-
15	Patel Varshaben Navinbhai	140.23	11,29,132/-
16	Nayak Hansabebn Mansukhabhai	138.68	11,16,651/-
17	Patel Kaminaben Bhagvanbhai	141.46	11,39,036/-
18	Patel Kokilaben Rasikbhai	140.03	11,27,522/-
19	Patel Manjulaben Jayantilal	141.4	11,38,553/-
20	Patel Manjulaben Chandrakant	134.15	10,80,176/-
21	Nayak Shakutlaben Mangalbhai	133.92	10,78,324/-

23. From evidences gathered, both oral and documentary, available on records, clearly establish the roles of 21 client passengers as listed above, who have indulged themselves in act of smuggling of gold items, totally weighing 2923.78 grams having purity of 999.0 24Kt, total market value of Rs.2,35,42,276/- from Abu Dhabi to India through SVPI, Airport Ahmedabad. They came from Abu Dhabi to India with an intention to smuggle of the above-mentioned gold weighing 2923.78 grams into India belonging to others for monetary considerations and for personal enrichment in connivance with the kingpins of smuggling racket viz Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai. They appear to be important part of the smuggling of the said gold items as the gold items were handed over to them at Abu Dhabi by Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel to smuggle the same in India.

23.1 The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-rea on the part of 21 client passenger with a view to avoiding payment of Customs duty. It therefore, appears that the said passengers, were not inclined to declare the goods viz. gold items that they were carrying before the Customs Authorities. Thus, gold items weighing 2923.78 grams, purity of 999.0 24Kt, having a market value of Rs.2,35,42,276/- were recovered from the possession of 21 client passengers, which was illegally attempted to be smuggled by them into India without declaration and payment of appropriate Customs duties in lieu of monetary considerations/discounts in trip expenses.

23.2 Therefore, the 21 client passengers have concerned themselves in the act of smuggling of foreign origin Gold items and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), 111(1) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

Role of remaining 06 client passengers from whom gold items weighing 470.03 grams recovered: The list of 06 client passengers is as: -

Sr. No.	Name of the Passenger	Weight (in Grams)	Market Value (In Rs.)
01	Patel Sharmishthaben Ramanbhai	40.08	3,22,724/-
02	Patel Hasumatiben Dineshbhai	110.02	8,85,881/-
03	Patel Kapilaben Dineshbhai	79.95	6,43,757/-
04	Patel Vijaykumar Dhanabhai	149.97	12,07,558/-
05	Patel Navinchandra Shivilal	49.96	4,02,278/-
06	Patel Ramanbhai Dhulabhai	40.05	3,22,483/-

24. From evidences gathered, both oral and documentary, available on records, clearly establish the roles of 06 client passengers as listed above, who have indulged themselves in act of smuggling of gold items, totally weighing 470.03 grams having purity of 999.0 24Kt, total market value of Rs.37,84,682/- from Abu Dhabi to India through SVPI, Airport Ahmedabad. They came from Abu Dhabi to India with an intention to smuggle of the above-mentioned gold weighing 470.03 grams into India in connivance with Shri Kiritkumar Laljibhai Patel. They tried to smuggle the same by not declaring the same before Customs Authority and try to clear the same clandestinely, to evade the customs duty.

24.1 The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-rea on the part of 06 client passenger with a view to avoiding payment of Customs duty. It therefore, appears that the said passengers, were not inclined to declare the goods viz. gold items that they were carrying before the Customs Authorities. Thus, gold items weighing 470.03 grams, purity of 999.0 24Kt, having a market value of Rs.37,84,682/- were recovered from the possession of 06 client passengers, which was illegally attempted to be smuggled by them into India without declaration and payment of appropriate Customs duties.

24.2 Therefore, the 06 client passengers have concerned themselves in the act of smuggling of foreign origin Gold items and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), 111(1) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

25. Accordingly, a Show Cause Notice was issued to **(i)** Shri Kiritkumar Laljibhai Patel, **(ii)** Shri Parth Dashrathbhai Patel, **(iii)** All 21 client passengers

(as listed in Table A at Para 3 hereinabove), **(iv)** All 06 client passengers (as listed in Table B at Para 3 hereinabove) as to why:

- i. Gold items (in forms of Mangalsutras & Gold Chains) totally weighing **2923.78 grams** having purity of 999.0/24Kt and market value of **Rs.2,35,42,276/-** recovered from 21 client passengers (as per Table-A) of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- ii. Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing **470.03 grams** having purity of 999.0/24Kt and market value of **Rs.37,84,682/-** recovered from 06 client passengers (as per Table-B) of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- iii. Penalty should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
- iv. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

DEFENCE REPLY AND PERSONAL HEARING:

Personal Hearing was fixed following 02 Noticees on dated 24.07.205, 11.08.2025 and 26.08.2025.

Sr. No.	Name of the Passenger
1	Shri Kiritkumar Laljibhai Patel
2	Shri Parth Dashrathbhai Patel

26. Defence Reply of Noticee No. 01: Shri Kiritkumar Laljibhai Patel filed defence reply to the show cause notice vide letter dated 29.05.2025. The submissions made are that:

26.1 In this case, the noticee is not the owner of the gold. Likewise, no penalty could be imposed upon the noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962.

26.2 The noticee submitted that the proposition made in the Show Cause Notice culminating from the conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved in the smuggling of goods. And the noticee has smuggled goods through passengers. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct.

26.3 that the noticee is in the business of a tour operator and he is educated. He was traveling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21.10.2024. The Noticee was interrogated at the airport by the customs officer. And the customs officials said that the noticee was engaged in smuggling business under the guise of a tour. But the noticee denied the allegations leveled by the officials. The noticee has charged a service charge of Rs. 2000 from passengers. Passengers will have to pay the price of the first ticket. And the remaining cost of the package taken by the passengers will have to be paid to the company once they go there.

26.4 Further, the Noticee did not purchase gold items nor did he assist passengers in purchasing gold items. He is not involved in smuggling. But the officer has deliberately implicated him, It is submitted that the noticee was threatened and coerced by the Official and asked to declare that the seized gold belongs to the noticee and to sign the Panchnama and statement dated 21.10.2024, and if he does not act accordingly, then the officer will detain all the passengers. And the passports of all passengers will be rejected, and passengers will be imprisoned for smuggling.

26.5 That the statement of the noticee taken under Section 108 in the said matter, which was taken after threatening and beating the noticee on a prepared statement, is requested to be retracted immediately.

26.6 That the noticee did not make any offers to the passengers. The passengers themselves have purchased the gold items. Passengers were stopped at Ahmedabad airport, and the customs officials have threatened to beat up the passengers, file a case, and throw them in jail.

26.7 that the **21 passengers (as referenced in Table A of Show Cause Notice)** had filed the provisional release application to the Department dated 10.11.2024 regarding not to dispose of the Gold Jewellery. Further, gold items have been seized from the possession of the passengers, and the passengers are the original owners of the gold items. The noticee is not aware of it, and he is not involved.

26.8 It is submitted that the noticee has never indulged in any smuggling activity in the past or present. He is not a habitual offender and has not been involved in this type of similar offense earlier. No gold item of any kind has been recovered from the noticee. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act. The Show Cause Notice states that the gold items were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules. The factual fact is that the noticee did not have any

dutiable goods; therefore, there is no question of violation of the provisions of the Customs Act.

26.9 that the Noticee has not helped anyone and he does not know anything about this matter. The Noticee is a tour operator. Customs officials have wrongly implicated him in the crime of smuggling. The noticee most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.

26.10 The noticee prayed that no penalty may be imposed under Section 112(a) and 112(b) and under Section 117 of the Customs Act, 1962. The noticee may be provided an opportunity of hearing before passing any order in the matter.

27. **Defence Reply of Noticee No. 02:** Shri Parth Dasrathbhai Patel filed defence reply to the show cause notice vide letter dated 02.06.2025. The submissions made are that:

27.1 In this case, the noticee is not the owner of the gold. Likewise, no penalty could be imposed upon the noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962.

27.2 The noticee submitted that the proposition made in the Show Cause Notice culminating from the conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved in the smuggling of goods. And the noticee has smuggled goods through passengers. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct.

27.3 that the noticee is a servant of Raj Visa Travels he is 12th standard pass in Gujarati medium. He was traveling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21.10.2024. The Noticee was interrogated at the airport by the customs officer. And the customs officials said that the noticee was engaged in smuggling business under the guise of a tour. But the noticee denied the allegations leveled by the officials. The noticee is works in Raj Visa Travels and paid a salary of Rs.25000/-. The noticee is not a partner in Raj Visa Travels. The noticee is taken along to look after the passengers at foreign destinations and take care of their food.

27.4 Further, the Noticee did not purchase gold items nor did he assist passengers in purchasing gold items. He is not involved in smuggling. But the officer has deliberately implicated him, It is submitted that the noticee was threatened and coerced by the Official and asked to declare that the seized gold belongs to the noticee and to sign the Panchnama and statement dated

21.10.2024, and if he does not act accordingly, then the officer will detain all the passengers. And the passports of all passengers will be rejected, and passengers will be imprisoned for smuggling.

27.5 That the statement of the noticee taken under Section 108 in the said matter, which was taken after threatening and beating the noticee on a prepared statement, is requested to be retracted immediately.

27.6 That the noticee did not make any offers to the passengers. The passengers themselves have purchased the gold items. Passengers were stopped at Ahmedabad airport, and the customs officials have threatened to beat up the passengers, file a case, and throw them in jail.

27.7 that the **21 passengers (as referenced in Table A of Show Cause Notice)** had filed the provisional release application to the Department dated 10.11.2024 regarding not to dispose of the Gold Jewellery. Further, gold items have been seized from the possession of the passengers, and the passengers are the original owners of the gold items. The noticee is not aware of it, and he is not involved.

27.8 It is submitted that the noticee has never indulged in any smuggling activity in the past or present. He is not a habitual offender and has not been involved in this type of similar offense earlier. No gold item of any kind has been recovered from the noticee. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act. The Show Cause Notice states that the gold items were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules. The factual fact is that the noticee did not have any dutiable goods; therefore, there is no question of violation of the provisions of the Customs Act.

27.9 that the Noticee has not helped anyone and he does not know anything about this matter. The Noticee is a tour operator. Customs officials have wrongly implicated him in the crime of smuggling. The noticee most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.

27.10 The noticee prayed that no penalty may be imposed under Section 112(a) and 112(b) and under Section 117 of the Customs Act, 1962. The noticee may be provided an opportunity of hearing before passing any order in the matter.

28. **Personal Hearing** in the matter was granted on 26.08.2025 and Authorised Representative and Advocate Shri Subham Jajharia appeared on behalf of:-

01. Shri Kiritkumar Laljibhai Patel and

02. Shri Parth Dasrathbhai Patel.

He produced copy of Vakalatnama/Authority Letter to represent the case. He requested to attend the personal hearing in person instead of video conferencing.

28.1 Shri Shubham Jhajharia re-iterated his submission dated 29.05.2025 and 02.06.2025 for both noticees. That the Noticees Kirit Patel and Parth Patel, both partner of M/s. Raj Visa and Travels has just organized the tour they have not played any direct or indirect role in smuggling of the gold jewellery, that the passengers travelling from their own fund and their own free will has purchased the gold jewellery and bought to India present noticees has not assisted or abetted in any manner, the present noticees has not claimed any ownership of the jewellery bought by the other passengers. That no gold item is recovered from the present noticees, they are wrongly implicated in the present case by the officers of the custom department.

28.2 Without Pre-judice to the other grounds it is submitted that the passengers alleged to be found in possession of the gold traveling with the company/agency of the noticees were stopped by the officers of the department before crossing the green channel and no opportunity of declaration was given, therefore the case made is arbitrary, wrong and illegal. That the officers have wrongly roped the present noticees in the alleged case, the individuals have allegedly bought gold and separate case against them could have been registered as per law by the department however, department has combined/clubbed all the passengers and wrongly roped the present noticees. That as per the statute and the settled principle of the law individual/ any person was responsible for their possession, that the individuals have produced their bank statements and the purchase receipts in support of the gold items seized, there is no shred of evidence against present noticees therefore, no penalty can be imposed.

28.3 It is noteworthy here that the statement of all the passengers was recorded by threatening and intimidating them that they will be put behind bars if they refuse to sign statement prepared by the officer of AIU. The officers have acted high handedly, intercepted passengers before the channel therefore they have roped the present noticees in the predetermined mindset and fashion. There is no past custom offence and/or case against present noticees.

28.4 It is further submitted that no case for penalty is made out against the present noticees as per the settled principles of the law. He further submitted that no penalty can be imposed upon them.

Personal Hearing was fixed following 21 Noticees on dated 24.07.205, 11.08.2025 and 26.08.2025.

Sr. No.	Name of the Passenger
1	Patel Parulben Baldevbhai
2	Patel Rasikbhai
3	Patel Babubhai Ambalal
4	Nayak Mangalbhai Shankarbhai
5	Patel Ashaben Shaileshkumar
6	Nayak Mansukhbhai Shankarbhai
7	Patel Upendrabhai Jivabhai
8	Patel Khodabhai Nagardas
9	Patel Jayantilal Madhabhai
10	Patel Madhavlal Shankardas
11	Patel Jashodaben Babaubhai
12	Patel Baldevbhai Shakrabhai
13	Patel Vikrambhai
14	Patel Navin Ranchhodbhai
15	Patel Varshaben Navinbhai
16	Nayak Hansabebn Mansukhabhai
17	Patel Kaminaben Bhagvanbhai
18	Patel Kokilaben Rasikbhai
19	Patel Manjulaben Jayantilal
20	Patel Manjulaben Chandrakant
21	Nayak Shakutlaben Mangalbhai

29. **Defence Reply of Noticee No. 01:** Patel Parulben Baldevbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

- It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 139.58 grams, having a Market value of Rs.11,23,898/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
- With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
- It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.

OIO No:140/ADC/SRV/O&A/2025-26
F. No: VIII/10-278/SVPIA-A/O&A/HQ/2024-25

4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. She can read write and understand Gujarati and a little Hindi. She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.
6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.
- 9) The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So, she did not submit the documents on time. The following documents are being submitted.
 - i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.
 - ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.
 - iii. Payment Receipt.

Invoice No. IT#0005000304 date 15/10/2024
The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.
 - iv. Proof of Payments.

Bill Copy
 - v. Bank Account Number

Ac Id: 01210118839 CIF ID: 10230351
 - vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.
 - vii. Proof of Gold Chain

Invoice No. HQ-2114

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So, she did not declare.

The noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

- 10) Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. She is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 139.58 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023

- (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962."* (Para 5.6)
- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.

(e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.

- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
 - A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;
 - F. Such other further relief/(s) as deemed fit in the interest of justice may kindly be granted to me.

30. Defence Reply of Noticee No. 02: Patel Rasikbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.99 grams, having a Market value of Rs.11,27,199/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.

4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.

6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.

9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000303 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

Ac ID: 801097013001905 CIF ID. 5382156

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2129

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold chain weighing 139.99 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.

- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111 and 125 of customs Act, 1962."* (Para 5.5)

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

 - (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.

- (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
- (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;
 - F. Such other further relief/(s) as deemed fit in the interest of justice may kindly be granted to noticee.

31. Defence Reply of Noticee No. 03: Patel Babubhai Ambalal filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 134.29 grams, having a Market value of Rs.10,81,303/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the

Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.

3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee recipient had purchased a gold mangalsutra for his wife. Which his personal belonging was as stated in the show cause notice. He did not conceal the gold mangalsutra. He bought a gold mangalsutra with his credit. He is not in the business of buying and selling gold and had brought a gold mangalsutra for his wife.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Mangalsutra. But the department did not respond to this application.
9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is farmer and he is not educated. So, he did not submit the documents on time. The following documents are being submitted.
 - i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.
 - ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.
 - iii. Payment Receipt.

Invoice No. IT#0005000304 date 15/10/2024
The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.
 - iv. Proof of Payments.

Bill Copy

v.Bank Account Number

A/C No. 014101540005128

vi.Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii.Proof of Gold Mangalsutra

Invoice No. HQ-2119

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

9. Further, a gold mangalsutra has been seized from the possession of the noticee, and the noticee is the original owner of the gold mangalsutra. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 10) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 11) The noticee was wearing a gold mangalsutra around his neck. He did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 12) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 13) Without prejudice to the above, it is further submitted that the gold mangalsutra are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 14) The noticee respectfully pray that the gold mangalsutra weighing 134.29 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and

little penalty. The noticee 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.

- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 15) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)

"Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962." (Para 5.6)
 - (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.

- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 16) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 17) It is submitted that, the gold mangalsutra is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 18) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 19). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;
 - F. Such other further relief/(s) as deemed fit in the interest of justice may kindly be granted to noticee.

32. Defence Reply of Noticee No. 04: Nayak Mangalbhai Shankarbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.94 grams, having a Market value of Rs.11,26,797/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.

3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.

4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.

5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.

6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.

9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So, he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000307 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c No.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2127

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.

- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.

- 15) The noticee respectfully pray that the gold chain weighing 139.94 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962.*" (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962."* (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;
 - F. Such other further relief/(s) as deemed fit in the interest of justice may kindly be granted to noticee.

33. Defence Reply of Noticee No. 05: Patel Ashaben Shaileshkumar filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 140.7 grams, having a Market value of Rs.11,32,916/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of

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F. No: VIII/10-278/SVPIA-A/O&A/HQ/2024-25

Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.

3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.

4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. Shee was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.

5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. He did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. He is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.

6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000316 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

1. Bank Account Number

A/c No. 139009201000078

v. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vi. Proof of Gold Chain

Invoice No. HQ-2120

vii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So, she did not declare.

The noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.

- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. She is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to

be returned back to the person from whom they are seized from as they are not prohibited items for import.

- 15) The noticee respectfully pray that the gold mangalsutra weighing 140.7 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
 - (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods-Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)

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

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai- 2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
- (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
 - A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

34. Defence Reply of Noticee No. 06: Nayak Mansukhbhai Shankarbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.9 grams, having a Market value of Rs.11,26,475/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under

Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.

3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.

4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.

5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.

6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.

9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000302 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c NO.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2130

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold chain weighing 139.9 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and

little penalty. The noticee 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.

- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)

"Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962." (Para 5.6)
 - (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.

- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

35. Defence Reply of Noticee No. 07: Patel Upendrabhai Jivabhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.93 grams, having a Market value of Rs.11,26,716/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.
9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So, he did not submit the documents on time. The following documents are being submitted.
 - i. Invoice from Tour Operator.
The noticee booked the flight through Raj Visa Travels.
 - ii. Mode of Payment
 - iii. # The noticee had purchased a ticket from Raj Visa Travel in cash.
 - iv. Payment Receipt.
Invoice No. IT#0005000318 date 15/10/2024
The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

v. Proof of Payments.

Bill Copy

vi. Bank Account Number

Ac ID: 01210118839 ID. 2500300

vii. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

viii. Proof of Gold Chain

Invoice No. HQ-2131

ix. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold chain weighing 139.93 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following

Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.

- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111 and 125 of customs Act, 1962."* (Para 5.5)

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

 - (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.

- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

36. Defence Reply of Noticee No. 08: Patel Khodabhai Nagardas filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.93 grams, having a Market value of Rs.11,26,716/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the acts. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a retired from private job but he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.
9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So, he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000313 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c: - 03851200000322

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2132

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.

- 15) The noticee respectfully pray that the gold chain weighing 139.93 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962.*" (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962."* (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

37. Defence Reply of Noticee No. 09: Patel Jayantilal Madhabhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.94 grams, having a Market value of Rs.11,26,797/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs

Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.

3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.

4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a retired from private job but he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.

5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.

6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.

9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000306 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/C NO.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2133

2. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So, he did not declare.

The noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain is not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.

- 15) The noticee respectfully pray that the gold chain weighing 139.94 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962.*" (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962."* (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

38. Defence Reply of Noticee No. 10: Patel Madhavlal Shankardas filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.94 grams, having a Market value of Rs.11,26,797/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon

noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.
9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000312 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c No. 802013001000031

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

3. Proof of Gold Chain

Invoice No. HQ-2134

vii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So he did not declare.

the noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold chain are not prohibited item, unlike in the case of drugs, brown sugar,

items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.

- 15) The noticee respectfully pray that the gold chain weighing 139.94 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.

- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
- (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
- (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
- (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
- (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024

- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.

- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962.*" (Para 5.5)

"Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine

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allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon’ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

39. Defence Reply of Noticee No. 11: Patel Jashodaben Babaubhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.92 grams, having a Market value of Rs.11,26,636/-

placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. She can read write and understand Gujarati and a little Hindi. She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold chain. She bought a gold chain with her credit. She is not in the business of buying and selling gold and the gold chain was brought for her personal use.
6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold chain. But the department did not respond to this application.
9. The officer demanded documents related to the gold chain and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.
 - i. Invoice from Tour Operator.

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The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000304 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/C No. 60710502732

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2135

4. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So, she did not declare.

The noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold chain. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around her neck. She did not conceal the gold chain and human body cannot be called as goods. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery is not prohibited item, unlike in the case of drugs, brown sugar,

items like arms and ammunition etc., gold chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.

- 15) The noticee respectfully pray that the gold Mangalsutra weighing 139.92 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine*

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allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon’ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

40. Defence Reply of Noticee No. 12: Patel Baldevbhai Shakrabhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

- 1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.88 grams, having a Market value of Rs.11,26,314/-

placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.

2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.
9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.
 - i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000304 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

Ac ID: 01210118839 CIF ID. 10230351

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2136

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So he did not declare.

the noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.

- 14) Without prejudice to the above, it is further submitted that the gold chain are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold chain weighing 139.88 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
- (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962.*" (Para 5.5)

“Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

41. Defence Reply of Noticee No. 13: Patel Vikrambhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 139.93 grams, having a Market value of Rs.11,26,716/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.
9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000317 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

Ac ID: 801097013000599 CIF ID. 2500687

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2137

5. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So he did not declare.

the noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty

there and therefore no question of violation of the provisions of the Customs Act.

- 14) Without prejudice to the above, it is further submitted that the gold chain are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold chain weighing 139.93 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
 - (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods-Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause*

danger or detriment to health-section 111 and 125 of customs Act, 1962.” (Para 5.5)

“Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

42. Defence Reply of Noticee No. 14: Patel Navin Ranchhodbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold chain is 999.9 pure, total weighing 140.04 grams, having a Market value of Rs.11,27,602/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold chain may not be confiscated under the provisions of section 111(d), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold chain of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a farmer and he is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. He was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold chain around his neck with him which was his personal belonging as stated in the show cause notice. He did not conceal the gold chain. He bought a gold chain with his credit. He is not in the business of buying and selling gold and the gold chain was brought for his personal use.
6. It is submitted that the noticee was threatened by the Official and asked him to declare that the seized gold chain is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if he do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold Chain. But the department did not respond to this application.

9. The officer demanded documents related to the gold chain and tour packages, but the noticee is farmer and he is not educated. So he did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

Cash

iii. Payment Receipt.

Invoice No. IT#0005000301 date 15/10/2024

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c No.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2128

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. He does not have the knowledge of customs law. So he did not declare.

the noticee has purchased the said gold on credit. And till date he has not remitted any amount of the said gold.

10. Further, a gold chain has been seized from the possession of the noticee, and the noticee is the original owner of the gold chain. He is not a habitual offender and has never involved in similar offence before. It is his first offence registered against him, and the noticee does not possess the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold chain around his neck. He did not conceal the gold chain and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold chain were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not

given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.

- 14) Without prejudice to the above, it is further submitted that the gold chain are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold Chain are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold chain weighing 140.04 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places his reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
 - (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause*

danger or detriment to health-section 111 and 125 of customs Act, 1962.” (Para 5.5)

“Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold chain is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold chain may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

43. Defence Reply of Noticee No. 15: Patel Varshaben Navinbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 140.23 grams, having a Market value of Rs.11,29,132/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. She can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.
6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.
- i. Invoice from Tour Operator.
- The noticee booked the flight through Raj Visa Travels.
- ii. Mode of Payment
- # The noticee had purchased a ticket from Raj Visa Travel in cash.
- iii. Payment Receipt.
- Invoice No. IT#0005000301 date 15/10/2024
The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.
- iv. Proof of Payments.
- Bill Copy
- v. Bank Account Number
- A/C No.
- vi. Amount of Money Carried Abroad.
- There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.
- vii. Proof of Gold Chain
- Invoice No. HQ-2113
- viii. Customs Declaration.
- The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.
- # the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.
10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. She is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the

noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.

- 14) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 140.23 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
 - (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods-Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be*

released on payment of redemption fine since they do not cause danger or detriment to health-section 111 and 125 of customs Act, 1962.” (Para 5.5)

“Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon’ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

44. Defence Reply of Noticee No. 16: Nayak Hansabehn Mansukhabhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 138.68 grams, having a Market value of Rs.11,16,651/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. He can read write and understand Gujarati and a little Hindi. He cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.
6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.
8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.
 - i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.
 - ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.
 - iii. Payment Receipt.

Invoice No. IT#0005000302 dated 15.10.2024
The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.
 - iv. Proof of Payments.

Bill Copy
 - v. Bank Account Number

A/C No.
 - vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.
 - vii. Proof of Gold Chain

Invoice No. HQ2121
 - viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.

the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.
10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. He did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the

customs duty there and therefore no question of violation of the provisions of the Customs Act.

- 14) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 138.68 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
 - (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods-Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause*

danger or detriment to health-section 111 and 125 of customs Act, 1962.” (Para 5.5)

“Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon’ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter.

45. Defence Reply of Noticee No. 17: Patel Kaminaben Bhagvanbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 141.46 grams, having a Market value of Rs.11,39,036/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. She can read write and understand Gujarati and a little Hindi. She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.
6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.
7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000314 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c No.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2116

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.

the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.
- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as

goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.

- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 141.46 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
 - (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that "*confiscation- Prohibited goods-*

Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111 and 125 of customs Act, 1962.” (Para 5.5)

“Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962.” (Para 5.6)

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon’ble Tribunal.
 - (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;

- D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
- E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

46. Defence Reply of Noticee No. 18: Patel Kokilaben Rasikbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 140.03 grams, having a Market value of Rs.11,27,522/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. He can read write and understand Gujarati and a little Hindi. She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.
6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000303 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

Ac ID: 801097013001905 CIF ID. 5382156

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2115

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.

the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.

- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 140.03 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted

and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.

- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)

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

- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
- (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.

20). It is therefore prayed that:

- A. The Show Cause Notice may be quashed and set aside;
- B. The seized gold mangalsutra may kindly be returned back to noticee;
- C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
- D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
- E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

47. Defence Reply of Noticee No. 19: Patel Manjulaben Jayantilal filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 141.400 grams, having a Market value of Rs.11,38,553/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. He can read write and understand Gujarati and a little Hindi. She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.

6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000306 dated 15.10.2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

Ac ID:

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2118

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.

the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence

before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.

- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. She is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 141.400 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024

- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF V/S COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods- Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111and 125 of customs Act, 1962."* (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962."* (Para 5.6)
- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
- (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.
- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.

- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
- A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

48. Defence Reply of Noticee No. 20: Patel Manjulaben Chandrakant filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 134.15 grams, having a Market value of Rs.10,80,176/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. She can read write and understand Gujarati and a little Hindi. She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.
5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She

did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.

6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000311 date 15/10/2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/c No.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2117

viii. Customs Declaration.

The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.

the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.

- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 11) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 12) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 13) The noticee respectfully pray that the gold mangalsutra weighing 134.15 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023
 - (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023

- (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
- (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 14) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of Yakub Ibrahim Yusuf V/S Commissioner Of Customs, Mumbai reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods-Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111 and 125 of customs Act, 1962."* (Para 5.5)
- "Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962."* (Para 5.6)
- (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.
- (e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.

- 15) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 16) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 17) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 18). It is therefore prayed that:
 - A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

49. Defence Reply of Noticee No. 21: Nayak Shakutlaben Mangalbhai filed defence reply to the show cause notice vide letter dated 19.05.2025. The submissions made are that:

1. It is submitted that in this case, the aforesaid gold mangalsutra is 999.9 pure, total weighing 133.92 grams, having a Market value of Rs.10,78,324/- placed under seizure vide panchnama drawn on 21/10/2024 should not be confiscated under the provisions of Sections 111(d), 111 (l) and 111(m) of Customs Act, 1962; penalty should not be imposed upon noticee under Sections 112(a) and 112(b) of the Customs Act, 1962; and the penalty should not be imposed upon noticee u/s. 117 of the Customs Act, 1962.
2. With great respect, it is submitted that in this case, the aforesaid gold mangalsutra may not be confiscated under the provisions of section 111(d), (i), 111(l), and 111(m) of the act. Likewise, no penalty could be imposed upon noticee under sections 112(a) and 112(b) and under section 117 of the Customs Act, 1962. Since it is so, the Show Cause Notice deserves to be quashed and set aside.
3. It is submitted that the preposition made in the Show Cause Notice culminating out of conclusion that it appears that I have contravened various provisions of the Customs Act and have been actively involved myself in smuggling of goods as well as managing gold mangalsutra of smuggled of goods through other persons.
4. In this regard, it is submitted that the said conclusion made in the Show Cause Notice is not correct. The noticee is a housewife and she is not educated. She can read write and understand Gujarati and a little Hindi.

She cannot read, write and understand English. She was travelling from Abu Dhabi to Ahmedabad Airport via Air Arabia flight number 3L-111 on 21/10/2024.

5. The noticee was wearing a gold mangalsutra around her neck with her which was her personal belonging as stated in the show cause notice. She did not conceal the gold mangalsutra. She bought a gold mangalsutra with her credit. She is not in the business of buying and selling gold and the gold mangalsutra was brought for her personal use.

6. It is submitted that the noticee was threatened by the Official and asked her to declare that the seized gold mangalsutra is not owned by the noticee and to sign Panchnama and statement dated 21/10/2024 and if she do not act accordingly then the Passport of the noticee will be rejected and noticee will be imprisoned for the same.

7. Furthermore, 108 statements in the above matter were obtained from the noticee as a threat; it is a humble request to you, kindly to retract the said statement.

8. Further, that the noticee had filed the provisional release Application to the Department dated 10/11/2024 regarding not to dispose of the Gold mangalsutra. But the department did not respond to this application.

9. The officer demanded documents related to the gold mangalsutra and tour packages, but the noticee is housewife and she is not educated. So she did not submit the documents on time. The following documents are being submitted.

i. Invoice from Tour Operator.

The noticee booked the flight through Raj Visa Travels.

ii. Mode of Payment

The noticee had purchased a ticket from Raj Visa Travel in cash.

iii. Payment Receipt.

Invoice No. IT#0005000307 dated 15.10.2024

The noticee giver had paid in cash for the land package to Innovation Tourism LLC in Dubai.

iv. Proof of Payments.

Bill Copy

v. Bank Account Number

A/C No.

vi. Amount of Money Carried Abroad.

There are some common mistakes in my last answer. The noticee was carrying 25,000/- in Indian currency during the travel.

vii. Proof of Gold Chain

Invoice No. HQ-2122

viii. Customs Declaration. The noticee is carrying only 25000/- in Indian currency during the travel. She does not the knowledge of customs law. So she did not declare.

the noticee has purchased the said gold on credit. And till date she has not remitted any amount of the said gold.

10. Further, that the noticee is the original owner of the gold mangalsutra. She is not a habitual offender and has never involved in similar offence before. It is her first offence registered against her, and the noticee does not the knowledge of the Customs law and the noticee has not done any act that would cause loss to the Indian economy.

- 11) It is submitted that, the noticee has never indulged in any smuggling activity in past. He is not habitual offender and not involved in this type of similar offence earlier.
- 12) The noticee was wearing a gold mangalsutra around her neck. She did not conceal the gold mangalsutra and human body cannot be called as goods. Therefore there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act.
- 13) The Show Cause Notice states that the gold mangalsutra were not declared in the declaration form as required under Section 77 of the Customs Act, 1962 and the Baggage Rules, the factual fact is that the noticee was intercepted on the belt by the Customs officer at the airport and was not given any opportunity to declare the goods and pay the customs duty there and therefore no question of violation of the provisions of the Customs Act.
- 14) Without prejudice to the above, it is further submitted that the gold jewellery are not prohibited item, unlike in the case of drugs, brown sugar, items like arms and ammunition etc., gold mangalsutra are required to be returned back to the person from whom they are seized from as they are not prohibited items for import.
- 15) The noticee respectfully pray that the gold mangalsutra weighing 133.92 Grams, which was factually not concealed in any manner may kindly be ordered to be released to the noticee on payment of applicable duty and nominal penalty. In the matter, the noticee places her reliance of the following Orders of Ld R.A., Mumbai, wherein more severe cases, the gold ornaments/ gold was ordered to be released on payment of duty and little penalty. The noticee 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.
 - (a) RE- Ms Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023
 - (b) RE- Mr Surajaram Godara V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023

- (c) RE- Ms. Mehraj Bi V/s Pr. Commissioner Of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023
 - (d) RE- Mr Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024
 - (e) RE- Mr Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTOM-000-APP-137-24-25 Dated 02/07/2024
- 16) The noticee submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.
- (a) Hon'ble Tribunal in the case of Yakub Ibrahim Yusuf V/S Commissioner Of Customs, Mumbai reported in 2011 (263) E.L.T. 685 (Tri-Mumbai) held that *"confiscation- Prohibited goods-Scope of - Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation-it does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health-section 111 and 125 of customs Act, 1962."* (Para 5.5)

"Redemption Fine- Option of Owner of goods not known-option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption fine allowed to person who had illicitly imported gold with view to earn profit by selling it, even though he had not claimed its ownership-section 125 of customs Act, 1962." (Para 5.6)
 - (b) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
 - (c) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveler was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
 - (d) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) 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 up held the decision of Hon'ble Tribunal.

(e) In Shri Waqar v/s Commissioner of Customs (Preventive), Customs Appeal No. 70723/2019, Customs, Excise & Service Tax Appellate Tribunal Allahabad.

- 17) It may be observed that neither are gold bars nor are gold jewellery termed as prohibited item.
- 18) It is submitted that, the gold is not ingeniously concealed and quantity is not large. It is requested to be released on nominal RF and Penalty.
- 19) Having regard to the submissions made hereinabove, it is most humbly and earnestly urged to kindly quash and set aside the impugned Show Cause Notice.
- 20). It is therefore prayed that:
 - A. The Show Cause Notice may be quashed and set aside;
 - B. The seized gold mangalsutra may kindly be returned back to noticee;
 - C. No penalty may be imposed on noticee under Section 112(a) and 112 (b) of the Customs Act, 1962;
 - D. No penalty may be imposed on noticee under Section 117 of Customs Act, 1962;
 - E. The noticee may be afforded an opportunity of hearing before passing any order in the matter;

50. Personal Hearing in the matter was granted on 26.08.2025 and Authorised Representative and Advocate Shri Subham Jajharia appeared on behalf of following noticees:-

1. Patel Parulben Baldevbhai
2. Patel Rasikbhai
3. Patel Babubhai Ambalal
4. Nayak Mangalbhai Shankarbhai
5. Patel Ashaben Shaileshkumar
6. Nayak Mansukhbhai Shankarbhai
7. Patel Upendrabhai Jivabhai
8. Patel Khodabhai Nagardas
9. Patel Jayantilal Madhabhai
10. Patel Madhavlal Shankardas
11. Patel Jashodaben Babaubhai
12. Patel Baldevbhai Shakrabhai
13. Patel Vikrambhai
14. Patel Navin Ranchhodbhai
15. Patel Varshaben Navinbhai
16. Nayak Hansabehn Mansukhabhai
17. Patel Kaminaben Bhagvanbhai
18. Patel Kokilaben Rashikbhai
19. Patel Manjulaben Jayantilal
20. Patel Manjulaben Chandrakant
21. Nayak Shakutiben Mangalbhai

Advocate Shri Subham Jajharia produced copy of Vakalatnama/Authority Letter to represent the case. He requested to attend the personal hearing in person instead of video conferencing. Shri Shubham Jhajharia re-iterated his submission dated 19.05.2025 for all noticees. He

submitted that the above mentioned 21 noticees have purchased the gold jewellery on their own from their funds and intended to declare same before crossing the green/red channel however they were wrongly intercepted before the channels and the case was registered, no opportunity of the declaration and payment of the duty was granted. He produced the purchase bill and bank statements alongwith submission for above mentioned noticees, and further submitted that the noticees were traveling on a holiday trip and they bought jewellery for personal use, the same was not concealed, the noticees intended to declare same however, the AIU officers made the present case in pre-determined manner and provided no opportunity of payment of duty and declaration. The noticees are reputed law-abiding citizens, they have spent good sum of money on travel and purchases, they have no intention to avoid duty, the officers have wrongly roped the noticees and made illegal case as the noticees were intercepted admittedly before crossing any of the channels, therefore the seizure was illegal. That there are no past case of such nature against any of the noticees, that the gold bought was in form of jewellery for personal use in small quantity and not in commercial quantity. The noticees are ready and willing to pay the applicable duty, the seizure was illegal therefore the gold cannot be absolutely confiscated and has to be released in favor of the noticees. Even otherwise, without prejudice the gold is not prohibited, as per the provision of the Section 125 of the Customs Act and the settled principles of the law the Adjudicating authority is bound to release the gold jewellery on payment of the duty and redemption fine. Without pre-judice to the ground raised above the noticees are willing to pay the applicable duty and nominal redemption fine if the gold is released in their favor.

Further, on dated 17.04.2025, as alleged in the Show Cause notice there was specific information about gold smuggling against Kirit Patel and Parth Patel, both partner of M/s. Raj Visa and Travels. The information was specific against the travel agency therefore; the officers of AIU has intercepted all the passengers through M/s. Raj Visa and Travels before crossing any of the channels and roped them in present case in predetermined manner, and no opportunity was provided to his clients to declare the gold jewellery which was not in commercial quantity, therefore the complete proceeding of seizure was illegal and stands vitiated under the law.. He submitted that most of his clients are not much educated or are illiterate person and not adapt/well versed with English Language and Customs Act/Rules, the officers took signatures of his clients on the statement prepared by them.

He requested to take lenient view in the matter and allow to release of the jewellery on payment of applicable duty.

Personal Hearing was fixed following **06 noticees (as referenced in Table B of Show Cause Notice)** on dated 25.07.2025, 07.08.2025 and 25.08.2025.

Sr. No.	Name of the Passenger
1	Patel Sharmishthaben Ramanbhai
2	Patel Hasumatiben Dineshbhai
3	Patel Kapilaben Dineshbhai
4	Patel Vijaykumar Dhanabhai
5	Patel Navinchandra Shivilal
6	Patel Ramanbhai Dhulabhai

50. Defence Reply of Noticee No. 01: Patel Sharmishthaben Ramanbhai has filed defence reply to the show cause notice vide letter dated 06.05.2025. The submissions made are that:

1. At the outset, the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 02 Gold Bangles weighing 40.08 grams of 24 Kt valued at Rs.2,88,883/- (Tariff Value) was placed under seizure; It may also be seen from 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 is 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.

2.. It is true that the noticee had 02 Gold Bangles weighing 40.08 grams of 24Kt valued at Rs.2,88,883/- (Tariff Value) was wearing in her hand was placed under seizure; **Noticee decided to visit Dubai, she contacted Raj Visa and Travels at Kadi owned by Kirit Patel**, who is well known and cheapest and reasonable tour operator. Noticee visited to Raj Visa Travels in the month of September 2024 and meet travel agent, who has offered a reasonable package for Dubai stay with all facility i.e. Air- tickets, Pickup & Drop, Sightseeing, Hotels Rooms, Pure-veg food etc, the Dubai Tour was starting from 14.10.2024 to 20.10.2024 for 07 days, a sample copy of travel Itinerary(Dubai) was given to my client and he offered Rs.75000/- per adult person charges, after bargaining at last Rs. 70,000/- per person was decided for Dubai Tour. On dated 17.09.2024 she paid in cash Rs. 70,000/- to Kirit Patel, who issued Cash Memo.**The noticee who is coming back to India** from Dubai, purchased Gold jewelry at Dubai, bill was produced at the same time but the said bill was not incorporated at any stage, the gold jewelry was brought for her personal usages and for her family, Gold is not in commercial quantity, Gold jewelry was worn on her hands which was clearly visible, the gold is not prohibited, On dated 21.10.2024 early morning the AIU officers have received an information that tour operator arriving from Abu Dhabi by Air Arabia Flight No. 3L-111 are suspected of engaging in gold smuggling the said information further indicated that the said tour operator was distributing gold items like gold chains and gold mangal-sutras to his client passengers in small, concealed quantities aboard Air Arabia Flight No. 3L-111 arriving from Abu Dhabi to Ahmedabad the officers . At the time flight Air-Arabia No. 3L-111

landed Ahmedabad at SVPI Airport at during the immigration process all the flight passengers were detained at Immigration Counter by AIU officers, they collected passports of all the passengers and all the passengers of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as she has first time brought the gold jewellery along with her she declared orally and she was not allowed to file the declaration form at Red Channel, as she has orally declared but nobody has bothered to help her 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 by officers. While returning from Dubai noticee has brought gold jewellery for her personal use and purchased from **OMNI Jewellers & Gold Smith L.L.C** by her Husband Patel Ramanbhai Dhulabhai and for her family from her hardworking and personal savings, monetary help from her relatives. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release on Duty payment/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of Duty-fine or re-export of goods or as per the procedure laid down under the Customs Act, 1962.

3. Statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee inter alia stated that the gold jewellery was brought by Noticee the said gold Jewellery from her personal savings, hardworking & borrowed money from relatives at Dubai, purchased from **"OMNI Jewellers & Gold Smith L.L.C"** at the material time she was carrying the bill in this regard, but prior to her declaration she was intercepted from immigration counter, not allowed to file declaration form at red channel and resulting in booking of the case; as carrying of gold without payment of duty means smuggling- as per the impugned SCN. Furthermore, it is therefore, very clear, that the goods in question clearly belongs to the noticee who had orally self-declared. Moreover, the noticee had repeatedly requested the officers to release the gold jewellery on payment of duty, but the same fell on the deaf ears. However, a copy of Invoice produced in the name of by her Husband Patel Ramanbhai Dhulabhai **"OMNI Jewellers & Gold Smith L.L.C"** gold bill in the name of her husband, which was produced/recovered from noticee; was not incorporated at any were during the panchanama, but during statement u/s 108, shows noticee's is the legitimate purchaser of gold. Noticee has produced the gold jewellery bill. the noticee was not allowed to file any declaration form, she does not know what is written in panchnama as well as statement u/s 108 has been recorded in English, she is an Illiterate Person studied in Gujarati Medium (Primary level) and she is not known what is written in the panchnama and statement which she was only asked the general questions about her family, she was not allowed to write in her own handwriting in Gujarati, as the officer intensely write their own story and narration in English. As the officer also knows Gujarati language very well to Read /Write, she was forced to sign in fear of arrest, she simply signed the papers. It can be seen from evidently that the Statement u/s 108 of C A Act 1962 from First para to last end of statement there is no any question asked regarding noticee's education & qualification, which is mandatory during the recording of statement u/s 108 of any person. At last page of statement why the noticee was forced to write in Gujarati "અલ બયાન મને ગુજરતી માં સમજાવેલ છે".

4. Furthermore, most important the Statements of Noticee and other 5 passengers were not true and correct any stage, as it can be seen from **Statement u/s 108** dated 21-22/10/2024 of tour operator Shri **Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel**, during their statement officers asked questions regarding funding/ownership of 6 passenger's gold jewellery. They both i.e. Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel has answered / stated that 6 passengers had purchase gold jewellery by them from their own funds and same owed by them only seized as per **Annexure-II of Panchanama dated 21.10.2024** the real fact were taken on record in the statement of Kiritkumar & Parth. The noticee is liable to release the jewellery on payment of applicable customs duty. The noticee does not know what is written in panchnama as well as statement u/s 108 of C A Act 1962, has been recorded in English, which she was forced to sign in fear of arrest, she 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. Noticee was liable to get released Gold Jewellery on payment of applicable Customs Duty, it is clear that she was not a part of syndicate of Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel. In the present case, gold weighing **40.08 grams of 24 Karat**, having a Tariff Value of **Rs. 2,88,883/-**, was seized from the individual possession of the Noticee. It is respectfully submitted that the value of the seized goods is **less than Rs. 10,00,000/-**. As per **CBIC Circular No. 07/2017-Cus dated 06.03.2017**, read with **Circular No. 09/2019-Cus dated 28.02.2019**, cases involving gold of value **below Rs. 10 lakh** should be adjudicated by the **Deputy Commissioner/Assistant Commissioner of Customs**, and **not by the Additional Commissioner**. Therefore, in view of the above factual and legal position, it is humbly prayed that the present matter may be **transferred to the jurisdiction of the Deputy Commissioner/Assistant Commissioner of Customs**, who is the appropriate adjudicating authority as per the monetary limits laid down in the aforementioned circulars.

5. In case at hand, from the individual possession of the applicant gold weighing 40.08 grams of 24Kt valued at Rs.2,88,883/- (Tariff Value) was placed under seizure valuing is not more than ten lakhs, value of total gold recovered from the possession of applicant.

Therefore, question arises whether value of individually recovered gold should be considered or value of combined recovered gold should be considered. 30. In Section 135 Customs Act, term "any person" has been used and, in my view, it denotes to an individual. The term "any person" cannot be interpreted as a group of persons. From the plain reading of Section 135 Customs Act it appears that it refers to an individual.

In the High Court of Gujarat at Ahmedabad Ayeshabibi Ajiz Husen Jariwala V/s. State of Gujarat & Afrinbanu Mohammed Amin Shaikh V/s. State of Gujarat in this The judgment related to falsely involved in said non bailable offence of customs Act 1962, it can be seen from panchnama and seizure memo that value of gold was recovered from present applicant is under ONE CRORE i.e. **Rs 45,50,727/-**. The said offence is bailable as per the Custom Act section 135, that the present applicant is falsely arrested in Non-Bailable offence and framed by assume and presume conspiracy narrated by the Investigating Officers of DRI. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of

possession, should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

The judgment dated 23.03.2023 of Hon'ble Allahabad High Court in **Mohd. Tufail vs UOI** is more relevant than the judgment dated 27.06.2023 of High Court of Kerala in the case of **Pulikkippoyil Sharafudheen & anr vs Superintendent of Customs**. In the said judgment dated 23.03.2023 legal provisions have been better explained than the judgment dated 27.06.2023 which mainly relied on General Clauses Act, 1897. In this case, the court underscored that possession must not only be physical but also **conscious and exclusive**, meaning the accused must be aware of and have control over the contraband. Mere proximity to the illegal substance or presence at the location is insufficient to establish individual possession unless supported by clear, cogent evidence linking the person directly to the contraband. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, *Mohd. Tufail* should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

Delhi High Court also in the case of Air Customs Vs. Begaim Akynova (supra) observed that punishment which is to be imposed on the accused should correspond to the gold that has **solely been recovered from his possession and each person should be made answerable for the recovery of gold found in his possession.** 32. Therefore, in my view, for the purpose of Section 135 Customs Act value of individually recovered gold should be considered and not the value of combined recovered gold.

Recently three Judges Bench of the Apex Court in the case of Commissioner of Customs Vs. Atul Automation Private Limited, 14 of 16 (2019) 3 Supreme Court Cases 539 with regard to multi-function device observed that MFDs were not prohibited but restricted items for import and further observed that there will exist fundamental distinction between what is prohibited and what is restricted. Therefore, from the case of Atul Automation (supra) it appears that on the basis of restriction on import a good cannot be said to be prohibited good in terms of Section 2 (33) Customs Act.

In case at hand, according to the prosecution, gold was recovered from the possession of the applicants which was liable for confiscation under Section 111 of the Customs Act and as per Section 125 Customs Act the authority concerned may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of Customs Act **gold is not prohibited goods but it is restricted goods** and as per Section 125 Customs Act in lieu of confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovered gold is not prohibited goods under Section 2(33) Customs Act but it is restricted goods in view of the judgment of **three Judges Bench of the Apex Court in the case of Atul Automation (supra).**

6. 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 her arrival in India; the fact is that during the immigration process noticee were detained at Immigration Counter by AIU officers, they collected passports of all the passengers including noticee of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as she has first time brought the gold jewelry along with her she declared orally and she was not allowed to file the declaration form at Red Channel, as she has orally declared but nobody has bothered to help her to file the declaration form, the present case is not the case of non-declaration. That the statement also 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 by this reply after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

7. The noticee had made very clear on dated 21.10.2024 that the seized goods belonged to her but to no avail and the officers were hell bent on booking a case against her i.e. the noticee. had been given some more time, she would have definitely after discussing and knowing the actual fact (not the member of Syndicate of Tour operator) with officers filed a declaration as required under law. It is not the case of the department that she 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 passengers to disclose prior to completion of her baggage.

8. In addition to para 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 she knows or has reason to believe are liable to confiscation under section 111(d), (i), (j), (l), (m). 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 she has simply failed to declare the gold jewelry in the declaration form but noticee has declared orally.

9. 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 her own handwriting which he knows very well as such Gujarati; 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

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

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 an 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. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

10. It is submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee 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 payment of Applicable Duty.

11. It is further submitted that the statement & Panchanama was recorded/signed under duress and threat contrary to the fact and that she had never on the previous occasion brought any gold or for that matter any offending goods while she 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 her entire life, she may be pardoned of the consequences just because she 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.

12. It is submitted that the noticee has been accused of carrying goods herself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate her involvement in a transaction in the nature of smuggling.

13. It is to further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN.

14. The noticee craves leave to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter.

15. It is further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

51. Defence Reply of Noticee No. 02: Patel Hasumatiben Dineshbhai has filed defence reply to the show cause notice vide letter dated 06.05.2025. The submissions made are that:

1. At the outset, the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 01 Chian & 02 Gold Bangles total

weighing 110.02 grams of 24 Kt valued at Rs.7,92,986/- (Tariff Value) was placed under seizure; It may also be seen from 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 is 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.

2. It is true that the noticee had brought 01Chian & 02 Gold Bangles total weighing 110.02 grams of 24 Kt valued at Rs.7,92,986/- (Tariff Value) was wearing in her hand was placed under seizure; **Noticee decided to visit Dubai, she contacted Raj Visa and Travels at Kadi owned by Kirit Patel,** who is well known and cheapest and reasonable tour operator. Noticee visited to Raj Visa Travels in the month of September2024 and meet travel agent, who has offered a reasonable package for Dubai stay with all facility i.e. Air- tickets, Pickup & Drop, Sightseeing, Hotels Rooms, Pure-veg food etc, the Dubai Tour was starting from 14.10.2024 to 20.10.2024 for 07 days, a sample copy of travel Itinerary(Dubai) was given to my client and he offered Rs.75000/- per adult person charges, after bargaining at last Rs. 73,000/- per person was decided for Dubai Tour. On dated 27.09.2024 she paid in cash Rs. 73,000/- to Kirit Patel, who issued Cash Memo.**The noticee who is coming back to India** from Dubai, purchased Gold jewellery at Dubai, bill was produced at the same time but the said bill was not incorporated at any stage, the gold jewellery was brought for her personal usages and for her family, Gold is not in commercial quantity, Gold jewellery was worn on her hands which was clearly visible, the gold is not prohibited, On dated 21.10.2024 early morning the AIU officers have received an information that tour operator arriving from Abu Dhabi by Air Arabia Flight No. 3L-111 are suspected of engaging in gold smuggling the said information further indicated that the said tour operator was distributing gold items like gold chains and gold mangal-sutras to his client passengers in small, concealed quantities aboard Air Arabia Flight No. 3L-111 arriving from Abu Dhabi to Ahmedabad the officers . At the time flight Air-Arabia No. 3L-111 landed Ahmedabad at SVPIAirport at during the immigration process all the flight passengers were detained at Immigration Counter by AIU officers, they collected passports of all the passengers and all the passengers of flight were taken to the AIU office situated at SVPIAirport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers

request all the passengers to co-operate in routine checking process. During the process the noticee as she has first time brought the gold jewellery along with her she declared orally and she was not allowed to file the declaration form at Red Channel, as she has orally declared but nobody has bothered to help her 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 by officers. While returning from Dubai noticee has brought gold jewellery for her personal use and purchased by herself and for her family from her hardworking and personal savings, monetary help from her relatives. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release on Duty payment/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of Duty-fine or re-export of goods or as per the procedure laid down under the Customs Act, 1962.

3. Statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interilic stated that the gold jewellery was brought by Noticee the said gold Jewellery from her personal savings, hardworking & borrowed money from relatives at Dubai, at the material time she was carrying the bill in this regard, but prior to her declaration she was intercepted from immigration counter , not allowed to file declaration form at red channel and resulting in booking of the case; as carrying of gold without payment of duty means smuggling- as per the impugned SCN. Furthermore, it is therefore, very clear, that the goods in question clearly belongs to the noticee who had orally self-declared. Moreover, the noticee had repeatedly requested the officers to release the gold jewellery on payment of duty, but the same fell on the deaf ears. However, a copy of Invoice produced in the name of Noticee gold bill in the name of noticee, which was produced/recovered from noticee; was not incorporated at any were during the panchanama, but during statement u/s 108, shows noticee's is the legitimate purchaser of gold. Noticee has produced the gold jewellery bill. the noticee was not allowed to file any declaration form, she does not know what is written in panchnama as well as statement u/s 108 has been recorded in English, she is an Illiterate Person studied in Gujarati Medium (Primary level) and she is not known what is written in the panchnama and statement which she was only asked the general questions about her family, she was not allowed to write in her own handwriting in Gujarati, as the officer intensely write their own story and narration in English. As the officer also knowns Gujarati language very well to Read /Write, she was forced to sign in fear of arrest, she simply signed the papers. It can be seen from evidently that the Statement u/s 108 of C A Act 1962 from First para to last end of statement there is no any question asked regarding noticee's

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education & qualification, which is mandatory during the recording of statement u/s 108 of any person. At last page of statement why the noticee was forced to write in Gujarati “આ બયાન મને ગુજરાતી માં સમજાવેલ છે”.

4. Furthermore, most important the Statements of Noticee and other 5 passengers were not true and correct t any stage, as it can be seen from **Statement u/s 108** dated 21-22/10/2024 of tour operator Shri **Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel**, during their statement officers asked questions regarding funding/ownership of 6 passenger’s gold jewellery. They both i.e. Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel has answered / stated that 6 passengers had purchase gold jewellery by them from their own funds and same owed by them only seized as per **Annexure II** of **Panchanama dated 21.10.2024** the real fact were taken on record in the statement of Kiritkumar & Parth. The noticee is liable to release the jewellery on payment of applicable customs duty. The noticee does not know what is written in panchnama as well as statement u/s 108 of C A Act 1962, has been recorded in English, which she was forced to sign in fear of arrest, she 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. Noticee was liable to get released Gold Jewellery on payment of applicable Customs Duty, it is clear that she was not a part of syndicate of Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel. In the present case, gold weighing **110.02 grams of 24 Karat**, having a Tariff Value of **Rs. 7,92,986/-**, was seized from the individual possession of the Noticee. It is respectfully submitted that the value of the seized goods is **less than Rs. 10,00,000/-**. As per **CBIC Circular No. 07/2017-Cus dated 06.03.2017**, read with **Circular No. 09/2019-Cus dated 28.02.2019**, cases involving gold of value **below Rs. 10 lakh** should be adjudicated by the **Deputy Commissioner/Assistant Commissioner of Customs**, and **not by the Additional Commissioner**. Therefore, in view of the above factual and legal position, it is humbly prayed that the present matter may be **transferred to the jurisdiction of the Deputy Commissioner/Assistant Commissioner of Customs**, who is the appropriate adjudicating authority as per the monetary limits laid down in the aforementioned circulars.

5. In case at hand, from the individual possession of the applicant gold weighing 110.02 grams of 24 Kt valued at Rs.7,92,986/- (Tariff Value) was placed under seizure valuing is not more than ten lakhs, value of total gold recovered from the possession of applicant.

Therefore, question arises whether value of individually recovered gold should be considered or value of combined recovered gold should be considered. 30. In Section 135 Customs Act, term “any person” has been used and, in my view, it

denotes to an individual. The term “any person” cannot be interpreted as a group of persons. From the plain reading of Section 135 Customs Act it appears that it refers to an individual.

In the High Court of Gujarat at Ahmedabad Ayeshabibi Ajiz Husen Jariwala V/s. State of Gujarat & Afrinbanu Mohammed Amin Shaikh V/s. State of Gujarat in this The judgment related to falsely involved in said non bailable offence of customs Act 1962, it can be seen from panchnama and seizure memo that value of gold was recovered from present applicant is under ONE CRORE i.e. **Rs 45,50,727/-**. The said offence is bailable as per the Custom Act section 135, that the present applicant is falsely arrested in Non-Bailable offence and framed by assume and presume conspiracy narrated by the Investigating Officers of DRI. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

The judgment dated 23.03.2023 of Hon'ble Allahabad High Court in **Mohd. Tufail vs UOI** is more relevant than the judgment dated 27.06.2023 of High Court of Kerala in the case of **Pulikkippoyil Sharafudheen & anr vs Superintendent of Customs**. In the said judgment dated 23.03.2023 legal provisions have been better explained than the judgment dated 27.06.2023 which mainly relied on General Clauses Act, 1897. In this case, the court underscored that possession must not only be physical but also **conscious and exclusive**, meaning the accused must be aware of and have control over the contraband. Mere proximity to the illegal substance or presence at the location is insufficient to establish individual possession unless supported by clear, cogent evidence linking the person directly to the contraband. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, *Mohd. Tufail* should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

Delhi High Court also in the case of Air Customs Vs. Begaim Akynova (supra) observed that punishment which is to be imposed on the accused

should correspond to the gold that has **solely been recovered from his possession and each person should be made answerable for the recovery of gold found in his possession.** 32. Therefore, in my view, for the purpose of Section 135 Customs Act value of individually recovered gold should be considered and not the value of combined recovered gold.

Recently three Judges Bench of the Apex Court in the case of Commissioner of Customs Vs. Atul Automation Private Limited, 14 of 16 (2019) 3 Supreme Court Cases 539 with regard to multi-function device observed that MFDs were not prohibited but restricted items for import and further observed that there will exist fundamental distinction between what is prohibited and what is restricted. Therefore, from the case of Atul Automation (supra) it appears that on the basis of restriction on import a good cannot be said to be prohibited good in terms of Section 2 (33) Customs Act.

In case as hand, according to the prosecution, gold was recovered from the possession of the applicants which was liable for confiscation under Section 111 of the Customs Act and as per Section 125 Customs Act the authority concerned may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of Customs Act **gold is not prohibited goods but it is restricted goods** and as per Section 125 Customs Act in lieu of confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovered gold is not prohibited goods under Section 2(33) Customs Act but it is restricted goods in view of the judgment of three Judges Bench of the Apex Court in the case of Atul Automation (supra).

6. 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 her arrival in India; the fact is that during the immigration process noticee were detained at Immigration Counter by AIU officers, they collected passports of all the passengers including noticee of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as she has first time brought the gold jewellery along with her she declared orally and she was not allowed to file the declaration form at Red Channel, as she has orally declared but nobody has bothered to help her to file the declaration form, the present case is not the case of non-declaration. That the statement also 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 by this reply after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

7. The noticee had made very clear on dated 21.10.2024 that the seized goods belonged to her but to no avail and the officers were hell bent on booking a case against her i.e. the noticee. had been given some more time, she would have definitely after discussing and knowing the actual fact (not the member of Syndicate of Tour operator) with officers filed a declaration as required under law. It is not the case of the department that she 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 passengers to disclose prior to completion of her baggage.

8. In addition to para 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 she knows or has reason to believe are liable to confiscation under section 111(d), (i), (j), (l), (m). 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 she has simply failed to declare the gold jewelry in the declaration form but noticee has declared orally.

9. 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 her own handwriting which he knows very well as such Gujarati; 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

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be

relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

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 its 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 an 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. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

10. It is submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee 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 payment of Applicable Duty.

11. It is further submitted that the statement & Panchanama was recorded/signed under duress and threat contrary to the fact and that she had never on the previous occasion brought any gold or for that matter any offending goods while she 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 her entire life, she may be pardoned of the consequences just because she 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.

12. It is submitted that the noticee has been accused of carrying goods herself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate her involvement in a transaction in the nature of smuggling.

13. It is to further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN.

14. The noticee craves leave to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter.

15. It is further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

52. Defence Reply of Noticee No. 03: Patel Kapilaben Dineshbhai has filed defence reply to the show cause notice vide letter dated 06.05.2025. The submissions made are that:

1. At the outset, the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 04 Gold Bangles weighing 79.95 grams of 24 Kt valued at Rs.5,76,252/- (Tariff Value) was placed under seizure; It may also be seen from 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 is 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.

2. It is true that the noticee had 04 Gold Bangles weighing 79.95 grams of 24 Kt valued at Rs.5,76,252/- (Tariff Value) was wearing in her hand was placed under seizure; **Noticee decided to visit Dubai, she contacted Raj Visa and Travels at Kadi owned by Kirit Patel**, who is well known and cheapest and reasonable tour operator. Noticee visited to Raj Visa Travels in the month of September2024 and meet travel agent, who has offered a reasonable package for Dubai stay with all facility i.e. Air- tickets, Pickup & Drop, Sightseeing, Hotels Rooms, Pure-veg food etc, the Dubai Tour was starting from 14.10.2024 to 20.10.2024 for 07 days, a sample copy of travel Itinerary(Dubai) was given to my client and he offered Rs.75000/- per adult person charges, after bargaining at last Rs. 68,000/- per person was decided

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for Dubai Tour. On dated 07.09.2024 she paid in cash Rs. 68,000/- to Kirit Patel, who issued Cash Memo. **The noticee who is coming back to India** from Dubai, purchased Gold jewellery at Dubai, bill was produced at the same time but the said bill was not incorporated at any stage, the gold jewellery was brought for her personal usages and for her family, Gold is not in commercial quantity, Gold jewellery was worn on her hands which was clearly visible, the gold is not prohibited, On dated 21.10.2024 early morning the AIU officers have received an information that tour operator arriving from Abu Dhabi by Air Arabia Flight No. 3L-111 are suspected of engaging in gold smuggling the said information further indicated that the said tour operator was distributing gold items like gold chains and gold mangal-sutras to his client passengers in small, concealed quantities aboard Air Arabia Flight No. 3L-111 arriving from Abu Dhabi to Ahmedabad the officers . At the time flight Air-Arabia No. 3L-111 landed Ahmedabad at SVPI Airport at during the immigration process all the flight passengers were detained at Immigration Counter by AIU officers, they collected passports of all the passengers and all the passengers of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as she has first time brought the gold jewellery along with her she declared orally and she was not allowed to file the declaration form at Red Channel, as she has orally declared but nobody has bothered to help her 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 by officers. While returning from Dubai noticee has brought gold jewellery for her personal use and purchased from **White Classic Gold and Diamond Trading LLC** by herself and for her family from her hardworking and personal savings, monetary help from her relatives. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release on Duty payment/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of Duty-fine or re-export of goods or as per the procedure laid down under the Customs Act, 1962.

3. Statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interilic stated that the gold jewellery was brought by Noticee the said gold Jewellery from her personal savings, hardworking & borrowed money from relatives at Dubai, purchased from **“White Classic Gold and Diamond Trading LLC”** at the material time she was carrying the bill in this regard, but prior to her declaration she was intercepted from immigration

counter , not allowed to file declaration form at red channel and resulting in booking of the case; as carrying of gold without payment of duty means smuggling- as per the impugned SCN. Furthermore, it is therefore, very clear, that the goods in question clearly belongs to the noticee who had orally self-declared. Moreover, the noticee had repeatedly requested the officers to release the gold jewellery on payment of duty, but the same fell on the deaf ears. However, a copy of Invoice produced in the name of Noticee “**White Classic Gold and Diamond Trading LLC**” gold bill in the name of noticee, which was produced/recovered from noticee; was not incorporated at any were during the panchanama, but during statement u/s 108, shows noticee’s is the legitimate purchaser of gold. Noticee has produced the gold jewellery bill. the noticee was not allowed to file any declaration form, she does not know what is written in panchnama as well as statement u/s 108 has been recorded in English, she is an Illiterate Person studied in Gujarati Medium (Primary level) and she is not known what is written in the panchnama and statement which she was only asked the general questions about her family, she was not allowed to write in her own handwriting in Gujarati, as the officer intensely write their own story and narration in English. As the officer also knows Gujarati language very well to Read /Write, she was forced to sign in fear of arrest, she simply signed the papers. It can be seen from evidently that the Statement u/s 108 of C A Act 1962 from First para to last end of statement there is no any question asked regarding noticee’s education & qualification, which is mandatory during the recording of statement u/s 108 of any person. At last page of statement why the noticee was forced to write in Gujarati “આ બયાન મને ગુજરાતી માં સમજાવેલ છે”.

4. Furthermore, most important the Statements of Noticee and other 5 passengers were not true and correct t any stage, as it can be seen from **Statement u/s 108** dated 21-22/10/2024 of tour operator Shri **Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel**, during their statement officers asked questions regarding funding/ownership of 6 passenger’s gold jewellery. They both i.e. Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel has answered / stated that 6 passengers had purchase gold jewellery by them from their own funds and same owed by them only seized as per **Annexure II** of **Panchanama dated 21.10.2024** the real fact were taken on record in the statement of Kiritkumar & Parth. The noticee is liable to release the jewellery on payment of applicable customs duty. The noticee does not know what is written in panchnama as well as statement u/s 108 of C A Act 1962, has been recorded in English, which she was forced to sign in fear of arrest, she 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. Noticee was liable to get released Gold Jewellery on payment of applicable Customs Duty, it is clear that she was not a part of syndicate of Kiritkumar

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Laljibhai Patel & Parth Dashrathbhai Patel. In the present case, gold weighing **79.95 grams of 24 Karat**, having a Tariff Value of **Rs. 5,76,252/-**, was seized from the individual possession of the Noticee. It is respectfully submitted that the value of the seized goods is **less than Rs. 10,00,000/-**. As per **CBIC Circular No. 07/2017-Cus dated 06.03.2017**, read with **Circular No. 09/2019-Cus dated 28.02.2019**, cases involving gold of value **below Rs. 10 lakh** should be adjudicated by the **Deputy Commissioner/Assistant Commissioner of Customs**, and **not by the Additional Commissioner**. Therefore, in view of the above factual and legal position, it is humbly prayed that the present matter may be **transferred to the jurisdiction of the Deputy Commissioner/Assistant Commissioner of Customs**, who is the appropriate adjudicating authority as per the monetary limits laid down in the aforementioned circulars.

5. In case at hand, from the individual possession of the applicant gold weighing 79.95 grams of 24 Kt valued at Rs.5,76,252/- (Tariff Value) was placed under seizure valuing is not more than ten lakhs, value of total gold recovered from the possession of applicant.

Therefore, question arises whether value of individually recovered gold should be considered or value of combined recovered gold should be considered. 30. In Section 135 Customs Act, term "any person" has been used and, in my view, it denotes to an individual. The term "any person" cannot be interpreted as a group of persons. From the plain reading of Section 135 Customs Act it appears that it refers to an individual.

In the High Court of Gujarat at Ahmedabad Ayeshabibi Ajiz Husen Jariwala V/s. State of Gujarat & Afrinbanu Mohammed Amin Shaikh V/s. State of Gujarat in this The judgment related to falsely involved in said non bailable offence of customs Act 1962, it can be seen from panchnama and seizure memo that value of gold was recovered from present applicant is under ONE CRORE i.e. **Rs 45,50,727/-**. The said offence is bailable as per the Custom Act section 135, that the present applicant is falsely arrested in Non-Bailable offence and framed by assume and presume conspiracy narrated by the Investigating Officers of DRI. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

The judgment dated 23.03.2023 of Hon'ble Allahabad High Court in **Mohd. Tufial vs UOI** is more relevant than the judgment dated 27.06.2023 of High Court of Kerala in the case of **Pulikkippoyil Sharafudheen & anr vs Superintendent of Customs**. In the said judgment dated 23.03.2023 legal provisions have been better explained than the judgment dated 27.06.2023 which mainly relied on General Clauses Act, 1897. In this case, the court underscored that possession must not only be physical but also **conscious and exclusive**, meaning the accused must be aware of and have control over the contraband. Mere proximity to the illegal substance or presence at the location is insufficient to establish individual possession unless supported by clear, cogent evidence linking the person directly to the contraband. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, *Mohd. Tufail* should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

Delhi High Court also in the case of Air Customs Vs. Begaim Akynova (supra) observed that punishment which is to be imposed on the accused should correspond to the gold that has **solely been recovered from his possession and each person should be made answerable for the recovery of gold found in his possession.** 32. Therefore, in my view, for the purpose of Section 135 Customs Act value of individually recovered gold should be considered and not the value of combined recovered gold.

Recently three Judges Bench of the Apex Court in the case of Commissioner of Customs Vs. Atul Automation Private Limited, 14 of 16 (2019) 3 Supreme Court Cases 539 with regard to multi-function device observed that MFDs were not prohibited but restricted items for import and further observed that there will exist fundamental distinction between what is prohibited and what is restricted. Therefore, from the case of Atul Automation (supra) it appears that on the basis of restriction on import a good cannot be said to be prohibited good in terms of Section 2 (33) Customs Act.

In case at hand, according to the prosecution, gold was recovered from the possession of the applicants which was liable for confiscation under Section 111 of the Customs Act and as per Section 125 Customs Act the authority concerned may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of Customs Act **gold is not prohibited goods but it is restricted goods** and as per Section 125 Customs Act in lieu of

confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovered gold is not prohibited goods under Section 2(33) Customs Act but it is restricted goods in view of the judgment of three Judges Bench of the Apex Court in the case of Atul Automation (supra).

6. 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 her arrival in India; the fact is that during the immigration process noticee were detained at Immigration Counter by AIU officers, they collected passports of all the passengers including noticee of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as she has first time brought the gold jewelry along with her she declared orally and she was not allowed to file the declaration form at Red Channel, as she has orally declared but nobody has bothered to help her to file the declaration form, the present case is not the case of non-declaration. That the statement also 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 by this reply after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

7. The noticee had made very clear on dated 21.10.2024 that the seized goods belonged to her but to no avail and the officers were hell bent on booking a case against her i.e. the noticee. had been given some more time, she would have definitely after discussing and knowing the actual fact (not the member of Syndicate of Tour operator) with officers filed a declaration as required under law. It is not the case of the department that she 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 passengers to disclose prior to completion of her baggage.

8. In addition to para 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 she knows

or has reason to believe are liable to confiscation under section 111(d), (i), (j), (l), (m). 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 she has simply failed to declare the gold jewellery in the declaration form but noticee has declared orally.

9. 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 her own handwriting which he knows very well as such Gujarati; 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

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

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 its 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 an 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. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

10. It is submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee 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 payment of Applicable Duty.

11. It is further submitted that the statement & Panchanama was recorded/signed under duress and threat contrary to the fact and that she had never on the previous occasion brought any gold or for that matter any offending goods while she 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 her entire life, she may be pardoned of the consequences just because she 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.

12. It is submitted that the noticee has been accused of carrying goods herself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate her involvement in a transaction in the nature of smuggling.

13. It is to further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN.

14. The noticee craves leave to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter.

15. It is further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

53. Defence Reply of Noticee No. 04: Patel Vijaykumar Dhanabhai has filed defence reply to the show cause notice vide letter dated 06.05.2025. The submissions made are that:

1. At the outset, the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 02 Gold Chain weighing 149.97 grams of 24 Kt valued at Rs.10,80,931/- (Tariff Value) was placed under seizure; It may also be seen from 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 is 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.

2. It is true that the noticee had 02 Gold Chain weighing 149.97 grams of 24Kt valued at Rs.10,80,931/- (Tariff Value) was wearing in his neck was placed under seizure; **Noticee decided to visit Dubai, he contacted Raj Visa and Travels at Kadi owned by Kirit Patel**, who is well known and cheapest and reasonable tour operator. Noticee visited to Raj Visa Travels in the month of September 2024 and meet travel agent, who has offered a reasonable package for Dubai stay with all facility i.e. Air- tickets, Pickup & Drop, Sightseeing, Hotels Rooms, Pure-veg food etc, the Dubai Tour was starting from 14.10.2024 to 20.10.2024 for 07 days, a sample copy of travel Itinerary(Dubai) was given to my client and he offered Rs.75000/- per adult person charges, after bargaining at last Rs. 68,000/- per person was decided for Dubai Tour. On dated 06.09.2024 he paid in cash Rs. 68,000/- to Kirit Patel, who issued Cash Memo. **The noticee who is coming back to India** from Dubai, purchased Gold jewellery at Dubai, bill was produced at the same time but the said bill was not incorporated at any stage, the gold jewellery was brought for his personal usages and for his family, Gold is not in commercial quantity, Gold jewellery was worn on his neck which was clearly visible, the gold is not prohibited, On dated 21.10.2024 early morning the AIU officers have received an information that tour operator arriving from Abu Dhabi by Air Arabia Flight

No. 3L-111 are suspected of engaging in gold smuggling the said information further indicated that the said tour operator was distributing gold items like gold chains and gold mangal-sutras to his client passengers in small, concealed quantities aboard Air Arabia Flight No. 3L-111 arriving from Abu Dhabi to Ahmedabad the officers . At the time flight Air-Arabia No. 3L-111 landed Ahmedabad at SVPI Airport at during the immigration process all the flight passengers were detained at Immigration Counter by AIU officers, they collected passports of all the passengers and all the passengers of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as he has first time brought the gold jewelry along with his he declared orally and he was not allowed to file the declaration form at Red Channel, as he has orally declared but nobody has bothered to help his 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 by officers. While returning from Dubai noticee has brought gold jewelry for his personal use and purchased by his and for his family from his hardworking and personal savings, monetary help from his relatives. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release on Duty payment/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of Duty-fine or re-export of goods or as per the procedure laid down under the Customs Act, 1962.

3. Statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interilic stated that the gold jewellery was brought by Noticee the said gold Jewellery from his personal savings, hardworking & borrowed money from relatives at Dubai, at the material time he was carrying the bill in this regard, but prior to his declaration he was intercepted from immigration counter , not allowed to file declaration form at red channel and resulting in booking of the case; as carrying of gold without payment of duty means smuggling- as per the impugned SCN. Furthermore, it is therefore, very clear, that the goods in question clearly belongs to the noticee who had orally self-declared. Moreover, the noticee had repeatedly requested the officers to release the gold jewellery on payment of duty, but the same fell on the deaf ears. However, a copy of Invoice produced in the name of Noticee gold bill in the name of noticee, which was produced/recovered from noticee; was not incorporated at any were during the panchanama, but during statement u/s 108, shows noticee's is the legitimate purchaser of gold. Noticee has produced

the gold jewellery bill. the noticee was not allowed to file any declaration form, he does not know what is written in panchnama as well as statement u/s 108 has been recorded in English, he is an Illiterate Person studied in Gujarati Medium (Primary level) and he is not known what is written in the panchnama and statement which he was only asked the general questions about his family, he was not allowed to write in his own handwriting in Gujarati, as the officer intensely write their own story and narration in English. As the officer also knows Gujarati language very well to Read /Write, he was forced to sign in fear of arrest, he simply signed the papers. It can be seen from evidently that the Statement u/s 108 of C A Act 1962 from First para to last end of statement there is no any question asked regarding noticee's education & qualification, which is mandatory during the recording of statement u/s 108 of any person. At last page of statement why the noticee was forced to write in Gujarati “અલ બચાન મને ગુજરાતી માં સમજાવેલ છે”.

4. Furthermore, most important the Statements of Noticee and other 5 passengers were not true and correct t any stage, as it can be seen from **Statement u/s 108** dated 21-22/10/2024 of tour operator Shri **Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel**, during their statement officers asked questions regarding funding/ownership of 6 passenger's gold jewellery. They both i.e. Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel has answered / stated that 6 passengers had purchase gold jewellery by them from their own funds and same owed by them only seized as per **Annexure II of Panchanama dated 21.10.2024** the real fact were taken on record in the statement of Kiritkumar & Parth. The noticee is liable to release the jewellery on payment of applicable customs duty. The noticee does not know what is written in panchnama as well as statement u/s 108 of C A Act 1962, has been recorded in English, which 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. Noticee was liable to get released Gold Jewellery on payment of applicable Customs Duty, it is clear that he was not a part of syndicate of Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel.

5. 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; the fact is that during the immigration process noticee were detained at Immigration Counter by AIU officers, they collected passports of all the passengers including noticee of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to

co-operate in routine checking process. During the process the noticee as he has first time brought the gold jewellery along with his he declared orally and he was not allowed to file the declaration form at Red Channel, as he has orally declared but nobody has bothered to help his to file the declaration form, the present case is not the case of non-declaration. That the statement also 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 by this reply after knowing the Department's statement under the provisions of section 108 of the Customs Act,1962, hence the same is contrary to law.

6. The noticee had made very clear on dated 21.10.2024 that the seized goods belonged to his but to no avail and the officers were hell bent on booking a case against his i.e. the noticee. had been given some more time, he would have definitely after discussing and knowing the actual fact (not the member of Syndicate of Tour operator) 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 passengers to disclose prior to completion of his baggage.

7. In addition to para 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), (i), (j), (l), (m). 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 jewellery in the declaration form but noticee has declared orally.

8. 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 such Gujarati; 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

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

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 its 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 an 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. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

9. It is submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee 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 payment of Applicable Duty.

10. It is further submitted that the statement & Panchanama was recorded/signed under duress and threat contrary to the fact 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 his 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.

11. It is submitted that the noticee has been accused of carrying goods herself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate his involvement in a transaction in the nature of smuggling.

12. It is to further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN.

13. The noticee craves leave to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter.

14. It is further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

54. Defence Reply of Noticee No. 05: Patel Navinchandra Shivilal has filed defence reply to the show cause notice vide letter dated 06.05.2025. The submissions made are that:

1. At the outset, the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 01 Gold Chain weighing 49.96 grams of 24Kt valued at Rs.3,60,094/- (Tariff Value) was placed under seizure; It may also be seen from 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 is 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.

2. It is true that the noticee had 01 Gold Chain weighing 49.96 grams of 24 Kt valued at Rs.3,60,094/- (Tariff Value) was wearing in neck was placed under seizure; **Noticee decided to visit Dubai, he contacted Raj Visa and Travels**

at Kadi owned by Kirit Patel, who is well known and cheapest and reasonable tour operator. Noticee visited to Raj Visa Travels in the month of September 2024 and meet travel agent, who has offered a reasonable package for Dubai stay with all facility i.e. Air- tickets, Pickup & Drop, Sightseeing, Hotels Rooms, Pure-veg food etc, the Dubai Tour was starting from 14.10.2024 to 20.10.2024 for 07 days, a sample copy of travel Itinerary(Dubai) was given to my client and he offered Rs.75000/- per adult person charges, after bargaining at last Rs. 68,000/- per person was decided for Dubai Tour. On dated 03.09.2024 he paid in cash Rs. 68,000/- to Kirit Patel, who issued Cash Memo. **The noticee who is coming back to India** from Dubai, purchased Gold jewellery at Dubai, bill was produced at the same time but the said bill was not incorporated at any stage, the gold jewellery was brought for his personal usages and for his family, Gold is not in commercial quantity, Gold jewellery was worn on his neck which was clearly visible, the gold is not prohibited, On dated 21.10.2024 early morning the AIU officers have received an information that tour operator arriving from Abu Dhabi by Air Arabia Flight No. 3L-111 are suspected of engaging in gold smuggling the said information further indicated that the said tour operator was distributing gold items like gold chains and gold mangal-sutras to his client passengers in small, concealed quantities aboard Air Arabia Flight No. 3L-111 arriving from Abu Dhabi to Ahmedabad the officers . At the time flight Air-Arabia No. 3L-111 landed Ahmedabad at SVPIA Airport at during the immigration process all the flight passengers were detained at Immigration Counter by AIU officers, they collected passports of all the passengers and all the passengers of flight were taken to the AIU office situated at SVPIA Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as he has first time brought the gold jewellery along with his he declared orally and he was not allowed to file the declaration form at Red Channel, as he has orally declared but nobody has bothered to help his 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 by officers. While returning from Dubai noticee has brought gold jewellery for his personal use and purchased from **MEGA STAR JI WELLERS LLC** by himself and for his family from his hardworking and personal savings, monetary help from his relatives. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release on Duty payment/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of Duty-fine or re-export of goods or as per the procedure laid down under the Customs Act, 1962.

3. Statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee interiliac stated that the gold jewellery was brought by Noticee the said gold Jewellery from his personal savings, hardworking & borrowed money from relatives at Dubai, purchased from “**MEGA STAR JI WELLERS LLC**” at the material time he was carrying the bill in this regard, but prior to his declaration he was intercepted from immigration counter, not allowed to file declaration form at red channel and resulting in booking of the case; as carrying of gold without payment of duty means smuggling- as per the impugned SCN. Furthermore, it is therefore, very clear, that the goods in question clearly belongs to the noticee who had orally self-declared. Moreover, the noticee had repeatedly requested the officers to release the gold jewellery on payment of duty, but the same fell on the deaf ears. However, a copy of Invoice produced in the name of Noticee “**MEGA STAR JI WELLERS LLC**” gold bill in the name of noticee, which was produced/recovered from noticee; was not incorporated at any were during the panchanama, but during statement u/s 108, shows noticee’s is the legitimate purchaser of gold. Noticee has produced the gold jewellery bill. the noticee was not allowed to file any declaration form, he does not know what is written in panchnama as well as statement u/s 108 has been recorded in English, he is an Illiterate Person studied in Gujarati Medium (Primary level) and he is not known what is written in the panchnama and statement which he was only asked the general questions about his family, he was not allowed to write in his own handwriting in Gujarati, as the officer intensely write their own story and narration in English. As the officer also knows Gujarati language very well to Read /Write, he was forced to sign in fear of arrest, he simply signed the papers. It can be seen from evidently that the Statement u/s 108 of C A Act 1962 from First para to last end of statement there is no any question asked regarding noticee’s education & qualification, which is mandatory during the recording of statement u/s 108 of any person. At last page of statement why the noticee was forced to write in Gujarati “અલ્પચાન મને ગુજરાતી માં સમજાવેલ છે”.

4. Furthermore, most important the Statements of Noticee and other 5 passengers were not true and correct t any stage, as it can be seen from **Statement u/s 108** dated 21-22/10/2024 of tour operator Shri **Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel**, during their statement officers asked questions regarding funding/ownership of 6 passenger’s gold jewellery. They both i.e. Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel has answered / stated that 6 passengers had purchase gold jewellery by them from their own funds and same owed by them only seized as per **Annexure II** of **Panchanama dated 21.10.2024** the real fact were taken on record in the statement of Kiritkumar & Parth. The noticee is liable to release the jewellery

on payment of applicable customs duty. The noticee does not know what is written in panchnama as well as statement u/s 108 of C A Act 1962, has been recorded in English, which 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. Noticee was liable to get released Gold Jewellery on payment of applicable Customs Duty, it is clear that he was not a part of syndicate of Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel. In the present case, gold weighing **49.96 grams of 24Karat**, having a Tariff Value of **Rs. 3,60,094/-**, was seized from the individual possession of the Noticee. It is respectfully submitted that the value of the seized goods is **less than Rs. 10,00,000/-**. As per **CBIC Circular No. 07/2017-Cus dated 06.03.2017**, read with **Circular No. 09/2019-Cus dated 28.02.2019**, cases involving gold of value **below Rs. 10 lakh** should be adjudicated by the **Deputy Commissioner/Assistant Commissioner of Customs**, and **not by the Additional Commissioner**. Therefore, in view of the above factual and legal position, it is humbly prayed that the present matter may be **transferred to the jurisdiction of the Deputy Commissioner/Assistant Commissioner of Customs**, who is the appropriate adjudicating authority as per the monetary limits laid down in the aforementioned circulars.

5. In case at hand, from the individual possession of the applicant gold weighing 49.96 grams of 24Kt valued at Rs.3,60,094/- (Tariff Value) was placed under seizure valuing is not more than ten lakhs, value of total gold recovered from the possession of applicant.

Therefore, question arises whether value of individually recovered gold should be considered or value of combined recovered gold should be considered. 30. In Section 135 Customs Act, term "any person" has been used and, in my view, it denotes to an individual. The term "any person" cannot be interpreted as a group of persons. From the plain reading of Section 135 Customs Act it appears that it refers to an individual.

In the High Court of Gujarat at Ahmedabad Ayeshabibi Ajiz Husen Jariwala V/s. State of Gujarat & Afrinbanu Mohammed Amin Shaikh V/s. State of Gujarat in this The judgment related to falsely involved in said non bailable offence of customs Act 1962, it can be seen from panchnama and seizure memo that value of gold was recovered from present applicant is under ONE CRORE i.e. **Rs 45,50,727/-**. The said offence is bailable as per the Custom Act section 135, that the present applicant is falsely arrested in Non-Bailable offence and framed by assume and presume conspiracy narrated by the Investigating Officers of DRI. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the

prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

The judgment dated 23.03.2023 of Hon'ble Allahabad High Court in **Mohd. Tufial vs UOI** is more relevant than the judgment dated 27.06.2023 of High Court of Kerala in the case of **Pulikkippoyil Sharafudheen & anr vs Superintendent of Customs**. In the said judgment dated 23.03.2023 legal provisions have been better explained than the judgment dated 27.06.2023 which mainly relied on General Clauses Act, 1897. In this case, the court underscored that possession must not only be physical but also **conscious and exclusive**, meaning the accused must be aware of and have control over the contraband. Mere proximity to the illegal substance or presence at the location is insufficient to establish individual possession unless supported by clear, cogent evidence linking the person directly to the contraband. This judgment clarifies that **possession cannot be imputed or presumed** solely based on association or presence unless the prosecution can prove that the accused had **intent and knowledge** about the presence of contraband. Therefore, in other cases involving allegations of possession, *Mohd. Tufail* should be cited to reinforce the legal requirement that individual possession must be **conclusively proven** through evidence demonstrating personal dominion and conscious awareness, thereby protecting individuals from wrongful implication based on mere suspicion or association.

Delhi High Court also in the case of Air Customs Vs. Begaim Akynova (supra) observed that punishment which is to be imposed on the accused should correspond to the gold that has **solely been recovered from his possession and each person should be made answerable for the recovery of gold found in his possession.** 32. Therefore, in my view, for the purpose of Section 135 Customs Act value of individually recovered gold should be considered and not the value of combined recovered gold.

Recently three Judges Bench of the Apex Court in the case of Commissioner of Customs Vs. Atul Automation Private Limited, 14 of 16 (2019) 3 Supreme Court Cases 539 with regard to multi-function device observed that MFDs were not prohibited but restricted items for import and further observed that there will exist fundamental distinction between what is prohibited and what is restricted. Therefore, from the case of Atul Automation (supra) it appears that on the basis of restriction on import a good cannot be said to be prohibited good in terms of Section 2 (33) Customs Act.

In case as hand, according to the prosecution, gold was recovered from the possession of the applicants which was liable for confiscation under Section 111 of the Customs Act and as per Section 125 Customs Act the authority concerned may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of Customs Act **gold is not prohibited goods but it is restricted goods** and as per Section 125 Customs Act in lieu of confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovered gold is not prohibited goods under Section 2(33) Customs Act but it is restricted goods in view of the judgment of three Judges Bench of the Apex Court in the case of Atul Automation (supra).

6. 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; the fact is that during the immigration process noticee were detained at Immigration Counter by AIU officers, they collected passports of all the passengers including noticee of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as he has first time brought the gold jewelry along with his he declared orally and he was not allowed to file the declaration form at Red Channel, as he has orally declared but nobody has bothered to help his to file the declaration form, the present case is not the case of non-declaration. That the statement also 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 by this reply after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

7. The noticee had made very clear on dated 21.10.2024 that the seized goods belonged to his but to no avail and the officers were hell bent on booking a case against his i.e. the noticee. had been given some more time, he would have definitely after discussing and knowing the actual fact (not the member of Syndicate of Tour operator) 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 passengers to disclose prior to completion of his baggage.

8. In addition to para 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), (i), (j), (l), (m). 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 jewelry in the declaration form but noticee has declared orally.

9. 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 such Gujarati; 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

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

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 his 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 an 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. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

10. It is submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee 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 payment of Applicable Duty.

11. It is further submitted that the statement & Panchanama was recorded/signed under duress and threat contrary to the fact 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 his 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.

12. It is submitted that the noticee has been accused of carrying goods himself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate his involvement in a transaction in the nature of smuggling.

13. It is to further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN.

14. The noticee craves leaves to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter.

15. It is further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

55. Defence Reply of Noticee No. 06: Patel Ramanbhai Dhulabhai has filed defence reply to the show cause notice vide letter dated 06.05.2025. The submissions made are that::

1. At the outset, the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 01 Gold Kada weighing 40.05 grams of 24 Kt valued at Rs.2,88,666/- (Tariff Value) was placed under seizure; It may also be seen from 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 is 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.

2. It is true that the noticee had 01 Gold Kada weighing 40.05 grams of 24 Kt valued at Rs.2,88,666/- (Tariff Value) was wearing in his hand was placed under seizure; **Noticee decided to visit Dubai, he contacted Raj Visa and Travels at Kadi owned by Kirit Patel**, who is well known and cheapest and reasonable tour operator. Noticee visited to Raj Visa Travels in the month of September2024 and meet travel agent, who has offered a reasonable package for Dubai stay with all facility i.e. Air- tickets, Pickup & Drop, Sightseeing, Hotels Rooms, Pure-veg food etc, the Dubai Tour was starting from 14.10.2024 to 20.10.2024 for 07 days, a sample copy of travel Itinerary(Dubai) was given to my client and he offered Rs.75000/- per adult person charges, after bargaining at last Rs. 70,000/- per person was decided for Dubai Tour. On dated 17.09.2024 he paid in cash Rs. 70,000/- to Kirit Patel, who issued Cash Memo.**The noticee who is coming back to India** from Dubai, purchased Gold jewelry at Dubai, bill was produced at the same time but the said bill was not incorporated at any stage, the gold jewelry was brought for his personal

usages and for his family, Gold is not in commercial quantity, Gold jewellery was worn on his hand which was clearly visible, the gold is not prohibited, On dated 21.10.2024 early morning the AIU officers have received an information that tour operator arriving from Abu Dhabi by Air Arabia Flight No. 3L-111 are suspected of engaging in gold smuggling the said information further indicated that the said tour operator was distributing gold items like gold chains and gold mangal-sutras to his client passengers in small, concealed quantities aboard Air Arabia Flight No. 3L-111 arriving from Abu Dhabi to Ahmedabad the officers . At the time flight Air-Arabia No. 3L-111 landed Ahmedabad at SVPIA Airport at during the immigration process all the flight passengers were detained at Immigration Counter by AIU officers, they collected passports of all the passengers and all the passengers of flight were taken to the AIU office situated at SVPIA Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as he has first time brought the gold jewellery along with his he declared orally and he was not allowed to file the declaration form at Red Channel, as he has orally declared but nobody has bothered to help his 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 by officers. While returning from Dubai noticee has brought gold jewellery for his personal use and purchased from **OMNI JEWELLERS & GOLD SMITH L.L.C** by himself and for his family from his hardworking and personal savings, monetary help from his relatives. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine, wherein the pax had been allowed for release on Duty payment/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of Duty-fine or re-export of goods or as per the procedure laid down under the Customs Act, 1962.

3. Statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee inter alia stated that the gold jewellery was brought by Noticee the said gold Jewellery from his personal savings, hardworking & borrowed money from relatives at Dubai, purchased from **"OMNI JEWELLERS & GOLD SMITH L.L.C"** at the material time he was carrying the bill in this regard, but prior to his declaration he was intercepted from immigration counter , not allowed to file declaration form at red channel and resulting in booking of the case; as carrying of gold without payment of duty means smuggling- as per the impugned SCN. Furthermore, it is therefore, very clear, that the goods in question clearly belongs to the noticee who had orally self-declared. Moreover, the noticee had repeatedly requested the officers to release

the gold jewellery on payment of duty, but the same fell on the deaf ears. However, a copy of Invoice produced in the name of Noticee “**OMNI JEWELLERS & GOLD SMITH L.L.C**” gold bill in the name of noticee, which was produced/recovered from noticee; was not incorporated at any were during the panchanama, but during statement u/s 108, shows noticee’s is the legitimate purchaser of gold. Noticee has produced the gold jewellery bill. the noticee was not allowed to file any declaration form, he does not know what is written in panchnama as well as statement u/s 108 has been recorded in English, he is an Illiterate Person studied in Gujarati Medium (Primary level) and he is not known what is written in the panchnama and statement which he was only asked the general questions about his family, he was not allowed to write in his own handwriting in Gujarati, as the officer intensely write their own story and narration in English. As the officer also knows Gujarati language very well to Read /Write, he was forced to sign in fear of arrest, he simply signed the papers. It can be seen from evidently that the Statement u/s 108 of Customs Act, 1962 from First para to last end of statement there is no any question asked regarding noticee’s education & qualification, which is mandatory during the recording of statement u/s 108 of any person. At last page of statement why the noticee was forced to write in Gujarati “આ બયાન મને ગુજરાતી માં સમજાવેલ છે”.

4. Furthermore, most important the Statements of Noticee and other 5 passengers were not true and correct t any stage, as it can be seen from **Statement u/s 108** dated 21-22/10/2024 of tour operator Shri **Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel**, during their statement officers asked questions regarding funding/ownership of 6 passenger’s gold jewellery. They both i.e. Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel has answered / stated that 6 passengers had purchase gold jewellery by them from their own funds and same owed by them only seized as per **Annexure II** of **Panchanama dated 21.10.2024** the real fact were taken on record in the statement of Kiritkumar & Parth. The noticee is liable to release the jewellery on payment of applicable customs duty. The noticee does not know what is written in panchnama as well as statement u/s 108 of C A Act 1962, has been recorded in English, which 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. Noticee was liable to get released Gold Jewellery on payment of applicable Customs Duty, it is clear that he was not a part of syndicate of Kiritkumar Laljibhai Patel & Parth Dashrathbhai Patel. In the present case, gold weighing **40.05 grams of 24 Karat**, having a Tariff Value of **Rs. 2,88,666/-**, was seized from the individual possession of the Noticee. It is respectfully submitted that the value of the seized goods is **less than Rs. 10,00,000/-**. As per **CBIC**

Circular No. 07/2017-Cus dated 06.03.2017, read with **Circular No. 09/2019-Cus dated 28.02.2019**, cases involving gold of value **below Rs. 10 lakh** should be adjudicated by the **Deputy Commissioner/Assistant Commissioner of Customs**, and **not by the Additional Commissioner**. Therefore, in view of the above factual and legal position, it is humbly prayed that the present matter may be **transferred to the jurisdiction of the Deputy Commissioner/Assistant Commissioner of Customs**, who is the appropriate adjudicating authority as per the monetary limits laid down in the aforementioned circulars.

5. In case at hand, from the individual possession of the applicant gold weighing 40.05 grams of 24 Kt valued at Rs.2,88,666/- (Tariff Value) was placed under seizure valuing is not more than ten lakhs, value of total gold recovered from the possession of applicant.

Therefore, question arises whether value of individually recovered gold should be considered or value of combined recovered gold should be considered. 30. In Section 135 Customs Act, term "any person" has been used and, in my view, it denotes to an individual. The term "any person" cannot be interpreted as a group of persons. From the plain reading of Section 135 Customs Act it appears that it refers to an individual.

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The judgment dated 23.03.2023 of Hon'ble Allahabad High Court in **Mohd. Tufial vs UOI** is more relevant than the judgment dated 27.06.2023 of High Court of Kerala in the case of **Pulikkippoyil Sharafudheen & anr vs Superintendent of Customs**. In the said judgment dated 23.03.2023 legal

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Recently three Judges Bench of the Apex Court in the case of Commissioner of Customs Vs. Atul Automation Private Limited, 14 of 16 (2019) 3 Supreme Court Cases 539 with regard to multi-function device observed that MFDs were not prohibited but restricted items for import and further observed that there will exist fundamental distinction between what is prohibited and what is restricted. Therefore, from the case of Atul Automation (supra) it appears that on the basis of restriction on import a good cannot be said to be prohibited good in terms of Section 2 (33) Customs Act.

In case as hand, according to the prosecution, gold was recovered from the possession of the applicants which was liable for confiscation under Section 111 of the Customs Act and as per Section 125 Customs Act the authority concerned may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of Customs Act **gold is not prohibited goods but it is restricted goods** and as per Section 125 Customs Act in lieu of confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovered gold is not prohibited goods under Section 2(33) Customs Act but it is

restricted goods in view of the judgment of three Judges Bench of the Apex Court in the case of Atul Automation (supra).

6. 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; the fact is that during the immigration process noticee were detained at Immigration Counter by AIU officers, they collected passports of all the passengers including noticee of flight were taken to the AIU office situated at SVPI Airport Ahmedabad. Thereafter, all passengers along with the said officers reach near the AIU office situated in the Arrival Hall of the Terminal-2 of the SVP International Airport and the officers request all the passengers to co-operate in routine checking process. During the process the noticee as he has first time brought the gold jewelry along with his he declared orally and he was not allowed to file the declaration form at Red Channel, as he has orally declared but nobody has bothered to help his to file the declaration form, the present case is not the case of non-declaration. That the statement also 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 by this reply after knowing the Department's statement under the provisions of section 108 of the Customs Act, 1962, hence the same is contrary to law.

7. The noticee had made very clear on dated 21.10.2024 that the seized goods belonged to his but to no avail and the officers were hell bent on booking a case against his i.e. the noticee. had been given some more time, he would have definitely after discussing and knowing the actual fact (not the member of Syndicate of Tour operator) 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 passengers to disclose prior to completion of his baggage.

8. In addition to para 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), (i), (j), (l), (m). 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 jewelry in the declaration form but noticee has declared orally.

9. 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 such Gujarati; 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

Section 138B in the Customs Act, 1962

1[138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

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 his 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 an 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. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

10. It is submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee 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 payment of Applicable Duty.

11. It is further submitted that the statement & Panchanama was recorded/signed under duress and threat contrary to the fact 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 his 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.

12. It is submitted that the noticee has been accused of carrying goods himself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate his involvement in a transaction in the nature of smuggling.

13. It is to further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN.

14. The noticee craves leave to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter.

15. It is further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

56. Personal Hearing in the matter was granted on 25.08.2025 and Authorised Representative and Advocate Shri Rishikesh Mehra appeared for Personal Hearing on behalf of:-

1. Patel Sharmishthaben Ramanbhai
2. Patel Hasumatiben Dineshbhai
3. Patel Kapilaben Dineshbhai
4. Patel Vijaykumar Dhanabhai

5. Patel Navinchandra Shirlal
6. Patel Ramanbhai Dhulabhai

Shri Rishikesh J Mehra, Advocate appeared for personal hearing on 25.08.2025 for the above mentioned noticees. Further, out of above mentioned **06 noticees (as referenced in Table B of Show Cause Notice)**, 02 noticees named Shri Patel Navinchandra Shirlal and Shri Patel Vijaykumar Dhanabhai appeared for personal hearing alongwith Advocate Shri Rishikesh Mehra. He produced copy of Vakalatnama to represent the case. He requested to attend the personal hearing in person instead of video conferencing.

Shri Rishikesh Mehra re-iterated his submission dated 06.05.2025 for all noticees. He submitted that as per Annexure-II of Panchnama dated 21.10.2024, real fact was taken on record. He submitted that Shri Kirit Patel and Shri Parth Patel in their statement clearly mentioned that the above mentioned **06 noticees (as referenced in Table B of Show Cause Notice)** have purchased the gold jewellery on their own from their funds and own their risk and responsibilities. He produced the purchase bill alongwith submission for above mentioned noticees. On dated 21.10.2024, there was specific information about gold smuggling through Kirit Patel and Parth Patel, both partner of M/s. Raj Visa and Travels. The information was specific against the travel agency therefore, the officers of AIU has intercepted all the passengers who travels through M/s. Raj Visa and Travels and no time was provided to his clients to declare the gold jewellery which was not in commercial quantity. The case regarding their client was clubbed with others passengers including Kirit Patel and Parth Patel against which specific information was there for smuggling of gold. He submitted that seizure memos were issued separately for each of his clients as per the quantity of gold jewellery found in their possession. He submitted that according to Section 135 of Customs Act, 1962, **“any person”** word is written, therefore, all of his clients are liable for their own possession of gold jewellery. He submitted that his clients are illiterate person and not adapt/well versed with English Language and Customs Act/Rules. Gold in form of jewellery was not found concealed ingeniously and no chance of declaration was given to his clients. Gold in form of jewellery is not prohibited goods.

He requested to take lenient view in the matter and allow to release of the jewellery on payment of applicable duty.

DISCUSSION AND FINDINGS:

57. I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticee alongwith the submission made by the noticees or their representative at the

time of personal hearing scheduled on various dates. Further, sufficient opportunities to be heard were extended to all the noticees in accordance to the Principles of Natural Justice.

58. Before discussing the allegations levelled in the impugned SCN in light of submissions made by noticees, it is imperative to mention that all the noticees to SCN have mentioned that their statement was recorded under duress and fear of being arrest. Some of noticees have mentioned that they were not much educated and unable to understand what was written in their statement as same was typed in English. In this regard, I find that from all their statements tendered before AIU officer, the said noticees admitted that the statements were given voluntarily and without any inducement, threat, coercion or by any improper means. In every instance, they were all affirmed that the statements were given voluntarily, without any threat, pressure, or inducement, and they signed them after verifying the correctness of the facts, in full presence of mind. I find that none of the noticees have submitted any documentary evidence to substantiate their claim that the statements were obtained under duress or coercion. I find no retraction on record, filed by any of the noticees at any stage of investigation till their written submission, which indicates a calculated step to just mislead the proceedings. 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. The law presumes that a statement made under Section 108 is voluntary and the person giving it is not obligated to endorse any typed statement if it was indeed obtained under duress, as now alleged. It is on the record the all noticees had requested the officer to type the statement on their behalf on computer and same was recorded as per their say and they put their signature on the Statement after understanding the same as explained by the officers.

I find that in these statements, they disclosed detailed information about their business/working activities, their family details and education background. I find that the statements of noticees contain specific and intricate details, which could only have been furnished based on their 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 statements in question. It is on the record that the noticees have tendered their statement(s) voluntarily under Section 108 of the Customs Act, 1962. In view of the above, I find that the statements given by noticees Sr.No. 1 to 29 of SCN 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 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, mis declared 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 v. State of Punjab - AIR 1952 SC 214, Para 30.**

Relying on the ratio of above judicial prudence, I find no merit in the contentions of the noticees of given their statement under duress and threat of being arrest.

58.1 As per the settled law, the said statements are admissible in evidence and are binding on the noticees. Moreover, in the event, for their own admission no further corroboration is required, reliance is placed on the decision of the Supreme Court in Commissioner of C. Ex., Madras Vs. M/s Systems & Components Pvt. Ltd. - 2004 (165) ELT 136, where it has been held that it is a basic and settled law that what has been admitted need not be proved. I, therefore reject the contention as raised by noticees, as frivolous and baseless.

58.2 Further, I find that some of noticees have submitted in their submission dated 25.03.2025 submitted through their advocate that due to ignorance of law, they were unable to declare the gold items carried by them. In this regard, I find that 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.)]*. Therefore, the plea taken by the noticees that due to ignorance of law, they were unable to declare the same appears more excuse than the genuine reason/explanation.

58.3 Also. I noticed that some of noticees had taken plea that they were not allowed to declare the gold and before declaration, a case was made against them. In this regard, I find that panchnama clearly indicated that the passengers were intercepted after they crossed the Red Channel without making any declaration and they had clearly admitted in their respective statements that the gold items were not declared by them intentionally to clear the gold clandestinely without making any payment of duty. Further, if they really intended to declare the same, they would approach the airline staff during journey and asked for the baggage declaration form, however the same was not happened which clearly indicate that the noticees were not inclined to declare the same. Furthermore, they could use "Athithi App" which is available on public domain for all the passengers for declaration of any dutiable goods with them. Further, I find that all the passengers in their statement admitted that the gold in form of chains and mangalsutras was provided to them by Shri Kirit Patel for smuggling purpose and in greed of money they had intentionally accepted the offer of carrying the gold items with them. Further, I find that Shri Kirit Patel and Parth Patel being a tour operators were well versed with the Customs Provisions and had the knowledge regarding declaration of goods before customs authority while returning from outside of country. I find that instead of declaring the gold before customs authority, Shri Kirit Patel distributed the same in small chunks in form of chain and mangalsutras to the 21 tour group members in order to avoid the payment of customs duty. Taking plea of not providing declaration form irrespective of fact that they did not want to declare the same, merits no consideration. Also, the panchnama narrates the fact that the impugned gold was not declared by the noticees on their own and also not declared even after asking by the officers and it was recovered only after search of their baggages and personal search. Also, in their voluntary statements they admitted that they did not make any declaration in this regard and wants to clear the same clandestinely to evade the payment of customs duty. These facts corroborates that the contention raised by the noticees is just an afterthought and frivolous. The legal principle "ignorantia juris non excusat" (ignorance of the law is no excuse) is a fundamental one.

59. As, I have already discussed the validity of the statements of the noticee and co-noticees, I now proceed to examine the core issues involved in the present case. I have carefully perused the facts and evidence placed before me. The questions that need to be addressed in this matter fall within the purview of the Customs Act, 1962 and the allied laws, and are as follows:

- i.** Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;

- ii.** Whether, Gold items (in forms of Mangalsutras & Gold Chains) totally weighing **2923.78 grams** having purity of 999.0/24Kt and market value of **Rs.2,35,42,276/-** recovered from 21 client passengers (as per Table-A of SCN) of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iii.** Whether, Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing **470.03 grams** having purity of 999.0/24Kt and market value of **Rs.37,84,682/-** recovered from 06 client passengers (as per Table-B of SCN) of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iv.** Whether the act of the Noticee No. 1 to Noticee No. 29 renders them to be penalized discretionarily under Section 112 & Section 117 of the Customs Act, 1962;

60. I find from the content of panchnama that the investigation was initiated on the basis of specific information regarding smuggling of gold by a tour operator who were arriving from Abu Dhabi via Flight No. 3L-111 alongwith the client passengers. The intelligence further indicated that the gold was distributed by the tour operator among their client passengers in small chunks in form of chains and mangalsutras. On the basis of specific information, the AIU officers had intercepted the tour operators alongwith the members of tour group while they were trying to exit through green channel without making any declaration. The AIU officers under Panchnama proceedings dated 21.10.2024 in presence of two independent witnesses asked the passenger who introduced himself as Shri Kiritkumar Laljibhai Patel, the tour operator whether he had anything dutiable to declare to the Customs authorities, to which he replied in negative. The AIU officer asked the noticee Shri Kirit Patel to pass through the Door Frame Metal Detector after removing all metallic objects with him and while he passed through the said DFMD, no Beep sound was heard indicating that there was nothing objectionable/dutiable on the body/clothes of noticee. Thereafter, the officer scanned the baggage of Shri Kirit Patel, however nothing objectionable noticed. Further, Shri Kirit Patel informed the officers that Shri Parth Dashrathbhai Patel was his partner of his tour firm M/s. Raj Visa Travels at Mehsana office. The officers of AIU then conducted the personal search of Shri Parth Dashrathbhai Patel as well as scanned his baggage in Baggage Scanning Machine, however nothing objectable was noticed.

I find that the panchnama clearly indicated that on being asked Shri Kirit Patel clearly admitted that he had purchased 24Kt gold in UAE and

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handed over the same to his tour group members in small chunks while returning to India. I find that he further admitted that he instructed the group members to return the same after clearance from the airport and for that he would gave them Rs. 13,000/- to each of them. Thereafter, the AIU officers examined all the tour group members and recovered the gold items as tabulated as:-

Sr No	Name	Passport No	Address	Gold In Grams(2 4 Carat)	Item	Certificate No.	Market Value (In Rs)
1	Patel Parulben Baldevbhai	R28285 82	144 Shiv Ganesh Bungalows Near Madhuram Plot , 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059	139.58	01 Gold Mangalsutra	1086	1123898
2	Patel Rasikbhai	W76009 89	8/19, Khant Vas Thol Kadi Mehasana-382715	139.99	01 Gold Chain	1087	1127199
3	Patel Babubhai Ambalal	N01823 49	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480	134.29	01 Gold Mangalsutra	1090	1081303
4	Nayak Mangalbhai Shankarbhai	W37206 87	Lal Vas Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat	139.94	01 Gold Chain	1092	1126797
5	Patel Ashaben Shaileshkumar	N65970 28	32 Siddhi Bunglows Gst Road New Ranip Ahmedabad-382480	140.7	01 Gold Mangalsutra	1093	1132916
6	Nayak Mansukhbhai Shankarbhai	W42588 16	Lal Vas Oppt Khat Vas Thol Mehsana-382715	139.9	01 Gold Chain	1098	1126475
7	Patel Upendrabhai Jivabhai	W00200 27	Ambaji Matanu Mandir Thol Kadi Mehasana-382715	139.93	01 Gold Chain	1099	1126716
8	Patel Khodabhai Nagardas	Y300219 5	A-101, Silicone Square Near Sukan Six Flats Oppt Solar Science City Sola Ahmedabad-380060	139.93	01 Gold Chain	1100	1126716
9	Patel Jayantilal Madhabhai	T760361 0	Khont Vas At Thol Kadi Mehasana-382715	139.94	01 Gold Chain	1103	1126797
10	Patel Madhavlal Shankardas	B65541 59	At And Post Thol Mehasana-382715	139.94	01 Gold Chain	1104	1126797
11	Patel Jashodaben Babaubhai	N94209 49	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480	139.92	01 Gold Chain	1105	1126636
12	Patel Baldevbhai Shakrabhai	R28293 15	144 Shiv Ganesh Bunglows Near Madhuram Plot , 100feet Ring Road , Shilaj Thaltej, Ahmedabad-380059	139.88	01 Gold Chain	1106	1126314
13	Patel Vikrambhai	C03381 30	Madhvas Ambaji Mata No Chok, Thol Kadi, Mehasana-382715, Gujarat	139.93	01 Gold Chain	1107	1126716
14	Patel Navin Ranchhodbhai	S902661 7	A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad-	140.04	01 Gold Chain	1108	1127602

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			380015				
15	Patel Varshaben Navinbhai	S8655907	Sonivas Village Thol Kadi Mehasana-382715	140.23	01 Gold Mangalsutra	1109	1129132
16	Nayak Hansabebn Mansukhabhai	W4259498	2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440	138.68	01 Gold Mangalsutra	1110	1116651
17	Patel Kaminaben Bhagvanbhai	S9005962	Thol Mehasana-382715	141.46	01 Gold Mangalsutra	1111	1139036
18	Patel Kokilaben Rasikbhai	W7598643	8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana-382715	140.03	01 Gold Mangalsutra	1112	1127522
19	Patel Manjulaben Jayantilal	T7599469	Khont Vas At Thol	141.4	01 Gold Mangalsutra	1113	1138553
20	Patel Manjulaben Chandrakant	X4787945	Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715	134.15	01 Gold Mangalsutra	1114	1080176
21	Nayak Shakutlaben Mangalbhai	W3278407	2-64/ Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat	133.92	01 Gold Mangalsutra	1115	1078324
Total				2923.78 Grams			Rs. 2,35,42,276/-

I also find that apart from the above mentioned **21 passengers (as referenced in Table A of Show Cause Notice)**, gold items from another 06 tour group members were recovered during the examination. The details of the same are as:-

Sr No	Name	Passport No	Address	Gold In Grams(24 Kt)	Item	Certificate No	Market Value (In Rs.)
1	Patel Sharmishthaben Ramanbhai	T7855586	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061	40.08	02 Gold Bangles	1085	322724
2	Patel Hasumatiben Dineshbhai	N0555916	C/2/205 Vishwas Apartment Near Gulab Tower, Thaltej, Ahmedabad-380054	110.02	01 Gold Chain+02 Gold Bangles	1088	885881
3	Patel Kapilaben Dineshbhai	C1134602	Bhav Vas Thol , Kadi Mehasana-382728	79.95	04 Gold Bangles	1089	643757
4	Patel Vijaykumar Dhanabhai	S0747135	Khant Vas At Thol Kadi Mehasana-382715	149.97	02 Gold Chains	1091	1207558
5	Patel Navinchandra Shivilal	T0387665	11-A/Saraswati Nagar Society Oppt Kr Rawal School , Ranip, Ahmedabad-382480	49.96	01 Gold Chain	1101	402278
6	Patel Ramanbhai Dhulabhai	T7839156	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061	40.05	01 Gold Kada	1102	322483
Total				470.03 Grams			Rs. 37,84,682/-

61. I 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/noticees. It is also on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighs all the items recovered from the tour group members and informed that the total weight of said gold was **3393.81 Grams** having purity 999.0/24KT. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold items carried by tour group members was **Rs.2,38,12,923/-** and Market value is **Rs.2,66,02,520/-**. Shri Soni Kartikey Vasantrai submitted his valuation reports in 27 Certificates

all dated 21.10.2024. Shri Soni Kartikey Vasantraai has given his valuation report of the said gold items as per the Notification No. 66/2024-Customs (N.T.) dated 15.10.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). From the report submitted by the Government Approved Valuer, it is confirmed that the gold items recovered from the members of the tour group were of 24kt having purity of 999.0.

62. I find that the noticees in their written submission have taken plea that gold is not fall under the ambit of “prohibited goods”. In this regard, I find 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/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 11 (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 negatived the said contention and held thus:- “... what clause (d) of Section 11 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 others 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*.

Relying on the ratio of the judgments stated above, I find that the goods brought by/found in possession of Noticees, are falls under the category of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

63. Shri Kirit Patel in his written submission mentioned that he is in the tour operator business. He submitted that he is involved in any smuggling of gold. he submitted that the gold was neither purchased by by nor he has assisted the passengers in purchasing the gold. He further submitted that the gold was recovered from the possession of the **21 passengers (as referenced in Table A of Show Cause Notice)** alongwith other 06 passengers (as referenced in Table-B of SCN) and he has nothing to do with the gold. Shri Parth Dashrathbhai Patel in his written submission mentioned that he works in M/s. Raj Visa Travels on monthly salary of Rs. 25,000/-. Shri Parth Patel submitted that he is not partner of Shri Kirit Patel in the firm M/s. Raj Visa Travels. He

submitted that he travelled with the tour group to look after the passengers and to take care of their foods. Further, they have submitted that they have never indulged in any smuggling activity in the past or present. No gold item of any kind has been recovered from them. Therefore, there is no question of violation of the provisions under Sections 111(i) and 111(m) of the Customs Act. In this regard, I find that during the panchnama proceedings as well as in their voluntary statement tendered before the officers, Shri Kirit Patel categorically mentioned that the gold weighing 2923.78 grams recovered from **21 passengers (as referenced in Table A of Show Cause Notice)** was actually procured by him in UAE and same was handed over to **21 passengers (as referenced in Table A of Show Cause Notice)** in small portions in form of chains and mangalsutras for carrying the same with them till clearance from Airport and for that he offered a discount of Rs. 10,000/- to Rs. 13,000/- to each passenger in their tour package. In his statement dated 22.10.2024, Shri Kirit Patel admitted that he had purchased the gold from M/s. Darvesh Jewellers, Gold Souq, Dera, Dubai on credit basis and was going to pay the amount after selling the same in India to Shri Darshan Bhai Soni of M/s. Darshan Travels. In his statement, he clearly admitted that this was not his first time of smuggling of gold but prior to this instance, he smuggled the gold on 12-13 instances from Dubai as well as from Thailand. He admitted that he procured the gold from Dubai on credit basis as the rate of gold in Dubai is cheaper than India and after selling the same in India, he earned a profit of Rs. 3000/- per 10 grams. Further, he admitted that he distributed the gold in small quantities to the willing passengers in form of ornaments, so that the officers never suspected them and they could easily get away from the airport without making any declaration before the customs authority.

64. I find from the voluntary statement tendered by Shri Parth Dashrathbhai Patel dated 21.10.2024 & 22.10.2024 that he was a partner in Mehsana branch of M/s. Raj Visa Travels, however he denied the said fact in his written submission wherein he submitted that he was only a worker in the firm on monthly salary of Rs. 25,000/- and he travelled abroad with the group to take care of food of passengers, which appears implausible as he clearly admitted that he was partner in the firm and organized 50-60 tours in a year and travelled 5-6 times abroad alongwith the group. He clearly admitted that the gold was procured by Shri Kirit Patel at Dubai and same was distributed among the group travellers/passengers by them in small quantity in form of chains, bangles and mangalsutras. Under their submission, they submitted that no gold items were found in their possession, therefore, there is no question of declaration of goods under Section 77 of Customs Act, 1962 arises and accordingly they were not liable for any penalty. In this regard, I find from their voluntary admission that the gold which were recovered from their tour members/passengers was actually procured by Shri Kirit Patel in UAE on credit basis and same was distributed among the passengers in small quantities so that the same was easily

cleared from the airport without noticing by the officers. The move of distributing the gold total weighing 2923.78 grams in small quantity of 100 to 150 grams among the passengers was clever, calculated and premeditated, as it was easy to carry gold in small units of 100 to 150 grams in form of ornaments, by **21 passengers (as referenced in Table A of Show Cause Notice)** so as it looks like daily used personal effects rather to carry 2923.78 grams by a single person. Further, I noticed that Shri Kirit Patel admitted in his statement that he used such modus operandi to smuggle the gold 10-12 times previously. It is very established fact that "what is admitted is not need to prove" and from this admission, it is clearly establishes that Shri Kirit Patel is a habitual offender. I find that being a tour operators and regular flyer, they were very well known to the facts that bringing of gold from foreign countries is highly regulated and required declaration in the proper format before the Customs Authority and accordingly liable to pay the applicable duty on such declared goods, if any. To avoid such declaration and payment of duty, they distributed the gold in form of ornaments in small quantity among the passengers so that it was not suspected by the officers and in any adverse situation, the same did not appears like smuggling rather it was appeared as a genuine mistake of non declaration of gold due to ignorance by the passengers. I find that in cases of gold smuggling, a noticee's involvement may extend beyond direct possession of the gold, encompassing various roles such as facilitating transportation, providing logistical support, providing financial benefits, or even engaging in money laundering. Further, I also consider the totality of circumstances, including statements from co-noticees and the noticee himself, to determine the extent of his involvement in the smuggling operation and from the evidences on the record, I find that the noticee Shri Kirit Patel in association with Shri Parth Patel engaged in smuggling of gold in guise of tour operator. Therefore, the plea of noticees Shri Kirit Patel and Shri Parth Patel that no gold was found in their possession and allegation of smuggling made against them in the SCN is baseless, is found highly implausible and frivolous on the basis of evidences available on record.

64.1 I also find that Shri Kirit Patel in his statement mentioned that he purchased the gold from M/s. Darvesh Jewellers, Gold Soqu, Dubai on credit basis and would pay the amount after selling the same in India. It is highly implausible, even beyond imagination, that Shri Kirit Patel procured gold worth of Rs. 2.35 crore approx from a shop in Dubai on credit basis without any security, advance payment, or prior acquaintance, and without ever visiting the said shop earlier. This assertion of Shri Kirit Patel that he procured the gold on credit basis appears highly questionable, especially considering the fact that gold being a precious metal having high purchasing price and without any security/advance/acquittance Shri Kirit Patel procured the such expensive goods from M/s. Darvesh Jewellers, Dubai. These facts clearly establish the existence of an unauthorized network involved in the illegal procurement, and transportation of gold in a systematic and organized manner. Further, I note that Shri Soni Kartikey Vasantrai, a Government-Approved Valuer, has examined the impugned goods and submitted his valuation report. The valuation was conducted in accordance with Notification No. 66/2024-Customs (N.T.) dated 15.10.2024 (gold) and

Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). As per his findings, the impugned gold was found to be of 999.0 purity, i.e. 24 karat gold. I note that it is a well-established fact that 24-karat gold, due to its high purity, is extremely malleable and lacks the structural strength typically required for finished jewellery, especially items like bangles/chains/mangalsutras that are expected to withstand wear and pressure. This observation raises a significant red flag with respect to the nature and purpose of the impugned goods. Moreover, had these goods been procured through legal and bona fide commercial transactions, they would have been supported by proper tax invoices reflecting accurate descriptions, and the payments would have been routed through verifiable banking channels.

65. From the above discussion and findings on the basis of narration of panchnama, voluntary statements and test reports, I find that there was a considerable "reason to belief" as required by Section 110 of the Act to the point of time when the goods in question are seized and Department has correctly discharge their burden of proving the gold was of foreign origin and was meant for smuggling purpose on the basis of voluntary statement of noticees themselves alongwith the testimony of co-accused and test report submitted by the Govt. Approved Valuer. However, on contrary the noticee Shri Kirit Patel and Shri Parth Patel failed to prove the gold was not smuggled one and acquired in a legitimate way. Further, the passengers who were carrying the gold on behalf of Shri Kirit Patel and Shri Parth Patel had nothing in their possession to prove the legitimacy of the gold they carried. The burden under Section 123 which is only of a reasonable belief is effectively discharged by the Department who initiated action on the basis of the seizure and the voluntary statements of both the noticees alongwith statements of co-noticees. The statements of the intercepted persons clearly indicate that they were asked to smuggle the same by concealment to avoid the detection from Customs. I find that Shri Kirit Patel and Shri Parth Patel contradicts themselves as on one hand they have admitted in their voluntary statement that the gold was procured on credit basis by Shri Kirit Patel at Duabi however on other hand they have submitted in their written submission that the gold was not purchased by them and they have nothing to do with the gold. This assertions indicates their intention and deliberate try to save from the clutches of law. Thus, the onus to prove that the gold was not smuggled, so as to upset the reasonable belief entertained by the Department shifted and squarely rested on their shoulders. To support my view, I rely on the decision of Hon'ble Kerala High Court in the case of Commissioner of Customs, Cochin V. Om Prakash Khatri which thereafter was upheld by the Hon'ble Apex Court as reported in 2019 (368) E.L.T. A155 (SC) wherein the following observation is made:

“We are in agreement with the view of the High Court. The appellant was unable to explain the source of the gold which was confiscated. In the circumstances, we find no merit in the civil appeals, which are accordingly dismissed.”

Further, to support my view, I place reliance on the judgment of **the Hon’ble Supreme Court in case of CC Vs. D. Bhoormal 10 which clarifies the code of conduct to be followed, as under:-**

2004 (165) ELT 136(SC) 1999 (109) ELT 247 (T) (1997) 90 ELT 241 (SC) (1997) 89 ELT 646 (SC) 1983 (13) ELT 1546 (SC) –The law does not require the prosecution to prove the impossible. All that is required is the establishment of such a degree of probability that a prudent man may, on the basis, believe in the existence of the fact in issue. The Hon’ble Court further observed that secrecy and stealth being its covering guards, it is impossible for the preventive department to unravel every link of the process.

66. I find that, the manner of concealment being clever, conscious and pre-meditated. The quantity and type of gold being for commercial use, this being a clever attempt to brazenly smuggle impugned gold and noticee Shri Kirit Patel and Shri Parth Patel were fully aware that the import of said goods is offending in nature. On carefully going through the evidences available on record in the form of Panchnama dated 21.10.2024, statements of concerned persons recorded under Section 108 of the Customs Act, 1962, other correspondence etc., it appeared that Shri Kirit Patel and Shri Parth Patel are the mastermind of the syndicate involved in smuggling of the said Gold. They both appeared to be the beneficiary to the whole smuggling racket and beneficial owner of the said quantity of smuggled gold. They both systematically planned a channel for smuggling of gold in the name of tour operator. Shri Kirit Patel and Shri Parth Patel used to plan tour for a group of persons on discounted rates who were willing to travel from India to Dubai and Thailand. They used to make the passengers ready to do smuggling of Gold as carrier while coming back from Dubai to India for some extra money/lure. The said carrier passengers knowingly indulged themselves in smuggling/carrying the said gold and acted as per the devised plan by Shri Kirit Patel and Shri Parth Patel. The investigations conducted also revealed that a modus operandi of distributing the gold in small chunks among the willing passengers in form of ornaments was adopted by Shri Kirit Patel with the active participation of Shri Parth Patel and for that monetary considerations were regularly passed on to carrier passengers in cash for facilitating in smuggling of gold.

Investigation as well as voluntary admission also confirms that in the past instances also, Shri Kirit Patel had smuggled gold into India from Dubai and Thailand with the help of Shri Parth Patel and Carrier passenger in guise of tour operation.

From the above-mentioned facts, it clearly appeared that Shri Kirit Patel and Shri Parth Patel had actively engaged themselves/systematically managed in smuggling of gold weighing 2923.78 grams in form of chains/bangles/mangalsutras and previously admitted smuggled gold into India for personal enrichment. It appears to be an organized smuggling which was forbidden and naturally prohibited. Thus, it is evident that the gold items recovered from the possession of **21 passengers (as referenced in Table A of Show Cause Notice)** alongwith the gold recovered from another 06 passengers (as referenced in Table-B of SCN) was "prohibited goods" within the meaning of Section 2(33) of the Act *ibid* and the same is liable for confiscation under Section 111 *ibid*. For the same reason, it is clear that their act of attempting to bring the seized goods into India in a concealed manner without payment of duty, tantamount to "smuggling" within the meaning of Section 2(39) of the Customs Act, 1962 as it rendered the said goods liable to confiscation under Section 111 of the Act, *ibid*. Therefore, Shri Kirit Patel and Shri Parth Patel, mastermind/beneficial owner, had concerned themselves in the act of smuggling of foreign origin gold and have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (l) and (m) of the Customs Act, 1962. It is seen that they involved themselves in carrying, removing, depositing, **harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing** with any goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticees have committed an offence of the nature described in Section 112 of Customs Act, 1962 making them liable for penalty under Section 112 of the Customs Act, 1962.

67. I find that Show Cause Notice proposes penalty under Section 112(a) and (b) of the Customs Act, 1962 on Shri Kirit Patel and Shri Parth Patel. In this regard, I find that under submission, both of them have contended that they are not liable for any penalty under Section 112 of Customs Act, 1962 as they were not involved in any kind of smuggling activity. In this regard, I note that bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "*does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act*" of Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. The noticees Shri Kirit Patel and Shri Parth Patel were mastermind and beneficiary owner of said smuggling activity. They had cleverly attempted to smuggle the gold in the name of tour operation. Further, the statements of the both the noticees reveals that Shri Kirit Patel procured the gold at Dubai and they had distributed the same among the

passengers for carrying the same to India. I find that in the instant case, the principle of mens-rea on behalf of noticees are established as the noticees have failed to follow the procedure and intentionally involved in smuggling of the gold. Therefore, both the noticees are liable to penalty under Section 112(b) of Customs Act, 1962. To support my view, I placed reliance on the judgment in case of Revisionary Authority, New Delhi in the matter of Smt. Shakeena Ahammed Thadayil, Kozhikode Vs. Commissioner of Customs, Calicut (Order No. 44/24-Cus dated 13.02.2024), which is squarely apt in the instant case. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticees were the mastermind and planned a systematic channel for smuggling of gold and attempting to evade the Customs Duty by not declaring the same before customs authority. Hence, the identity of the goods is not established and non-declaration at the time of import, is considered as an act of omission on their part. Despite their knowledge and belief that the bringing the gold by way of concealment is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, both of them attempted to smuggle the said gold of 2923.78 grams, having purity 999.0 with the help of carrier passengers. Thus, it is clear that both of them have concerned themselves with carrying, removing, depositing, **harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing** with the smuggled gold which they very well knew and had reason to believe that the same were liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I hold that the noticee named Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel are liable for the penalty under Section 112 (b) of the Customs Act, 1962.

68. Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide *for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from*

01.08.2019. The detailed discussions in the preceding paragraphs clearly prove that both the noticees not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticee named Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel.

69. Now, I come to allegation in the Show Cause Notice that as to whether the gold having net weight of 2923.78 Grams recovered from the possession of 21 client passengers as listed below is liable for confiscation or otherwise and whether penalty should be imposed upon the noticees under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or not. List of passengers alongwith the quantity of gold recovered from them.

Sr No	Name	Passport No	Address	Gold In Grams(2 4 Carat)	Item	Certificate No.	Market Value (In Rs)
1	Patel Parulben Baldevbhai	R28285 82	144 Shiv Ganesh Bungalows Near Madhuram Plot , 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059	139.58	01 Gold Mangalsutra	1086	1123898
2	Patel Rasikbhai	W76009 89	8/19, Khant Vas Thol Kadi Mehasana-382715	139.99	01 Gold Chain	1087	1127199
3	Patel Babubhai Ambalal	N01823 49	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480	134.29	01 Gold Mangalsutra	1090	1081303
4	Nayak Mangalbhai Shankarbhai	W37206 87	Lal Vas Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat	139.94	01 Gold Chain	1092	1126797
5	Patel Ashaben Shaileshkumar	N65970 28	32 Siddhi Bunglows Gst Road New Ranip Ahmedabad-382480	140.7	01 Gold Mangalsutra	1093	1132916
6	Nayak Mansukhbhai Shankarbhai	W42588 16	Lal Vas Oppt Khat Vas Thol Mehsana-382715	139.9	01 Gold Chain	1098	1126475
7	Patel Upendrabhai Jivabhai	W00200 27	Ambaji Matanu Mandir Thol Kadi Mehasana-382715	139.93	01 Gold Chain	1099	1126716
8	Patel Khodabhai Nagardas	Y300219 5	A-101, Silicone Square Near Sukan Six Flats Oppt Solar Science City Sola Ahmedabad-380060	139.93	01 Gold Chain	1100	1126716
9	Patel Jayantilal Madhabhai	T760361 0	Khont Vas At Thol Kadi Mehasana-382715	139.94	01 Gold Chain	1103	1126797
10	Patel Madhavlal Shankardas	B65541 59	At And Post Thol Mehasana-382715	139.94	01 Gold Chain	1104	1126797

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11	Patel Jashodaben Babaubhai	N9420949	B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480	139.92	01 Gold Chain	1105	1126636
12	Patel Baldevbhai Shakrabhai	R2829315	144 Shiv Ganesh Bunglows Near Madhuram Plot , 100feet Ring Road , Shilaj Thaltej, Ahmedabad-380059	139.88	01 Gold Chain	1106	1126314
13	Patel Vikrambhai	C0338130	Madhvas Ambaji Mata No Chok, Thol Kadi,Mehasana-382715, Gujarat	139.93	01 Gold Chain	1107	1126716
14	Patel Navin Ranchhodbhai	S9026617	A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad-380015	140.04	01 Gold Chain	1108	1127602
15	Patel Varshaben Navinbhai	S8655907	Sonivas Village Thol Kadi Mehasana-382715	140.23	01 Gold Mangalsutra	1109	1129132
16	Nayak Hansabebn Mansukhabhai	W4259498	2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440	138.68	01 Gold Mangalsutra	1110	1116651
17	Patel Kaminaben Bhagvanbhai	S9005962	Thol Mehasana-382715	141.46	01 Gold Mangalsutra	1111	1139036
18	Patel Kokilaben Rasikbhai	W7598643	8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana-382715	140.03	01 Gold Mangalsutra	1112	1127522
19	Patel Manjulaben Jayantilal	T7599469	Khont Vas At Thol	141.4	01 Gold Mangalsutra	1113	1138553
20	Patel Manjulaben Chandrakant	X4787945	Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715	134.15	01 Gold Mangalsutra	1114	1080176
21	Nayak Shakutlaben Mangalbhai	W3278407	2-64/ Lal Vas, Opposite Khant Vas, Thol , Mehasana-382715, Gujarat	133.92	01 Gold Mangalsutra	1115	1078324
Total				2923.78 Grams			Rs. 2,35,42,276/-

Before discussion, I would like to mention that all the 21 noticees have submitted their written submission through their common advocate vide letters dated 19.05.2025. further, Shri Shubham Jajharia, common advocate appeared for personal hearing on 26.08.2025 on behalf of all 21noticees. On going through the written submission as well as submission made during the personal hearing, I noticed that their contention and submission are identical in nature, therefore, I combinedly take up the matter for discussion. I find that the panchnama clearly mentioned that there was an intelligence regarding smuggling of gold by tour operator. The intelligence further indicated that the said tour opertors had distributed the gold to his client passengers in small quantities in form of ornaments. On the basis of said intelligence, the officers of AIU had intecrpted the tour group after crossing the red channel without making any declaration of gold. The investigation and personal search of all passengers alongwith their baggage, resulted into recovery of gold items in form

of chains, bangles and mangalsutras. It is on the record that the Government approved valuer informs that the total weight of the said recovered gold items was 2923.78 grams and certified that the said gold was of 24kt having purity of 999.0. It is also on the record that all 21 noticees had tendered their 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 that all the 21 noticees in their respective voluntary statement admitted that the said gold in form of ornaments was handed over to them by Shri Kirit Patel and Shri Parth Patel, the tour operators before departure to India from Duabi and asked them to hide or wear in a way that the same was not noticed by the customs officers at Airport during immigration and for doing that they would receive a discount of Rs. 10000/- to Rs. 13000/- in their tour packages. Under their individual written submission, they have mentioned that the statement was recorded under duress and threat of being arrest. This contention of the noticees has already been discussed in length in the foregoing paras and to avoid the duplicacy, I refrain from discussing it again.

In their statement, they have clearly admitted that they were agreed to the offer given by Shri Kirit Patel and willingly involved in carrying the gold in form of ornaments. They all had clearly admitted that they had intentionally not declared the same before the customs on arrival on the direction of Shri Kirit Patel and Shri Parth Patel in order to clear the same clandestinely without payment of duty. Further, I noticed that under their earlier submission as well as in the latest written submission, they have taken a plea that due to ignorance of Customs Laws, they were unable to declare the same before authority. The explanation given by the noticees 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. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticees had kept the gold items with them and failed to declare the same before the Customs Authorities on their arrival at SVPIA, Ahmedabad. I also find that the none of them had neither questioned the manner of the panchnama proceedings at the material time nor controverted/refuted the facts detailed in the panchnama during the course of recording of their statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passengers/noticees. The case of smuggling of gold in form of ornaments concealed by them under garments and was not declared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that

passengers/noticees 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.

70. Under their submission, all of them have mentioned that they are the owner of the gold and purchased the gold in form of ornaments from Dubai on the credit basis and have the purchase bill for the same. In this regard, I note that Shri Soni Kartikey Vasantrai, a Government-Approved Valuer, has examined the impugned goods and submitted his valuation reports and as per his findings the impugned gold bangles were found to be of 995 purity, i.e. 24 karat gold. I note that it is a well-established fact that 24-karat gold, due to its high purity, is extremely malleable and lacks the structural strength typically required for finished jewellery, especially items like chains, bangles and mangalsutras that are expected to withstand wear and pressure. This observation raises a significant red flag with respect to the nature and purpose of the impugned goods. Therefore, it evidently establishes that the recovered gold items were not for the personal use rather they were meant for smuggling purpose. Further, I note that they have mentioned that they have purchased the said gold on credit basis and have not remitted the amount yet to the seller. This explanation of the noticees appears highly implausible as gold being an precious and expensive goods and without any surety, guarantee, advance and/or any acquitances with seller, no one has sold gold on credit basis. From the submission, I noticed that they have merely mentioned that they have purchased the gold on credit basis without providing any supporting details. Therefore, I find that the alibi taken by the noticees did not appear genuine and making the smuggling of gold activity as genuine purchase by mentioning that they have purchased the gold themselves. I find that Shri Kirit Patel clearly confessed that he procured the gold from M/s. Darvesh Jewellers, Dubai and distributed the same among the passengers for smuggling purpose, however on contrary, all the noticees have submitted the purchase invoices issued by M/s. BAB Al Saqlain Goldsmith and Jewellery LLC. Moreover, on going through the details of submitted invoices, I noticed that in all the invoices description of goods was mentioned as **“TTB Ten Tola Bar”**, however on other hand the gold recovered from the passengers was in form of ornaments viz. Chains, Mangalsutras and bangles. Therefore, the submitted invoices did not appear to be original, genuine and afterthought just to show the smuggling activity as genuine purchase.

71. From the facts discussed above, it is evident that all 21 noticees had carried in total gold weighing 2923.78 grams, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24kt/999.00 purity totally weighing 2923.78 grams, liable for confiscation, under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold in form of ornaments and not declaring the same before the Customs, it is established that the passengers had a clear intention to smuggle the gold clandestinely with an intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

I find that the importation of gold into India is highly regulated and bulk importation of gold item could only be effected by the nominated banks, agencies or business houses in the manner laid down by various DGFT regulations as well as the RBI circular or by the eligible passengers in the manner provided by the relevant regulations as the main object of the Customs Act is to prohibit smuggling of goods and sternly deal with the same as can be gathered/evident on a conjoint reading of Section 2(25), 11(2)(c), 111 and 112 of the Act.

Further, Section 11 of the Act, which principally dealing with the power to prohibit speaks of an absolute prohibition or import being subject to conditions that may be prescribed. It is thus manifest that a prohibition could be either in absolutist terms or subject to a regime of restriction or regulation. It is this theme which stands reiterated in Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992, (FTDR) which again speaks of a power to prohibit, restrict or regulate. It becomes pertinent to bear in mind that in terms of the said provision, all orders whether prohibiting, restricting or regulating are deemed, by way of a legal fiction, to fall within the ambit of Section 11 of the Act. This in fact reaffirms that Section 2(33) would not only cover situations where an import may be prohibited but also those where the import of goods is either restricted or regulated. In terms of the plain language, an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". I find that in terms of the definition of 'prohibited goods' in Section 2(33) even prohibited goods could be imported or exported, subject to compliance with the terms and conditions as prescribed but if import is not done lawfully as per the procedure prescribed under the Customs Act or any other law for the time being in force, in that event the **said goods would fall under the definition of 'prohibited goods'**. The necessary corollary is that goods being imported if not subjected to check up at the customs on their arrival and are cleared without payment of customs

duty are treated as 'smuggled goods'. As observed by the Madras High Court in *Malabar Diamond Gallery P Ltd. (supra)* " *The expression, subject to the prohibition under the Customs Act, 1962, or any other law for the time being in force, in Section 2(33) of the Customs Act, has to be read and understood, in the light of what is stated in the entirety of the Act and other laws. Production of legal and valid documents for import along with payment of duty, determined on the goods imported, are certainly conditions to be satisfied by an importer. If the conditions for import are not complied with, then such goods, cannot be permitted to be imported and thus, to be treated as prohibited from being imported.*"

Also, the observations of the High Court of Gujarat in *Bhargavraj Rameshkumar Mehta Vs UOI - 2018 (361) ELT 260* has also enunciated the principle that, "condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions."

72. I find 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.

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 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India. 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.

73. 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.

74. 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 21 noticees as tabulated above have brought the gold totally weighing 2923.78 grams which is more than the prescribed limit. Further, none of them have declared the same before customs on their arrival which is an integral condition to import the gold and same had been admitted in their voluntary statement that they wanted to clear the gold clandestinely without payment of eligible custom duty. Since the conditions for import of gold as per the notification issued by DGFT and the restrictions imposed by RBI have been violated, the gold in question has to be treated as 'prohibited goods' under Section 2(33). Consequently, it would fall within the definition of 'smuggling ' under Section 2(39) which will render such goods liable to confiscation under Section 111 of the Act.

75. Further as per Section 123 of the Customs Act, 1962, 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. Section 123 of Custom Act, 1962 read as follows:-

Section 123. Burden of proof in certain cases. -

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

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

-

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

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

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

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

Hence, in respect of gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, all 21 noticees from whom gold in form of ornaments recovered have failed to produce any evidences which establishes that the gold was procured in legitimate way and for their personal bonafide use. Under their submission as well as during personal hearing they have claimed that the gold was purchased by them on credit basis. They have also claimed in their submission that they were not allowed to declare the gold and before declaration, a case was made against them, however on contrary I find they have clearly admitted that they were not inclined to declare the same before the authority as they wanted to remove the gold clandestinely without making any declaration and without any payment of duty. I also note that they had no foreign exchange with them which is required to make payment for the said gold at the time of arrival. If I assume for instance, that they were going to declare the same before authority then how they were going to make the payment of duty as per the provisions mentioned in Circular dated 06.03.2014, as they have no convertible foreign exchange with them. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that "in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt". And "Wherever possible, the field

officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them". From the above conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Further, I find that all the noticees unanimously have mentioned that said gold was purchased by them on credit basis and submitted the copy of invoices. Merely claiming the ownership on gold only on the basis of copy of bill which itself appears not genuine and without submission of any other documentary evidences viz, bank transactions details/cash details does not make them owner and does not establish that the gold was purchased in legitimate way and as bona fide personal use. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77 and 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 as amended. Therefore, I hold that all 21 noticees have nothing to submit in their defense and claim of all 21 noticees that the gold was purchased by them is not tenable on basis of no legitimate documentary evidences. Further, in their respective statements, they have confessed that they were merely working as carrier of gold on the direction of Shri Kirit Patel and Shri Parth Patel in lieu of monetary consideration/discount in their tour packages.

76. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that all 21 Noticees had not filed the baggage declaration form and had not declared the said gold which was in their possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were exited through Green Channel which shows that the noticees were trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after

a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. In the instant case, I find that all the noticees were going to Dubai for a trip on 13/14.10.2024 and returned back on 21.10.2024, well before the prescribed time limit to bring the gold as per the definition of eligible passenger. Therefore, the said improperly imported gold weighing 2923.78 grams concealed by them in form of ornaments, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 2923.78 grams, recovered and seized from 21 noticees as tabulated above vide Seizure Order under Panchnama proceedings both dated 21.10.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using such modus of concealing the gold, it is observed that the noticees were fully aware that the import of said goods is offending in nature.

77. In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

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

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 356 (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, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to

fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

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 his 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 his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his 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

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the mentioned 21 Noticees. As per the statement of Shri Kirit Patel recorded under Section 108 of the Customs Act, 1962, they organized a tour for Dubai on 13/14.10.2024 and returned back on 21.10.2024, well before the stipulated time of stay as prescribed to import the gold. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such conditions were satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or

partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject gold weighing 2923.78 grams, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

(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;

I find that the said gold in form of ornaments recovered from the possession of **21 passengers (as referenced in Table A of Show Cause Notice)** was not declared before the Customs as required under Section 77 of the Customs Act, 1962 and they passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold ornaments viz. chains, mangalsutras and bangles which were found concealed and recovered in manner as described above, was made by all 21 noticees, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

(III) in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

In this regard, I find that 2923.78 grams of gold ornaments of foreign origin were recovered from possession of mentioned **21 passengers (as referenced in Table A of Show Cause Notice)** and admittedly smuggled into India. On test, those golds were found to be of purity of 999.0/24kt. Moreover, I find that none of them could produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin, thus failing to discharge their “burden of proof” that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962

and hence the said gold items are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

78. I find from manner of concealment of gold in form of gold ornaments that all the noticees were fully aware that the import of said goods is offending in nature. From their voluntary statements recorded under Section 108 of Custom Act, 1962, I find that all of them have clearly admitted that they were aware of carrying the gold in form of ornaments on the direction of Shri Kirit Patel and Shri Parth Patel. They have clearly admitted that they were willingly and actively participated in the smuggling of gold for their personal benefits. It is therefore very clear that they have knowingly carried the gold and failed to declare the same to the Customs on their arrival at the Airport. *It is seen that they have involved themselves in carrying, keeping, concealing and dealing with the impugned goods in a manner which he knows or had reasons to believe that the same were liable to confiscation under the Act.* I find that the allegations made against the noticee are established on the basis of documentary evidences as well as evidences gathered during the investigation and same shows the involvement of noticees for carrying the gold in form of gold ornaments. I find from the documentary evidences on records and the corroborative statements of noticees and co-noticees that they were actively participated in smuggling of gold, which was handed over to them by Shri Kirit Patel, at Dubai. Accordingly, on the basis of documentary as well as voluntary statements, mens-rea of all 21 noticees are proved beyond doubt and I hold that 21 noticees have committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

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

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

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

78.2. 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.

78.3. 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).*

78.4 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".

78.5 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.**"*

78.6 Further, I find that all 21 noticees have requested in their written submission to release the gold on payment of the redemption fine/penalty and relied on various case laws. I am of the view that conclusion in the case may be correct, but it cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, *I find that judgments relied upon by the noticee, is not squarely applicable in the instant case.*

Further, 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.

In view of the above discussions, I find that the manner of concealment, in this case clearly shows that all 21 noticees had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. I find that all 21 noticees have failed to discharge the burden placed on them in terms of Section 123 by not providing any supportive documents which establishes their claim on gold and prove that the gold was not smuggled one. In view of Judgment of Hon'ble Supreme Court in case of Om Prakash Bhatia, it is clear that gold may not be one of the enumerated goods, as prohibited goods, still if the condition for such import are not complied with, then import of gold, would squarely fall under the definition of "Prohibited Goods". I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Also, in the judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

78.9. Given the facts of the present case before me and the judgements and rulings cited above, the said seized gold weighing 2923.78 grams, carried and recovered from 21 noticees are therefore liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the said gold items total net weighing 2923.78 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.**

79. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of mentioned 21 noticees, I find that there is no bar in the Customs Act upon simultaneous penalty under Section 112 (a) and (b). Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under “does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act” covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. The mentioned 21 noticees had attempted to smuggle the said goods by deliberately not declaring the same upon arrival with willful intent to evade customs duty. Further, the statements of all noticees as well as Statement of Shri Kirit Patel and Shri Parth Patel reveals that they were just carrier of gold and has attempted to smuggle the gold on direction of Shri Kirit Patel and Shri Parth Patel for monetary benefits. I find that in the instant case, the principle of mens-rea on behalf of noticees are established as all 21 noticees have failed to follow the procedure and intentionally involved in smuggling of the gold. Therefore, the mentioned 21 noticees are liable to penalty under Section 112(b) of Customs Act, 1962. To support my view, I placed reliance on the judgment in case of Revisionary Authority, New Delhi in the matter of Smt. Shakeena Ahammed Thadayil, Kozhikode Vs. Commissioner of Customs, Calicut (Order No. 44/24-Cus dated 13.02.2024), which is squarely apt in the instant case. On deciding the penalty in the instant case, I also take into consideration the observations of Hon’ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon’ble Apex Court observed that “The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.” In the instant case, 21 noticees were attempting to smuggle the gold in form of ornaments and attempting to evade the Customs Duty by not declaring the

same before Customs Authority. Hence, the identity of the goods are not established and non-declaration at the time of import, is considered as an act of omission on their part. I further find that the noticees had involved themselves and abetted the act of smuggling of the said gold weighing 2923.78 grams, carried by them. They all agreed and admitted in their statement that they had travelled from Dubai to Ahmedabad with the said gold in form of ornaments. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticees have attempted to smuggle the said gold of 2923.78 grams, having purity 999.0 by concealment. Thus, it is clear that 21 noticees have concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they know very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I hold that the mentioned 21 noticees tabulated above are liable for the penalty under Section 112 (b) of the Customs Act,1962.

79.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide *for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019.* The detailed discussions in the preceding paragraphs clearly prove that mentioned 21 noticees not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there is clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, all 21 noticees have accepted to carry the gold in form of ornaments and involved themselves in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on mentioned 21 noticees as tabulated above.

80. Now, I come to allegation in the Show Cause Notice that as to whether the gold having net weight of 470.03 Grams recovered from the possession of 06 client passengers as listed below is liable for confiscation or otherwise and whether penalty should be imposed upon the noticees under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or not. List of passengers alongwith the quantity of gold recovered from them is as:-

Sr No	Name	Passport No	Address	Gold In Grams(24 Kt)	Item	Certificate No	Market Value (In Rs.)
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1	Patel Sharmishthaben Ramanbhai	T7855586	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061	40.08	02 Gold Bangles	1085	322724
2	Patel Hasumatiben Dineshbhai	N0555916	C/2/205 Vishwas Apartment Near Gulab Tower, Thaltej, Ahmedabad-380054	110.02	01 Gold Chain+02 Gold Bangles	1088	885881
3	Patel Kapilaben Dineshbhai	C1134602	Bhav Vas Thol , Kadi Mehasana-382728	79.95	04 Gold Bangles	1089	643757
4	Patel Vijaykumar Dhanabhai	S0747135	Khant Vas At Thol Kadi Mehasana-382715	149.97	02 Gold Chains	1091	1207558
5	Patel Navinchandra Shivilal	T0387665	11-A/Saraswati Nagar Society Oppt Kr Rawal School , Ranip, Ahmedabad-382480	49.96	01 Gold Chain	1101	402278
6	Patel Ramanbhai Dhulabhai	T7839156	B-201,Swastik Residency, Rc Technical Road, Chandlodia, Ahmedabad-380061	40.05	01 Gold Kada	1102	322483
Total				470.03 Grams			Rs. 37,84,682/-

Before discussion, I would like to mention that all 06 above mentioned noticees have submitted their written submission through their common advocate. Further, Shri Rishikesh Mehra, common advocate appeared for personal hearing on 25.08.2025 on behalf of all **06 noticees (as referenced in Table B of Show Cause Notice)**. On going through the written submission as well as submission made during the personal hearing, I noticed that their contention and submission are identical in nature, therefore, I combinedly take up the matter for discussion. I find that the panchnama clearly mentioned that there was an intelligence regarding smuggling of gold by tour operator. The intelligence further indicated that the said tour opertors had distributed the gold to his client passengers in small quantities in form of ornaments. On the basis of said intelligence, the officers of AIU had intecrpted the tour operator alongwith the members while they were crossing the red channel without making any declaration of gold. The investigation and personal search of all passengers alongwith their baggage, resulted into recovery of gold items in form of chains, bangles and mangalsutras. It is on the record that the Government approved valuer informs that the total weight of the said recovered gold items was 470.03 grams and certified that the said gold was of 24kt having purity of 999.0. It is also on the record that all **06 noticees (as referenced in Table B of Show Cause Notice)** had tendered their 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 that all the **06 noticees (as referenced in Table B of Show Cause Notice)** in their respective voluntary statement admitted that the said gold in form of ornaments were purchased by them with the help of Kirit Patel from the funds arranged by them as loan from their known friends in Dubai. Further, they have clearly admitted that they had not declared the gold before cutsoms on arrival from Dubai in order to evade the payment of customs duty.

It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticees had kept the gold items with them and failed to declare the same before the Customs Authorities on their arrival at SVPIA, Ahmedabad. I also find that the none of

them had neither questioned the manner of the panchnama proceedings at the material time nor controverted/refuted the facts detailed in the panchnama during the course of recording of their statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passengers/noticees. The case of smuggling of gold in form of ornaments concealed by them under garments and was not declared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that passengers/noticees 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.

81. Under their submission, all of them have mentioned that they are the owner of the gold and purchased the gold in form of ornaments from Dubai from the money borrowed from their friends at Dubai and submitted the copy of bill. In this regard, I note that Shri Soni Kartikey Vasantrai, a Government-Approved Valuer, has examined the impugned goods and submitted his valuation reports and as per his findings the impugned gold items were found to be of 995 purity, i.e. 24 karat gold. I note that it is a well-established fact that 24-karat gold, due to its high purity, is extremely malleable and lacks the structural strength typically required for finished jewellery, especially items like chains, bangles and mangalsutras that are expected to withstand wear and pressure. This observation raises a significant red flag with respect to the nature and purpose of the impugned goods. Therefore, it evidently establishes that the recovered gold items were not for the personal use rather they were meant for smuggling purpose. Further, I note that they have mentioned that they have purchased the said gold on their own from the money borrowed from their friend circle. However, they have failed to submit any supporting documents which establishes their claim that they have purchased the said gold items in legitimate way and for their personal use. Therefore, I find that the alebi taken by the noticees did not appear genuine and making the smuggling of gold activity as genuine purchase by mentioning that they have purchased the gold themselves. I find that Shri Kirit Patel clearly mentioned that he helped all 06 passengers (as referenced in Table-B of SCN) in purchasing the gold items from M/s. Darvesh Jewellers, Dubai, however on contrary, all the noticees have submitted the purchase invoices issued by various different sellers. Moreover, on going through the details of submitted

invoices, I noticed that some of invoices not even have the purchaser details and not even signed by seller or purchaser. Therefore, the submitted invoices did not appear to be original, genuine and afterthought just to show the smuggling activity as genuine purchase.

82. From the facts discussed above, it is evident that all **06 noticees (as referenced in Table B of Show Cause Notice)** had carried in total gold weighing 470.03 grams, while arriving from Abu Dhabi/Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24kt/999.00 purity totally weighing 470.03 grams, liable for confiscation, under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold in form of ornaments and not declaring the same before the Customs, it is established that the passengers had a clear intention to smuggle the gold clandestinely with an intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

I find that the importation of gold into India is highly regulated and bulk importation of gold item could only be effected by the nominated banks, agencies or business houses in the manner laid down by various DGFT regulations as well as the RBI circular or by the eligible passengers in the manner provided by the relevant regulations as the main object of the Customs Act is to prohibit smuggling of goods and sternly deal with the same as can be gathered/evident on a conjoint reading of Section 2(25), 11(2)(c), 111 and 112 of the Act.

Further, Section 11 of the Act, which principally dealing with the power to prohibit speaks of an absolute prohibition or import being subject to conditions that may be prescribed. It is thus manifest that a prohibition could be either in absolutist terms or subject to a regime of restriction or regulation. It is this theme which stands reiterated in Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992, (FTDR) which again speaks of a power to prohibit, restrict or regulate. It becomes pertinent to bear in mind that in terms of the said provision, all orders whether prohibiting, restricting or regulating are deemed, by way of a legal fiction, to fall within the ambit of Section 11 of the Act. This in fact reaffirms that Section 2(33) would not only cover situations where an import may be prohibited but also those where the import of goods is either restricted or regulated. In terms of the plain language, an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". I find that in terms of the definition of 'prohibited goods' in Section 2(33) even prohibited goods could be

imported or exported, subject to compliance with the terms and conditions as prescribed but if import is not done lawfully as per the procedure prescribed under the Customs Act or any other law for the time being in force, in that event the **said goods would fall under the definition of 'prohibited goods'**. The necessary corollary is that goods being imported if not subjected to check up at the customs on their arrival and are cleared without payment of customs duty are treated as 'smuggled goods'. As observed by the Madras High Court in Malabar Diamond Gallery P Ltd. (supra) " *The expression, subject to the prohibition under the Customs Act, 1962, or any other law for the time being in force, in Section 2(33) of the Customs Act, has to be read and understood, in the light of what is stated in the entirety of the Act and other laws. Production of legal and valid documents for import along with payment of duty, determined on the goods imported, are certainly conditions to be satisfied by an importer. If the conditions for import are not complied with, then such goods, cannot be permitted to be imported and thus, to be treated as prohibited from being imported.*"

Also, the observations of the High Court of Gujarat in Bhargavraj Rameshkumar Mehta Vs UOI - 2018 (361) ELT 260 has also enunciated the principle that, "condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions."

83. I find 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.

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 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported

by him within 15 days of his arrival in India. 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.

84. 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.

85. 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 the intelligence specifically indicated about smuggling of gold by a tour operator with the help of client passengers and not mentioned any smuggling of gold by an individual person, therefore, the whole group was intercepted from whom total gold amounting to tune of 2923.78+ 470.03 grams of gold ornaments were recovered. Therefore, the plea taken by the 06 noticees that the matter should be dealt individually holds no water. I find that all **06 noticees (as referenced in Table B of Show Cause Notice)** as tabulated above have brought the gold totally weighing 470.03 grams which is more than the prescribed limit. Further, none of them have declared the same before customs on their arrival which is an integral condition to import the gold and same had been admitted in their voluntary

statement that they wanted to clear the gold clandestinely without payment of eligible custom duty. Since the conditions for import of gold as per the notification issued by DGFT and the restrictions imposed by RBI have been violated, the gold in question has to be treated as 'prohibited goods' under Section 2(33). Consequently, it would fall within the definition of 'smuggling' under Section 2(39) which will render such goods liable to confiscation under Section 111 of the Act.

86. Further as per Section 123 of the Customs Act, 1962, 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. Section 123 of Custom Act, 1962 read as follows:-

Section 123. Burden of proof in certain cases. -

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

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

-

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

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

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

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

Hence, in respect of gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, all **06 noticees (as referenced in Table B of Show Cause Notice)** from whom gold in form of ornaments recovered have failed to produce any evidences which establishes that the gold was procured in legitimate way and for their personal bonafide use. Under their submission as well as during personal hearing they have claimed that the gold was purchased by them for their personal use. They have also claimed in their submission that they were not allowed to declare the gold and before declaration, a case was made against them, however on contrary, I find they have clearly admitted that they were not inclined to declare the same before the authority as they wanted to remove the

gold clandestinely without making any declaration and without any payment of duty. I also note that they had no foreign exchange with them which is required to make payment for the said gold at the time of arrival. If I assume for instance, that they were going to declare the same before authority then how they were going to make the payment of duty as per the provisions mentioned in Circular dated 06.03.2014, as they have no convertible foreign exchange with them. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that "in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt". And "Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them". From the above conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Further, I find that all the noticees unanimously have mentioned that said gold was purchased by them from the money borrowed from their friends in Duabi and submitted the copy of invoices. Merely claiming the ownership on gold only on the basis of copy of bill which itself appears not genuine and without submission of any other documentary evidences viz, bank transactions details/cash details/ details regarding money borrowed from their friends does not make them owner and does not establish that the gold was purchased in legitimate way and as bona fide personal use. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77 and 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 as amended. Therefore, I hold that all **06 noticees (as referenced in Table B of Show Cause Notice)** have nothing to submit in their defense and claim of all **06 noticees (as referenced in Table B of Show Cause Notice)** that the gold was purchased by them is not tenable on basis of no legitimate documentary evidences.

87. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having

dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that all **06 noticees (as referenced in Table B of Show Cause Notice)** had not filed the baggage declaration form and had not declared the said gold which was in their possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were exited through Green Channel which shows that the noticees were trying to evade the payment of eligible customs duty. I also find that the definition of “eligible passenger” is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. In the instant case, I find that all the noticees were going to Dubai for a trip on 13/14.10.2024 and returned back on 21.10.2024, well before the prescribed time limit to bring the gold as per the definition of eligible passenger. Therefore, the said improperly imported gold weighing 470.03 grams concealed by them in form of ornaments, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 470.03 grams, recovered and seized from **06 noticees (as referenced in Table B of Show Cause Notice)** as tabulated above vide Seizure Order under Panchnama proceedings both dated 21.10.2024 liable to confiscation under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By using such modus of concealing the gold, it is observed that the noticees were fully aware that the import of said goods is offending in nature.

88. In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

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

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Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 356 (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, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

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 his 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 his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his 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

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the mentioned **06 noticees (as**

referenced in Table B of Show Cause Notice). As per the statement of Shri Kirit Patel recorded under Section 108 of the Customs Act, 1962, they organized a tour for Dubai on 13/14.10.2024 and returned back on 21.10.2024, well before the stipulated time of stay as prescribed to import the gold. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such conditions were satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject gold weighing 470.03 grams, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

(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;

I find that the said gold in form of ornaments recovered from the possession of 06 passengers (as referenced in Table-B of SCN) was not declared before the Customs as required under Section 77 of the Customs Act, 1962 and they passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold ornaments viz. chains, mangalsutras and bangles which were found concealed and recovered in manner as described above, was made by all **06 noticees (as referenced in Table B of Show Cause Notice)**, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

(III) in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

In this regard, I find that 470.03 grams of gold ornaments of foreign origin were recovered from possession of mentioned 06 passengers (as referenced in Table-B of SCN) and admittedly smuggled into India. On test, those golds were found to be of purity of 999.0/24kt. Moreover, I find that none of them could produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin, thus failing to discharge their "burden of proof" that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962 and hence the said gold items are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

89. I find from manner of concealment of gold in form of gold ornaments that all the noticees were fully aware that the import of said goods is offending in nature. From their voluntary statements recorded under Section 108 of Custom Act, 1962, I find that all of them have clearly admitted that they were aware of carrying the gold in form of ornaments with them. They have clearly admitted that they were not inclined to declare the same on arrival in order to evade the payment of customs duty. It is therefore very clear that they have knowingly carried the gold and failed to declare the same to the Customs on their arrival at the Airport. *It is seen that they have involved themselves in carrying, keeping, concealing and dealing with the impugned goods in a manner which they know or had reasons to believe that the same were liable to confiscation under the Act.* I find that the allegations made against the noticee are established on the basis of documentary evidences as well as evidences gathered during the investigation and same shows the involvement of noticees for carrying the gold in form of gold ornaments. I find from the documentary evidences on records and the corroborative statements of noticees and co-noticees that they were actively participated in smuggling of gold. Accordingly, on the basis of documentary as well as voluntary statements, mens-rea of all 06 noticees are proved beyond doubt and I hold that **06 noticees (as referenced in Table B of Show Cause Notice)** have committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

89.1. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold

was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

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

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

89.2. 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.

89.3. 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).

89.4 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”.

89.5 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.**"*

89.6 Further, I find that all **06 noticees (as referenced in Table B of Show Cause Notice)** have requested in their written submission to release the gold on payment of the redemption fine/penalty and relied on various case laws. I am of the view that conclusion in the case may be correct, but it cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon’ble Supreme Court are always required to be borne in mind. The Hon’ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon’ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon’ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be

logically deduced there from. Hence, I find that judgments relied upon by the noticee, is not squarely applicable in the instant case.

Further, 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.

In view of the above discussions, I find that the manner of concealment, in this case clearly shows that all **06 noticees (as referenced in Table B of Show Cause Notice)** had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. I find that all **06 noticees (as referenced in Table B of Show Cause Notice)** have failed to discharge the burden placed on them in terms of Section 123 by not providing any supportive documents which establishes their claim on gold and prove that the gold was not smuggled one. In view of Judgment of Hon'ble Supreme Court in case of Om Prakash Bhatia, it is clear that gold may not be one of the enumerated goods, as prohibited goods, still if the condition for such import are not complied with, then import of gold, would squarely fall under the definition of "Prohibited Goods". I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that

“Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive.” Also, in the judgment the Hon’ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that “---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer.” Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

89.7. Given the facts of the present case before me and the judgements and rulings cited above, the said seized gold weighing 470.03 grams, carried and recovered from **06 noticees (as referenced in Table B of Show Cause Notice)** are therefore liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the said gold items total net weighing 470.03 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.**

90. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of mentioned **06 noticees (as referenced in Table B of Show Cause Notice)**, I find that there is no bar in the Customs Act upon simultaneous penalty under Section 112 (a) and (b). Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under “does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act” covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. The mentioned **06 noticees (as referenced in Table B of Show Cause Notice)** had attempted to smuggle the said goods by deliberately not declaring the same upon arrival with willful intent to evade customs duty. Further, the statements of all noticees as well as Statement of Shri Kirit Patel and Shri Parth Patel reveals that they had attempted to smuggle the gold for their personal enrichment. I find that in the instant case, the principle of mens-rea on behalf of noticees are established as all 06 noticees (as referenced in Table B of Show Cause Notice) have failed to follow the procedure and intentionally involved in smuggling of the gold. Therefore, the mentioned **06 noticees (as referenced in Table B of Show Cause Notice)** are liable to penalty under Section 112(b) of Customs Act, 1962.

To support my view, I placed reliance on the judgment in case of Revisionary Authority, New Delhi in the matter of Smt. Shakeena Ahammed Thadayil, Kozhikode Vs. Commissioner of Customs, Calicut (Order No. 44/24-Cus dated 13.02.2024), which is squarely apt in the instant case. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, **06 noticees (as referenced in Table B of Show Cause Notice)** were attempting to smuggle the gold in form of ornaments and attempting to evade the Customs Duty by not declaring the same before Customs Authority. Hence, the identity of the goods are not established and non-declaration at the time of import, is considered as an act of omission on their part. I further find that the noticees had involved themselves and abetted the act of smuggling of the said gold weighing 470.03 grams, carried by them. They all agreed and admitted in their statement that they had travelled from Dubai to Ahmedabad with the said gold in form of ornaments. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticees have attempted to smuggle the said gold of 470.03 grams, having purity 999.0 by concealment. Thus, it is clear that **06 noticees (as referenced in Table B of Show Cause Notice)** have concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they know very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I hold that the mentioned **06 noticees (as referenced in Table B of Show Cause Notice)** tabulated above are liable for the penalty under Section 112 (b) of the Customs Act, 1962.

90.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide *for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019.* The detailed discussions in the preceding paragraphs clearly prove

that mentioned **06 noticees (as referenced in Table B of Show Cause Notice)** not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there is clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, all **06 noticees (as referenced in Table B of Show Cause Notice)** have accepted to carry the gold in form of ornaments and involved themselves in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on mentioned **06 noticees (as referenced in Table B of Show Cause Notice)** as tabulated above.

91. Accordingly, I pass the following Order:

ORDER

- i. I order absolute confiscation of Gold items (in forms of Mangalsutras & Gold Chains) totally weighing 2923.78 grams having purity of 999.0/24 Kt and market value of Rs. 2,35,42,276/- recovered from 21 client passengers (as per Table-A) of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- ii. I order absolute confiscation of Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing 470.03 grams having purity of 999.0/24 Carat and market value of Rs. 37,84,682/- recovered from 06 client passengers (as per Table-B) of Shri Kiritkumar Laljibhai Patel and Shri Parth Dashrathbhai Patel, seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 65,00,000/- (Rupees Sixty-Five Lakh Only) on Shri Kiritkumar Laljibhai Patel under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- iv. I impose a penalty of Rs. 65,00,000/- (Rupees Sixty-Five Lakh Only) on Shri Parth Dashrathbhai Patel under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- v. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty-Thousands Only) on Patel Parulben Baldevbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.

- vi. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Rasikbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- vii. I impose a penalty of Rs. 2,70,000/- (Rupees Two Lakh Seventy Thousand Only) on Paltel Babubhai Ambalal under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- viii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Nayak Mangalbhai Shankarbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- ix. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Ashaben Shaileshkumar under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- x. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Nayak Mansukhbhai Shankarbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- xi. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Upendrabhai Jivabhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- xii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Khodabhai Nagardas under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- xiii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Jayantilal Madhabhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- xiv. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Madhavlal Shankardas under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- xv. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Jashodaben Babaubhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.
- xvi. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Baldevbhai Shankarbhai under the

provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.

- xvii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Vikrambhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xviii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Navin Ranchhodbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xix. I impose a penalty of Rs. 1,80,000/- (Rupees One Lakh Eighty Thousand Only) on Patel Varshaben Navinbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xx. I impose a penalty of Rs. 1,80,000/- (Rupees One Lakh Eighty Thousand Only) on Nayak Hansaben Mansukhbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxi. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Kaminaben Bhagvanbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Kokilaben Rasikbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxiii. I impose a penalty of Rs. 2,80,000/- (Rupees Two Lakh Eighty Thousand Only) on Patel Manjulaben Jayantilal under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxiv. I impose a penalty of Rs. 2,70,000/- (Rupees Two Lakh Seventy Thousand Only) on Patel Manjulaben Chandrakant under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxv. I impose a penalty of Rs. 2,70,000/- (Rupees Two Lakh Seventy Thousand Only) on Nayak Shakutlaben Mangalbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxvi. I impose a penalty of Rs. 80,000/- (Rupees Eighty Thousand Only) on Patel Sharmishthaben Ramanbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**

- xxvii. I impose a penalty of Rs. 2,20,000/- (Rupees Two Lakh Twenty Thousand Only) on Patel Hasumatiben Dineshbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxviii. I impose a penalty of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand Only) on Patel Kapilaben Dineshbhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxix. I impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh Only) on Patel Vijaykumar Dhanabhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxx. I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Patel Navinchandra Shivilal under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxxi. I impose a penalty of Rs. 80,000/- (Rupees One Lakh Only) on Patel Ramanbhai Dhulabhai under the provisions of Section 112(a) & Section 112(b) of the Customs Act 1962.**
- xxxii. I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on Shri Kiritkumar Laljibhai Patel under the provisions of Section 117 of the Customs Act 1962.**
- xxxiii. I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on Shri Parth Dashrathbhai Patel under the provisions of Section 117 of the Customs Act 1962.**
- xxxiv. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Parulben Baldevbhai under the provisions of Section 117 of the Customs Act 1962.**
- xxxv. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Rasikbhai under the provisions of Section 117 of the Customs Act 1962.**
- xxxvi. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Babubhai Ambalal under the provisions of Section 117 of the Customs Act 1962.**
- xxxvii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Nayak Mangalbhai Shankarbhai under the provisions of Section 117 of the Customs Act 1962.**

- xxxviii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Ashaben Shaileshkumar under the provisions of Section 117 of the Customs Act 1962.**
- xxxix. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Nayak Mansukhbhai Shankarbhai under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Upendrabhai Jivabhai under the provisions of Section 117 of the Customs Act 1962.**
- xli. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Khodabhai Nagardas under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Jayantilal Madhabhai under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Madhavlal Shankardas under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Jashodaben Babaubhai under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Baldevbhai Shankarbhai under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Vikrambhai under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Navin Ranchhodbhai under the provisions of Section 117 of the Customs Act 1962.**
- xl. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Varshaben Navinbhai under the provisions of Section 117 of the Customs Act 1962.**

- xlix. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Nayak Hansaben Mansukhbhai under the provisions of Section 117 of the Customs Act 1962.**
- i. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Kaminaben Bhagvanbhai under the provisions of Section 117 of the Customs Act 1962.**
- ii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Kokilaben Rasikbhai under the provisions of Section 117 of the Customs Act 1962.**
- iii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Manjulaben Jayantilal under the provisions of Section 117 of the Customs Act 1962.**
- liii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Manjulaben Chandrakant under the provisions of Section 117 of the Customs Act 1962.**
- liv. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Nayak Shakutlaben Mangalbhai under the provisions of Section 117 of the Customs Act 1962.**
- lv. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Sharmishthaben Ramanbhai under the provisions of Section 117 of the Customs Act 1962.**
- lvi. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Hasumatiben Dineshbhai under the provisions of Section 117 of the Customs Act 1962.**
- lvii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Kapilaben Dineshbhai under the provisions of Section 117 of the Customs Act 1962.**
- lviii. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Vijaykumar Dhanabhai under the provisions of Section 117 of the Customs Act 1962.**
- lix. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Navinchandra Shivilal under the provisions of Section 117 of the Customs Act 1962.**

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F. No: VIII/10-278/SVPIA-A/O&A/HQ/2024-25

ix. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Patel Ramanbhai Dhulabhai under the provisions of Section 117 of the Customs Act 1962.

92. Accordingly, the Show Cause Notice No. VIII/10-278/SVPIA-A/O&A/HQ/2024-25 dated 17.04.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad.

DIN:20251071MN0000333D4E

F. No. VIII/10-278/SVPIA-A/O&A/HQ/24-25

Date: 06.10.2025

BY RPAD/E-MAIL

To,

- Shri Kiritkumar Laljibhai Patel
S/o Shri Laljibhai Ambaram Patel
20, Sarjan Bungalows, Panchvati,
Kalol, Distt-Gandhinagar-382721

Alternate Address

Shri Kiritkumar Laljibhai Patel
S/o Shri Laljibhai Ambaram Patel
Parthnagar, Bhatasan, Ta-Kadi, Mehsana,
Gujarat-382705

- Shri Parth Dashrathbhai Patel,
S/o Shri Dashrathbhai Punji Patel
0, Gayatri Nagar, Mankanaj,
Mehsana-384421

Alternate and Current Address:-

- Shri Parth Dashrathbhai Patel,
S/o Shri Dashrathbhai Punji Patel
5, Dutt Bungalows, Modhera Road,
Mehsana-384002
- Patel Parulben Baldevbhai (Passport- R2828582)
144 Shiv Ganesh Bunglows Near Madhura Plot,
100feet Ring Road , Shilaj Thaltej,
Ahmedabad-380059
 - Patel Rasikbhai
8/19, Khant Vas,
Thol, Kadi, Mehasana-382715

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5. Patel Babubhai Ambalal
B/6 Vimal Nath Tenament
Nirnay Nagar Road
Ranip Ahmedabad- 382480
6. Nayak Mangalbhai Shankarbhai
Lal Vas , Opposite Khant Vas,
Thol, Mehasana-382715, Gujarat
7. Patel Ashaben Shaileshkumar
32 Siddhi Bungalows,
GST Road New Ranip
Ahmedabad-382480
8. Nayak Mansukhbhai Shankarbhai
Lal Vas Opp. Khat Vas
Thol Mehsana-382715
9. Patel Upendrabhai Jivabhai
Ambaji Matanu Mandir
Thol Kadi Mehasana-382715
10. Patel Khodabhai Nagardas
A-101, Silicone Square
Near Sukan Six Flats
Oppt Solar Science City
Sola Ahmedabad-380060
11. Patel Jayantilal Madhabhai
Khont Vas At Thol Kadi Mehasana-382715
12. Patel Madhavlal Shankardas
At And Post Thol Mehasana-382715
13. Patel Jashodaben Babaubhai
B/6 Vimal Nath Tenament
Nirnay Nagar Road Ranip
Ahmedabad-382480
14. Patel Baldevbhai Shakrabhai
144 Shiv Ganesh Bungalows
Near Madhuram Plot , 100feet Ring Road ,
Shilaj Thaltej, Ahmedabad-380059
15. Patel Vikrambhai
Madhvas Ambaji Mata No Chok,
Thol Kadi,Mehasana-382715, Gujarat
16. Patel Navin Ranchhodbhai
A-G-1 Jayraj Flats Near Lotus School
Jodhpur Satellite Ahmedabad-380015
17. Patel Varshaben Navinbhai
Sonivas Village Thol
Kadi Mehasana-382715

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18. Nayak Hansabehn Mansukhabhai
2/63 Lal Vas Oppt Khanta Vas Same,
Thol Kadi Mehasana-384440
19. Patel Kaminaben Bhagvanbhai
Thol Mehasana-382715
20. Patel Kokilaben Rasikbhai
8-6 Khantvas Oppt Bhagol
Thol Talula Kadi Mehsana-382715
21. Patel Manjulaben Jayantilal
Khont Vas At Thol-382715
22. Patel Manjulaben Chandrakant
Lal Vas At Po-Thol Ta-Kadi,
Mehasana-382715
23. Nayak Shakutlaben Mangalbhai
2-64/ Lal Vas, Opposite Khant Vas, Thol ,
Mehasana-382715, Gujarat
24. Patel Sharmishthaben Ramanbhai
B-201,Swastik Residency, Rc Technical Road,
Chandlodia, Ahmedabad-380061
25. Patel Hasumatiben Dineshbhai
C/2/205 Vishwas Apartment Near Gulab Tower,
Thaltej, Ahmedabad-380054
26. Patel Kapilaben Dineshbhai
Bhav Vas Thol , Kadi Mehasana-382728
27. Patel Vijaykumar Dhanabhai
Khant Vas At Thol Kadi Mehasana-382715
28. Patel Navinchandra Shivilal
11-A/Saraswati Nagar Society Opp. Kr Rawal School ,
Ranip, Ahmedabad-382480
29. Patel Ramanbhai Dhulabhai
B-201,Swastik Residency, RC Technical Road,
Chandlodia, Ahmedabad-380061

Copy to:

- (i) The Deputy/Assistant Commissioner of Customs, SVPIA, Ahmedabad
- (ii) The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad
- (iii) The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (iv) Guard File