



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंजिल 4th Floor, हड्डकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250471MN000000C9F2

क	फ़ाइलसंख्या FILE NO.	S/49-75/CUS/AHD/2024-25 230
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-013-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	09.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	09/ADC/VM/O&A/2024-25, dated 22.04.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	09.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Mr Gulab Subhan Pathan, Flat No. 304, 3rd Floor, A - Wing, Maria Heights, Balveder Road, Mumbai, Maharashtra - 400010.
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ	

	<p>देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय,(राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं.</p>
	<p>Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.</p>
	<p>निम्नलिखितसम्बन्धितआदेश/Order relating to :</p>
(क)	<p>बैगेजकेरूपमेंआयातितकोईमाल.</p>
(a)	<p>any goods imported on baggage.</p>
(ख)	<p>भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरारेगएमालयाउसगन्तव्य स्थानपरउत्तरारेजानेकेलिएअपेक्षितमालउत्तरारेनजानेपरयाउसगन्तव्यस्थानपरउत्तरारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.</p>
(b)	<p>any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.</p>
(ग)	<p>सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.</p>
(c)	<p>Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p>
3.	<p>पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :</p>
	<p>The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :</p>
(क)	<p>कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.</p>
(a)	<p>4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.</p>
(ख)	<p>सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो</p>
(b)	<p>4 copies of the Order-in-Original, in addition to relevant documents, if any</p>
(ग)	<p>पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां</p>
(c)	<p>4 copies of the Application for Revision.</p>
(घ)	<p>पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र ),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क,मांगागयाव्याज,लगायागयादंडकीरिशऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-</p>
(d)	<p>The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.</p>
4.	<p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p>
	<p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p>
	<p>सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण,पश्चिमीक्षेत्रीयपीठ</p>
	<p>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</p>

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



ORDER-IN-APPEAL

Mr. Gulab Subhan Pathan, Flat No. 304, 3rd Floor, A - Wing, Maria Heights, Balveder Road, Mumbai, Maharashtra - 400010 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 09/ADC/VM/O&A/2024-25, dated 22.04.2024 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of suspicion, the officers from the Immigration Department at SVPI Airport, Ahmedabad had informed the AIU officers of Customs, at Green Channel that the appellant with Passport bearing No. U 1081878, who had arrived by Air Arabia Flight No. G9 418 from Sharjah to Ahmedabad on 24.01.2024, was suspected to carry high valued dutiable/contraband goods. Therefore, thorough search of all the baggage of the appellant as well as his personal search was required to be carried out. Thereafter, the Immigration officers handed over the appellant to the AIU officers at the Green Channel for further proceedings. The appellant, as directed by the AIU Officers, removed all the metallic objects such as mobile, purse, one ring, a pouch containing various hooks etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating there was nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the appellant, the Panchas and officers moved to the AIU office located opposite Belt No. 5 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the appellant. Further, the officers scanned one green colored trolley bag of the appellant in X-ray Baggage scanning machine (BSM) installed near the Green Channel counter at Terminal-2 of SVPI, Ahmedabad in which a dark black coloured image of some substance appeared inside the trolley bag. Thereafter, the AIU officers thoroughly checked the trolley bag from which black coloured Image appeared and found that a chocolate powder packet seemed suspicious, the same pouch was again scanned in the X-ray machine and some dark color Image appeared again, further some powder was taken out and mixed in some water, after mixing the same powder, some golden color particles remained in the bottom of the bottle. On being asked about the same, the appellant stated that the powder material mixed flavored powder contained gold in powder form. The appellant also stated that the ring which was removed during DFMD was also made of gold which was coated with white rhodium and the hooks of golden color which were taken out from the pant pocket were also made of gold.



2.1 Thereafter, the AIU officers called the Government Approved Valuer and informed him that Semi solid substance consisting of gold and chemical, one ring, one pouch containing gold hooks and a powder material mixed flavored powder had been recovered from the appellant and he had informed that those items contain gold. Hence, testing and Valuation of the said material is required to be done. After weighing the Semi-solid substance consisting of gold and chemical on his weighing scale, Shri Kartikey Vasantral Soni, Government Approved Valuer informed that the same was weighing 372.320 grams. After, weighing the Powder material mixed flavoured powder on his weighing scale, the Valuer, informed that the same was weighing 416.860 grams. After, weighing the Gold Ring coated with white rhodium on his weighing scale, the Valuer informed that the same was weighing 35.260 grams. After weighing the gold Hooks on his weighing scale, the Valuer informed that the same was weighing 149.980 grams. The Government Approved Valuer after converting the Semi-solid substance consisting of gold and chemical and the Powder material mixed flavored powder recovered from the appellant, into gold bars. The details of the Valuation of the said gold bars, ring and hooks is tabulated in below table:

Sr. No	Details of Items	Pieces	Net Weight (in grams)	Purity	Market Value (in Rs)	Tariff Value (in Rs)
01	Gold Bar (extracted from Paste)	1	295.490	999.0/24kt	19,02,956	16,45,117
02	Gold Bar (extracted from Powder)	1	131.700	999.0/24kt	8,48,148	7,33,229
03	Gold ring (white rhodium coating)	1	35.26	999.0/24kt	2,27,074	1,96,307
04	Gold Hooks	-	149.980	750.0/18kt	7,24,403	6,26,251
	Total	3	612.430		37,02,581	32,00,905



2.2 Statement of the appellant was recorded on 24.01.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, admitted attempting to smuggle gold into the country. He admitted that he had smuggled total 612.430 grams of gold in the form of gold paste, gold powder, gold ring and gold hooks by way of concealment in his clothes and baggage. The same was clearly meant for commercial purpose and hence did not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before the Customs by the appellant.

2.3 In view of the above, gold totally weighing 612.430 grams, in the form of 02 gold bar (extracted from gold paste and gold powder), 01 gold ring and various gold hooks, having tariff value of Rs. 32,00,905/- and market value of Rs. 37,02,581/- were placed under Seizure on 24.01.2024 under Panchnama and seizure memo dated 24.01.2024 on the reasonable belief that the same were liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally.

2.4 The appellant vide his letter dated 06.02.2024, forwarded through his Advocate Shri Rishikesh J Mehra submitted that he is cooperating in investigation and claiming the ownership of the gold recovered from him. He understood the charges levelled against him. He requested to adjudicate the case without issuance of Show Cause Notice.

2.6 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of the impugned gold, in the form of gold paste, gold powder, gold ring & gold hooks of 999.0 / 24Kt. & 750.0 / 18 kt. purity totally weighing 612.430 Grams and valued at Rs. 32,00,905/- (tariff value) and Rs. 37,02,581/- (market value) recovered and seized from the appellant vide Seizure Order and Panchnama dated 24.01.2024 under Section 111(d), 111(f), 111(1), 111(j), 111(l) & 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 12,00,000/- on the appellant under Section 112 (a) (i) of the Customs Act, 1962.

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

- As regards confiscation of the goods under Section 125 of the Customs Act 1962, the Ld. Adjudicating Authority, while admitting that there is no option to the Adjudicating Authority if the goods are not prohibited, but to release the goods on payment of redemption fine, and if the goods are prohibited he has a discretion to either release the goods on payment of redemption fine or confiscate the

goods absolutely. The case laws relied upon by the adjudicating authority are not applicable in the facts and circumstances of the case.

- A reading of Paras of the findings of the adjudicating authority clearly shows that the adjudicating Authority was pre-decided to absolutely confiscate the gold in question, without applying himself to the crucial fact that he had a discretion to either permit release of gold on Redemption fine or absolutely confiscate them only when the goods were "prohibited". Though not admitting, even if for a moment it is presumed that the goods in question were prohibited, the Ld Adjudicating Authority is required to exercise his discretion and how such discretion is to be exercised is laid down in the case of Commissioner of Customs (Air) vs P. Sinnasamy in CMA No.1638 of 2008, before the Hon High Court of Madras decided on 23 August, 2016.
- In the instant case it is very clear that the Ld. Adjudicating Authority started on a wrong premise of the fact that the Appellant in this case is a smuggler, and that he has concealed the gold in this case, all of which are erroneous findings as discussed above. Taking into consideration these erroneous findings, the Ld Adjudicating Authority has got biased and decided that the gold in question should be absolutely confiscated and penalty imposed.
- There are plethora of Judgements both for and against the release of gold seized in Customs Cases. A combined reading of all the cases with specific reference to the policy/Rules in vogue at the relevant times, will show that depending on circumstances of each case in hand and the profile of the person involved, the goods in question may become "Prohibited" which are otherwise not listed in the prohibited categories. However, despite the goods being prohibited the same can be released or re-exported in the discretion of the Adjudicating Authority, which discretion has to be exercised as per the canons laid down by the Hon. Apex Court as discussed above. In this connection, following case laws are submitted relied upon by the appellant:-
  - (i) Yakub Ibrahim Yousuf 2011 (263) ELT-685 (Tri. Mum) and subsequently 2014-TIOL-277-CESTST-MUM.
  - (ii) Shaik Jameel Pasha Vs Govt of India 1997 (91) ELT 277 (AP);
  - (iii) V.P. Hamid vs Commissioner of Customs, 1994 (73) ELT 425 (Tri);



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

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

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

- It is also submitted that impugned goods are not prohibited for use by the society at large and release of the same will not cause to the society and its import and / or redemption would not be dangerous or detrimental to health, welfare or morals of the people, in any circumstances.
- There is a catena of cases where the orders of absolute confiscation were successfully challenged and gold released either for re-export or on redemption fine u/s 125 of Customs Act 1962. Some of the judgements can be cited as under:
  1. S Rajgopal vs CC Trichy 2007 (219) ELT 435
  2. P. Sinnaswamy vs CC Chennai 2007 (220) ELT 308
  3. M. Arumugam vs CC Thiruchirapally 2007 (220) ELT 311
  4. Krishna Kumari vs CC Chennai 2008 (229) ELT 222.
- Following are the list of latest revision authority's orders relied upon by the appellant:
  1. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI, DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala
  3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI, DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri
  4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI, DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar.
  5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI, DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.



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

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

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

- Coming to the penalties imposed it may be stated that since the goods in question were not prohibited, the penalty under section 112 (a) and (b) of Customs Act 1962 could not have been more than the duty involved which in this case is Rs. 12,00,000/- on the appellant.
- The appellant finally prayed to quash and set aside the OIO No: 09/ADC/VM/O&A/HQ/2024-25 dated 22.04.2024 in so far as the absolute confiscation is concerned and in so far as the penalties under section 112 Customs Act is concerned.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 26.03.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

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

(a) Whether the impugned order directing absolute confiscation of the impugned gold, in the form of gold paste, gold powder, gold ring & gold hooks of 999.0/ 24Kt. & 750.0/ 18 kt. purity totally weighing 612.430 Grams and valued at Rs. 32,00,905/- (tariff value) and Rs. 37,02,581/- (market value) without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;

(b) Whether the penalty amounting to Rs. 12,00,000/- imposed on the appellant under Section 112 (a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that, on the basis of suspicion, the officers from immigration at SVPI Airport, Ahmedabad handed over the appellant having Passport No. U 1081878, to the officers of Customs, AIU, at Green Channel for suspected to carry high valued dutiable/contraband goods. The appellant

had arrived at SVPI Airport, Ahmedabad, by Air Arabia Flight No. G9 418 from Sharjah on 24.01.2024. Search of the baggage of the appellant resulted in recovery of gold totally weighing 612.430 grams, in the form of 02 gold bar (extracted from gold paste and gold powder), 01 gold ring and gold hooks, having Tariff Value of Rs. 32,00,905/- and Market Value of Rs. 37,02,581/- . The appellant did not declare the said gold before the Customs. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on 24.01.2024. There is no disputing the facts that the appellant had not declared possession of gold at the time of his arrival in India when asked to do so. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

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

6.2 I have also perused the decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India. I find that the Revisionary Authority has taken a view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared gold in the form of gold paste, gold powder, gold ring & gold hooks of 999.0/ 24Kt. & 750.0/ 18 kt. purity totally weighing 612.430 grams and valued at Rs. 32,00,905/- (tariff value) and Rs. 37,02,581/- (market value) are liable to confiscation and the appellant is also liable to penalty.

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



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

It is apparent from the above judicial pronouncement that even though gold is not enumerated as prohibited goods under Section 11 of the Customs Act, 1962, but it is to be imported on fulfilment of certain conditions, still, if the conditions for such import are not complied with, then import of gold will fall under prohibited goods. Hence, I find no infirmity in the impugned order on this count.

6.4 In respect of absolute confiscation of gold in the form of gold paste, gold powder, gold ring & gold hooks of 999.0/ 24Kt. & 750.0/ 18 kt. purity totally weighing 612.430 grams and valued at Rs. 32,00,905/- (Tariff Value) and Rs. 37,02,581/- (Market Value), it is observed that the adjudicating authority in the instant case relying on the decisions of Hon’ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)], Hon’ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker)], Hon’ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue – Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu in paras 24 to 28 of the impugned order, had ordered for absolute confiscation of gold in the form of gold paste, gold powder, gold ring & gold hooks of 999.0/ 24Kt. & 750.0/ 18 kt. purity totally weighing 612.430 grams and valued at Rs. 32,00,905/- (Tariff Value) and Rs. 37,02,581/- (Market Value).

6.5 It is observed from the facts and records of the present case that the appellant had concealed gold in paste form, gold in powder form, Gold ring coated with white rhodium and gold hooks totally weighing 612.430 grams in his baggage and in person with an intention to smuggle the same without payment of duty. The gold was detected during examination of the baggage in X Ray scanning on the basis of suspicion about the smuggling activities of the appellant. The appellant, in his statement recorded under Section 108 of the Customs Act, 1962 on 24.01.2024, had admitted that he had smuggled total 612.430 grams of gold in the form of gold paste, gold powder, gold ring and gold hooks by way of concealment in his clothes and baggage. The same was clearly meant for commercial purpose and hence did not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before the Customs. Thus, the present case is not of simple non declaration of gold but an act of smuggling, as the gold was concealed in paste and powder form, coated with white rhodium and kept in the form of gold hooks with an intention to smuggle the same without payment of duty for commercial reasons to earn profit. The appellant has not submitted any evidence for substantiating the transactions for purchase of gold in such a quantity.

6.6 In this regard, I rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of V.K. MOHAMMAD ALI Versus COMMISSIONER OF CUSTOMS, COCHIN [2019 (369) E.L.T. 1538 (Tri. - Bang)], wherein the Hon'ble Tribunal has upheld the decision of adjudicating authority for absolute confiscation of undeclared seized gold. The relevant paras are as under:

*“6. The brief issue for consideration in the case is to decide whether the adjudicating authority as a discretion to release the gold confiscated or the seized gold requires allowing to be redeemed on payment of fine in lieu of confiscation in terms of Section 125 of the Customs Act, 1962. Section 125 of the Customs Act reveals as under:*

*“(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit*



Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods."

**6.1** A plain reading of the above provision gives understanding that while the adjudging officer may permit the redemption of goods on payment of fine in lieu of confiscation of goods which are prohibited in nature, he shall, in the case of other goods, 'may' permit redemption on payment of fine in lieu of confiscation.

**6.2** There are two situations which emerge out of the legal position which needs to be addressed; firstly, whether the impugned goods are in the nature of prohibited goods wherein the adjudicating authority has an option to permit the goods to be redeemed on payment of fine in lieu of confiscation. Secondly, whether the adjudging officer has a discretion so as to allow or not such goods to be redeemed on payment of fine in lieu of confiscation.

**6.3** For an appreciation of the same, it is required to see what are prohibited goods is Section 2(33) of the Customs Act, 1962 defines prohibited goods as follows :

Prohibited goods means "any goods, the import or export on 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."

In view of the above, for the goods to acquire a nature of being prohibited who either be prohibited under Customs Act or any other law for the time being in force or the goods should have been imported wherein the conditions subject to which the goods are permitted to be imported are not complied with. Admittedly, the impugned gold is not prohibited either under Customs Act or any other law for the time being in force at the material time. As per the records of the case, the appellant have not submitted anything to show on record that the goods have been properly imported. It is to be inferred that the impugned gold has been imported



without following the due process of law that is to say without following the procedures thereof. Therefore, it is to be held that the impugned goods have acquired the nature of being prohibited goods in view of Section 2(33) of the Customs Act, 1962.

**6.4** Having found that the impugned goods have acquired the nature of prohibited goods, the issue which remains to be decided as to whether the adjudicating authority can exercise [its] discretion to allow the goods to be redeemed. Going by the wordings of Section 125, it is clear that in such circumstances i.e. whether the goods are prohibited, the adjudicating authority 'may' permit the redemption. That being the case the Tribunal cannot sit in judgment over the discretion exercised by the competent authority duly empowered under the statute. We find that as submitted by the Learned DR, the Hon'ble High Court of Madras has categorically held that: "When a *prima facie* case of attempt to smuggle the goods is made out, it is not upon the Tribunal, the issue not give positive directions to the adjudicating authority, to exercise option in favour of the respondents". We also find that this Bench of the Tribunal (*supra*) in a case involving identical circumstances has upheld the absolute confiscation of gold biscuits of foreign origin seized from a passenger who claimed that the same were purchased in Mumbai.

**7.** In view of the above, we find that the Order-in-Appeal does not require any intervention and as such the appeals are rejected."

**6.7** I also rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of Ismail Ibrahim Versus Commissioner of Customs, Bangalore [2019 (370) ELT 1321 (Tri Bang)], wherein the Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold i.e. 612.430 grams concealed in a handbag.

**6.8** I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 251/2023-CUS (WZ)/ASRA/MUMBAI, dated 21.02.2023 on similar issue i.e. attempt to bring undeclared gold in form of 02 kadas and 03 chains concealed in hand bag in the case of Shri Deepak Rupani, wherein the Hon'ble Revisionary Authority has upheld the absolute confiscation of 1166.680 grams of gold valued at Rs. 30,27,534/- (Tariff



Value) and Rs 33,95,040/- (market value). The relevant paras are reproduced as under:

"7. The Government has gone through the facts of the case. The two gold bars were found only when the hand bag of the applicant was screened. The Applicant had not filed any declaration of dutiable goods before the Customs as required under Section 77 of the Customs Act, 1962. The quantity of gold recovered is substantial and in form of ornaments i.e. 2 nos of karda and 3 chains. The confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

8. Further, 2 Apple watches were found in the handbag of the applicant alongwith an invoice showing the value of the watches, Free baggage allowance of Rs. 50,000/- was given to the applicant.

9. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy, reported in 2016 (344) E.E.T. 1154 (Mad), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) ELT. 423 (S.C.), has held that if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods ..... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. It is thus 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".

10. Further, in para 47 of the said case the Hon'ble High Court has observed "Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation..... Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited"



and therefore liable for confiscation and the Applicant thus liable for penalty.

11. Once goods are held to be prohibited, Section 125 of the Customs Act, 1962 still provides discretion to consider release of goods on redemption fine Hon'ble Supreme Court in case of M/s. Raj Grow Impex [CIVIL APPEAL NO(S) 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020-Order dated 17.06.2021) has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

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

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

12. Government notes that the gold was in the form of ornaments. The applicant had kept the same in the hand bag and was not concealed in an ingenious. Usually, the hand bags are not screened at the arrival airport. The quantity of the gold is quite substantial. The applicant had not declared the gold ornaments in his possession which indicates that he had no intention to pay duty on the same. All these have been properly considered by the OAA while confiscating the gold ornaments absolutely.

13. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the quantity being substantial, clear intention to clear the gold ornaments without payment of duty, is a fit case for absolute confiscation as a deterrent to such



offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold ornaments. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority upholding the order of absolute confiscation of the gold ornaments passed by the adjudicating authority is therefore liable to be upheld."

6.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 217/2024-Cus, dated 16.10.2024 wherein the applicant attempt to bring undeclared gold in paste form in the case of Riswan Kochupurayil Nazeer, wherein the Revisionary Authority has upheld the absolute confiscation of 788.940 grams of gold extracted from gold paste weighing 874.760 grams valued at 30,29,931/- (Assesable Value) and Rs 34,99,286/- (Market Value).

6.10 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Ms Ros Maszwin Binti Abdul Kadir, Order No. 184/2024 - CUS, dated 04.09.2024 wherein absolute confiscation of one long crude gold chain of 24 carat purity weighing 1.2 kgs valued at Rs 39,70,800/-, wrapped in a condom which was found concealed in lower inner garment, was upheld. The penalty imposed was also upheld.

6.11 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Sh. Rafi Syed, Order No. 175/2024 -CUS, dated 28.08.2024 wherein absolute confiscation of 39 gold bars of 24 carat purity weighing 3800 grams valued at Rs 1,16,58,400/-, concealed inside plastic pouches containing dates, was upheld. The penalty imposed was also upheld. The applicant in this case was working as carrier.

6.12 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Shri Riyas Khan, Order No. 190/2024 -CUS, dated 09.09.2024 wherein absolute confiscation of two cut gold bits and 78 gold ingots of 24 carat purity weighing 2620 grams valued at Rs 87,42,940/- concealed in play station joy sticks, was upheld. The penalty imposed was also upheld. The applicant in this case was working as carrier.

6.13 I also rely upon the decision of Hon'ble High Court of Kerala in the case of Abdul Razak Versus Union of India [2012 (275) ELT 300 (Ker)] maintained in the Hon'ble Supreme Court [2017 (350) ELT A173 (SC)],

wherein the passenger, a carrier, tried to smuggle 8 kg of gold concealed in emergency light, mixie, grinder, car horns etc. was held to be absolutely confiscated and not allowed to be released on redemption fine. The relevant para is reproduced as under:

**“6. After hearing both sides and after considering the statutory provisions, we do not think the appellant, as a matter of right, can claim release of the goods on payment of redemption fine and duty. Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. There is no need for us in this case to consider the conditions on which import is permissible and whether the conditions are satisfied because the appellant attempted to smuggle out the goods by concealing the same in emergency light, mixie, grinder and car horns etc. and hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal import of gold. 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.”**

In the present case also, the appellant had attempted to smuggle 612.430 grams of gold for commercial reasons to earn profit. He had concealed gold in paste, powder form, gold ring coated with white rhodium and gold hooks with an intention to smuggle the same without payment of duty. The appellant has not submitted any evidence to substantiate the transaction in this case. Further, the seized gold were ingeniously concealed. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.14 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the concealment in this case was intentional as substantial quantity of gold in in paste form, gold in powder form, gold ring coated with white rhodium and gold hooks weighing 612.430 grams were intentionally concealed to evade detection by the Customs authorities. The appellant did not intend to declare the said gold. The appellant in his statement recorded under Section 108 of the Customs Act, 1962 on 24.01.2024 had admitted that he had smuggled total 612.430 grams of gold in the form of gold paste, gold powder, gold ring and gold hooks by way of concealment in his clothes and baggage. The same was clearly meant for commercial purpose and hence did not constitute bonafide baggage within the meaning of Section 79 of the

Customs Act, 1962. Further, the said goods were also not declared before the Customs. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of 612.430 grams of gold under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. In view of above, the absolute confiscation of gold weighing 612.430 gram valued at Rs. 32,00,905/- (Tariff Value) and Rs 37,02,581/- (Market Value) is upheld.

6.15 Further, in respect of imposition of penalty amounting to Rs 12,00,000/- on the appellant for bringing undeclared gold weighing 612.430 gram valued at Rs. 32,00,905/- (Tariff Value) and Rs. 37,02,581/- (Market Value), the appellant has not raised any ground for reduction in penalty. He has not made any request along with any ground for reduction in penalty during personal hearing also. It is observed that the appellant had attempted to bring gold into India without declaring the same and concealing the same in the form of gold paste, gold powder, gold coated with rhodium and gold hooks. The quantum of gold is substantial and the appellant had smuggled gold for earning profit. The appellant was aware that smuggling of gold without payment of customs duty is an offence as stated by him in his statement dated 12.10.2023. Thus, I am of the considered view, that the penalty of Rs 12,00,000/- imposed on the appellant under Section 112 (a)(i) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112 (a)(i) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellant. Therefore, there is no infirmity in the impugned order and the same is upheld.

7. In view of above, the appeal filed by the appellant is rejected.



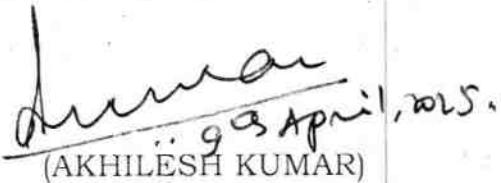
सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT

सीमा शुल्क (अपील्स), अहमदाबाद.

CUSTOMS (APPEALS), AHMEDABAD

By Registered Post A.D.



9 April, 2025.  
(AKHILESH KUMAR)  
COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD.

F.No. S/49-75/CUS/AHD/2024-25

Dated -09.04.2025

To,

- (i) Mr Gulab Subhan Pathan, Flat No. 304,  
3rd Floor, A - Wing, Maria Heights,  
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