

OIO No.29/AB/ADC/SRT-AIRPT/2024-25

F. No.VIII/26-42/AIU/CUS/2023-24



अपर आयुक्त, सीमा शुल्क कार्यालय

OFFICE OF THE ADDITIONAL
COMMISSIONER OF CUSTOMS

सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT

4th Floor, CUSTOMS HOUSE, Beside SMC Ward

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PREAMBLE

A	डी आई ऐन/DIN	20250371MN000022222A
B	फ़ाइल संख्या / File No.	F. No. VIII/26-42/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-42/AIU/CUS/2023-24 Dated 30.05.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	29/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	18.03.2025
F	जारी करने की तिथि/ Date of Issuance	19.03.2025
G	द्वारा पारित / Passed by	Shri Anunay Bhati, Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and address of Passenger	Shri Yusuf Ali Rehmani S/o Shri Ali Jusub rehmani, 85, Haroon Manzil, 1 st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai-400009, Maharashtra

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए यह प्रति निशुल्क प्रदान की है |
1. This copy is granted free of charge for the private use of the person to whom it is issued.
२. इस आदेश से अपने को व्यथित महसूस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है | इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए| इस अपील पर नियमानुसार कोर्ट का स्टाम्प लगा होना चाहिए |
2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhavan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed within sixty days of receipt of this order by the post or person. It should bear a court fee stamp of appropriate value.
३. अपील के साथ निम्नलिखित चीजे संलग्न की जाए |
3. The following documents must be enclosed alongwith the appeal.
- (क) अपील की प्रति, तथा (a) A copy of the appeal and
- (ख) आदेश की प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोर्ट फी स्टाम्प लगा हो |
- (b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

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BRIEF FACTS OF THE CASE:

Shri Yusuf Ali Rehmani (hereinafter referred to as the "Passenger/Noticee"), Age: 61 years, S/o Shri Ali Jusub Rehmani, residing at 85, Haroon Manzil, 1st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai-400009, Maharashtra, India, holding passport No. Z7463102 arrived at Surat International Airport on 28.01.2024 from Sharjah on Air India Express Flight No. IX172.

2. Based on passenger profiling, Shri Yusuf Ali Rehmani, an international passenger who was suspected to be carrying some high-value dutiable/prohibited goods, was intercepted by the officers of the Air Intelligence Unit (AIU) and Customs officers of Surat International Airport (hereinafter referred to as the "officers"), in the presence of panchas under Panchnama proceedings dated 28/29.01.2024. The passenger was found to be carrying three pieces of baggage, one black trolley bag and two black handbags. The officers asked the passenger whether he had anything to declare in reply, which the passenger denied. The officers informed the passenger that they would conduct his personal search and detailed baggage examination. The officers offered their search to the passenger, but the passenger politely denied it. Thereafter, the officers asked the passenger whether he wanted to be searched in the presence of the Magistrate or the Superintendent (Gazetted Officer) of Customs, in reply to which the passenger gave his consent to be searched before the Superintendent of Customs. The Customs officers then asked the passenger to remove all the metallic objects from his body and scanned his body with the hand-held metal detector. During scanning, a beep sound was heard near the chest area of the passenger. The passenger was asked to remove his vest, and the vest was scanned with the hand-held metal detector, whereby a beep sound was heard again. The said vest was then passed through the XBIS scanner machine in the arrival hall of Surat International Airport. During scanning, a dark image was seen in the scanner machine, indicating the presence of some metallic object in his vest.

3. Thereafter, the Customs officers scanned the passenger's baggage, viz, one black trolley bag and two black handbags, through the XBIS Scanner machine. However, nothing objectionable was observed in the baggage during scanning.

4. Subsequently, the officers took the passenger to the Sunshine Global Hospital, Surat, for a CT scan/X-ray after obtaining his consent to ascertain whether he had concealed any contraband item in his body. In the X-ray of Shri Yusuf Ali Rehmani, no contraband item was seen in his body.

5. Thereafter, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery to burn the garment of the passenger for extraction of metal concealed therein. Thereafter, the garment was burnt in the furnace, and the ashes were collected and again melted in the furnace, upon which gold in bar form was obtained, and some ashes remained in the process. The gold bar and the remaining ashes obtained were packed in a plastic pouch, put in a green envelope, and sealed so they could not be tampered with.

6. The government-approved valuer was unreachable at that time, and hence, in the presence of the passenger and the panchas, the Customs officers cut open the sealed green envelope and weighed the gold bar in the weighing machine available in the Customs office located at the arrival hall of Surat International Airport. The gold bar was found to weigh 395.30 gms and was approximately valued at Rs. 22,00,801/- by the Customs officers. When asked about this, the passenger informed that the said gold is 24 carats. The gold mentioned above recovered from the said passenger appeared to have been smuggled inside India in clear violation of the provisions of the Customs Act of 1962. Therefore, the officers placed the said gold bar weighing

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395.30 grams under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure Order dated 29.01.2024 under Panchnama proceedings dated 28/29.01.2024, on a reasonable belief that the same attempted to be smuggled by Shri Yusuf Ali Rehmani was liable for confiscation as per the provisions of the Customs Act, 1962.

7. The following documents were withdrawn from the passenger for further investigation:-

- (i) Boarding Pass from Sharjah to Surat of Air India Express Flight No. IX-172 dated 28.01.2024, Seat No. 10D, PNR No. K6RTXD.
- (ii) Copy of Passport No. Z7463102 issued at Mumbai on 18.09.2023 and valid upto 17.09.2033.

8. A statement of Shri Yusuf Ali Rehmani was recorded on 29.01.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was residing at 85, Haroon Manzil, 1st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai, PIN-400009 with his wife, sister and three children; that he was a trader and engaged in the sale of clothes and shoes; that he had studied upto 8th Std.; that he could read, write and understand English and Hindi Languages.
- that he was shown and explained the panchnama dated 28/29.01.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, he put his dated signature on the panchnama in token of acceptance of the facts stated therein.
- that earlier he had made ten visits to Dubai for business purpose; that for the current trip, he had gone to Dubai on 27.01.2024 from International Airport, Mumbai; that the impugned gold recovered from his possession did not belong to him and he was not the owner of said gold; that one Mr. Parvezbhai had handed over the vest containing gold to him at Dubai; that he had met Mr. Parvezbhai at Dubai in connection with business purpose; that Mr. Parvezbhai met him outside Sharjah Airport on 28.01.2024 and handed over the vest to him and asked him to hand over the vest containing gold to a person, who would call him at Surat on his mobile number the following day; that he had met Mr. Parvezbhai a few times at Dubai, however his full name, details or mobile number was not known to him; that the details of person who was supposed to collect the gold from him were not known to him; that he had carried the gold as Mr. Parvezbhai had promised him that the person who would collect gold at Surat will give him Rs. 20,000/- upon handing over the gold to him; that he was not aware of the cost of gold and payment details.
- that he was aware that import of gold without payment of Customs duty was an offence, but he tried to smuggle the same for some monetary benefit; that as he intended to smuggle the gold by concealing the same, he did not declare the same upon his arrival before any Customs officer; that after clearing the immigration procedures, he collected his baggage and during checkout, the Customs officials intercepted him and further procedures as stated in Panchnama dated 28/29.01.2024 was carried out.
- that he was aware that he had committed an offence by smuggling gold for which he would have to face the consequences as prescribed under the Customs Law.

9. Shri Vikasraj Juneja, the Government Approved Valuer was requested vide letter F. No. VIII/26-42/AIU/CUS/2023-24 dated 29.01.2024 to visit the Surat International Airport on 30.01.2024 for testing and valuation of the gold so recovered and seized from the passenger on 29.01.2024. The valuer, arrived at the Surat International Airport on 30.01.2024 and, after examination of the said item under panchnama proceedings dated 30.01.2024, certified the same to be a gold nugget/bar of 99% purity weighing 395.300 gms having a market value of Rs. 25,65,497/- (Rupees Twenty Five Lakh Sixty Five Thousand Four Hundred Ninety-Seven only) and tariff value of Rs. 21,33,434/- (Rupees Twenty One Lakh Thirty Three Thousand Four Hundred Thirty Four only) as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024. Thereafter, the Government Approved Valuer issued valuation certificate No. 30.01.2024/1.

10. **LEGAL PROVISIONS RELEVANT TO THE CASE**

- a) As per para 2.26 of Foreign Trade Policy 2015-20-“Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.”
- b) 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.”
- c) 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.”
- d) 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.”
- e) 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.”
- f) As per Section 2(3) of the Customs Act, 1962 – “baggage” includes unaccompanied baggage but does not include motor vehicles.
- g) 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;

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- h)** 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, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”
- i)** 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.”
- j)** As per Section 77 of the Customs Act 1962-“the owner of any baggage shall, to clear it, make a declaration of its contents to the proper officer.”
- k)** As per Section 110 of the Customs Act, 1962-“if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.”
- l)** Any goods which are imported or attempted to be imported or 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 shall be liable to confiscation under section 111 (d) of the Customs Act 1962.
- m)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.
- n)** 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 are liable to confiscation under Section 111 (j) of the Customs Act 1962.
- o)** As per Section 112 of the Customs Act 1962-“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, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”
- p)** As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- q)** As per Section 123 of Customs Act 1962 (Burden of proof in certain cases)
 - (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-
 - (a) in a case where such seizure is made from the possession of any person -
 - (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
 - (b) in any other case, on the person, if any, who claims to be the owner of the

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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.

- r) As per Customs Baggage Declaration Regulations, 2013- “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.”
- s) As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, the Import policy of gold in any form, other than monetary gold and silver in any form, is amended from ‘Free’ to ‘Restricted’; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

11. CONTRAVENTION AND VIOLATION OF LAWS

It therefore appeared that:

- (a) Shri Yusuf Ali Rehmani had actively involved himself in the instant case of smuggling of gold into India. Shri Yusuf Ali Rehmani had improperly imported Gold weighing 395.300 grams (net weight), having market value of Rs.25,65,497/- and tariff value of Rs.21,33,434/-, as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024, without declaring it to the Customs, by way of concealment in paste form in the vest (garment) worn by him. He concealed the said gold with a deliberate and mala fide intention to smuggle the said gold into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other Allied Acts, Rules and Regulations. The gold improperly imported by him with commercial considerations without declaration before the proper officer of Customs could not be treated as bona fide household goods or personnel effects. Shri Yusuf Ali Rehmani had thus contravened the Foreign Trade Policy 2015-20, Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
- (b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c) The gold improperly imported by the passenger Shri Yusuf Ali Rehmani by concealing the same in paste form in his vest without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- (d) Shri Yusuf Ali Rehmani, by his above-described acts of omission and commission on his part, had rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) As per Section 123 of the Customs Act 1962, the burden of proving that the

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said improperly imported gold, weighing 395.300 gms (net weight), having a market value of Rs. 25,65,497/- and tariff value of Rs.21,33,434/- without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, namely Shri Yusuf Ali Rehmani.

12. Therefore, a Show Cause Notice (SCN) bearing F.No. VIII/26-42/AIU/CUS/2023-24 dated 30.05.2024 was issued to Shri Yusuf Ali Rehmani calling upon to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on the 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of SCN as to why:

(i) The recovered 01 gold nugget of purity 99% weighing 395.300 gms having a market value of Rs. 25,65,497/- (Rupees Twenty Five Lakh Sixty Five Thousand Four Hundred Ninety-Seven only) and tariff value of Rs. 21,33,434/- (Rupees Twenty One Lakh Thirty Three Thousand Four Hundred Thirty-Four only), seized vide Seizure Order dated 29.01.2024 under panchnama proceeding dated 28/29.01.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;

(ii) A penalty should not be imposed upon him under Section 112 of the Customs Act, 1962.

13. DEFENCE REPLY

13.1 In the Show Cause Notice, the noticee was asked to submit his written reply/defence submission to the SCN within the stipulated time. The Noticee submitted his defence submission reply dated 21.06.2024 through Advocate Prakash Shingrani, Authorized Representative of the noticee. In his defence submission, he has submitted as under:

- that he is a trader and engaged in the sale of clothes; he admits the possession, carriage, transport and ownership of the gold weighing 395.300 grams under seizure but denies the allegations that he had carried the gold for one Mr. Parvez Bhai for monetary consideration of Rs. 20,000/-;
- that the impugned SCN issued without a valid and verifiable DIN (Document Identification Number) is invalid, and it is to be considered that it was never issued. Therefore, the seized goods are liable to be released unconditionally; that the impugned SCN was issued with DIN: 20240571MN000000F3F3. While verifying the said DIN, important columns such as communication sub-category, stream, identifier, party name and party address were left blank. This discrepancy raised concerns regarding the authenticity and validity of the notice in question, which relied upon the decision of the Hon'ble Supreme Court in the cases of Asstt. Collector of Customs and Ors. V Charan Das Malhotra AIR 1972 SC 689, J.K. Bardolia Mills V Dy. Collector and Ors. 1994(5)SCC 332, Krampe Hydraulik (India) v Union of India and Ors. 2003(71) DRJ 353 and Baru Ram V Parsanni AIR 1959 SC 93;
- that Seizure Order dated 29.01.2024 was not served on the noticee, and therefore, the seizure of gold is invalid, and the same is liable to be returned to the noticee unconditionally. The noticee, in support of his contention, has placed reliance on the judgments of Patna High Court in the case of Union of India & Ors vs. Md. Mazid @ Md. Tufani, Bombay High Court in the case of

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Arvind Trading Company vs State of Maharashtra and Ors., and Dina Baldev Pathak vs Collector of Customs and Ors., Gujarat High Court in the case of Manilal Bhanabhai Patel vs Kaul and Ors, Allahabad High Court in the case of L. Kashi Nath Seth vs Collector, Central Excise, Bombay High Court in the case of Dhiraj Pal Amrit Lal Mehta and Delhi High Court in the case of Shanti Lal Mehta;

- that his statement dated 29.01.2024 was not voluntary and was against truth and thus cannot be relied upon. The noticee has placed reliance on the following judgements in the case of Thulasiammal and Others vs Joint Secretary to the Govt. of India 1987 (30) ELT 415 (Mad), Shankari v State of Rajasthan (AIR 1978 S.C.1248), Sevantilal Karsondas Modi v State of Maharashtra [1999 (109) E.L.T.41 (S.C.=AIR 1979 S.C. 705), E. Kesvan v. Assistant Collector of Customs [1987 (27) E.L.T. 640 (Mad.), Manindra Chandra Dey v. CEGAT [1992 (58) E.L.T. 192 (Cal.), Nazir Khan & Others vs State of Delhi [(2003) 8 SCC 461], Ram Khilari v State of Rajasthan (1999) 9 SCC 89; and Namala Subba Rao V State of Andhra Pradesh 2006 (10) Scale 253], State of Rajasthan v. Kashi Ram [2006 (11) Scale 440 SC, Kulwinder Singh v. State of Punjab S.C., K.T.M.S. Mohd. V. Union of India [1992] 65 Taxman 130/197 ITR 196, Telestar Travels (P.) Ltd., v. Enforcement Directorate [2013] 9 SCC 549, Adambhai Sulemanbhai Ajmeri v. State of Gujarat [2014] 7 SCC 716 and Seenai Nainar Mohammed v. State [2017] 13 SCC 6850];
- that Gold is not a prohibited item, and gold seized from the noticee is not liable for confiscation. He relied on the decisions in the cases of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009(241) ELT 182 (Cal.), Shaikh Jamal Basha v GOI, 1997 (91) ELT 277 (AP) Union of India v. Dhanak M. Ramji 2003(248) ELT 128 (Bom), Sapna Sanjiv Kohli v. Commissioner of Customs, Surat 2010(253) ELT A52 (SC) and the case of Horizon Ferro Alloys Pvt Ltd. in the Division Bench of Punjab and Haryana High Court;
- that in support of his contention for the redemption of seized goods, he has relied upon the following decisions/Orders in the case: Suresh Kumar Agarwal V. Collector of Customs 1998(103) ELT 18 (AP), Bhargav B. Patel in Appeal No. C/381/10-Mum, GOI's order dated 05.03.14 in case of Sujahi V Commissioner of Customs, Meenambakkam Airport, Chennai, Commissioner of Customs V Alfred Menezes 2009(242) ELT 334 (Bom), Dhanak Madhusudan Ramii V Commissioner of Customs 2009(237) ELT 280, A. Rajkumari Vs Commissioner of Customs 2015(321) ELT 540, Mohd. Zia Ul Haque T2014/314/849, Yaqub Ibrahim Yusuf 2011(263) ELT 685, Shaikh Jamal Basha 1992(91) ELT 227(AP), Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai-2006 (205) ELT 383, (Tri-Chennai) Achiever International 2012(286) ELT 180 (Del), Shri Rama Sugar Industries Ltd. (1974) I SCC 534, Rajaram Bohra 2015(322) ELT 337 (Cal.), Ashok Kumar Verma 2019(369) ELT 1677, Mohammed Husain Ayyub Chilwan 2019(369) ELT 1784, Roshni Mathurdas 2019(369) ELT 184 (Tri Hyd);
- that the proposal made in the SCN for imposition of penalty under section 112 is not sustainable since it could not be made out from the SCN whether the charge was being made with reference to Section 112(a) or (b). In this context, he relied upon the judgment in B. Lakshimchand v. Govt. of India, 1983 (12) ELT 322 (Madras), Collector of Customs and Central Excise, Chandigarh v. Ajit Singh and Anr reported in 1987(32) ELT 769, Gianchand Vs State of

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Punjab-AIR 1962 SC 469 Thakur Amar Singh v. State of Rajasthan reported in AIR 1955 SC 504 and Balvir Singh vs Collector of Customs, 1991(56) ELT64 Tri Del;

- that the noticee claims ownership of the gold and other goods and redemption of the goods on payment of reasonable fine and penalty. He has placed reliance upon the decisions of the Delhi High Court in the case of Jatinder Kumar Sachdeva vs Union of India and Ors, the Madras High Court in the case of K. H Mohamed Ismail (alias) vs the Additional Commissioner and the Bombay High Court in the case of Chokshi Arvind Jewellers vs Union of India and Ors;
- that gold was not validly seized, and he was not issued any valid SCN with verifiable DIN. Therefore, the gold under seizure cannot be confiscated, and thus, the gold must be released unconditionally as per section 110 read with Section 124; when no confiscation is maintainable, no penalty can be imposed on him. The noticee has further prayed for the unconditional release of the gold and to drop further proceedings against him.

13.2 Further, the noticee has filed an additional submission dated 11.12.2024 wherein he has contended that in similar cases, redemption was allowed upon payment of fines and penalties. He has submitted that various judicial and administrative precedents support the practice of permitting redemption. However, the noticee has contended that no specific reasoning or distinguishing factors have been provided to justify this deviation. He has also raised concerns regarding administrative consistency and fair application of the law. Additionally, he has submitted that the absence of a clear explanation may be seen as inconsistent with the principles of fair hearing (*audi alteram partem*) and unbiased adjudication (*nemo judex in causa sua*). In light of past practice, the noticee has contended that the option of redemption should be considered in light of various orders of the Hon'ble Court, Appellate Authority, and Adjudicating Authority cited in favour of the noticee. He has supplied multiple orders passed by the Hon'ble Supreme Court, Hon'ble CESTAT, Commissioner of Customs, Commissioner of Customs (Appeals), Additional Commissioner of Customs, and Assistant/Deputy Commissioner of Customs wherein redemption in gold cases has been granted to supplement his argument.

14. RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before a final order is passed. Therefore, vide letter dated 25.11.2024, the Adjudicating Authority granted an opportunity to be heard in virtual mode for a hearing on 11.12.2024. Shri Prakash Shingrani, Advocate Authorized representative of the noticee vide letter dated 17.12.2024, informed that they did not require a hearing in either personal or virtual mode regarding the matter, and the case may be decided on its merits. He further reiterated his written submission dated 21.06.2024. He made an additional submission dated 11.12.2024, wherein he emphasised the consistency in allowing redemption of goods in light of various orders of the Hon'ble Court, Appellate Authority and Adjudicating Authority in favour of the noticee.

15. DISCUSSION AND FINDINGS

I have carefully reviewed this case's facts, the relied-upon documents, both the defence submissions, relevant legal provisions and other material on records. Consequently, I will now proceed to determine the current case based on the evidence and documents available on record.

16. In the instant case, I find that the main issues that need to be decided are as under: whether-

- (i)** The recovered 01 gold nugget of purity 99% weighing 395.300 grams having a market value of Rs. 25,65,497/- (Rupees Twenty Five Lakh Sixty Five Thousand Four Hundred Ninety-Seven only) and tariff value of Rs. 21,33,434/- (Rupees Twenty One Lakh Thirty Three Thousand Four Hundred Thirty-Four only), seized vide Seizure Order dated 29.01.2024 under panchnama proceeding dated 28/29.01.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 or otherwise;
- (ii)** A penalty should be imposed upon him under Section 112 of the Customs Act, 1962 or otherwise.

17. I find that Panchnama 28/29.01.2024 has recorded the facts that, based on passenger profiling, Shri Yusuf Ali Rehmani, an international passenger suspected to be carrying some high-value dutiable/prohibited goods, arrived at Surat International Airport on 28.01.2024 from Sharjah on Air India Express Flight No. IX 172 was intercepted by the Customs in the presence of panchas. The passenger was found to be carrying three pieces of luggage: one black trolley bag and two black handbags. The officers asked the passenger if he had anything to declare, to which he replied in negative. The officers then informed the passenger that they would conduct a personal search and a detailed examination of his baggage. The Customs officers then requested the passenger to remove all metallic objects from his body and scanned him with a hand-held metal detector. During a personal search with a hand-held metal detector, a beep was detected near his chest. Upon removal of his vest, it again triggered the detector. Subsequent XBUS scanning revealed a dark image in the vest, indicating a concealed metallic object. With his consent, he was taken to Sunshine Global Hospital for a CT/X-ray, which showed no contraband in his body. The Customs officers, panchas, and the passenger then proceeded to Shri Ambica Touch Refinery, where his garment was burned in a furnace, yielding a gold bar and residual ashes. The gold bar and the remaining ashes were sealed in a plastic pouch and placed in a green envelope to prevent tampering. The government-approved valuer was unreachable at that time, and hence, in the presence of the passenger and the panchas, the Customs officers opened the sealed green envelope. The gold bar weighed 395.30 gms and was valued at approximately Rs. 22,00,801/-. The passenger identified it as 24-carat gold. The officers seized the bar on the reasonable belief that it was to be smuggled in violation of the Customs Act, 1962, under Section 110 of the Customs Act vide Seizure order dated 29.01.2024 under Panchnama dated 28/29.01.2024. Subsequently, the Govt. Approved Valuer Shri Vikasraj Juneja examined the gold on 30.01.2024 and certified it to be a 99% pure gold nugget weighing **395.300 grams** with a market value of **Rs. 25,65,497/-** and tariff value of **Rs. 21,33,434/-**, and issued valuation certificate No. 30.01.2024/1 to this effect.

18. Further, I have gone through the statement of the passenger recorded on 29.01.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he has inter alia stated:

- that earlier he had made ten visits to Dubai for business purpose; that for the current trip, he had gone to Dubai on 27.01.2024 from International Airport, Mumbai; that the impugned gold recovered from his possession did not belong to him and he was not the owner of said gold; that one Mr. Parvezbhai had handed over the vest containing gold to him at Dubai; that he had met Mr. Parvezbhai at Dubai in connection with business purpose; that Mr. Parvezbhai

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met him outside Sharjah Airport on 28.01.2024 and handed over the vest to him and asked him to hand over the vest containing gold to a person, who would call him at Surat on his mobile number the following day; that he had met Mr. Parvezbhai a few times at Dubai, however his full name, details or mobile number was not known to him; that the details of person who was supposed to collect the gold from him were not known to him; that he had carried the gold as Mr. Parvezbhai had promised him that the person who would collect gold at Surat would give him Rs. 20,000/- upon handing over the gold to him; that he was not aware of the cost of gold and payment details.

➤ that he was aware that import of gold without payment of Customs duty was an offence, but he tried to smuggle the same for some monetary benefit; that as he intended to smuggle the gold by concealing the same, he did not declare the same upon his arrival before any Customs officer; that after clearing the immigration procedures, he collected his baggage and during checkout, the Customs officials intercepted him and further procedures as stated in Panchnama dated 28/29.01.2024 was carried out.

➤ that he was aware that he had committed an offence by smuggling gold for which he would have to face the consequences as prescribed under the Customs Law.

19. In the next paragraphs, I will conduct a comprehensive examination of the case laws cited by Shri Rehmani in his defence submission, and I will present my detailed observations, along with the evaluation of their legal relevance, applicability to the current proceedings, and the implications they hold for the matter at hand.

19.1 I observe that the noticee, in his defence submission dated 21.06.2024, has challenged the validity of the impugned show cause notice (SCN) dated 30.05.2024 on the grounds that the Document Identification Number (DIN) purportedly printed on it is invalid and not capable of verification. However, this office has done the verification of the DIN on the CBIC website, and the website has shown the DIN: 20240571MN000000F3F3 as legitimate and fully traceable in the online system. It is appropriate to point out that in order to generate a valid DIN, the user must meticulously input all mandatory details, including but not limited to the name and address of the noticee, and upload a PDF version of at least the first page of the SCN. Any omission or misrepresentation of the mandatory data would automatically render the DIN generation process incomplete and unworkable, thereby preventing the issuance of any spurious or unverifiable numbers. The fact that the DIN in question was successfully generated and independently verified affirms the authenticity of the SCN. Consequently, the noticee's argument that the DIN is invalid or unverifiable stands refuted by documentary proof. Such a contention appears to be a frivolous or misguided attempt to undermine the legitimacy of the SCN on inconsequential grounds. I further find that in the instant case, the Show Cause Notice proposing the confiscation of the subject gold in the matter has already been issued within the timeframe of six months. I, thus, find that given the discussion above, the case laws relied upon by the defence do not hold water in the instant case.

19.2 I note that the noticee's contention that the Seizure Order dated 29.01.2024 was not served on the noticee, and therefore, the seizure of gold is invalid, seems inconsequential. I find that the omission to quote a Document Identification Number (DIN) on the Seizure Order dated 29.01.2024, purportedly issued under Section 110(1) and (3) of the Customs Act, 1962, does not invalidate or render said Order non-est. The CBIC Circular No. 37/2019-Customs, read with subsequent clarifications, is admittedly a salutary instruction aimed at ensuring transparency and accountability in departmental communications. However, I further find that it

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is equally well-settled that such administrative circulars, while binding on departmental officers, do not override the substantive provisions of the Customs Act, 1962. In the present case, the issuance of the Order followed the statutory procedure enshrined in Section 110 of the Customs Act, which empowers the proper officer to seize goods on reasonable belief of evasion and to issue orders extending or confirming such seizure upon recorded reasons. There has been strict adherence to due process during the seizure proceedings and I observe that the Seizure order dated 29.01.2024 was communicated and hand-delivered to the noticee (obtaining acknowledgement in the form of a dated signature of the noticee on the body of the Order) on the spot on 29.01.2024 and it included all details concerning the reasons for seizure, thereby affording the noticee full knowledge of the proceedings. Additionally, I observe that there exists no demonstrable prejudice or denial of natural justice to the opposing party arising from the absence of DIN. The principle of substantial compliance dictates that minor procedural lapses, in the absence of mala fide intent or proven prejudice, should not defeat the lawful exercise of statutory power. Indeed, courts have consistently held that technical defects, especially those not specified as mandatory by the statute, do not necessarily vitiate the entire proceeding. Consequently, I believe that the validity and legal efficacy of the Order under Section 110(1) and (3) remain unimpaired. The inadvertent omission of DIN, where the facts and merits of the seizure have been duly recorded, cannot be grounds to treat the Order as non-est or to nullify the lawful exercise of authority vested under the Customs Act, 1962. Thus, I do not find any force in the aforesaid contention of the defence; thus, I hold that the reliance placed on the case laws by the defence in this contention is misconceived.

19.3 I find that the contention of the noticee that his statement dated 29.01.2024 was not voluntary and was against truth and thus cannot be relied upon the statement dated 29.01.2024 lacks ground. The statement recorded from the noticee during the investigation was obtained in a lawful manner and was voluntarily tendered by the noticee. The relevant procedure under Section 108 of the Customs Act, 1962, was strictly followed, whereby the noticee was summoned to appear before the proper officer for the purpose of recording a statement in relation to the ongoing inquiry. I further find that at no point has the noticee produced any concrete evidence that coercion, duress, threat, or inducement was applied by the investigating authorities. The statement in question was recorded in the language understood by the noticee, who was allowed to read it, confirm its contents, and thereafter endorse it with his signature. The officers have meticulously complied with all procedural safeguards, including informing the noticee of the nature of the inquiry and affording him the option to clarify any concerns. Further, if the noticee believed that any part of the statement was inaccurately or improperly recorded, he was at liberty to raise objections or request amendments at that very time. The mere ex-post-facto allegation of involuntariness, without substantive proof, cannot vitiate a statement that is otherwise recorded in compliance with statutory protocols. It is relevant to observe that the Indian Courts have consistently held that statements recorded under Section 108 are admissible as evidence when not rebutted by credible material suggesting force or duress. The burden, therefore, rests upon the noticee to demonstrate any palpable abuse of authority or coercion, which he has failed to do. I find that in the absence of any corroboration of the contention of the noticee, the statement dated 29.01.2024 is to be treated as voluntary and legally admissible, rendering the noticee's belated attempt to label it as coerced both unsustainable in law and unsubstantiated by facts. In view of that, I find that the case laws relied upon by the defence in his favour are unconvincing and are therefore rejected.

Further, I find it important to highlight at this juncture that the noticee has never retracted his aforesaid statement dated 29.01.2024, and the offence committed by

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the passenger is confessed by him in his statement. Therefore, I consider his statement to be material evidence in this case, and to reinforce my stand, I place my reliance on the following judgements/case laws;

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that the statement made before the Customs Officers though retracted within 6 days is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act, 1962;
- The confessional statement given before the Customs officers is admissible evidence as they are not the police officers. This view has been upheld by the Hon'ble Supreme Court in the case of **Badaku Joti Savant vs. State of Mysore** [1978 (2) ELT J 323 (SC)];
- The decision of the Hon'ble Madras High Court in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Raghupathy** 1998 (98) ELT 50 (Mad), in which the court held that the confessional statement under Section 108, even though later retracted is a voluntary statement and was not influenced by duress and is a true one.
- The Hon'ble Apex Court in **Naresh J Sukhawani vs UOI** held that the Statement before the Customs Officer is a material piece of evidence.

I also find that the noticee has neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama while recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the panchas and passengers. In fact, in his statement dated 29.01.2024, the noticee had confessed that he was aware that the import of gold without payment of customs duty was an offence, but as he wanted to evade customs duty, therefore he had concealed the same in his vest and not declared the same with the sole intention to smuggle the gold into the country as he was working as a carrier for clearance of smuggled goods into India for monetary consideration as confessed by the passenger in his statement that one person Mr Parvezbhai had handed over the vest containing gold him at Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs. 20,000/- on handing over the gold to him. Thus, I find it established beyond doubt that the passenger has violated the provisions of the Customs Act, 1962; the Baggage Rules, 2016; the Foreign Trade (Development & Regulations) Act, 1992; the Foreign Trade (Development & Regulations) Rules, 1993; and the Foreign Trade Policy 2015-2020/2023.

Further, I have found that the passenger had not declared the said gold concealed in his vest upon his arrival to the Customs authorities as he was working as a carrier for clearance of smuggled goods into India for monetary consideration, as confessed by the passenger in his statement dated 29.01.2024 that one person Mr Parvezbhai had handed over the vest containing gold him at Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs. 20,000/- on handing over the gold to him. It is a clear case of non-declaration intending to smuggle the gold into Indian territory. Accordingly, there is sufficient evidence to say that the passenger had kept the gold in his possession and had failed to declare the same before the Customs Authorities upon his arrival at Surat International Airport, Surat. The smuggling of gold recovered from his possession, which was kept undeclared with the intent of smuggling the same to evade payment of customs duty, is conclusively proved. Thus, the passenger has

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violated Section 77, Section 79 of the Customs Act for the import of gold which was not for bona fide use and thereby has violated Rule 11 of the Foreign Trade Regulation Rules 1993 and para 2.26 of the Foreign Trade Policy 2015-20/Para 2.27 of Foreign Trade Policy 2023. Since 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, then as per Section 123 of the Customs Act, 1962, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. In the instant case, the passenger confessed in his statement that he was not the owner of the impugned gold and was working as the carrier, intending to smuggle the gold for monetary benefit.

From the facts discussed above, I find it affirmatively established that Shri Yusuf Ali Rehmani had concealed gold ingeniously in his vest while arriving from Sharjah to Surat with the sole intention of smuggling and removing the same without payment of Customs duty. The offence committed by him has rendered the gold nugget (extracted post melting of the said gold), having a purity of 99% and weighing 395.300 grams, liable for confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. By concealing the said gold in a vest worn by him and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of the above acts has made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

Further, I note that the noticee had not filled the baggage declaration form and had not declared the said gold paste in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the import was also for non-bona fide purposes, as the same was carried for monetary consideration while working as a carrier, as confessed by the noticee in his statement. Therefore, the improperly imported gold paste by the passenger, Shri Yusuf Ali Rehmani, without declaring to the Customs on his arrival in India, cannot be treated as bona fide household goods or personal effects. The passenger thus has contravened the 2.26 of the Foreign Trade Policy 2015-20/Para 2.27 of Foreign Trade Policy 2023 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 gold weighing 395.300 grams (net weight), having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/-, seized under Panchnama dated 28-29.01.2024, liable for confiscation under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.

19.4 Further, I find that the noticee, in his defence submission, has submitted that the Gold is not a prohibited item, and the gold seized from the noticee is not liable for confiscation, and he has placed reliance on a few case laws in his support. I find that the noticee in his statement confessed to carrying gold in his vest worn by him and attempted to remove the said gold from the Surat Airport without declaring it to the Customs Authorities and thereby has violated the provisions of para 2.26/2.27 of the Foreign Trade Policy 2015-20/2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. I note that as per Section 2(33), "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import has thus acquired the nature of

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being prohibited goods in view of Section 2(33) of the Act. I further find that gold is not on the list of prohibited items, but the import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia**, in very clear terms, lays down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions will make the goods fall within the ambit of 'prohibited goods'. I would also like to derive support in favour of my stand from the Hon'ble Delhi High Court's views in the case of **Nidhi Kapoor v. Principal Commissioner and Additional Secretary to the Government of India & Ors.**, wherein the Hon'ble Delhi High Court addressed the classification of gold as "prohibited goods" under Section 2(33) of the Customs Act, 1962. The court held that gold, when imported without adherence to prescribed conditions, qualifies as "prohibited goods." This classification empowers customs authorities to confiscate such goods under Section 111(d) of the Act. Furthermore, the court clarified that the discretionary power to allow redemption of confiscated goods under Section 125 of the Act does not extend to prohibited goods, thereby upholding the absolute confiscation of improperly imported gold.

19.5 I find it relevant at this juncture to highlight that smuggling of gold is per se restricted by virtue of Section 111 of the Customs Act as well in terms of various notifications issued under the FTDR Act and under the RBI Act. It should be brought to attention that importation of gold into India is highly regulated and bulk importation of gold could only be affected by the nominated banks, agencies or business houses in the manner laid down by various DGFT regulations as well as the RBI circulars or by the —eligible passengers in the manner provided by the relevant Regulations discussed hereinabove. There is no gainsaying that one of the main objects of the Customs Act is to prohibit the smuggling of goods and sternly deal with the same, as could be plainly gathered on a conjoint reading of Sections 2(25), 11(2)(c), 111 and 112 of the Act. It would be relevant to refer to the case of **Commissioner of Customs (Preventive) v. M. Ambalal & Co.**, wherein it was categorically observed that the Customs Act "aims to counter the difficulties that have emerged over the years due to the changing economic and financial conditions; amongst them it proposes to tackle the increasing problems of smuggling both in and out of the country. The Act aims to sternly and expeditiously deal with smuggled goods, and curb the dents on the revenue thus caused. In order to deal with the menace of smuggling, the authorities are enabled to detect, conduct search and seizure, and if necessary, confiscate such smuggled goods, within the territory of India. (*emphasis supplied*)

In view of the discussions in the foregoing paragraphs, I find that non-fulfilment of the conditions has made the gold seized in the present case "*prohibited goods*" as the passenger trying to smuggle it was not an eligible passenger to bring it into India or import gold into India in baggage. Shri Yusuf Ali Rehmani has confessed to carrying the said gold and keeping it undeclared with the intention of smuggling the same and evading payment of customs duty. By using this modus, it is unequivocally proved that the goods are offending in nature and, therefore, prohibited for their importation. Thus, the passenger does not fulfil the conditions

19.6 I find that the noticee in his defence submission has submitted that the proposal made in the SCN for the imposition of penalty under section 112 is not sustainable since it could not be made out from the SCN whether the charge was being made with reference to Section 112(a) or (b). The relevant portion of Section 112 of the Customs Act, 1962, for ease of reference, is reproduced as under:

112. Penalty for improper importation of goods, etc.

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- 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, harbouring, 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,

shall be liable-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees,] whichever is the greater.

I find that clause (a) of Section 112 of the Customs Act, 1962, provides for penalties related to acts of commission and/or omission in illegal import and/or abetment thereof. In this case, the noticee has illicitly imported the 'prohibited goods' into India without making any declaration to the Customs authorities. In his statement dated 29.01.2024, recorded under Section 108 of the Customs Act, 1962, the noticee admitted that he had not declared the said items, as he intended to clear them illicitly without paying Customs duty. In exchange for smuggling the items, he was promised Rs. 20,000/- by Mr Parvezbhai, and it is also conclusively proved that the seized goods were not meant for personal use but for smuggling into India for promised monetary consideration in exchange for smuggled goods.

19.7 The defence has further submitted that the noticee claims ownership of the gold and redemption of the goods on payment of reasonable fine and penalty. However, I find that in support of his claim, they have not submitted any documents/evidence proving the gold belonged to him. I observe that, on the contrary, the noticee has confessed in his statement that he was working as a carrier and that the seized gold did not belong to him but to one Mr Parvezbhai. However, I note that no one has claimed ownership of the gold in question except the noticee. The noticee has relied on case laws, which I do not find relevant to the matter at hand. Nonetheless, I place my reliance on the judgment of the CESTAT, Mumbai, in the case of Ibrahim Yusuf Vs. Commissioner of Customs 2011 (263) ELT 685 (Tri-Mumbai), wherein it was held that when the owner of the goods is unknown, an option for redemption must be given to the person from whose possession the impugned goods were recovered. In light of this judgment, I allow the noticee's claim for ownership of the impugned gold.

Further, I find that in support of his contention for the redemption of seized goods, i.e. Gold, the noticee has cited some case laws and requested relief in the case. I find that it is a settled legal position that the ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. 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 the decision relied upon applied to the factual situation of a given case. I find that

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the noticee has not addressed how the cited case laws apply to the facts of his case. I find that in the instant case, the gold was concealed in a vest worn by the noticee and kept undeclared by the passenger with the intention of clearing the same illicitly from Customs Airport and evading payment of Customs duty. Further, the noticee, in his statement dated 29.01.2024, has confessed that he was working as a carrier and attempting to smuggle the goods into India for monetary consideration of Rs. 20,000/- which he was about to get on handing over the vest containing gold to the person. Therefore, I find the subject goods, i.e. Gold, are liable for absolute confiscation under Section 111 of the Customs Act, 1962, in respect of the redemption of the impugned goods, i.e., gold.

Furthermore, I would like to derive support in favour of my stand from the view expressed by the Hon'ble High court in the case of **Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)]**, wherein 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."

Further, I would like to gather support in favor of my position from 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 Samyanathan 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.

Further, I seek to strengthen support for my argument from the case of **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).

Furthermore, I would like to reinforce my stand by placing my reliance on the case of **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

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had deliberately attempted to smuggle 2548.3 gram 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.

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

In view of the discussions in the foregoing paragraphs, I find that the ratio of judgments in the above relied-upon cases is squarely applicable in the present case. In the instant case, gold was concealed in a vest, an example of ingenious concealment. Further, the noticee has acted as a carrier for promised monetary consideration of Rs. 20,000/- at the behest of Mr Parvezbhai. I hold that the noticee acted as a professional carrier for financial consideration, and the release of the gold on payment of the redemption fine will not be in the interest of the Indian economy and indirectly encourage the smuggling of impugned goods. Therefore, considering the facts, modus operandi, concealment and circumstances of the case coupled with the above citations, releasing the seized goods is not tenable. I am, therefore, not inclined to use my discretion to give the option to redeem the gold weighing 395.300 grams on payment of the redemption fine, as envisaged under Section 125 of the Act.

Given the facts of the present case and the judgements and rulings cited above, I am of the considered view that a gold nugget of 24-carat gold weighing 395.300 gms. having a purity of 99% carried by the noticee is liable to be confiscated absolutely as the passenger had concealed the said gold item in his vest worn by him with the intention to smuggle the same into the country. In his statement dated 29.01.2024, the noticee had confessed that he was aware that the import of gold paste without payment of customs duty was an offence, but as he wanted to evade customs duty, therefore he had concealed the same in his vest and not declared the same with the sole intention to smuggle the gold into the country as he was working as a carrier for clearance of smuggled goods into India for monetary consideration as confessed by the passenger in his statement that one person Mr Parvezbhai had handed over the vest containing gold him at Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs. 20,000/- on handing over the gold to him. I, therefore, hold in unequivocal terms that a gold nugget of 24-carat gold weighing 395.300 grams. having a purity of 99% carried by the noticee and placed under seizure vide Seizure Order/Memo under Panchnama dated 28-29.01.2024, are liable for absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962.

19.8 Further, I have gone through the additional submission dated 11.12.2024, wherein the noticee has argued that redemption was permitted in similar cases upon payment of fines and penalties. He has also contended that judicial and administrative precedents support this practice and asserts that no specific reasoning has been provided for deviating from it. I have also gone through the submission of the noticee which contains multiple orders from various judicial and administrative authorities, including the Hon'ble Supreme Court and CESTAT, supporting redemption in gold cases.

Upon a comprehensive review of the above contentions made by the noticee, I am unpersuaded to countenance the aforesaid arguments of the noticee for reasons which follow. I find that the noticee's contention that redemption should be granted based on past precedents is misplaced. I am of the considered view that while adjudicating different cases as an Adjudicating authority, each case must be decided on its own facts and circumstances, and there is no absolute right to redemption, particularly in cases involving deliberate smuggling through concealment. In this case, the noticee was caught red-handed while smuggling gold in paste form, concealed in his vest while entering India from Sharjah. Such an act constitutes a clear attempt to evade customs duty and deceive authorities, distinguishing it from cases where gold was merely mis-declared or improperly imported. Under Section 2(33) of the Customs Act, 1962, smuggled gold is classified as "prohibited goods," and absolute confiscation is justified under Section 111(d) of the Act.

Further, I find that the noticee's argument that adjudicating authorities have previously allowed redemption in similar cases and that the present order lacks consistency is hardly of any legal consequence. It suffices to state that administrative consistency does not mean identical treatment in all cases, especially when material facts differ. Cases involving concealment within body-worn garments demonstrate clear 'mens rea' (guilty intent) and a deliberate attempt to subvert customs laws, warranting stricter penal action. It merits attention that the Hon'ble Supreme Court and various tribunals have upheld that smuggling through concealment justifies absolute confiscation to serve as an effective deterrent. In contrast, cases where redemption was permitted typically involved procedural lapses or non-declaration without an element of deception.

Further, I find that the argument that absolute confiscation violates principles of natural justice is also unfounded. The noticee has been given the full opportunity to present his defence, and all submissions have been duly considered. However, the principles of natural justice cannot override statutory provisions—once smuggling is established, the law mandates strict penal action. Furthermore, allowing redemption in cases of deliberate and concealed smuggling would undermine enforcement efforts and encourage future offenders to take calculated risks, knowing they can reclaim smuggled goods by merely paying a fine. Given the aggravated circumstances of this case, absolute confiscation under Section 125 of the Customs Act is fully justified, and the noticee's request for redemption is untenable. I would like to further fortify my stand by placing reliance on the views expressed by the Apex Court in the case of ***Pukhraj Champalal Jain vs. D.R. Kohli* AIR 1962 SC 1559**, wherein the Supreme Court has reinforced the principle that smuggling, especially of valuable commodities like gold, has a deleterious effect on the economy. The Court had highlighted that stringent enforcement of Customs laws, including the confiscation of smuggled gold, is essential to combat economic crimes that can destabilize the country's financial system. This judgment underscores the judiciary's recognition of gold smuggling as a significant economic ill and justifies the use of absolute confiscation as a deterrent.

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20. After a careful evaluation, I find that in the present case, the noticee utilizing the modus of concealing a gold nugget weighing 395.300 grams in a vest worn by him on his person and not making a declaration of it to the Customs Officers, has involved himself in the act of smuggling of gold total weighing 395.300 grams, thereby violating the statutory requirements envisaged under the Customs Act and other relevant provisions related to legal importation of gold into India by a passenger. After a comprehensive and detailed review of the aforementioned, I am decisively led to the conclusion that such an act on the part of the passenger has rendered the goods liable for confiscation under Section 111 of the Act. It would be relevant to refer to Section 112(b)(i) of the Customs Act, 1962, which imposes penalties on any person who acquires, possesses, stores, sells, or transports goods that they know or have reason to believe are liable for confiscation under Section 111 of the Customs Act. In the instant case, I find that the deliberate act of concealing the gold by the noticee unequivocally establishes his '***mens rea***' and demonstrates a wilful intent to evade Customs regulations, leaving no room for doubt regarding his knowledge and involvement in the attempted act of smuggling. I find it irrefutably established that his actions fall squarely within the ambit of Section 112(b)(i), attracting penal liability, in addition to the confiscation of the smuggled goods. Accordingly, I hold the noticee liable for a penalty under the said provision.

21. Accordingly, in the exercise of the powers vested in me as the Adjudicating Authority, I hereby issue the following order:

ORDER

- (i) I order **absolute confiscation** of the recovered 01 gold nugget of purity 99%, weighing **395.300 grams**, having a market value of **Rs. 25,65,497/-** (Rupees Twenty-Five Lakh Sixty-Five Thousand Four Hundred Ninety-Seven only) under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii) I impose a penalty of **Rs. 25,65,497/-** (Rupees Twenty-Five Lakh Sixty-Five Thousand Four Hundred Ninety-Seven) on Shri Yusuf Ali Rehmani under Section 112(b)(i) of the Customs Act, 1962.

22. This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962, as amended or rules made thereunder or under any law for the time being in force.

(Anunay Bhati)

Additional Commissioner,
Surat International Airport,
Customs, Surat

BY SPEED POST AD/E.MAIL/WEBSITE

F. No. VIII/26-42/AIU/CUS/2023-24

Date:18.03.2025

DIN: 20250371MN000022222A

To

Shri Yusuf Ali Rehmani, S/o Shri Ali Jusub Rehmani,
85, Haroon Manzil, 1st Floor, Room No. 13/14,
Shaída Marg, Dongri, Charnull,
Mumbai-400009, Maharashtra

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Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy/Assistant Commissioner of Customs (TRC), Ahmedabad.
3. The Superintendent (Recovery), Customs, Surat International Airport.
4. The System In-Charge, Customs, H.Q., Ahmedabad, for uploading on the official website (via email)
5. Guard File.