



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

DIN -20251171MN0000222C78

क	फ़ाइलसंख्या FILE NO.	S/49-227 to 255/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-327 to 355-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	14.11.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	140/ADC/SRV/O&A/2025-26 dated 06.10.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	14.11.2025



<p>ઉ</p>	<p>અપીલકર્તાકાનામવપતા NAME AND ADDRESS OF THE APPELLANT:</p>	<ol style="list-style-type: none"> 1. Shri Kiritkumar Laljibhai Patel S/o Shri Laljibhai Ambaram Patel 20, Sarjan Bungalows, Panchvati, Kalol, Distt-Gandhinagar-382721 2. Shri Parth Dashrathbhai Patel, S/o Shri Dashrathbhai Punji Patel 0, Gayatri Nagar, Mankanaj, Mehsana-384421 3. Patel Parulben Baldevbhai, 144, Shiv Ganesh Bungalows, Nr. Madhuram Plot, 100 Feet Ring Road, Shilaj Thaltej, Ahmedabad-380059 4. Patel Rasikbhai, 8/19, Khant Vas, Thol, Kadi, Mehasana-382715 5. Patel Babubhai Ambaial B/6 Vimal Nath Tenements, Nirnay Nagar Road, Ranip, Ahmedabad- 382480 6. Nayak Mangalbhai Shankarbhai Lal Vas, Opp. Khant Vas, Thol, Mehasana-382715 7. Patel Ashaben Shaileshkumar 32 Siddhi Bunglows, GST Road, New Ranip, Ahire labad-382480 8. Nayak Mansukhbhai Shankarbhai Lal Vas Opp. Khat Vas, Thol, Mehsana-382715 9. Patel Upendrabhai Jivabhai, Ambaji Matanu Mandir Thol, Kadi, Mehasana-382715 10. Patel Khodabhai Nagardas, A-101, Silicone Square Nr. Sukan Six Flats Oppt Solar Science City Sola Ahmedabad-380060 11. Patel Jayantilal Madhabhai Khont Vas At Thol Kadi Mehasana-382715 12. Patel Madhavlal Shankardas At And Post Thol Mehasana-382715 13. Patel Jashodaben Babaubhai B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480 14. Patel Baldevbhai Shakrabhai, 144 Shiv Ganesh Bungalows, Nr. Madhuram Plot, 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059 15. Patel Vikrambhai Madhvas Ambaji Mata No Chok, Thol Kadi, Mehasana-382715 16. Patel Navin Ranchhodbhai A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad-380015 17. Patel Varshaben Navinbhai Sonivas Village, Thol Kadi Mehasana-382715 18. Nayak Hansabebn Mansukhabhai 2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440 19. Patel Kaminaben Bhagvanbhai Thol Mehasana-382715 20. Patel Kokilaben Rasikbhai 8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana-382715 21. Patel Manjulaben Jayantilal Khont Vas At Thol-382715 22. Patel Manjulaben Chandrakant Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715 23. Nayak Shakutlaben Mangalbhai 2-64/Lal Vas, Opposite Khant Vas, Thol Mehasana-382715, Gujarat.
----------	--	--

		<p>24. Patel Sharmishthaben Ramanbhai B-201, Swastik Residency, RC Technical. Road, Chandlodia, Ahmedabad-380061</p> <p>25. Patel Hasumatiben Dineshbhai C/2/205, Vishwas Apartment, Nr. Gulab. Tower, Thaltej, Ahmedabad-380054</p> <p>26. Patel Kapilaben Dineshbhai Bhav Vas Thol, Kadi Mehasana-382728</p> <p>27. Patel Vijaykumar Dhanabhai Khant Vas At Thol Kadi Mehasana-382715</p> <p>28. Patel Navinchandra Shivilal 11-A/Saraswati Nagar Society, Opp. Kr Rawal School, Ranip, Ahmedabad-382480</p> <p>29. Patel Ramanbhai Dhulabhai B-201, Swastik Residency, RC Technical Road, Chandlodia, Ahmedabad-380061</p>
1.	यहप्रतिसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.	
	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, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं.	
	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.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकीसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.	
	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.	
	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंग्रहोनेचाहिए :	
	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)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित)	

	<p>मेनिधारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमर्दोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)या रु.1000/- (रूपएएकहजारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाव्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-</p>	
(d)	<p>The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.</p>	
4.	<p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p>	
	<p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p>	
	सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ	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.	<p>सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1) केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</p>	
	<p>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 -</p>	
(क)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथा लगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररूपए.</p>	
(a)	<p>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;</p>	
(ख)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथा लगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहजाररूपए</p>	
(b)	<p>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 ;</p>	
(ग)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथा लगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहजाररूपए.</p>	
(c)	<p>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</p>	
(घ)	<p>इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहै, अपीलरखाजाएगा।</p>	
(d)	<p>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.</p>	
6.	<p>उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकि एगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p>	
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p>	
	<p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p>	
	<p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>	

ORDER-IN-APPEAL

Twenty Nine appeals have been filed by the following appellants (Details as per Table-A) in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 140/ADC/SRV/O&A/2025-26 dated 06.10.2025 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

Table A

Sr. No.	Appeal No	Name of appellant	The appellant hereinafter referred to as
01	S/49-254/CUS/AHD/25-26	Shri Kiritkumar Laljibhai Patel S/o Shri Laljibhai Ambaram Patel 20, Sarjan Bungalows, Panchvati, Kalol, Distt-Gandhinagar-382721	Appellant -1
02	S/49-255/CUS/AHD/25-26	Shri Parth Dashrathbhai Patel, S/o Shri Dashrathbhai Punji Patel 0, Gayatri Nagar, Mankanaj, Mehsana-384421	Appellant -2
03	S/49-242/CUS/AHD/25-26	Patel Parulben Baldevbhai, 144, Shiv Ganesh Bungalows, Nr. Madhuram Plot, 100 Feet Ring Road, Shilaj Thaltej, Ahmedabad-380059	Appellant -3
04	S/49-235/CUS/AHD/25-26	Patel Rasikbhai Shankarbhai, 8/19, Khant Vas, Thol, Kadi, Mehasana- 382715	Appellant -4
05	S/49-241/CUS/AHD/25-26	Patel Babubhai Ambalal B/6 Vimal Nath Tenements, Nirnay Nagar Road, Ranip, Ahmedabad- 382480	Appellant -5
06	S/49-229/CUS/AHD/25-26	Nayak Mangalbhai Shankarbhai Lal Vas, Opp. Khant Vas, Thol, Mehasana-382715	Appellant -6
07	S/49-227/CUS/AHD/25-26	Patel Ashaben Shaileshkumar 32 Siddhi Bunglows, GST Road, New Ranip, Ahire labad-382480	Appellant -7
08	S/49-230/CUS/AHD/25-26	Nayak Mansukhbhai Shankarbhai Lal Vas Opp. Khat Vas, Thol, Mehsana- 382715	Appellant -8
09	S/49-247/CUS/AHD/25-26	Patel Upendrabhai Jivabhai, Ambaji Matanu Mandir Thol, Kadi, Mehasana- 382715	Appellant -9
10	S/49-244/CUS/AHD/25-26	Patel Khodabhai Nagardas, A-101, Silicone Square Nr. Sukan Six Flats Oppt Solar Science City Sola Ahmedabad-380060	Appellant -10
11	S/49-	Patel Jayantilal Madhabhai Khont Vas At Thol Kadi Mehasana-382715	Appellant -11

	246/CUS/AHD/25-26		
12	S/49- 253/CUS/AHD/25-26	Patel Madhavlal Shankardas At And Post Thol Mehasana-382715	Appellant -12
13	S/49- 240/CUS/AHD/25-26	Patel Jashodaben Babubhai B/6 Vimal Nath Tenament Nirnay Nagar Road Ranip Ahmedabad-382480	Appellant -13
14	S/49- 232/CUS/AHD/25-26	Patel Baldevbhai Shakrabhai, 144 Shiv Ganesh Bungalows, Nr. Madhuram Plot, 100feet Ring Road, Shilaj Thaltej, Ahmedabad-380059	Appellant -14
15	S/49- 233/CUS/AHD/25-26	Patel Vikrambhai, Madhvas Ambaji Mata No Chok, Thol Kadi, Mehasana-382715	Appellant -15
16	S/49- 237/CUS/AHD/25-26	Patel Navin Ranchhodbhai A-G-1 Jayraj Flats Near Lotus School Jodhpur Satellite Ahmedabad-380015	Appellant -16
17	S/49- 231/CUS/AHD/25-26	Patel Varshaben Navinbhai Sonivas Village Thol Kadi Mehasana-382715	Appellant -17
18	S/49- 236/CUS/AHD/25-26	Nayak Hansabehn Mansukhabhai 2/63 Lal Vas Oppt Khanta Vas Same, Thol Kadi Mehasana-384440	Appellant -18
19	S/49- 243/CUS/AHD/25-26	Patel Kaminaben Bhagvanbhai Thol Mehasana-382715	Appellant -19
20	S/49- 228/CUS/AHD/25-26	Patel Kokilaben Rasikbhai 8-6 Khantvas Oppt Bhagol Thol Talula Kadi Mehsana-382715	Appellant -20
21	S/49- 238/CUS/AHD/25-26	Patel Manjulaben Jayantilal Khont Vas At Thol-382715	Appellant -21
22	S/49- 239/CUS/AHD/25-26	Patel Manjulaben Chandrakant Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715	Appellant -22
23	S/49- 234/CUS/AHD/25-26	Nayak Shakutiben Mangalbhai 2-64/Lal Vas, Opposite Khant Vas, Thol Mehasana-382715, Gujarat	Appellant -23
24	S/49- 250/CUS/AHD/25-26	Patel Sharmishthaben Ramanbhai B-201, Swastik Residency, RC Technical. Road, Chandlodia, Ahmedabad-380061	Appellant -24
25	S/49- 245/CUS/AHD/25-26	Patel Hasumatiben Dineshbhai C/2/205, Vishwas Apartment, Nr. Gulab. Tower, Thaltej, Ahmedabad-380054	Appellant -25
26	S/49- 249/CUS/AHD/25-26	Patel Kapilaben Dineshbhai Bhav Vas Thol, Kadi Mehasana-382728	Appellant -26
27	S/49-	Patel Vijaykumar Dhanabhai Khant Vas At Thol Kadi Mehasana-382715	Appellant -27

	252/CUS/AHD/25-26		
28	S/49- 248/CUS/AHD/25-26	Patel Navinchandra Shirlal 11-A/Saraswati Nagar Society, Opp. Kr Rawal School, Ranip, Ahmedabad-382480	Appellant -28
29	S/49- 251/CUS/AHD/25-26	Patel Ramanbhai Dhulabhai B-201, Swastik Residency, RC Technical Road, Chandlodia, Ahmedabad-380061	Appellant -29

2. Briefly stated, facts of the case are that on the basis of an information, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted tour operators i.e. appellant 1 and appellant 2 and their 27 client passengers i.e. appellant 3 to appellant 29 arriving by Air Arabia flight no. 3L-111 from Abu Dhabi to Ahmedabad at Terminal-2 of the SVP International Airport, Ahmedabad, while they were attempting to exit through green channel without making any declaration to the Customs. All the appellants were asked by the AIU Officers whether they have made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which they replied in negative and informed that they were not carrying any dutiable items with them. Appellant's personal search and examination of their baggage was conducted in presence of two independent witnesses and the proceedings were recorded under Panchnama dated 21.10.2024. The officers examined appellant 1, (Passport No 24418707.), and appellant 2 (Passport No-P4195251, however nothing objectionable is found from these 2 appellants.



2.1 Thereafter, the officers asked appellant 1 and appellant 2 whether they themselves or their client tourists have brought any dutiable items with them to which appellant 1 stated that he had purchased certain 24 Kt. gold items in the UAE and handed over the same to their clients. He further stated that the said client passengers were instructed by him to return the said gold items to him after coming out of the Ahmedabad Airport. He stated that he had promised to give Rs. 13,000/- to each of the passenger for carrying the said gold items from Abu Dhabi to SVPIA Ahmedabad. Further, appellant 1 and appellant 2 inform that some of the passengers have carried their own gold items of 24 Kt also which was purchased by the concerned passengers during their tour of UAE from their own funds and the same was owned by them only.

2.2 Thereafter, the Government Approved Valuer Shri Soni Kartikey Vasantrai after conducting valuation of these gold items submitted his report which is as under in Table A:

Table A

Sr No	Name of the appellant	Passport No	Wt of Gold of purity 24 kt (in grams)	Description of gold Items	Certificate No	Market Value(in Rs)
01	Appellant 3	R2828582	139.58	01 Gold Mangalsutra	1086	11,23,898
02	Appellant 4	W7600989	139.99	01 Gold Chain	1087	11,27,199
03	Appellant 5	N0182349	134.29	01 Gold Mangalsutra	1090	10,81,303
04	Appellant 6	W3720687	139.94	01 Gold Chain	1092	11,26,797
05	Appellant 7	N6597028	140.70	01 Gold Mangalsutra	1093	11,32,916
06	Appellant 8	W4258816	139.90	01 Gold Chain	1098	11,26,475
07	Appellant 9	W0020027	139.93	01 Gold Chain	1099	11,26,716
08	Appellant 10	Y3002195	139.93	01 Gold Chain	1100	11,26,716
09	Appellant 11	T7603610	139.94	01 Gold Chain	1103	11,26,797
10	Appellant 12	B6554159	139.94	01 Gold Chain	1104	11,26,797
11	Appellant 13	N9420949	139.92	01 Gold Chain	1105	11,26,636
12	Appellant 14	R2829315	139.88	01 Gold Chain	1106	11,26,314
13	Appellant 15	C0338130	139.93	01 Gold Chain	1107	11,26,716
14	Appellant 16	S9026617	140.04	01 Gold Chain	1108	11,27,602
15	Appellant 17	S8655907	140.23	01 Gold Mangalsutra	1109	11,29,132
16	Appellant 18	W4259498	138.68	01 Gold Mangalsutra	1110	11,16,651
17	Appellant 19	S9005962	141.46	01 Gold Mangalsutra	1111	11,39,036
18	Appellant 20	W7598643	140.03	01 Gold	1112	11,27,522

				Mangalsutra		
19	Appellant 21	T7599469	141.40	01 Gold Mangalsutra	1113	11,38,553
20	Appellant 22	X4787945	134.15	01 Gold Mangalsutra	1114	10,80,176
21	Appellant 23	W3278407	133.92	01 Gold Mangalsutra	1115	10,78,324
		TOTAL	2923.78			2,35,42,276

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

Table B

Sr No	Name of the appellant	Passport No	Wt of Gold of purity 24 kt (in grams)	Description of gold Items	Certificate No	Market Value(in Rs)
01	Appellant 24	T7855586	40.08	02 Gold Bangles	1085	3,22,724
02	Appellant 25	N0555916	110.02	01 Gold Chain and 02 Gold Bangles	1088	8,85,881
03	Appellant 26	C1134602	79.95	04 Gold Bangles	1089	6,43,757
04	Appellant 27	S0747135	149.97	02 Gold Chain	1091	12,07,558
05	Appellant 28	T0387665	49.96	01 Gold Chain	1101	4,02,278
06	Appellant 29	T7839156	40.05	01 Gold Kada	1102	3,22,483
		TOTAL	470.03			37,84,682

As per the valuation reports given by the said Govt. approved valuer, the net weight and value of the said gold items attempted to be smuggled by the 21 appellants (as referenced in Table A above) on behalf of and under instructions of appellant 1 and appellant 2 is 2923.78 Grams and having Market Value of Rs 2,35,42,276/-. Similarly, the total weight of 24 Kt. gold

items attempted to be smuggled by 6 appellants (as per Table B above) in their own capacity is 470.03 Grams having Market Value of Rs 37,84,682/- and Tariff Value of Rs 33,87,812/-. Shri Soni Kartikey Vasantrai also submitted his valuation reports in 27 Certificates all dated 21.10.2024. Shri Soni Kartikey Vasantrai has given his valuation report of the said gold items as per the Notification No. 66/2024-Customs (N.T.) dated 15.10.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate).

2.3 The aforementioned gold items totally weighing 3393.8 grams (2923.78 grams + 470.03 Grams) having purity 999.0/24kt recovered from the aforesaid 27 appellants i.e. appellant 03 to 29 (as per Table A and Table B above) who had carried the same without declaring before the Customs Authorities amounts to smuggling of gold and therefore, the same is liable for confiscation under the provisions of the Customs Act, 1962. Accordingly, the said gold items were placed under seizure vide 27 Seizure Orders all dated 21.10.2024.

2.3 Statement of the appellant 1 was recorded on 21.10.2024, 22.10.2024 and 15.12.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he is tour operator and he is doing business in the name of M/s. Raj Visa Travels. The firm is a partnership firm. He alongwith his brother Shri Sanjay Kumar Laljibhai Patel are the partners in the said firm. He submitted that he travelled abroad as a tour guide as well as on personal visits with his family members. He organized 50-60 (approx.) trips per year under his travel agency, out of which, he accompanies the tour abroad 6-7 times with the group. He charged actual air ticket charges plus Rs. 2000/- service charges. He further charged land package amount in respect of the concerned country/destination which includes Air ticket as well as stay, food and local sightseeing. Thus, total cost to a passenger is Rs. 60,000/- to 80,000/- depending on the flight, date of booking and inclusions like places to visit and hotel type. He further stated that he was present during the entire panchnama proceedings. He stated that it is true that the gold items recovered from the following 21 appellants (as referenced in Table A above) were procured by him in the UAE and handed over to them for the purpose of carrying till outside SVPI Airport, Ahmedabad. He stated that he had given Rs. 10,000/- to Rs. 13,000/- discount to each concerned passenger in their international tour package of UAE for carrying the said gold articles. He further provided the details of tour package charges collected by him from his clients for various destinations. He provided the details of the person from whom these gold items were purchased in the UAE on credit and the

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

2.4 Statement of the appellant 2 was recorded on 21.10.2024 and 22.10.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he is tour operator and a partner in M/s. Raj Visa Travel at Mehsana Branch. He submitted that he travelled abroad as a tour guide. He submitted that their firm organized 50-60 (approx.) trips per year under their travel agency, out of which, he accompanies the tours abroad 5 times with the group. He submitted that they have charged actual air ticket charges plus Rs. 2000/- service charges. He further charged land package amount in respect of the concerned country/ destination which includes Air ticket as well as stay, food and local sightseeing. Thus, the total cost to a passenger is Rs. 60,000/- to 80,000/- depending on the flight, date of booking and inclusions like places to visit and hotel type. He further stated that he was present during the entire panchnama proceedings. He stated that it is true that the gold items recovered from the 21 appellants (as referenced in Table A above) were procured by appellant 1 in the UAE and handed over to them for the purpose of carrying till outside SVPI Airport, Ahmedabad. He stated that appellant 1 had given Rs. 10,000/- to Rs. 13,000/- each discount to the concerned appellants in their international tour package of UAE for carrying the said gold articles. He submitted that appellant 1 had handed over the 24 Kt. Gold items to 21 appellants and asked them to keep these with them so that these gold items are not visible. Subsequently these gold items were seized by the AIU officers. He submitted that appellant 1 had purchased the said gold items from M/s. Darvesh Jewelers, Gold Souq, Dera, Dubai which was owned by Shri Adil. He submitted that the gold was purchased from Shri Adil on Credit and appellant 1 was to make payment after selling the gold in India. He provided the details of the person from whom these gold items were purchased in the UAE on credit and the payment was to be made to him after these gold items were sold in India. He submitted that they have distributed 24kt gold ornaments to the appellants in small quantities so that none of them bear much risk and if they caught, they may get the gold released upon payment of customs duty.

2.5 Statement of the appellant 03 to 23 was recorded on 21.10.2024 under Section 108 of the Customs Act, 1962, wherein they, inter-alia, confirmed the veracity of the Panchnama dated 21.10.2024. The appellants



further stated that the owner of the 24 kt. Pure Gold item as detailed in Table A above which were recovered from them during the Panchnama dated 21.10.2024 is of appellant 1. The same gold item was handed over to them in Abu Dhabi. The appellants further stated that they had accepted to carry the said gold item in lieu of discount promised by appellant 1 for UAE trip.

2.6 Statement of the appellant 24 to 29 was recorded on 21.10.2024 under Section 108 of the Customs Act, 1962, wherein they, inter-alia, confirmed the veracity of the Panchnama dated 21.10.2024. The appellants further claimed ownership of the 24 kt. Pure Gold item as detailed in Table B above which were recovered from them during the Panchnama dated 21.10.2024 and that the same was purchased by them in the UAE under guidance from appellant 1.

2.7 From the above, it evidently appears that all the 21 appellants (as per Table A above) on the direction of appellant 1 and appellant 2 involved in carrying the gold clandestinely to evade the payment of Customs Duty. Further, the remaining 06 appellants (as per the Table-B above) in their voluntary statements admitted that they have purchased the gold themselves and concealed the same with them on arrival at SVPIA Airport Ahmedabad and tried to exit through green channel without making any declaration to evade the payment of Customs Duty. In order to check the genuineness/correctness of details submitted/tendered in their statements, letters to all client passengers were issued on 13.01.2025 by Superintendent, AIU-A, SVPIA, Airport, Ahmedabad asking them to submit the detail viz. invoice from tour operator, mode of payment to operator, payment receipt alongwith proof of payment, Amount and form of money carried by them while going abroad, Customs Declaration, etc. In response to the above letters, on behalf of all 21 appellants (as referenced in Table A above), a reply was submitted by their common advocate/authorized representative vide letter dated 28.01.2025, wherein he submitted that his clients were the original owner of the gold jewellery. He submitted that this the first and only incident booked against their clients and they have not found involved in similar offence in earlier instances. He submitted that their clients have purchased the tickets in cash and purchased the gold jewellery on credit taken from their relatives living in UAE.

2.8 Appellant 1 and appellant 2 and the appellant 3 to 23 as detailed in Table A above had entered into a conspiracy to smuggle/improperly import following 24 Kt. Pure gold items owned by appellant 1 and distributed by appellant 1 and appellant 2 among the other appellants 03 to 23 and asked them to carry the same into India, with a deliberate intention to evade the

payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Further, the appellant 24 to 29 as detailed in Table B above had attempted to smuggle/improperly import 24 Kt. Pure gold items, with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations in their personal capacity. The appellant 1 and appellant 2 and other appellant 03 to 23 (as referenced in Table A above) as well as the appellant 24 to 29 as mentioned in Table B above in their personal capacity had knowingly and intentionally smuggled the said gold items upon their arrival from Abu Dhabi to Ahmedabad on 21.10.2024 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold items smuggled by the appellants, cannot be treated as bonafide household goods or personal effects. The appellants have, thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. The appellants, by not declaring the said gold items before the proper officer of the Customs have contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

2.9 The said gold items smuggled by the appellants, without declaring it to the Customs are liable for confiscation under Section 111 111(d), 111(1) and 111(m) read with Section 2 (22), (39) of the Customs Act, 1962. The appellants, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962. As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon the appellants.

2.10 A show cause notice was issued to the appellants for confiscation of impugned Gold items (in forms of Mangalsutras & Gold Chains) totally weighing 2923.78 grams having purity of 999.0/24Kt and market value of Rs.2,35,42,276/- recovered from appellant 03 to 23 (as per Table-A), seized under Section 110 of the Customs Act, 1962 under Section 111(d), 111(1) and 111(m) of the Customs Act, 1962, for confiscation of impugned Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing 470.03 grams having purity of 999.0/24Kt and market value of Rs.37,84,682/- recovered from appellant 24 to 29 (as per Table-B), seized under Section 110 of the Customs Act, 1962 under Section 111(d), 111(1)



and 111(m) of the Customs Act, 1962 and for imposition of penalty under Section 112 and 117 of the Customs Act, 1962.

2.11 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of Gold items (in forms of Mangalsutras & Gold Chains) totally weighing 2923.78 grams having purity of 999.0/24 Kt and market value of Rs. 2,35,42,276/- recovered from appellant 03 to 23 (as per Table-A), seized under Section 110 of the Customs Act, 1962 under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. The Adjudicating authority, vide the impugned order, has also ordered for absolute confiscation of Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing 470.03 grams having purity of 999.0/24 Carat and market value of Rs. 37,84,682/- recovered from appellant 24 to 29 (as per Table-B), seized under Section 110 of the Customs Act, 1962 under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty under Section 112(a), (b) and Section 117 of the Customs Act, 1962 as detailed below:

Sr No	Name of the appellant	Penalty under Section 112(a), and 112(b) of the Customs Act, 1962	Penalty under Section 117 of the Customs Act, 1962
01	Appellant 1	65,00,000/-	50,000/-
02	Appellant 2	65,00,000/-	50,000/-
03	Appellant 3	2,80,000/-	10,000/-
04	Appellant 4	2,80,000/-	10,000/-
05	Appellant 5	2,70,000/-	10,000/-
06	Appellant 6	2,80,000/-	10,000/-
07	Appellant 7	2,80,000/-	10,000/-
08	Appellant 8	2,80,000/-	10,000/-
09	Appellant 9	2,80,000/-	10,000/-
10	Appellant 10	2,80,000/-	10,000/-
11	Appellant 11	2,80,000/-	10,000/-
12	Appellant 12	2,80,000/-	10,000/-



13	Appellant 13	2,80,000/-	10,000/-
14	Appellant 14	2,80,000/-	10,000/-
15	Appellant 15	2,80,000/-	10,000/-
16	Appellant 16	2,80,000/-	10,000/-
17	Appellant 17	1,80,000/-	10,000/-
18	Appellant 18	1,80,000/-	10,000/-
19	Appellant 19	2,80,000/-	10,000/-
20	Appellant 20	2,80,000/-	10,000/-
21	Appellant 21	2,80,000/-	10,000/-
22	Appellant 22	2,70,000/-	10,000/-
23	Appellant 23	2,70,000/-	10,000/-
24	Appellant 24	80,000/-	10,000/-
25	Appellant 25	2,20,000/-	10,000/-
26	Appellant 26	1,60,000/-	10,000/-
27	Appellant 27	3,00,000/-	10,000/-
28	Appellant 28	1,00,000/-	10,000/-
29	Appellant 29	80,000/-	10,000/-



3. Being aggrieved with the impugned order, the appellants have filed the present appeals. Further appellant 1 and appellant 2 mainly contended as under;

- Nothing was recovered from the possession of the them, that the present applicant has not made any purchase of gold or carried the same. Also factually, the applicant and his clients were stopped well before the Immigration Counter and crossing any of the channels, they were not provided with any opportunity of declaration. That the applicant being a tour operator is wrongly roped in present case, the applicant has not claimed ownership of any of the gold item seized. That he appellant has not concealed any item, and further nothing was recovered admittedly from the appellant.

- The officers has wrongly recorded statements by threatening the clients of the appellant that they shall be arrested if they don't sign the statement prepared by the department. That the appellant did not make any offers to the passengers. The passengers themselves have purchased the gold items. Passengers were stopped at Ahmedabad airport, and the customs officials have threatened to beat up the passengers, file a case, and throw them in jail. According to what the customs officer told the passengers, we have given the wrong name of appellant.
- The appellant submit that the appellant had no knowledge of the gold, he has not assisted in purchase of any gold to any clients, there is no monetary transaction, no shred of evidence against the present appellant. The present appellant has been wrongly roped by the officers of the department. That the client of the appellant has preferred individual application and replies claiming ownership of the confiscated gold, also they have submitted evidence of the same. That in the light of the same no penalty can be imposed on the appellant.
- It is submitted that the appellant has never indulged in any smuggling activity in the past or present. He is not a habitual offender and has not been involved in this type of similar offense earlier.
- The appellants finally submitted that in the above premises, Your Honour may also be pleased to appreciate that no penalty deserves to be imposed upon them.
- As regards confiscation of the goods under Section 125 of the Customs Act 1962, the Ld. Adjudicating Authority, while admitting that there is no option to the Adjudicating Authority if the goods are not prohibited, but to release the goods on payment of redemption fine, and if the goods are prohibited he has a discretion to either release the goods on payment of redemption fine or confiscate the goods absolutely. The case laws relied upon by the adjudicating authority are not applicable in the facts and circumstances of the case.

Further the appellants 03 to 29 mainly contended as under;

- the present case was made on 21/10/2024 by the Customs, Ahmedabad without giving an opportunity to the declare the goods viz Gold chains, mangalsutra, gold bangles and gold kada weighing between 40 grams to 141 grams per appellant; the fact remains that the applicants were stopped well before the Customs area and



taken for check thus depriving the chance of filling the Declaration form and present the same to the Customs. Factually, the applicant was stopped well before the Immigration Counter.

- The applicants respectfully submits that all proceedings were undertaken in English language. The appellants are farmer, and he are not educated. Their English knowledge is to fill-up bank pay-in-slip and rail-reservation form only. The lengthy and legal terminology used in the panchnama and statement proceedings was beyond their understanding. None was available to explain the same to the appellant in vernacular or Hindi language. At the initial stage, the applicant thought that necessary proceedings are being undertaken to determine the quantum of import duty to be paid on the gold jewellery. However, later on, it was learnt that the goods brought are placed under seizure. Above all, there was no panchs witness available when the proceedings were undertaken and signatures of the panchs were taken after concluding the proceedings. The CCTV installed in the airport premises, if seen now, the contention made by the applicant would be found to be accurate.
- The applicants have submitted a provisional release application before the Department on 10/11/2024, wherein it was stated that the applicants are the rightful owner of the gold jewellery. It is further submitted that the statement under Section 108 was obtained by the officer of the Department through coercion and intimidation.
- The appellants vehemently denies the allegation that the gold jewellery were concealed in any manner. The appellants were wearing gold jewellery on the body. They did not conceal the gold jewellery. Therefore, the allegation made that the same was concealed is without any substance and thus, the allegation so made is baseless to increase the gravity of the allegation. The same is not sustainable.
- The appellant respectfully submits that the quantity of one gold jewellery brought by them was ranging between 40 grams to 141 grams having market value ranging between Rs. 3,22,483/- to Rs 11,39,036/-. Thus, it can be safely concluded that such a small quantity of gold jewellery cannot be for the purpose of sale and self-enrichment. The appellant deposed before the officials that it was meant for his family requirement.
- It is further submitted that the appellants were not a part of any gold smuggling syndicate. No allegation is made in the impugned



order to this effect. At no time in past and after this case, the appellants came to any adverse notice. The gold items brought were absolutely for personal and family use, but the applicant was stopped well before he could declare the same. Thus, the error committed was unintended and Bonafide in nature and the same has been committed for the first time a lenient was requested to be taken, however, the Ld Adjudicating Authority has imposed hefty penalties.

- The applicant respectfully prays that the gold jewellery weighing between 40 grams to 141 grams Grams, which was factually not concealed in any manner may kindly be ordered to be released to the applicant with payment of applicable duty and nominal penalty. In the matter, the applicant places his reliance of the following Orders of Ld. R.A., Mumbai, where in more severe cases, the gold ornaments/ gold was ordered to be released with payment of duty and little penalty. The applicant prays for reduction of penalty substantially since the quantity of gold is very small, which is meant for personal use and the same was not concealed in any manner.

a) RE- Ms. Mansi C. Trivedi V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/438/B/WZ/2022-RA Dated 07/12/2023.

(b) RE- Mr. Surajaram Godara V/s Pr. Commissioner of Customs, CSI Airport, Mumbai RA Order No. 371/126/B/WZ/2021-RA Dated 04/12/2023.

(c) RE- Ms. Mehraj Bi V/s Pr. Commissioner of Customs, CSI Airport, Mumbai RA Order No. 371/266/B/WZ/2021-RA Dated 19/12/2023.

(d) RE- Mr. Kasmani Asif Abdul Aziz V/s Pr. Commissioner of Customs Ahmedabad RA Order No. 371/306/B/WZ/2022-RA Dated 29/01/2024.

(e) RE- Mr. Khan Naseer A. Zaheer Ahmed O.I.A. AHD-CUSTM-000-APP-137-24-25 Dated 02/07/2024

- The appellants submits that without prejudice to the above contentions it is submitted that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble

Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The notice submits that some of the judgments are listed below viz.

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

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



- (ii) In union of India Vs Dhanak M. Ramji- 2009 (248) E.L.T. 127 (Bom) affirmed vide 2010 (252) E.L.T. A102 (SC) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (iii) In Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai-2008 (230) E.L.T. 305 the Tribunal observed that the frequent traveller was aware of rules and regulation and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (iv) In The Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat 2022 (382) E.L.T 345 (AH) The Hon'ble High Court observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute

confiscation of the gold up held the decision of Hon'ble Tribunal.

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

- It is respectfully submitted that the appellants belongs to a lower middle-class family and the penalty imposed between Rs 80,000/- to Rs 3,00,000/- and 10,000/- under the provisions of Section 112(a)(i) and section 112(b)(i) and 117 of the Customs Act 1962, in respect of other goods is highly excessive. The appellant had no ill intention, and the goods were brought for exclusive personal use in ignorance of law and being unaware thus both the excessive penalties imposed under Section 112(a) (i) and Section 112(b) and Section 117 may kindly be annulled with consequential relief to the applicant.
- They further submitted that the fact that gold is not a prohibited item for import is also evident from perusal of list of prohibited items for import. Therefore, also, the gold in question may be released.
- In the above premises, it is most humbly and earnestly urged that Your Honour may kindly appreciate that the gold jewellery deserves to be released and handed over to the appellants, the appellants are ready and willing to pay duty on that behalf, Your Honour may also be pleased to appreciate that no penalty deserves to be imposed upon the appellant.

The appellant says and submit that in view of the aforesaid submissions, the gold jewellery shall release the goods u/s 125 of Customs Act, 1962 on nominal redemption fine and personal penalty as the violation, if any, is of technical in nature.

4. Advocate, on behalf of the appellant 1 and 2 vide letter requested that he does not want personal hearing in the matter and requested to decide the appeal on merits as per grounds of Appeal in above mentioned case. He further submitted that the appellants has not made any kind of gold purchase. The appellant is not the owner of the said gold. The appellant has no connection whatsoever with the present case.

4.1 Advocate, on behalf of the appellant 03 to 29 vide letter requested that he does not want personal hearing in the matter and requested to decide the appeal on merits as per grounds of Appeal in above mentioned case. He further submitted that the appellants are farmer and had made the purchase for personal use. The appellant has also produced the invoice of the gold purchase before the Authority.

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 Gold items (in forms of Mangalsutras & Gold Chains) totally weighing 2923.78 grams having purity of 999.0/24 Kt and market value of Rs. 2,35,42,276/- recovered from appellant 03 to 23 (as per Table-A), 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 impugned order directing absolute confiscation of Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing 470.03 grams having purity of 999.0/24 Carat and market value of Rs. 37,84,682/- recovered from appellant 24 to 29 (as per Table-B), 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;

(c) Whether the quantum of penalty imposed on the appellant 1 to 29, under Section 112(a)& (b) and Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.



It is observed that on the basis of an information, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted tour operators i.e. appellant 1 and appellant 2 and their 27 client passengers i.e. appellant 3 to appellant 29 arriving by Air Arabia flight no. 3L-111 from Abu Dhabi to Ahmedabad at Terminal-2 of the SVP International Airport, Ahmedabad, while they were attempting to exit through green channel without making any declaration to the Customs. All the appellants were asked by the AIU Officers whether they have made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which they replied in negative and informed that they were not carrying any dutiable items with them. Appellant's personal search and examination of their baggage was conducted in presence of two independent witnesses and the proceedings were recorded under Panchnama dated 21.10.2024, which resulted in recovery of Gold items (in forms of Mangalsutras & Gold Chains) totally weighing 2923.78 grams having purity of 999.0/24 Kt and market value of Rs. 2,35,42,276/- from appellant 03 to 23 (as per Table-A) and recovery of

Gold items (in forms of Gold Chains, Gold Kadas & Gold bangles) totally weighing 470.03 grams having purity of 999.0/24 Carat and market value of Rs. 37,84,682/- from appellant 24 to 29 (as per Table-B). The Government Approved Valuer Shri Soni Kartikey Vasantrai, after testing the said items, vide his Certificate as mentioned in Table A and Table B above certified that recovered Gold jewellery from appellant 03 to 23 (as per Table-A) are totally weighing 2923.78 grams having purity of 999.0/24 Kt and market value of Rs. 2,35,42,276/- and recovered gold jewellery recovered from appellant 24 to 29 (as per Table-B) are totally weighing 470.03 grams having purity of 999.0/24 Kt and market value of Rs. 37,84,682/-. The appellants 03 to 29 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 appellants recorded under Section 108 of the Customs Act, 1962. There is no disputing the facts that the appellants 03 to 29 had not declared possession of gold at the time of their arrival in India. Thereby, they had violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

6.1 I find that it is undisputed that the appellants 03 to 29 had not declared the seized gold to the Customs on their arrival in India. Further, in their statement, the appellants 03 to 29 had admitted the knowledge, possession, carriage, non-declaration and recovery of the seized gold. The appellants 03 to 29 had, in their 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 appellants 03 to 29 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 appellants 03 to 29 had rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

6.2 I have also perused the decision of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India submitted by the appellants and other decisions also. 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 conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared impugned gold items totally weighing 3393.80 grams having purity 999.0/24kt, recovered from appellant 03 to 29 and valued at Rs 2,73,26,958/- (Market Value) are liable to confiscation and the appellants



who carried the gold jewellery are also liable to penalty under Section 112 of the Customs Act, 1962.

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

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

It is apparent from the above judicial pronouncement that even though gold is not enumerated as prohibited goods under Section 11 of the Customs Act, 1962, but it is to be imported on fulfilment of certain conditions, still, if the conditions for such import are not complied with, then import of gold will fall under prohibited goods.

6.4 In respect of absolute confiscation of impugned gold items totally weighing 3393.80 grams having purity 999.0/24kt, recovered from appellant 03 to 29 and valued at Rs 2,73,26,958/- (Market Value), it is observed that the adjudicating authority in the instant case 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)], Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu and other decisions in the impugned order, had



ordered for absolute confiscation of impugned gold items totally weighing 3393.80 grams having purity 999.0/24kt, recovered from appellant 03 to 29 and valued at Rs 2,73,26,958/- (Market Value).

6.5 I find that the Hon'ble CESTAT, Allahabad has in the case of COMMR. OF C. EX. & S.T., LUCKNOW V/s MOHD. HALIM MOHD. SHAMIM KHAN [2018 (359) E.L.T. 265 (Tri. - All.) and in the case of COMMISSIONER OF C. EX. & S.T., LUCKNOW V/s ISLAHUDDIN KHAN [2018 (364) E.L.T. 168 (Tri. - All.) has held that only prohibited goods cannot be released on payment of redemption fine and gold is not prohibited goods under the Customs Act or any other law in force and therefore cannot be absolutely confiscated in terms of Section 125 of the Customs Act, 1962 and upheld the order permitting release of such gold on payment of redemption fine in lieu of confiscation.

6.6 I also rely upon the decision of Hon'ble High Court of Allahabad in the case of COMMISSIONER OF CUS., ALIGANJ, LUCKNOW V/s RAJESH JHAMATMAL BHAT [2022 (382) E.L.T. 345 (All.) wherein the Hon'ble High Court has held that Gold does not fall within the category of 'prohibited goods' and upheld the decision of Hon'ble Tribunal and Commissioner(Appeal) that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act, 1962. The Hon'ble High Court had upheld the decision of Hon'ble Tribunal wherein the Hon'ble Tribunal had upheld the decision of Commissioner (Appeal) wherein 4076 grams of gold bars recovered from the specially designed cavities made in the shoes, valued at Rs. 1,09,98,018/- was allowed to be redeemed on payment of redemption fine and penalty. The Hon'ble Tribunal had reduced the redemption fine from 25,00,000/- to Rs 15,00,000/- and penalty was also reduced from 10,00,000/- to 5,00,000/- as ordered by the Commissioner (Appeal). The Hon'ble High Court observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold upheld the decision of Hon'ble Tribunal. The relevant paras are reproduced as under:

"19. Having given our thoughtful consideration to the rival submission made on behalf of the parties, we find that although as per the provisions contained in Section 2(1) of the Act, the Commissioner (Appeals) or the Appellate Tribunal are not included within the definition of the term "adjudicating authority" and, therefore, they cannot exercise the powers vested in the "officer adjudging" but the power conferred by Section 128A(3)(a) of the Act to "modify" the decision or order appealed

against, is not at all curtailed by Section 2(1) of the Act and thus, in our considered opinion, the Commissioner (Appeals) has not exceeded his jurisdiction while modifying the order passed by the "adjudicating authority". The submission of Sri. Seth that Section 2(1) if the Act is a special provision and Section 128A is a general provision, is fallacious in this case for the reason that provisions of the entire Act have to be taken into consideration in their entirety to decipher the exact scheme of the Act as contemplated by the Legislature.

20. Moreover, we find that in the order dated 27-8-2018, the Commissioner (Appeals) has held that the import of gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold. This finding has not been reversed by the Tribunal as the Tribunal has affirmed the order passed by Commissioner (Appeals). Nothing has been placed before this Court to establish that this finding of the Commissioner (Appeals) is wrong or erroneous and that gold falls within the category of 'prohibited goods'. Therefore, we proceed to decide the appeal on the factual premise that Gold does not fall within the category of 'prohibited goods'.

21. Section 125 of the Act deals with confiscation of two separate categories of goods. It provides that in the case of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, the Officer adjudicating may give an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in case of any other goods, the officer adjudicating shall give an option to pay in lieu of confiscation such fine as the said officer thinks fit. The Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act and this finding has not been assailed by the Appellants in this Appeal.

22. In view of the aforesaid discussion, our answer to the first substantial question of law framed in this Appeal is that the Additional Commissioner, Customs (P.) Commissionerate, Lucknow had passed the order of confiscation of Gold without taking into consideration the fact that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act and thus the Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and,



therefore, it should be offered for redemption in terms of Section 125 of the Act."

6.7 I also find that the Hon'ble CESTAT, Ahmedabad has in the case of Commr. of C. Ex., Cus. & S.T., Surat-II Vs Dharmesh Pansuriya [2018 (363) E.L.T. 555 (Tri- Ahmd)] considered the decision of Hon'ble High Court of Madras in the case of Commissioner of Customs (Air) Chennai-I Vs P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad)] and the decision of Hon'ble High Court of Bombay in the case of Commissioner Vs Alfred Menezes [2009 (242) E.L.T. 334 (Bom)], and were of the view that in case of prohibited goods as defined under Customs Act, 1962, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. The relevant paras are reproduced hereunder:

"8. It is the argument of the Revenue that under the aforesaid provision, once the goods in question are prohibited goods under the Act, no discretionary power is left with the adjudicating authority for imposition of fine. We are afraid that the said plea of the Revenue may not find support from the principle of law laid down by the Hon'ble Bombay High Court in the case of Alfred Menezes case (supra). Their Lordships after analyzing the said provision of Section 125 of the Customs Act observed as follows:

3. It is, therefore, clear that Section 125(1) deals with two situations (1) the importation and exportation of prohibited goods and (2) the importation and exportation of any other goods. Insofar as importation or exportation of prohibited goods, the expression used is that where the goods were confiscated, the officer "may". In the case of any other goods, which are confiscated, the officer "shall".

4. It is, therefore, clear that insofar as the prohibited goods are concerned, there is discretion in the officer to release the confiscated goods in terms as set out therein. Insofar as other goods are concerned, the officer is bound to release the goods. In the instant case, we are concerned with prohibited goods. The officer has exercised his discretion. The Tribunal [2009 (236) E.L.T. 587 (Tri. - Mum.)] has upheld the order of the adjudicating officer.

9. This principle is later followed by the Hon'ble Madras High Court recently in P. Sinnasamy's case (supra). Thus, in view of the aforesaid principle, even if the goods in question are considered as prohibited goods as defined under the Customs Act, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. In these premises, thus to consider the issue raised at the bar that whether the gold bars

removed from the Unit in SEZ without permission and contrary to the Circulars issued by RBI and Customs, became prohibited goods, or otherwise, in our view, becomes more an academic exercise and hence need not be resorted to.

10. The other argument advanced by the Ld. AR for the Revenue is that in view of the judgment of Hon'ble Madras High Court in P. Sinnasamy's case, discretion conferred under the provision cannot be arbitrary and it is to be exercised in judicious manner. From the finding of the Ld. Commissioner, we notice that even though he has not considered the goods as prohibited ones, observing it in the sense that these are not arms, ammunitions, narcotic substance, but after examining the fact that the gold bars were imported for its authorized use in the SEZ and after considering other extenuating circumstances, exercised discretion in directing confiscation of the gold bars removed unauthorizedly from the SEZ Unit with option to redeem the same on payment of fine. We find that in P. Sinnasamy's case (supra), the adjudicating authority has directed absolute confiscation of the gold smuggled into the country, which was set aside by the Tribunal, with a direction to the adjudicating authority to consider imposition of fine, which did not find favour from the Hon'ble High Court. Their Lordships observed that once the adjudicating authority has reasonably and correctly applied the discretion, it is not open to the Tribunal to give positive direction to the adjudicating authority to exercise option in a particular manner. Even though the facts and circumstances in the said case are different from the present one, inasmuch as in the said case the Commissioner has directed absolute confiscation, but in the present case option for payment of fine was extended by the Commissioner; however, the principle laid down therein is definitely applicable to the present case. Therefore, we do not find merit in the contention of the Revenue that the Adjudicating authority ought to have directed absolute confiscation of the seized goods."


6.8 I have also gone through the judgement of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Nagpur-I Vs Mohd. Ashraf Armar [2019 (369) E.L.T. 1654 (Tri Mumbai)] wherein the Hon'ble Tribunal, after considering the decision of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), has upheld the order of Commissioner (A) who set aside the order of absolute confiscation ordered by the adjudicating authority and allowed redemption of 1200.950 gm of concealed gold valued at Rs. 27,02,137/- on




payment of fine of Rs 5,50,000/-. The relevant paras are reproduced hereunder:

"4. We have perused the case record as well as judgment passed by the Hon'ble Supreme Court, Delhi in Om Prakash Bhatia's case. Relevant interpretation of "prohibited goods", as made in para 9 of the said judgment is reproduced below for ready reference:

" From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for 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. This is also made clear by this Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import (Control) Order, 1955. The Court negated the said contention and held thus: -



'...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the words "any prohibition" in Section 111(d) of



the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import (Control) Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues".

5. Going by the bare reading of the said interpretation, it can be said that in the definition of prohibited goods in terms of Section 2(33) of the Customs Act, 1962, any such goods means any such restricted and prohibited goods and not any other goods. It is in this contest the whole analyses of prohibited goods is made by the Hon'ble Apex Court and not in respect of any other goods other than prohibited and restricted goods. Gold being a permitted goods for importation, cannot be said to be restricted goods in applying such an interpretation but ceiling on the maximum quantity that could be imported could never be equated with restriction or prohibition to such importation. Admittedly, appellant's intention to evade duty by suppressing such import is apparent on record for which Commissioner (Appeals) has rightly confirmed fine and penalty under relevant provisions of the Customs Act but absolute confiscation of gold, which is permitted to be imported to India, solely on the ground that it was brought in concealment cannot be said to be in conformity to law or contradictory to decision of Hon'ble Apex Court given in Om Prakash Bhatia's case. Hence the order.

6. Appeal is dismissed and the Order-in-Original No. 1/SBA/JC/CUS/2014, dated 27-5-2014 passed by the Commissioner (Appeals) is hereby confirmed."

6.9 It is further observed that in respect of absolute confiscation of gold bar, the judgment pronounced on 05.05.2023 in respect of Civil Misc. Review Application No. 156/2022 filed at Hon'ble High Court of Allahabad sitting at Lucknow, by the Commissioner of Customs, Lucknow is relevant wherein the Hon'ble High Court has upheld the decision of Hon'ble Tribunal who had upheld the decision of Commissioner (Appeals) that gold is not prohibited item, it should be offered for redemption in terms of Section 125 of the Customs Act, 1962 and thus rejected the review application filed by the Commissioner of Customs, Lucknow. The relevant paras of the judgment are reproduced hereunder:

"16. In the present case, the Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act. The Tribunal has recorded that the respondents had brought impugned Gold from Bangkok to Gaya International Airport without declaring the same to

Customs Authorities and there was nothing to explain as to how the Customs authorities posted at Gaya International Airport could not detect such huge quantity of gold being removed from Gaya International Airport by passengers on their arrival and there was no explanation as to how the respondents procured gold before they were intercepted at Mughalsarai Railway Station and the Tribunal has dismissed the Appeals for the aforesaid reason and has affirmed the order passed by the Commissioner (Appeals) holding that the import of gold was not prohibited under the Foreign Trade Policy or any other law and, therefore, there is no sufficient ground for absolute confiscation of the gold.

17. Nothing was placed before this Court to challenge the finding of the Commissioner (Appeals), which was upheld by the Tribunal, that Gold is not a prohibited item, and nothing was placed before this Court to establish that this finding of the Commissioner (Appeals) was wrong or erroneous.

18. Even if the goods in question had been brought into India without following the conditions prescribed therefore and those fall within the category of prohibited condition, Section 125 of the Act provides that the Adjudicating Officer may give to the owner of such goods an option to pay fine in lieu of confiscation. Section 128 A of the Act confers powers on the Commissioner (Appeals) to pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. In the present case, the Commissioner (Appeals) has modified the order of absolute confiscation by imposing penalty in lieu thereof, which was well within his power as per Section 128 A. The Tribunal has affirmed the order of the Commissioner (Appeals). This Court dismissed the further Appeal filed by the Department, finding no illegality in the judgment passed by the Tribunal.

19. In view of the aforesaid discussion, we are of the view that the order passed by this Court refusing to interfere with the aforesaid order passed by the Tribunal does not suffer from any error, much less from an error apparent on the face of the record.

20. The review application lacks merits and, accordingly, the same is dismissed. "

6.10 Further, It is observed that in the decision vide Order No.355/2022-CUS (WZ)/ASRA/MUMBAI, dated 07.12.2022 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger had brought 02 gold bars of 01 kg each and 02 gold bars of 10 tolas each totally weighing 2233.2 grams wrapped with white coloured self-adhesive marking tape and concealed in both the watch pockets of black coloured trousers worn by him, relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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



17.1 Government further observes that there are catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of *Commissioner of Customs, Aligarj, Lucknow vs Rajesh Jhamatmal Bhat* 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of *Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I* [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of *R. Mohandas vs. Commissioner of Cochin* [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of *Union of India vs Dhanak M Ramji* [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

18.1 For the reasons cited above, Government finds that this is not a case of impersonation as construed by the lower authorities. Also, for the reasons cited above, it would be inappropriate to term the appellant as habitual offender. In the instant case, the impugned gold bars were kept by the applicant on his person i.e., in the pockets of the pants worn by him. Government observes that sometimes passengers resort to such innovative methods to keep their valuables / precious possessions safe. Also, considering the issue of parity and fairness as mentioned above, Government finds that this is a case of non-declaration of gold.

18.2 Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating the (02) two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/-. Also, observing the ratio of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of gold bars but allows the impugned gold bars to be redeemed on payment of a redemption fine.

19 The Government finds that the penalty of Rs 6,00,000/- imposed under Section 112 (a) & (b) by the original authority and upheld by the AA is commensurate with the omission and commissions committed. Government finds the quantity of the penalty as appropriate.

20. In view of the above, the Government modifies the OIA passed by the AA to the extent of absolute confiscation of the gold bars i.e. (02) two FM gold bars of 1 kg each and two gold bars of 10 tolas each, totally weighing 2233.2 grams and valued at Rs 58,26,977/- and grants an option to the applicant to redeem the same on payment of a redemption fine of Rs 12,00,000/- (Rupees Twelve Lakhs only). The penalty of Rs 6,00,000/- imposed by OAA and upheld by AA is sustained.

21 Accordingly, Revision Application is decided on the above terms."

6.11 Further, It is observed that in the recent decision vide Order No 516-517/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.06.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger was wearing brown coloured cloth belt fastened around her abdomen and when the belt was cut open resulted in recovery of brown coloured powder with water pasted in glue, purported to containing gold weighing 2800 grams (gross). The Hon'ble revisionary authority relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

"10. Once goods are held to be prohibited, Section 125 still provided discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s Raj Grow Impex (CIVIL APPEAL NO(s).

2217-2218 of 2021 Arising out of SLP© Nos. 14633-14634 of 2020-
Order dated 17.06.2021) has laid down the conditions and
circumstances under which such discretion can be used. The same are
reproduced below:

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

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

11. A plain reading of Section 125 shows that the Adjudicating
Authority is bound to give an option of redemption when the goods are
not subject to any prohibition. In case of prohibited goods, such as, the
gold, the Adjudicating Authority may allow redemption. There is no bar
on the Adjudicating Authority allowing redemption of prohibited goods.
This exercise of discretion will depend on the nature of goods and the
nature of prohibition. For instance, spurious drugs, arms, ammunition,
hazardous goods, contaminated flora or fauna, food which does not
meet the food safety standards, etc. are harmful to the society if
allowed to find their way into the domestic market. On the other hand,
release of certain goods on redemption fine, even though the same
becomes prohibited as condition of import have not been satisfied, may
not be harmful to the society at large. Thus, Adjudicating Authority can
allow redemption under Section 125 of any goods which are prohibited
either under the Customs Act or any other law on payment of fine.

12.1 Government further observes that there are catena of
judgements, over a period of time, of the Hon'ble Courts and other

forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

(a) In the case of *Commissioner of Customs, Aliganj, Lucknow vs Rajesh Jhamatmal Bhat* 2022(382) E.L.T. 345 (All), the Lucknow bench of the Hon'ble High Court of Allahabad, has held at para 22 that "Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

(b) The Hon'ble High Court of Judicature at Madras, in the judgement in the case of *Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I* [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of *R. Mohandas vs. Commissioner of Cochin* [2016(336) E.L.T. 399 (Ker)] has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

(d) Also, in the case of *Union of India vs Dhanak M Ramji* [2010(252) E.L.T. A102 (SC)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passanger.

12.2 Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

13 Government notes that the quantity of impugned gold dust (converted into bars) under import, is neither substantial nor in commercial quantity. The appellant claimed ownership of the impugned gold and stated that the same was brought for marriage purpose. There are no other claimants of the said gold. There is no allegation that the appellants are habitual offenders and was involved in similar offence



earlier. The fact of the case indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. The absolute confiscation of the impugned gold, leading to dispossession of the gold in the instant case is therefore harsh and not reasonable. Government considers granting an option to the appellant to redeem the gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

14. In view of above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned gold seized from the appellant. The seized gold from the appellant 1 i.e. impugned gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and totally valued at Rs 41,07,735/- is allowed to be redeemed on payment of a fine of Rs 8,10,000/- (Rupees Eight Lakh Ten Thousand only)."

6.12 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 380/2022-CUS (WZ)/ASRA/MUMBAI, dated 14.12.2022, wherein the applicant was carrying 270 grams of gold dust which has been ingeniously concealed by pasting it with glue in between two t shirt worn by him, had finally held that since the appellant is not a habitual offender and was not involved in the similar offence earlier and it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine.

6.13 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the Order No 67/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.01.2023, on recovery of two gold bars of 01 kg each and 02 gold bars of 10 tolas each concealed in the pant worn, totally weighing 2232 grams valued at Rs 58,23,846/- upheld the decision of Appellate Authority allowing redemption of gold bars on payment of redemption fine of Rs 11,00,000/- and upheld the penalty of Rs 6,00,000/- imposed by the Original Adjudicating Authority and upheld by the Appellate Authority observing that the concealment was not ingenious, the passenger was not habitual offender and involved in the similar offence earlier, there was nothing on record that he was part of an organised smuggling syndicate. The Government found that this was a case of non-declaration of gold and held that absolute confiscation of the impugned gold leading to dispossession of gold would be harsh and not reasonable.

With this observation the order of Appellate Authority granting an option to redeem the gold on payment of redemption fine was upheld.

6.14 Further, the Principal Commissioner & ex-officio Additional Secretary to Government of India in the recent decision vide Order No 68/2024-CUS (WZ)/ASRA/MUMBAI, dated 24.01.2024, in the case of Mr Kasmani Asif Abdul Aziz wherein the passenger had kept three gold kadiwali chains and two gold pendants in a transparent plastic pouch kept in pant pocket totally weighing 1200 grams of 24 kt having 999.0 purity valued at Rs. 35,22,816/- (Tariff value) and Rs. 39,02,400/- (Market value) had finally held that since quantum of gold is not commercial and the applicant was in possession of invoice for purchase of gold jewellery, concealment was not ingenious, the passenger is not a habitual offender and was not involved in the similar offence earlier and not a part of organised smuggling syndicate, it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. With this observation absolute confiscation was set aside and gold was allowed to be redeemed on payment of redemption fine.

6.15 In view of above decisions of the Principal Commissioner & ex-officio Additional Secretary to Government of India, I am of the considered view that in present case also there is no allegation that the appellants 03 to 29 are habitual offender and were involved in similar offence earlier. The appellants 03 to 29 were not a part of organised smuggling syndicate. The appellant during adjudication as recorded in the impugned order has submitted that they had purchased gold jewellery for their family. They did not conceal the gold jewellery. The appellants had also filed application for provisional release of the gold jewellery. They submitted all the documents related to the tour package and invoice for the purchase of the gold jewelley. They also submitted that they are the owner of gold jewelley and were not involved any such offence earlier. Thus, the appellants 03 to 29 were owner of the gold and not a carrier. There is nothing on record to suggest that the concealment was ingenious. The investigation of the case has not brought any smuggling angle but the investigation suggest that this is case of non-declaration of gold with intention of non-payment of Customs duty. The fact of the present case also indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial consideration. The absolute confiscation of impugned gold, leading to dispossession of the gold in the instant case is, therefore, harsh. Therefore, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No



2

156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Allahabad, Ahmedabad and Mumbai as detailed in the above paras, I am of the considered view that the absolute confiscation of impugned gold items weighing totally 3393.80 grams having purity 999.0/24kt, recovered from appellant 03 to 29 and valued at Rs 2,73,26,958/- (Market Value) is harsh. I, therefore, set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allow redemption of impugned gold items totally weighing 3393.80 grams having purity 999.0/24kt, recovered from appellants 03 to 29 and valued at Rs 2,73,26,958/- (Market Value) on payment of fine as detailed in the table below:

Sr No	Name of the appellant	Weight of gold jewellery (in grams)	Market Value (in Rs)	Redemption fine (in Rs)
01	Appellant 3	139.58	11,23,898	2,00,000/-
02	Appellant 4	139.99	11,27,199	2,00,000/-
03	Appellant 5	134.29	10,81,303	2,00,000/-
04	Appellant 6	139.94	11,26,797	2,00,000/-
05	Appellant 7	140.70	11,32,916	2,00,000/-
06	Appellant 8	139.90	11,26,475	2,00,000/-
07	Appellant 9	139.93	11,26,716	2,00,000/-
08	Appellant 10	139.93	11,26,716	2,00,000/-
09	Appellant 11	139.94	11,26,797	2,00,000/-
10	Appellant 12	139.94	11,26,797	2,00,000/-
11	Appellant 13	139.92	11,26,636	2,00,000/-
12	Appellant 14	139.88	11,26,314	2,00,000/-
13	Appellant 15	139.93	11,26,716	2,00,000/-
14	Appellant 16	140.04	11,27,602	2,00,000/-
15	Appellant 17	140.23	11,29,132	2,00,000/-
16	Appellant 18	138.68	11,16,651	2,00,000/-



[Handwritten signature]

17	Appellant 19	141.46	11,39,036	2,00,000/-
18	Appellant 20	140.03	11,27,522	2,00,000/-
19	Appellant 21	141.40	11,38,553	2,00,000/-
20	Appellant 22	134.15	10,80,176	2,00,000/-
21	Appellant 23	133.92	10,78,324	2,00,000/-
22	Appellant 24	40.08	3,22,724	50,000/-
23	Appellant 25	110.02	8,85,881	1,50,000/-
24	Appellant 26	79.95	6,43,757	1,20,000/-
25	Appellant 27	149.97	12,07,558	2,00,000/-
26	Appellant 28	49.96	4,02,278	75,000/-
27	Appellant 29	40.05	3,22,483	50,000/-

Further, the appellants 03 to 29 were also required to pay in addition the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962.

6.16 Further, in respect of imposition of penalty, for non-declaration of gold items weighing totally 3393.80 grams having purity 999.0/24kt, recovered from appellant 03 to 29 and valued at Rs 2,73,26,958/- (Market Value), under Section 112(a) and 112(b) of the Customs Act, 1962, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad, Mumbai and Allahabad as detailed in the above paras, I am of the considered view that penalty imposed on the appellants 03 to 29 as ordered by the adjudicating authority in the impugned order is harsh. Therefore, I reduce the penalty on the appellants 03 to 29 as detailed in the table below:

Sr No	Name of the appellant	Weight of gold jewellery (in grams)	Market Value (in Rs)	Reduced Penalty under Section 112 of the Customs Act, 1962 (in Rs)
01	Appellant 3	139.58	11,23,898	1,00,000/-

02	Appellant 4	139.99	11,27,199	1,00,000/-
03	Appellant 5	134.29	10,81,303	1,00,000/-
04	Appellant 6	139.94	11,26,797	1,00,000/-
05	Appellant 7	140.70	11,32,916	1,00,000/-
06	Appellant 8	139.90	11,26,475	1,00,000/-
07	Appellant 9	139.93	11,26,716	1,00,000/-
08	Appellant 10	139.93	11,26,716	1,00,000/-
09	Appellant 11	139.94	11,26,797	1,00,000/-
10	Appellant 12	139.94	11,26,797	1,00,000/-
11	Appellant 13	139.92	11,26,636	1,00,000/-
12	Appellant 14	139.88	11,26,314	1,00,000/-
13	Appellant 15	139.93	11,26,716	1,00,000/-
14	Appellant 16	140.04	11,27,602	1,00,000/-
15	Appellant 17	140.23	11,29,132	1,00,000/-
16	Appellant 18	138.68	11,16,651	1,00,000/-
17	Appellant 19	141.46	11,39,036	1,00,000/-
18	Appellant 20	140.03	11,27,522	1,00,000/-
19	Appellant 21	141.40	11,38,553	1,00,000/-
20	Appellant 22	134.15	10,80,176	1,00,000/-
21	Appellant 23	133.92	10,78,324	1,00,000/-
22	Appellant 24	40.08	3,22,724	25,000/-
23	Appellant 25	110.02	8,85,881	75,000/-
24	Appellant 26	79.95	6,43,757	60,000/-
25	Appellant 27	149.97	12,07,558	1,00,000/-
26	Appellant 28	49.96	4,02,278	35,000/-
27	Appellant 29	40.05	3,22,483	25,000/-

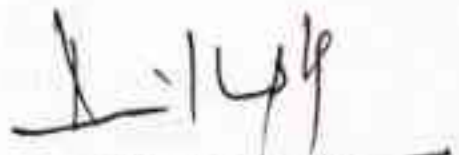


6.17 Further in respect of penalty imposed under Section 112(a) and 112(b) on the appellant 1 and appellant 2, it is observed that both the appellants were tour operator and no gold items were recovered from their possession. Further, it is also observed that penalty on the appellant 1 and appellant 2 was imposed on the assumption that they are owner of gold items recovered from appellant 03 to 23. It is observed that the appellants 03 to 23 has claimed ownership of the gold recovered from them in their submission before the adjudicating authority and also before me. In the foregoing paras it has been held that the gold items recovered from the appellants 03 to 29 belong to them and purchased by them. Therefore, in my considered view no penalty can be imposed on appellant 1 and appellant 2. Hence, the penalty imposed on appellant 1 and appellant 2 under Section 112 and 117 of the Customs Act, 1962 is set aside.

6.18 In respect of imposition of penalty on the appellants 03 to 29 under Section 117 of the Customs Act, 1962, it is observed that the Hon'ble Tribunal, Allahabad in the case of COMMISSIONER OF CUS. & C. EX., GHAZIABAD V/s Ruby Impex [2017 (357) E.L.T. 1239 (Tri. - All.)] has held that the penal provisions, under Section 117 of Customs Act, 1962, is residuary in nature and can be invoked only in the situation when no express penalty is provided, elsewhere in the Customs Act. Since the show cause notice proposed imposition of penalty under Section 112 of Customs Act, 1962, the provisions of Section 117 of Customs Act, 1962 were not invocable. In view of the above, since the gold items are liable to confiscation and consequently, penalty is inbuilt and is leviable under Section 112 of the Act and hence the provisions of Section 117 of Customs Act, 1962 are not invocable. Similarly, penalty under Section 117 of the Customs Act, 1962 imposed on the appellants 03 to 29 is also set aside.

6.19 The fine and penalty of the above amount on the appellants 03 to 29 will not only eliminate any profit margin, if any, but will also have a positive effect on the applicant to ensure strict compliance of law in future.

7. In view of above the appeals filed by the appellant is disposed off in the above terms.


(AMIT GUPTA)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.No. S/49-227 to 255/CUS/AHD/2025-26

Dated -14.11.2025

To,

- (i) Shri Kiritkumar Laljibhai Patel
S/o Shri Laljibhai Ambaram Patel
20, Sarjan Bungalows, Panchvati,
Kalol, Distt-Gandhinagar-382721
- (ii) Shri Parth Dashrathbhai Patel,
S/o Shri Dashrathbhai Punji Patel
0, Gayatri Nagar, Mankanaj, Mehsana-384421
- (iii) Patel Parulben Baldevbhai,
144, Shiv Ganesh Bungalows,
Nr. Madhuram Plot, 100 Feet Ring Road,
Shilaj Thaltej, Ahmedabad-380059
- (iv) Patel Rasikbhai, 8/19, Khant Vas,
Thol, Kadi, Mehasana-382715
- (v) Patel Babubhai Ambalal
B/6 Vimal Nath Tenements,
Nirnay Nagar Road, Ranip, Ahmedabad- 382480
- (vi) Nayak Mangalbhai Shankarbhai Lal
Vas, Opp. Khant Vas, Thol, Mehasana-382715
- (vii) Patel Ashaben Shaileshkumar
32 Siddhi Bunglows, GST Road,
New Ranip, Ahire labad-382480
- (viii) Nayak Mansukhbhai Shankarbhai Lal
Vas Opp. Khat Vas, Thol, Mehsana-382715
- (ix) Patel Upendrabhai Jivabhai,
Ambaji Matanu Mandir Thol, Kadi, Mehasana-382715
- (x) Patel Khodabhai Nagardas,
A-101, Silicone Square Nr. Sukan Six Flats
Oppt Solar Science City Sola Ahmedabad-380060
- (xi) Patel Jayantilal Madhabhai Khont
Vas At Thol Kadi Mehasana-382715
- (xii) Patel Madhavlal Shankardas At And Post Thol Mehasana-
382715
- (xiii) Patel Jashodaben Babaubhai
B/6 Vimal Nath Tenament
Nirnay Nagar Road, Ranip Ahmedabad-382480
- (xiv) Patel Baldevbhai Shakrabhai,
144 Shiv Ganesh Bungalows,
Nr. Madhuram Plot, 100feet Ring Road,
Shilaj Thaltej, Ahmedabad-380059
- (xv) Patel Vikrambhai Madhvas
Ambaji Mata No Chok, Thol Kadi, Mehasana-382715
- (xvi) Patel Navin Ranchhodbhai
A-G-1 Jayraj Flats Near Lotus School Jodhpur
Satellite Ahmedabad-380015
- (xvii) Patel Varshaben Navinbhai
Sonivas Village Thol Kadi Mehasana-382715
- (xviii) Nayak Hansabehn Mansukhabhai
2/63 Lal Vas Oppt Khanta Vas Same,
Thol Kadi Mehasana-384440
- (xix) Patel Kaminaben Bhagvanbhai Thol Mehasana-382715
- (xx) Patel Kokilaben Rasikbhai
8-6 Khantvas Oppt Bhagol Thol Talula
Kadi Mehsana-382715
- (xxi) Patel Manjulaben Jayantilal Khont Vas At Thol-382715
- (xxii) Patel Manjulaben Chandrakant
Lal Vas At Po-Thol Ta-Kadi, Mehasana-382715
- (xxiii) Nayak Shakutlaben Mangalbhai
2-64/Lal Vas, Opposite Khant Vas,
Thol Mehasana-382715, Gujarat.
- (xxiv) Patel Sharmishthaben Ramanbhai



- B-201, Swastik Residency,
RC Technical. Road, Chandlodia, Ahmedabad-380061
- (xxv) Patel Hasumatiben Dineshbhai
C/2/205, Vishwas Apartment,
Nr. Gulab. Tower, Thaltej, Ahmedabad-380054
- (xxvi) Patel Kapilaben Dineshbhai Bhav
Vas Thol, Kadi Mehasana-382728
- (xxvii) Patel Vijaykumar Dhanabhai Khant
Vas At Thol Kadi Mehasana-382715
- (xxviii) Patel Navinchandra Shivilal
11-A/Saraswati Nagar Society,
Opp. Kr Rawal School, Ranip, Ahmedabad-382480
- (xxix) Patel Ramanbhai Dhulabhai
B-201, Swastik Residency, RC Technical Road,
Chandlodia, Ahmedabad-380061



Copy to:

1. The Principal Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
- ✓ 2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Joint/Additional Commissioner of Customs, Ahmedabad.
4. Guard File

સત્વાપિત/ATTESTED

અધીક્ષક / SUPERINTENDENT
સીમા મુલ્ક (અપીલ્સ), અમદાવાદ.
CUSTOMS (APPEALS), AHMEDABAD