



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250871MN000000AC65

क	फ़ाइलसंख्या FILE NO.	S/49-402/CUS/AHD/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-166-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	01/AB/ADC/SRT-AIRPT/2023-24, dated 31.10.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Kishore Gokaldas Pala, Pala Jewellers ni bajuma, Haveli Gali, Chandi Bazar, Main Road, Junagarh - 362001.



1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. 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) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग)

	संसदमार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.
	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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	वैगज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु कि सीवाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	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.
(ग)	सीमा शुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	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 :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमा शुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	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 :
सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, 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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(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; पाँचहज़ाररूपए	
(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; दसहज़ाररूपए.	
(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, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहै, 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) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

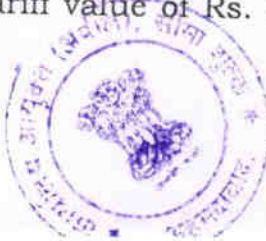


ORDER-IN-APPEAL

Shri Kishore Gokaldas Pala, Pala Jewellers ni bajuma, Haveli Gali, Chandi Bazar, Main Road, Junagarh - 362001 (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. 01/AB/ADC/SRT-AIRPT/2023-24, dated 31.10.2023 (hereinafter referred to as "the impugned order") passed by Additional Commissioner, Customs, Surat (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of passenger profiling, the AIU officers intercepted the appellant having Indian Passport No. P2547381 who arrived by Air India Express Flight No. IX 172 on 27.07.2022 From Sharjah to Surat International Airport. The appellant was intercepted when he was attempting to exit the arrival hall of International Airport, Surat, along with his baggage by opting for Green Channel clearance without any declaration to the Customs. The appellant was found carrying one black Colour trolley bag and one brown colour bag. The officers then specifically asked the passenger whether he was carrying any high value dutiable goods and does he have anything to declare to the Customs. However, the appellant denied having any such thing with him. The appellant as directed by the officers readily removed objects such as mobile, purse, belt etc., and kept them on a table; and when he passed through the DFMD (Door Frame Metal Detector) Machine, no beep sound was heard. Thereafter, the officers scanned the baggage of the appellant i.e., one black Colour trolley bag and one brown colour bag in the XBIS scanning machine installed in arrival hall. During the scanning of black colour trolley bag with "Dollar" mark, it was noticed that a metal wire was concealed in beaded moulding for edging on top part of the bag. Thereafter, the officers carried out physical search of the passenger wherein nothing objectionable was found. The officers then in presence of the Panchas and the appellant cut open the beaded moulding for edging on top part of the black colour trolley bag with "Dollar" mark, with a cutter/knife and took out three metal wires concealed therein from the said bag. The wires were found to be of white colour and suspected to be made of gold coated with Rhodium.

2.1 The Govt approved valuer, Shri Vikasraj Juneja after checking and examining the wires issued a Valuation Certificate bearing no. SC11/2022 dated 28.07.2022 and certified that the three pieces of white colour metal wire totally weighing 202.130 gms recovered from the passenger are made of gold with rhodium plating and have a purity of 99.95%, with a Market Value of Rs. 10,62,672/- and Tariff value of Rs. 8,96,669/- calculated as



per the Notification No. 62/2022-Customs(N.T.) dated 15.07.2022 and Notification No. 64/2022-Customs(N.T.) dated 21.07.2022.

2.2 The three pieces of white colour rhodium coated gold wire totally weighing 202.130 gms having purity of 99.95% and valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value) which were found concealed in the baggage and recovered from the appellant were placed under seizure under the provisions of section 110 of the Customs Act 1962 vide Seizure order under Panchnama proceedings both dated 28.07.2022, on a reasonable belief that the said three pieces of rhodium coated gold wire, were smuggled into India and were liable to confiscation under provisions of the Customs Act, 1962. The black colour trolley bag with "Dollar" mark in which the said three pieces of white rhodium coated gold wire were concealed was also placed under Seizure vide Seizure order under Panchnama proceedings both dated 28.07.2022.

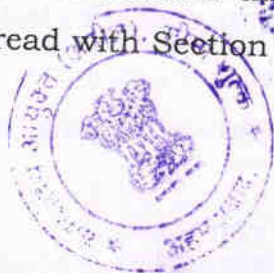
2.3 Statement of the appellant was recorded on 28.07.2022 under Section 108 of the Customs Act,1962, wherein he, inter-alia, confirmed that he has been shown and explained the panchnama dated 28.07.2022 drawn at International Airport, Surat by the officers and he agreed with the Panchnama proceedings dated 28.07.2022 drawn by the officers. He further stated that that he was carrying one Black Colour trolley bag with "Dollar" mark and one brown colour bag and he had concealed three white rhodium plated gold wires in Black Colour trolley bag with "Dollar" mark; that the aforementioned bag was given to him by one person in Sharjah whose name he didn't know. That the said individual instructed him that the bag containing concealed Gold wire in the beaded moulding for edging on top part of the bag and it is to be delivered to a person outside Surat International Airport in lieu of an amount of Rs. 30,000/-. The individual in question informed him that the person to whom the products were to be delivered would call him on his mobile number. He accepted to this proposal because he was in desperate need of money; that he was aware that carrying the gold wire was considered smuggling activity with an intention to evade the customs duty. He admitted that he had carried three white rhodium plated gold wires weighing 202.130 Grams with an intent to evade customs duty by smuggling the same into India; that he was aware that carrying gold concealed in bag is an offence under the Customs Act, but he took a chance so as to gain some money. He further stated that this was the first time he had smuggled Gold into India. He was also aware that if Gold is imported into India from abroad then it should be declared before Customs and appropriate Customs duty should be paid if otherwise eligible to import. But as he was in desperate need of money, he had concealed the



said Gold in baggage and was certain that he could evade Customs and smuggle the Gold out of Airport. He further stated that he had intentionally not declared the said Gold wires being smuggled by him before the Customs Authorities on his arrival at Surat International Airport as he wanted to clear it illicitly and evade payment of Custom duty. He also admitted that he was aware that he had committed an offence by evading payment of Custom duty for which he had to face the consequences as prescribed under the Customs Law.

2.4 The appellant had actively involved himself in the instant case of smuggling of white rhodium coated gold wire pieces into India. The appellant had improperly imported three pieces of white rhodium coated gold wire, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value) by concealing it in black colour trolley bag with "Dollar" mark without declaring it to the Customs. He opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported three white rhodium coated gold wire totally weighing 202.130 gms, by the appellant by way of concealment in the baggage without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The bag with the concealed gold wires does not belong to him and was given to him by another person in Sharjah for delivering it to some other person in India for a monetary consideration. He is also not an eligible passenger to import gold into India as per the Baggage Rules or the Notification No.50/2017-Customs dated 30.06.2017 as amended due to his short duration of stay abroad. Thus the black colour trolley bag with "Dollar" mark which contained the concealed gold cannot be treated as bonafide baggage of the appellant has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

2.5 By not declaring the contents of his baggage which included dutiable and prohibited goods to the proper officer of the Customs the appellant has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. The improperly imported gold by the appellant, found concealed without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(1) & 111(m) read with Section 2 (22), (33),



(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962. The appellant, by his above-described acts of omission/commission and/or abetment on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962. As per Section 123 of Customs Act 1962, the burden of proving that the said improperly imported three pieces of white rhodium coated gold wire, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value) by way of concealment in the black coloured trolley bag, without declaring it to the Customs, are not smuggled goods, is upon the appellant.

2.6 A Show Cause Notice dated 18.01.2023 was issued to the appellant proposing for confiscation of three pieces of white rhodium coated gold wire, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value) seized under Panchnama dated 28.07.2022 under Section 111(d), 111(f), 111(i), 111(j), 111(1) & 111(m) of the Customs Act, 1962, for confiscation of black colour trolley bag with "Dollar" mark seized from him vide seizure order under panchnama proceedings both dated 28.07.2022 under Section 119 of the Customs Act, 1962 and for imposition of penalty upon the appellant under Section 112(a) of the Customs Act, 1962.

2.7 The Adjudicating authority vide impugned order has ordered for absolute confiscation of three pieces of white rhodium coated gold wire, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value) seized under Panchnama dated 28.07.2022 under Section 111(d), 111(f), 111(i), 111(j), 111(1) & 111(m) of the Customs Act, 1962. The adjudicating authority also ordered for confiscation of the black colour trolley bag with "Dollar" mark under Section 119 of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs 10,62,672/- 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;

- The applicant is not dealing in the export or import of gold.
- The applicant is not frequently travelling to the foreign country so as to infer the applicant having knowledge or intention to defraud the authorities.
- The applicant is unknown about the entire episode as to the bag containing any metal which is in the nature of prohibition. Even the



applicant does not know who that person was at Surat International Airport.

- During the proceeding of the show cause notice also and even prior to that at the time of preparation of the panchnama and recording of the statement of the present applicant, it is not found regarding the persons handing over the bag and the person/s to be receiving the bag.
- This great amount of penalty would be causing undue hardship to the applicant as such deposit of such amount needs to be dispense with to safeguard the interest of the applicant.
- In the appeal, the applicant claims the relief of either absolute confiscation or in alternative the lesser amount of penalty, by this way, the interest of the revenue would also be safeguarded.

4. Shri Jitendra H Singh and Shri Shivang Ramani, Advocate, appeared for personal hearing on 03.07.2025 on behalf of the appellant. They 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 three pieces of white rhodium coated gold wire concealed in the trolley bag, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff 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 quantum of penalty amounting to Rs.10,62,000/- 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.

5.1 It is observed that the appellant, on the basis of passenger profiling, was intercepted the AIU officers having Indian Passport No. P2547381 who arrived by Air India Express Flight No. IX 172 on 27.07.2022 from Sharjah to Surat International Airport. The appellant was intercepted when he was attempting to exit the arrival hall of International Airport, Surat, along with his baggage by opting for Green Channel clearance without any declaration to the Customs. The appellant was found carrying one black Colour trolley bag and one brown colour bag. The officers then specifically asked the

passenger whether he was carrying any high value dutiable goods and does he have anything to declare to the Customs. However, the appellant denied having any such thing with him. The appellant as directed by the officers readily removed objects such as mobile, purse, belt etc., and kept them on a table; and when he passed through the DFMD (Door Frame Metal Detector) Machine, no beep sound was heard. Thereafter, the officers scanned the baggage of the appellant i.e., one black Colour trolley bag and one brown colour bag in the XBIS scanning machine installed in arrival hall. During the scanning of black colour trolley bag with "Dollar" mark, it was noticed that a metal wire was concealed in beaded moulding for edging on top part of the bag. Thereafter, the officers carried out physical search of the passenger wherein nothing objectionable was found. The officers then in presence of the Panchas and the appellant cut open the beaded moulding for edging on top part of the black colour trolley bag with "Dollar" mark, with a cutter/knife and took out three metal wires concealed therein from the said bag. The wires were found to be of white colour and suspected to be made of gold coated with Rhodium. The Govt approved valuer, Shri Vikasraj Juneja after checking and examining the wires issued a Valuation Certificate bearing no. SC11/2022 dated 28.07.2022 and certified that the three pieces of white colour metal wire totally weighing 202.130 gms recovered from the passenger are made of gold with rhodium plating and have a purity of 99.95%, with a Market Value of Rs. 10,62,672/- and Tariff value of Rs. 8,96,669/-. The said gold were seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 28.07.2022. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold concealed in wire form in the trolley bag at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

5.2 I find that it is undisputed that the appellant had not declared the seized gold concealed in wire form in the trolley bag to the Customs on his arrival in India. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of gold concealed in wire form in the trolley bag. 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) of the Customs Act, 1962.

5.3 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 on the similar issues. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed condition of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant are consequently liable for penalty. Thus, it is held that the undeclared three pieces of white rhodium coated gold wire concealed in the trolley bag, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value), are liable to confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962 and the appellant is also liable to penalty under Section 112(a) *ibid*.

5.4 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....."

Thus, it is clear 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.

5.5 It is further observed that the adjudicating authority in the instant case had relying on the decisions of Hon'ble Supreme Court in the case of

Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), 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], Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)] discussed in paras 19 to 24 of the impugned order, had held that smuggling of gold was done by the appellant and had ordered for absolute confiscation of three pieces of white rhodium coated gold wire concealed in the trolley bag, totally weighing 202.130 gms having 99.95% purity valued at Rs. 10,62,672/- (market value) and Rs.8,96,669/- (tariff value).

5.6 It is also observed from the facts and records of the present case that the appellant had ingeniously concealed gold in wire form concealed in the trolley bag with an intention to smuggle the same without payment of duty. The gold in wire form concealed in the trolley bag was detected during scanning of baggage of the appellant on the basis of profiling of the appellant. The appellant in his statement recorded under Section 108 of the Customs Act, 1962 on 28.07.2022 had admitted his offence. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold was concealed ingeniously in trolley bag in the form of wires.

5.8 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

5.9 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. 202.130 grams concealed in trolley bag in the form of wires coated with white rhodium was concealed discreetly in the baggage.

5.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority vide Order No. 217/2024-Cus, dated 16.10.2024 on similar issue i.e. attempt to bring undeclared gold in paste form in the case of Riswan Kochupurayil Nazeer, has upheld the absolute confiscation of 788.940 grams of gold extracted from gold paste weighing 874.760 grams valued at 30,29,931/- (Assessable Value) and Rs 34,99,286/- (market value). The penalty imposed was also upheld. The relevant paras are reproduced as under:

"8. The Government has examined the matter. It is observed that the Applicant has not declared the possession of impugned gold in his Customs declaration form and it was only through persistent enquiry and examination of the Applicant, that the body concealment of the impugned gold in paste form came to light. The Appellate Authority has also observed that the Applicant in his voluntary statement dated 04.01.2021 under Section 108 of the Customs Act, 1962 admitted that he knew that importing of gold without payment of duty is an offence; that he had committed an offence by concealing the gold and not declaring the same to evade payment of Customs duty; that the impugned gold was handed over to him by a person at Dubal with instructions to smuggle the same to India and promised the Applicant a remuneration of Rs. 30,000/- in return. The Applicant in his second voluntary statement recorded on 16.01.2021 reiterated his earlier statement. The Appellate Authority in para (11) of the said O-I-A, has



also noted that, on 11.07.2022, the Authorised representative of the Applicant, Shri Nazeer, who is the father of the Applicant, has admitted to his son's offence and has also stated the Applicant has committed this offence knowingly for financial gains. The impugned gold items smuggled into India via ingenious body concealment cannot be considered as bonafide baggage. The entire proceedings have also been covered under a Mahazar in presence of independent witnesses which also corroborates the sequence of events.

9. As per Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. Leave alone declaring the gold as required under Section 77 of the Customs Act, 1962, the Applicant chose to ingeniously conceal it in his rectum and this was detected only upon during his search & examination. Had he been the owner of the gold and had intended to declare the gold to Customs, he would not have had to resort to such ingenious concealment. Thus, the lack of any documents establishing ownership and non-declaration is not surprising. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the adjudicating & appellate authorities that the impugned goods were liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

10.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, Import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* (1971 AIR 293), the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi* (2003(155) ELT423(SC)), the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Further, in the case of *UOI & Ors vs. M/s Raj Grow Impex LLP & Ors* (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in *Sheikh Mohd. Omer* (*supra*) and *Om Prakash Bhatia* (*supra*) to hold that "any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."

10.2 In the case of *Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai* [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (leaving aside the Hon'ble Jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962---."

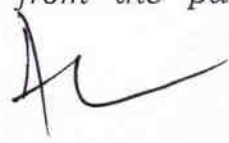
10.3 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that "A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". Hence, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid*.

10.4 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

11. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that ".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

12.1 As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles Imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj vs Commissioner of Customs (P), Lucknow (2019(365) ELT 695(All.)), held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had not made a true declaration under Section 77.

12.2 Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs. UOI (2009 (241) ELT 621 (Del.)), held that re-export is not permissible when article is recovered from the passenger while



attempting to smuggle it. Hence, the question of allowing re-export does not arise.

13. The case laws relied upon by the Applicant, in support of his various contentions, are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

14. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods as upheld by Commissioner Appeals does not require any interference. The quantum of penalty imposed on the Applicant is neither harsh nor excessive.

15. The revision application is rejected for the reasons aforesaid."

5.10 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.

5.11 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.

5.12 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.

5.13 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, acting as a carrier concealed the seized gold in form of wires coated with white rhodium in the trolley bag with an intention to smuggle the same into India. The gold was detected only on the scanning of the baggage of the appellant on the basis of his profiling. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.16 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 ingenious as substantial quantity of gold form of wires coated with white rhodium in the trolley bag weighing 202.130 grams was intentionally and ingeniously concealed in form of wires coated with white rhodium in the trolley bag to evade detection by the Customs authorities. The appellant did not intend to declare the said gold and the same was detected only on scanning of his baggage. He also admitted that he was carrying the said gold and intendent to clear the same without paying Customs duty from the Airport. The appellant in the grounds of appeal has neither contested the absolute confiscation of gold nor challenged the findings of the adjudicating authority. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned and intentional smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of seized gold of 24 kt/99.95 purity weighing 202.130 grams valued at Rs. 8,96,669/- (Tariff Value) and Rs 10,62,672/- (Market Value) under Customs Act, 1962. In view of above, the absolute confiscation of gold of 24 kt gold weighing 202.130 grams valued at Rs. 8,96,669/- (Tariff Value) and Rs 10,62,672/- (Market Value) is upheld.

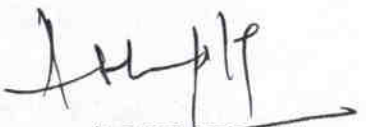


6.17 Further, in respect of imposition of penalty amounting to Rs 10,62,672/- on the appellant for bringing undeclared gold weighing 202.130 grams valued at Rs. 8,96,669/- (Tariff Value) and Rs 10,62,672/- (Market Value), the appellant has attempted to bring gold into India without declaring the same and concealing the same ingeniously in form of wires coated with white rhodium in the trolley bag. The appellant was working as a carrier only. He is not owner of the gold. It is observed that the appellant was not a habitual offender and was not a part of organised smuggling syndicate. The adjudicating authority has imposed penalty equal to the market value of the seized gold and has not recorded any findings for imposing the same. The appellant has also in the grounds of appeal has requested for reduction of penalty. In view of the above and looking at the role played by the appellant I am of the considered view that penalty of Rs. 10,62,672/- ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty to Rs. 1,00,000/-.

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



સત્યાપિત/ATTESTED
અધીક્ષક/SUPERINTENDENT
સીમા શુલ્ક (અપીલ), અમદાવાદ.
CUSTOMS (APPEALS), AHMEDABAD


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F. No. S/49-402/CUS/AHD/2023-24
To, 2753

Dated -07.08.2025

- (i) Shri Kishore Gokaldas Pala,
Pala Jewellers ni bajuma, Haveli Gali,
Chandi Bazar, Main Road, Junagarh - 362001,

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