

OIO No:218/ADC/SRV/O&A/2024-25
F. No: VIII/10-70/SVPIA/O&A/2019-20



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

A	फाइलसंख्या/ File No.	:	VIII/10-70/SVPIA/O&A/2019-20
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-70/SVPIA/O&A/2019-20 Dated 05.11.2019
C	मूलआदेशसंख्या/ Order-In-Original No.	:	218/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	03.01.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	03.01.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Rahul Soni, Nr. Sangilal Sangariya House, Rail Colony, Barmer, Rajasthan-344001
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		

(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case :

Mr. Rahul Soni, aged 23 years (DoB : 06.04.1996), residing at Nr. Sangilal Sangariya House, Rail Colony, Barmer, Rajasthan-344001 (hereinafter referred to as '*the passenger*'), holding an Indian Passport No. M3593458, had arrived at Sardar Vallabhbhai Patel International Airport, Ahmedabad from Dubai by Indigo Flight No. 6E-072 on 11.05.2019. The passenger was carrying one black coloured bag as check-in baggage and one red sling bag as hand baggage. The said passenger had opted for green channel. As his actions were looking suspicious, the passenger was intercepted at the exit of the green channel for personal search and examination of his baggage.

2. On scanning of his baggage at the Baggage Scanning Machine installed at Green Channel near Exit gate, neither any objectionable object/ material found and passing through the DFMD by the Passenger, a loud beep sound was generated from the middle portion of the DFMD machine, which indicated presence of metallic substance in the middle part of his body. As the DFMD was giving alert sound, the AIU officer once again, politely asked the passenger as to whether he was carrying any metallic substance on his body, the passenger denied of having any metallic object on his body. Once again the passenger walked through the DFMD Machine, a loud beep sound was generated

from the middle portion of the DFMD machine, which indicated presence of metallic substance in the middle part of his body. Once again on being asked politely the passenger removed a packet from his back pocket of the pant and placed it in the tray. On being questioned the passenger confessed that he had concealed yellow metal i.e. gold bars and showed the same to the officers. On being asked, the passenger accepted that on arrival he did not want to declare the gold bars to Customs so that he could clear it illicitly. The details are as under :

Sr. No.	Description	Net Weight (in Grams)	Tariff Value (in Rs.)	Local Market Value (in Rs.)
1	Six (06) Gold Bars of 10 Tolas each "IPMR" Mark	699.900	20,31,488/-	23,06,170/-

3. The Government Approved Valuer after testing and valuation of the said article i.e. **Six (06) gold bars** ('gold items' for short), informed that these were made of pure gold having purity of 24 Kt. (999). The report indicated that six (06) gold bars, totally weighing 699.900 grams having a tariff value of Rs. 20,31,488/- and local market value of Rs. 23,06,170/-.

3.1 The said passenger was arrested under Section 104 of the Customs Act, 1962 upon the authorization granted by the Commissioner, Customs, Ahmedabad under F. No. VIII/10-15/AIU/A/2019-20 dated 11.05.2019 and produced before the Superintendent (AIU), Ahmedabad and granted conditional bail.

3.2 Whereas, it appears that the passenger has contravened the following provisions of :

- Section 77 of the Customs Act, 1962 as he has failed to make a declaration of the imported six (06) gold bars totally weighing 699.900 grams which was recovered from his possession;
- Section 79 of the Customs Act, 1962 as he has imported six (06) gold bars for commercial purpose which were not for his bonafide use;
- Section 7 of the Foreign Trade (Development & Regulations) Act, 1992 as he imported six (06) gold bars for commercial purpose.
- Rule 11 of the Foreign Trade (Regulation) Rules, 1993 as he failed to declare the value, quantity and description of six (06) gold bars imported by him;
- Para 2.26 of the Foreign Trade Policy 2015-2020, as he acted contrary to the restrictions imposed and imported *non-bonafide* baggage.

3.3 Whereas, it appears that the passenger has not filed the baggage declaration form and has not declared that six (06) gold bars which were in his possession, as envisaged under Section 77 of the Customs Act, 1962, read with the Baggage Rules and Baggage Regulations. It also appears that the import was for *non-bonafide* purpose. Moreover, gold or silver, in any form, other than ornaments is not allowed free of duty. Further, one kg of gold can also be imported by an eligible passenger as envisaged under Notification No. 12/2012-Cus dated 17.03.2012 (Sr. No. 321) wherein an '*eligible passenger*' means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967, who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits. It, therefore, appears that all the above acts of contravention on the

part of the passenger has rendered the seizure of six (06) gold bars liable to confiscation, under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. It further appears that six (06) gold bars imported by the passenger are to be construed as '*smuggling*' within the meaning of Section 2(39) of the Customs Act, 1962. By using the modus of concealing six (06) gold bars in pant pocket, it appears that the passenger was fully aware that the goods would be offending in nature on its import. It appears that the passenger has involved himself in carrying, keeping, concealing and has dealt with the offending goods in a manner which he knew or has reasons to believe were liable to confiscation under the Customs Act, 1962. It, therefore, appears that the passenger has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

3.4 Whereas, the passenger has not produced any valid declaration for possession of Gold in form of **six (06) gold bars of pure 24 kt gold of .999 purity total weighing 699.900 grams having a tariff value of Rs. 20,31,488/- and local market value of Rs. 23,06,170/-**, as required in terms of Regulation No.3 of the Customs Baggage Declaration Regulations, 2013, framed under Section 81 of the Customs Act, 1962, with an intention to evade payment of Customs duty. The passenger, therefore, appears to have rendered himself liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

4. In view of the above, a Show Cause Notice No VIII/10-70/SVPIA/O&A/2019-20 dated 05.11.2019 was issued to the Noticee, alleging that -

- (i) The Six (06) gold bars concealed in pant pocket, totally weighing 699.900 grams having tariff value of **Rs. 20,31,488/- (Rupees Twenty Lakhs Thirty One Thousand Four Hundred and Eighty Eight Only)** and market value of **Rs. 23,06,170/- (Rupees Twenty Three Lakhs Six Thousand One Hundred and Seventy Only)**, placed under seizure vide panchnama drawn on 11.05.2019, should not be confiscated under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger under Sections 112(a) and 112(b) of the Customs Act, 1962;

5. The said Show Cause Notice was adjudicated by the Joint Commissioner of Customs, Ahmedabad, vide Order-in-Original No. 20/JC/SM/O&A/2020-21 dated 10.08.2020 issued on 11.08.2020 wherein the Joint Commissioner passed order as under:

- i. I order absolute confiscation of the said six (06) gold bars concealed in pant pocket, totally weighing 699.900 grams having tariff value of **Rs. 20,31,488/- (Rupees Twenty Lakhs Thirty One Thousand Four Hundred And Eighty Eight Only)** And Market Value Of **Rs. 23,06,170/- (Rupees Twenty Three Lakhs Six Thousand One Hundred And Seventy Only)** recovered from Mr. Rahul Soni and placed under seizure vide panchnama dated 11.05.2019 under Section 111(d),111(i), 111(l), and 111(m) of the Customs Act,1962;
- ii. I impose a penalty of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) on Mr. Rahul Soni, under the provisions of Sections 112(a)(i) of the Customs Act 1962;

6. Being aggrieved by the said Order-in-Original No. 20/JC/SM/O&A/2020-21 dated 10.08.2020 issued on 11.08.2020, the Noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The said appeal was decided by the Commissioner (Appeals), Customs, Ahmedabad vide Order-in-Appeal No. AHD-CUSTOM-000-APP-503-23-24 dated 28.03.2024, wherein he ordered that -

“ 7. In the light of the aforesaid facts and circumstances, I allow the appeals filed by the appellant by way of remand and remit the matter to the adjudicating authority, who shall ascertain the facts, examine the documents, submission made in appeal memorandum and case laws submitted by the appellant and pass speaking order after following principle of natural justice and adhering to the legal provisions. While passing this order, no opinion or views has been expressed on the merits of the dispute or the submission by the appellant in this regard, which shall be independently examined by the adjudicating authority”

In view of the above referred OIA dated 28.03.2024, the case has been taken up for adjudication proceedings.

Defense reply and record of personal hearing:

7. Personal Hearing in this case was fixed on 09.12.2024. Shri Chetan K Pandya, Advocate appeared for noticee and re-iterated his submission made on 02.03.2020. Further, mentioned that the noticee did not try to cross the green channel and was taken from customs counter to the green channel, hence no attempt to smuggle gold. He submits that noticee was intercepted at 00:30

hrs and arrested at 04:30hrs. During this 04 hours time, the noticee was intercepted, his baggage screened/frisked, in person frisked, statement recorded, investigation officer prepared report to call for sanction, report was sent to concerned commissioner's residence and the commissioner after going through the entire bunch of the documents gave his sanction for arrest and the sanction order reaches to the airport. Hence the arrest guidelines issued by CBIC/CBEC and the guidelines for arrest laid down in Vol 2 (Intelligence) of customs prev. manual (central). He submits that the noticee has provided documents at the time of interrogation about purchase of Gold including invoice and bank statement. He submits that there is no mens rea to smuggle the gold or duty evasion. The Department has failed to establish the mens rea as held by supreme court. He submits that department has failed to provide best available evidence of CCTV footage of the instant time of the airport. If the CCTV footage was not supplied then as per the various case laws adverse inferences to be drawn against the department. He submits that gold is not prohibited goods and restricted goods only, hence the noticee ought to be allowed to re-export the gold or in alternative the noticee be permitted to redeem the gold on payment of applicable duties as held by various CESTAT, HC and Commr. Decisions. He further requested for one week's time for written submission.

Written Submission:-

7.1 The noticee has submitted his written submission on 11.12.2024 through his advocate wherein he submitted that the noticee is one of the partner of M/s. Star Bullion House at Barner, Rajasthan and engaged in the business of sale of gold and silver jewellery. M/s. Star Bullion House has IEC Code No. ADFFS4065H.

He further submitted that the noticee had also business entity at Unit No. 3940, DMCC Business Centre, Level No. 1, Jewellery and Gemplex 3, Dubai, United Arab Emirates in the name of "The Golden Hawk Group DMCC". The Dubai firm is dealing with (i) Jewellery Trading (ii) Imitation Jewellery trading (iii) Non manufactured precious metal trading (iv) pearls and precious stone trading having license No. DMCC-516004. The noticee transferred money from his personal account from india to "The Golden Hawk Group DMCC", Dubai wherein the noticee was one of the partner. On 10.05.2019, the noticee had withdrawn money from the Dubai firm and purchased 6 gold bar for AED 1,06,266 from Viren Jewellers, LLC of Dubai bearing SAL No. HO-2879. On 10/05/2019, the noticee was travelled by Indigo Flight No. 6E-072 from Dubai to Ahmedabad and had carried 6 gold bars in his pant pocket and was intersected around 00:30 hrs of 11.05.19. The noticee had for the first time brought the gold from Dubai and therefore, not aware about the procedure of payment of Customs duty at Airport. At the relevant time at airport, the custom counter was between the Red Channel and Green Channel. That is to say first exit from red channel, then custom counter and then exit through green channel. After collecting the bags before the noticee approaches the customs officer/counter to know the procedure for the payment of customs duty, the noticee was taken to exit of green channel and asked to put his bags in x-ray machine. After scanning no objectionable article were found in the bags. The noticee mentioned that before passing through the metal detector, he was not asked about the possessing gold bar or precious metal or precious stone. The noticee had shown the custom officer (i) license of "The Golden Hawk Group DMCC", Dubai (ii) Invoice of purchase of Six Gold Bars, (iii) IEC Code of Star Bullion House, (iv)

Bank Statement for Withdrawal of AED from The Golden Hawk Group DMCC, (v) Residence Visa of UAE and (vi) address proof of Barmer.

At about 02:35 AM summons dated 11.05.2019 was issued to the noticee to record the statement under Section 108 of the Customs Act, 1962. The noticee was pressurized to sign the documents prepared by the Custom officers. After reading the documents, the noticee refused to sign the documents as it was alleged that the noticee was trying to smuggle the gold bar, which was not true and till 04:00 AM the documents were not signed and thereafter, custom officers threatened to sign the documents as with the sunrise, media person would be called for press conference wherein the noticee would be highlighted before the print and electronic media as smuggler. The noticee got frightened with the label of smuggler as the noticee is coming from respectable family and business community. Under such circumstances, the noticee had signed the documents prepared by the custom officers. At 04:30 AM, the noticee was arrested, in other words the procedure of arrest was concluded in half an hour. It is pertinent to note that in less than four hours the noticee was interrogated, statement recorded, report made to the commissioner to sanction arrest, the commissioner gone through the entire material and accorded sanction to arrest the noticee. It is crystal clear that the commissioner has accorded sanction without application of mind and did not arrive at independent decision as to whether the noticee was required to be arrested or not.

He further, submitted that there is no mens-rea of the noticee either to smuggle gold bars or to commit an offence punishable under Section 135 of the Customs Act, 1962. The

Hon'ble Supreme Court in case of Akbar Badrudin Giwani Vs Collector of Customs, Bombay reported in 1990 2 SSC 203 hold that mens-rea must be established for confiscation and penalty under Section 111(d) and 112. Burden on the custom department to show the import acted dishonestly or contumaciously or with the deliberate or distinct of breaching the Law.

He submitted that the noticee showed his readiness and willingness to undergo Narco analysis test to prove that he had no intention to smuggle the gold bars and was proceeding towards the custom counter for making payment of customs duty. The best available evidences of CCTV footage had been withheld/concealed by the customs authority and not made available at any point of time either to the noticee or to this Hon'ble Authority to bring true and correct facts on record. In support, the noticee has submitted case law which are as :-

- Tomaso Bruno and another Vs. State of Uttarpradesh reported in (2015) 7 SSC 178
- Prakash Gold Palalce P Ltd Vs. CC (Airport & Cargo) reported in 2015 SSC Online Mad 14295: (2016) 340 ELT 111
- Shalu Chandha Vs. Additional Commissioner of Customs, Goa reported in 2018 (359) ELT 28. (Bom)
- Mohammed Haroon Vs. Addl.Dir General, DRI, Chennai reported in 2021 (378) ELT 754 (Mad)

He further submitted that customs authority ought to have permitted to re-export the gold which was found by them because the noticee has made true and correct disclosure at the first available opportunity. For the same he submitted the judgments in case of Mammed Koya Abdul Riyas Vs. Commissioner of Cus & C.Ex, Calicut reported in 2017 (357) ELT 1139 (Tri-Bang) and K.R

Ahmed Shah Vs. Additional Collector of Customs, Madras reported in 1981 (8) ELT 153 (Mad) and Directorate of Revenue Intelligence Vs. Pushpa Lekhumal Tolani reported in 2017 (353) ELT 129 (S.C) wherein the Hon'ble Court held that Section 17 of Customs Act, 1962 was not violated as necessary declarations were made while passing through the green channel.

The noticee has placed reliance on the following cases for giving the benefit of redemption fine :-

- The Hon'ble CESTAT, South Zone Bench, Chennai in case of Rajan Ran Vs. Commissioner of Customs, Chennai reported in (2023) 2 Centax 118 (Tri. Mad)
- The Hon'ble Delhi High Court in matter of Nidhi Kapoor Vs. Principal Commissioner and Additional Secretary to the Govt. of India and Ors reported in 2023
- The Principal Commissioner and ex-Officio, Additional Secretary, Govt. of India by an order dated 24-08-22 in matter of Pradip Sevantilal Shah
- The Principal Commissioner and ex-Officio, Additional Secretary, Govt of India by an order dated 04.08.2023 in the matter of Ms. Saba Parveen Irfan Khan
- The Principal Commissioner and ex-Officio, Additional Secretary, Govt of India, In case of Ms. Mansi C Trivedi
- The Principal Commissioner and ex-Officio, Additional Secretary, Govt of India, In case of Mr. Shahrukkhan Maniruddin Pathan

The noticee has submitted that no order for confiscation of the gold weighing 699.900 grams be passed and either the noticee be permitted to re-export the gold or the noticee be permitted to redeem the gold on payment of redemption fine considering the

peculiar facts and circumstances stated and the case law cited by the noticee and the order passed by the Revisional Authority.

DISCUSSION & FINDINGS

8. I have carefully gone through the facts of the case that the main issue to be decided is whether, six gold bars of pure 24 kt gold having 999 purity, totally weighing **699.900** grams having tariff value of **Rs. 20,31,488/- (Rupees Twenty Lakhs Thirty-One Thousand Four Hundred and Eighty-Eight Only)** and Market Value of **Rs. 23,06,170/- (Rupees Twenty Three Lakhs Six Thousand One Hundred And Seventy Only)** smuggled/ brought in by the passenger which were placed under seizure vide Panchnama drawn on 11.05.2019, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

After having identified and framed the main issue to be decided, as stated above, I now proceed to deal with the issue in the light of facts and circumstances of the case provision of the Customs Act, 1962, contentions of the noticee and evidences available on record.

10. I find that the Panchnama clearly draws out the fact that the noticee was intercepted when he was passing and was about to exit the green channel and on suspicion, personal search of the passenger and his baggage was conducted. The passenger did not declare the gold and denied to have dutiable goods. Under Panchnama, I find that during passing from DFMD (Door Frame Metal Detector) machine, loud beep sound heard and on being asked, if he had anything dutiable goods, the noticee denied and after passing again and on being asked again the noticee removes

a packet from his back pocket, which is wrapped in tissue paper and on scanning the same some dark images appears and on being questioned, the noticee confessed that he had concealed gold bars. It is on record that the passenger had admitted that he was carrying gold which was intended to smuggle in without declaring before Customs Officers. It is also on record that the government approved valuer had tested and certified that six gold bars were of pure 24 kt gold of 999 purity, totally weighing 699.900 grams, valued at Rs. 20,31,488/- (Tariff Value) and Rs. 23,06,170/- (Local Market Value), placed under seizure under panchnama dated 11.05.2019, in the presence of the passenger and Panchas. Under his reply, I find that, the noticee has submitted that he brought gold from Dubai and therefore, not aware about the procedure of payment of Custom Duty and after collecting the bags, he approached the custom officer to know the procedure for payment of customs duty, however under Panchnama it is very clear that after passing from the DFMD machine 2-3 times and on being asked by the officer, only then the noticee has gave a packet from his back packet. Therefore, the argument put forth by the noticee that he approached the custom counter to know the process for payment of duty is far from the truth and not tenable. I further notes that the noticee in his submission mentioned that he was not aware about the procedure of payment of customs duty. The explanation given by the noticee cannot be held to be genuine and creditworthy as in his submission he mentioned that he was a partner of M/s. Star Bullion House at Barmer, Rajasthan which is engaged in business of sale of gold and silver jewelry and also a business entity which deals in jewelry trading. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular

manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.

11. I find under submission that the noticee has alleged that he was pressurized to sign the documents viz. Statement and Panchnama and was threatened to sign the documents otherwise would be highlighted before the print and electronic media as smuggler, however on contrary, I find that it is quite clear that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording his statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. The passenger has not dislodged any of the facts narrated in his deposition. In fact, in his statement, he has clearly admitted that he had intentionally kept undeclared six gold bars and had not declared the same on his arrival before the Customs officer with an intent to clear them illicitly and evade payment of customs duty and thereby, violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020. The Statement under Section 108 of the Customs Act, 1962 was given voluntarily and the noticee was at liberty to not endorse the typed statement or hand written statement, if the same had been taken coercion/pressure as alleged by the noticee. Moreover, I find that the noticee mentioned he was got frightened with the label of smuggler before print and electronic media and therefore, signed the documents. However, on contrary on one hand the noticee had claimed he had all the

documents with him regarding purchase of the gold and same was produced before the customs officer, if so, then why the noticee was got frightened in name of print media as he would have produced the same before them. Therefore, I donot find any force in the contention of noticee in this regard and same is afterthought. It is on the record the noticee had tendered their statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter is as:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that “Statement recorded by a Customs Officer under Section 108 is a valid evidences”
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that “ It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962”
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon’ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that “Confessional Statement corroborated by the Seized documents admissible even if retracted.”

12. I find that the noticee has submitted that he was one of the partners of M/s. Star Bullion House at Barmer, Rajasthan and engaged in the business of sale of gold and silver jewellery and also submitted that he had also a business entity at Unit No. 3940, DMCC Business Centre, Level No. 1, Jewelry & Gemplex 3, Dubai, United Arab Emirates in name of "The Golden Hawk Group DMCC" which is dealing with jewellery trading, imitation jewellery trading, non-manufactured precious metal trading and pearls and precious stone trading. He also submitted that he had transferred money from his personal account from India to "The Golden Hawk Group DMCC", Dubai. On perusal of documents submitted by the noticee on 11.12.2024 as well as on 02.03.2020, I find that the noticee has not mentioned any details of his business entities in his earlier submission dated 02.03.2020 or event, I did not find any details of the same in the Appellate Order dated 28.03.2024 and same is mentioned in the submission dated 11.12.2024. On perusal, I find that how the noticee missed such peculiar details of his business entities during the Statement and in written submission dated 02.03.2020 and this came only after the matter remand back, therefore, I find that the same is afterthought.

Further, under submission, the noticee has mentioned that the noticee transferred the money from his personal account from India to his Dubai based entity named "The Golden Hawk Group DMCC" and submitted the statement. On perusal of documents submitted, I find statement of "The Golden Hawk Group DMCC, Dubai" for the month of April-2019, however, no such transaction of receiving money from the Indian account of noticee noticed in the statement, therefore, I find contention of the noticee of purchasing gold from the money which he transferred

from India to account of his business entity situated at Dubai, is not tenable and justified and far from the truth.

13. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 06 gold bars, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

14. From the facts discussed above, it is evident that noticee had carried the said gold weighing 699.900 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 699.900 grams, liable for confiscation, under the provisions of Sections

111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

15. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017-Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold

weighing 699.900 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 699.900 grams, having Tariff Value of Rs.20,31,488/- and Market Value of Rs.23,06,170/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 11.05.2019 liable to confiscation under the provisions of Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form of bars in back pocket, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

16. I find that the Noticee confessed of carrying the said gold of 699.900 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs

Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. 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 have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

17. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 699.900 grams, having Tariff Value of Rs.20,31,488/- and Market Value of Rs.23,06,170/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 11.05.2019. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it,

the noticee had attempted to remove the said gold bar weighing 699.900 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

18. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay 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 the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 699.900 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in form of bars in his pack pocket. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

19. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the

Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of bars wrapped in tissue paper concealed in back pocket with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 699.900 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 11.05.2019 stated that he has carried the said gold by concealment to evade payment of Customs duty. Under his submission, the noticee has requested to redeem the gold on payment of redemption fine and relied on the various case law as mentioned hereinabove at Para 11. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised 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 ¹ [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:

² [**Provided** that where the proceedings are deemed to be concluded

under the proviso to sub-section (2) of [section 28](#) or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed]:

Provided further 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.

The noticee has submitted various judgment wherein Redemption fine is allowed for release of Gold, on contrary I relied on the following judgment wherein redemption fine is not allowed which are as :-

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

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

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

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

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

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

prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

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

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

20.4. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is

observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

20.5. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

"23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."

*"26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**"*

20.6. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

21. The passenger has requested for allowing the gold bars for re-export. Section 80 of the Act reads as under:

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

21.1 I find that Section 80 of the Act does allow re-export of goods but the important point to be seen is as to whether there has been a true declaration of the goods on arrival. In the present case, I find that the passenger had not requested for re-export of the seized Gold neither at any time after his arrival at SVPI Airport nor during the whole proceedings. So, I find that request made by him for re-export of gold bars is merely an afterthought and cannot be considered. The passenger repeatedly denied of having gold with him during investigation and gold bars were recovered after walking through DFMD installed at SVPI Airport Ahmedabad. So his contention that he wanted to declare the gold is merely afterthought. Further, it is already established and an admitted fact that there was no declaration made of the gold bar concealed by the passenger. Therefore, the option under Section 80 of the Act would not be applicable to him. The request for re-export is therefore, rejected.

22. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 699.900 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 699.900 grams, placed under seizure would be liable to**

absolute confiscation under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962.

23. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of noticee is established wherein it states that "The act is not culpable unless the mind is guilty". Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of *M/s. Hindustan Steel Ltd Vs. State of Orissa*; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bar weighing 699.900 grams (06 gold bars) having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 699.900 grams, carried by him. He has agreed and admitted in his statement that he travelled from Dubai to Ahmedabad with the said gold in form of 6 bars concealed in back pocket. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the

noticee attempted to smuggle the said gold of 699.900 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) of the Customs Act, 1962 and I hold accordingly.

24. Accordingly, I pass the following Order:

ORDER

- i. I order absolute confiscation of the said six (06) gold bars concealed in pant pocket, totally weighing 699.900 grams having tariff value of **Rs. 20,31,488/- (Rupees Twenty Lakhs Thirty-One Thousand Four Hundred and Eighty-Eight Only)** And Market Value of **Rs. 23,06,170/- (Rupees Twenty-Three Lakhs Six Thousand One Hundred and Seventy Only)** recovered from Mr. Rahul Soni and placed under seizure vide panchnama dated 11.05.2019 under Section 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962;
- ii. I impose a penalty of **Rs. 6,00,000/- (Rupees Six Lakh Only)** on Mr. Rahul Soni, under the provisions of Sections 112(a)(i) of the Customs Act 1962;

25. Accordingly, the Show Cause Notice No. VIII/10-70/SVPIA/O&A/HQ/2019-20 dated 05.11.2019 stands disposed of.

Additional Commissioner
Customs, Ahmedabad

OIO No:218/ADC/SRV/O&A/2024-25
F. No: VIII/10-70/SVPIA/O&A/2019-20

F. No. VIII/10-70/SVPIA/O&A/HQ/2019-20
DIN: 20250171MN000081832E

Date:03.01.2025

BY SPEED POST A.D.

To,
Shri Rahul Soni,
Nr. Sangilal Sangariya House,
Rail Colony, Barmer,
Rajasthan-344001

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusamd@gov.in
- (v) Guard File.