



प्रधान आयुक्त का कार्यालय, सीमाशुल्क, अहमदाबाद

“ सीमा शुल्क भवन ,”पहलीमंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380009.

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PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-38/SVPIA-C/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-38/SVPIA-C/O&A/HQ/2025-26 Dated: 26.08.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	164/ADC/SRV/O&A/HQ/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	24.11.2025
E	जारी करने की तारीख/ Date of Issue	:	24.11.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Hemant Tomar, B-17, Shiromani Society, Honeymoon Party Plot, Nava Naroda, Ahmedabad, Gujarat - 382345
1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
3)	अपील के साथ केवल पांच (₹)00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
i)	अपील की एक प्रति और;		
ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच(₹)00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७करोड़ शुल्क हम अधिकतम १० %५. करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह कीदंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

On the basis of intelligence, the officers of DRI, AZU, Ahmedabad and the officers of Air Intelligence Unit (AIU), SVPIA, Customs Ahmedabad, intercepted a male passenger named Shri Hemant Tomar (D.O.B. 24.11.1986) (hereinafter referred to as the said "passenger/Noticee"), residing at B-17, Shiromani Society, Honeymoon Party Plot, Nava Naroda, Ahmedabad-382345, Gujarat, India (address as per passport), holding an Indian Passport No. C5763211, arriving from Bangkok, Thailand [Don Mueang International Airport] to Ahmedabad (AMD) on 11.03.2025 via Air Asia Flight No. FD 144 (Seat No. 32A), at the arrival hall of the Terminal-2 of SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings thereof were recorded under the Panchnama dated 11/12.03.2025.

2. Whereas, the passenger was questioned by the AIU & DRI Officers as to whether he was carrying any contraband/dutiable goods in person or in baggage to which he denied. The Officers asked/ informed the passenger that a search of his baggage as well his personal search was to be carried out and given him an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the Passenger desired to be searched in presence of a gazetted Customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the Officers.

2.1 The AIU & DRI officers then asked the passenger to put his baggage in the X-Ray baggage scanning machine, installed near Green Channel at Arrival Hall, Terminal-II, SVPI Airport, Ahmedabad. The Officers found nothing objectionable in the baggage. The passenger, Shri Hemant Tomar was then made to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal -2 building, after removing all metallic objects from his body/ clothes. However, even during this process, no beep sound was heard. Further, the officers asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough interrogation by the officers, in presence of the panchas, the passenger did not confess that he is carrying any high valued dutiable goods. Thereafter, the passenger along with the panchas and the officers come into the AIU office where, the said passenger was thoroughly examined and searched by the AIU officer and during his personal search, it was observed that the said passenger was wearing a jeans pant with unusually thick waist band. Thereafter, the AIU officer, in presence of the panchas, asked the passenger whether he has any objection in changing his jeans pant and handover the same to the AIU officer. The passenger in response said he did not have any objection in doing the same. After changing his jeans pant, the passenger Shri Hemant Tomar handed over the aforesaid jeans pant to the AIU officer.

2.2 Thereafter, the AIU Officers thoroughly examined the said jeans pant and found that the weight of the said jeans pant was heavier than usual and the waist band of the jeans pant was thick and very heavy. During further examination, it was observed that some material was concealed inside the waist band of the jeans pant by way of stitching. On being asked about the same, the passenger, Shri Hemant Tomar informed that he was carrying gold paste mixed with chemical in transparent plastic strip covered with white tape which was concealed by him inside waist band of his jeans pant. Thereafter the DRI & AIU officers cut the thick visible edge of waist band of the said jeans pant and one strip containing semi solid gold and chemical mix paste was extracted covered with white plastic tape.

2.3 Thereafter, the officers called the Government Approved Valuer (Shri Kartikey Vasantrai Soni) and informed him that one strip containing semi solid gold and chemical mix paste covered with white plastic tape was recovered from the passenger and as per the passenger, said strip is containing gold paste and chemical in semi solid form and that he needed to come to the Airport for verification, examination and valuation of the recovered item. In reply, the Government Approved Valuer informed the Officers that the testing of the material is possible only at his workshop as gold has to be extracted from such semi solid paste form by melting it and also informed the address of his workshop.

2.4 Thereafter, the Officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer, located at 301, Golden Signature, Behind Ratnam Complex, C. G. Road, Ahmedabad-380006. On reaching the above-mentioned premises, the officers introduced the panchas as well as the passenger to one person namely Shri Kartikey Vasantrai Soni, Government Approved Valuer. Shri Kartikey Soni examined and weighed the said strip recovered from inside of waist band of jeans pant of the said passenger and provided detailed primary verification report of semi solid substance according to which the said strip contained semi solid substance consisting of Gold & chemical mix having Gross weight 829.080 grams. Thereafter, the Government Approved Valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Shri Kartikey Soni started the process of converting the semi solid paste into solid gold by putting it into the furnace and upon heating the substance turned into liquid material. The said substance consisting of gold in liquid state was then taken out of furnace and poured in a bar shaped plate and then after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, the Government Approved Valuer informed that 01 (One) gold bar totally weighing 724.720 Grams has been derived from 829.080 grams of semi solid strip containing gold and Chemical mix. The photographs of the said semi solid gold and chemical mix strip covered with white plastic tape and the gold bar derived from it are as below:



2.5 The Government Approved valuer further vide his Certificate No. 1765/2024-25 dated 12.03.2025, certified that the gold bar, weighing 724.720 grams (Net Weight) is having purity 999.0/24 Kt. and is having Market Value of Rs.64,59,429/- (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff value as Rs.58,98,540/- (Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only), which has been calculated as per the Notification No. 12/2025-Customs (N.T.) dated 28.02.2025 (gold) and Exchange Rate Notification No. 20/2024-Customs (N.T.) dated 07.03.2025 (Exchange rate). The valuation report provided by the said Govt. Approved Valuer is summarized as under:

Sl. No.	Item Particulars	PCS	Net Weight (in Grams)	Market Value (in Rs.)	Tariff Value (in Rs.)
1.	Gold Bar- 999.0/24 Kt. Purity	1	724.720	64,59,429/-	58,98,540/-

2.6 Thereafter, after the completion of the extraction of gold at the workshop of Govt. Approved Valuer, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle along with the extracted gold bar weighing 724.720 grams derived from the semi solid strip containing gold paste and Chemical mix having gross weight of 829.080 grams, that was recovered, from inside the waist band of the jeans of the passenger on dated 1.03.2025.

SEIZURE OF THE ABOVE GOLD BAR:

3. The said 01 Gold Bar totally weighing 724.720 Grams derived from 829.080 grams of semi solid strip containing gold paste and Chemical mix was carried by the passenger without any legitimate Import documents inside the Customs Area, therefore the same falls under the category of Smuggled Goods and stands liable for confiscation under the Customs Act,1962. Therefore, the said gold, weighing 724.720 grams (Net Weight) is having purity 999.0/24Kt. and is having **Market Value of Rs.64,59,429/-**(Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and **Tariff Value as Rs.58,98,540 /-**(Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only), was placed under seizure vide Order dated 12.03.2025 issued under the provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject Gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

STATEMENT OF SHRI HEMANT TOMAR:

4. Statement of Shri Hemant Tomar was recorded on dated 12.03.2025, wherein he inter alia stated that his personal details like name, address and family details as mentioned in the statement are true and correct and that he is educated up to class 8th. He is working in pan Parlour from which he earns around Rs.20,000/- per month.

4.1 Regarding the purpose of his visit to Don Muaeng, on being asked, he stated that he travelled there to visit Thailand and came back on 11.03.2025 by Air Asia Flight No. FD 144 from Don Mueang (DMK) to Ahmedabad (AMD). He further stated that the gold recovered under Panchnama by the AIU Officers was purchased by him and it belongs to him only. The gold was purchased in semi solid paste form, from the gold shop at Thailand. Further, with a view to evade the payment of Customs duty without declaring the same to the Customs and to illicitly clear the same through Green Channel, he had concealed the strip containing semi solid substance of gold paste mixed with chemical inside the waist band of the jeans pant worn by him.

4.2 He further stated that he does not have any bills in respect of the gold found from his possession and further stated that he would not be able to submit the same in future, as the payment in respect of the said gold paste was made by him in cash. He added that he had managed the payment of the said gold by mortgaging the residential property.

4.3 He perused the Panchnama dated 11-12.03.2025 and stated that the facts narrated therein are true and correct and that he had opted for green channel without declaring the dutiable goods with intention to evade payment of Customs duty on gold which was being carried by him by way of concealment inside the waist band of jeans pant worn by him.

4.4 In terms of Board's Circular No.13/2022-Customs dated 16.08.2022, the passenger, Shri Hemant Tomar was arrested on 12.03.2025 under Section 104 of the Customs Act, 1962 and was further released on bail subject to fulfillment of conditions, in terms of para 3.2 of Circular No. 38/2013-Cus dated 17.09.2013.

4.5 From the investigation conducted in the case, it appeared that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 01 gold bar totally weighing 724.720 gms having purity of 24Kt/999.0 was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans by the passenger, Shri Hemant Tomar, who had arrived from Don Mueang to Ahmedabad on 11.03.2025 via Air Asia Flight No. FD 144, at Terminal-2 of SVPIA Ahmedabad. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules and for these reasons alone it cannot be considered as a Bonafide Baggage under the Customs Baggage Rules, 2016.

4.6 According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper Officer. In the instant case, the passenger had not declared the said gold items totally weighing 724.720 grams having purity of 24 Kt/999.0 because of malafide intention and thereby contravened the provisions of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold bar totally weighing 724.720 gms having purity of 24 Kt/999.0 recovered from Shri Hemant Tomar, was attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold bar totally weighing 724.720 grams having purity of 24 Kt/999.0 is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Consequently, 01 gold bar totally weighing 724.720 gms having purity of 24Kt/999.0 derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans by the passenger, Shri Hemant Tomar, who had arrived from Don Mueang to Ahmedabad on 11.03.2025 via Air Asia Flight No. FD 144, at Terminal-2 of SVPIA Ahmedabad was placed under seizure vide Panchnama dated 11-12.03.2025 and Seizure Order dated 12.03.2025 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

SUMMATION:

5. The aforementioned proceedings indicates that Shri Hemant Tomar attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having the Market Value of Rs.64,59,429/- (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value as Rs.58,98,540/- (Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same was placed under Seizure vide Order dated 12.03.2025 issued under the Provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject Gold Bar is liable for confiscation under Section 111 of the Customs Act, 1962.

5.1 Further, the offence committed by the passenger was a punishable offence under section 135(1)(a) & (b) of the Customs Act, 1962 and therefore he was liable to be arrested under section 104 of the Customs Act, 1962. Accordingly, after getting due authorization from the Hon'ble Pr. Commissioner of Customs, Ahmedabad, the passenger Shri Hemant Tomar was arrested on 12.03.2025, in terms of Section 104 of the Custom Act, 1962 for committing offences punishable under section 135 of the Customs Act, 1962. Thereafter, the arrested person was released on bail subject to fulfillment of conditions, in terms of Circular No. 38/2013-Cus dated 17.09.2013.

6. LEGAL PROVISIONS RELEVANT TO THE CASE:

Foreign Trade Policy 2015-20 and Foreign Trade (Development and Regulation) Act, 1992:

- 6.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.
- 6.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 6.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 6.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

- 6.5 As per Section 2(3) – "baggage includes unaccompanied baggage but does not include motor vehicles.
- 6.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property;
- 6.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 6.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 6.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or

class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

- 6.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- 6.11 As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.
- 6.12 Section 111. Confiscation of improperly imported goods, etc.:
The following goods brought from a place outside India shall be liable to confiscation: -
- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*
 - (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*
 - (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*
 - (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
 - (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*
 - (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*
 - (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*
 - (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*
 - (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
 - (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*
 - (k) any dutiable or prohibited goods imported by land in respect of which*

the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*
- (n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;*
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*
- (p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

6.13 Section 112. Penalty for improper importation of goods etc.:

any person,

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

6.14 As per Section 123 of Customs Act 1962,

- (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-*
 - (a) in a case where such seizure is made from the possession of any person-*
 - (i) on the person from whose possession the goods were seized; and*
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
 - (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*
- (2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

6.15 All dutiable goods imported into India by a passenger in his baggage are classified under CTH 9803.

Customs Baggage Rules and Regulations:

- 6.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.
- 6.17 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bon-fide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

Notifications under Foreign Trade Policy and the Customs Act, 1962:

- 6.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.
- 6.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below	10%	41

		99.5%, imported by the eligible passenger		
		(ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls		

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a) carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

7 From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 kt.) was restricted as per DGFT notification and import was permitted only by nominated agencies. Further, it appears that import of goods whereas it is allowed subject to certain conditions are to be treated as prohibited goods under section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. As such import of gold is not permitted under Baggage and therefore the same is liable to be held as prohibited goods.

8. CONTRAVENTION AND VIOLATION OF LAWS:

It therefore appears that:

(i) **Shri Hemant Tomar** had attempted to smuggle/improperly import 01 Gold Bar totally weighing 724.720 Grams having purity 24Kt/999.0 and Market Value of **Rs.64,59,429/-**(Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value as **Rs.58,98,540/-**(Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only), recovered from the semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans wore by the passenger, with a deliberate intention to evade payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The said passenger, **Shri Hemant Tomar** had

knowingly and intentionally smuggled the said gold in the form of semi solid substance consisting of Gold and Chemical mix having Gross weight 724.720 Grams, found concealed inside the waist band of the jeans wore by him, on his arrival from Don Mueang to Ahmedabad on 11.03.2025 by Air Asia Flight No. FD 144 (Seat No. 4F) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by **Shri Hemant Tomar**, by way of concealment in the waist band of the jeans pant wore by him and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. **Shri Hemant Tomar** has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.

- (ii) **Shri Hemant Tomar** by not declaring the gold brought by him in the form of 01 gold bar totally weighing 724.720 gms having purity of 24Kt/999.0 that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans by him, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (iii) The improperly imported/smuggled gold by **Shri Hemant Tomar** , in the form of 01 gold bar totally weighing 724.720 Grams having purity of 24Kt/999.0 that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans wore by him, before arriving from Don Mueang to SVPI Airport, Ahmedabad, on 11.03.2025 via Air Asia Flight No. FD 144 (Seat No. 4F) at Terminal -2, SVPIA Ahmedabad on 11.03.2025, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2(22), 2(33), 2(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (iv) **Shri Hemant Tomar**, by the above-described acts of omission/commission and/or abetment has rendered himself liable for penalty under Section 112 of Customs Act, 1962.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold bar totally weighing 724.720 Grams that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams found concealed inside the waist band of the jeans wore by the passenger, **Shri Hemant Tomar** who arrived from Don Mueang via Air Asia Flight No. FD 144 (Seat No. 4F) at Terminal -2, SVPIA Ahmedabad on 11.03.2025 are not smuggled goods, is upon **Shri Hemant Tomar** , who is the Noticee in this case.

9. Accordingly, a Show Cause Notice was issued to the Noticee i.e. Shri Hemant Tomar, residing at B-17, Shiromani Society, Honeymoon Party Plot, Nava Naroda, Ahmedabad-382345, Gujarat, holding an Indian Passport No. C5763211, as to why:

- (i) One (01) Gold Bar, having purity 999.0/24 Kt., weighing 724.720 Grams (Net Weight) and having the Market Value of Rs.64,59,429/- (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value

as Rs.58,98,540/- (Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only) derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans by the passenger, **Shri Hemant Tomar**, who arrived from Don Mueang to Ahmedabad on 11.03.2025 by Air Asia Flight No. FD 144, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under Panchnama proceedings dated 11/12.03.2025 and Seizure Memo Order dated 12.03.2025, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) Penalty should not be imposed upon **Shri Hemant Tomar**, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

DEFENSE REPLY AND RECORD OF PERSONAL HEARING:

10. The noticee has submitted written submission on dated 06.09.2025 through Shri Rishikesh Mehra, Advocate and Authorized Representative.

10.1. Vide letter dated 06.09.2025, he submitted that the Noticee denies the entirety of the allegations in the SCN. It is true that the noticee had brought 01 Gold Bars weighing 724.720 grams of 24Kt of Value at Rs. 58,98,540/- (tariff value) which was inside waist band of his jeans pant worn by him, were placed under seizure; It may also be seen from the Panchnama and statement recorded Under Section 108 of the Customs Act 1962; was given under fear and duress of being arrested. The statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in the impugned SCN. From the facts and submissions narrated above, the gold is neither prohibited nor restricted, hence the goods in question is not liable for confiscation under section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. The noticee is also not liable for penal action under section 112 of the Customs Act, 1962.

10.2. He submitted that the noticee **Shri Hemant Tomar** is residing at B-17, Shiromani Society, Honey moon Party plot, Nava Naroda, Ahmedabad-382345. He accepted that that the noticee had brought 01 Gold Bar weighing 724.720 grams of 24Kt of Value at Rs.58,98,5540/- which was inside waist band of his jeans pant worn by him was placed under seizure; The noticee who was coming back to India from Bangkok and gold bar was brought for his personal use and not in commercial quantity the bill was produced/recover from noticee; was not incorporated at any were during the Panchanama. He stated that the gold was not ingeniously concealed, it was inside his jeans pant, a common man did for his valuable goods for safety purpose as he was having the fear of Loot/ Theft; were many cases of loot/ theft/ robbery and murder cases are booked as per police record, hence the question of concealment does not arise. He stated that the gold is not prohibited, as he was first time brought the gold along with him was unable to declare it, due to ignorance of Customs law/rules. He stated that the noticee had orally declared but nobody had bothered to help him to file the declaration form, as noticee was in the airport premises, reference is invited to instructions as stipulated under **Circular No: 9/2001-Cus dated 22.02.2001** has not been followed.

10.3 He stated that the statement was recorded under section 108 of the Customs Act, 1962 wherein the noticee inter-ilia stated that the gold was brought by Noticee from his personal savings and hardworking earned money purchase from **Giriraj Trading Co. Ltd.** At the material time he was carrying the bill in this regard, but prior to his declaration he was intercepted and resulting in booking of the case; as

carrying of gold without payment of duty means smuggling- as per the impugned SCN. He further stated that it was therefore, very clear, that the goods in question clearly belongs to the noticee. Moreover, the noticee had repeatedly requested the officers to release the gold on payment of duty, fine and penalty, but the same fell on the deaf ears. However, a copy of Invoice of gold bill in the name of noticee, which was produced/recover from noticee; was not incorporated at any were during the panchanama and statement u/s 108, The noticee was legitimate purchaser of gold. He stated that the Noticee had produced the gold bill of **Giriraj Trading Co. Ltd.** due to ignorance of Customs law, first time he has brought the gold along with his, the noticee was unable to file the declaration form, he did not know what was written in panchnama as well as statement has been recorded in English, studied up to 8th standard in Gujarati Medium, he was an Illiterate Person and he did not known what was written in the panchnama and statement which he was only asked the general questions about his work & family, he was forced to sign in fear of arrest, he simply signed the papers.

10.4 He, further submitted that the Department has stressed upon declaration to be filed upon section 77 of the Customs Act, 1962 and which had not been filled by the noticee on his arrival in India; moreover, the airlines staff had neither bothered to provide the customs declaration form nor the same was handed during the time of disembarkation. The declaration form, if provided would have been definitely filed before the authorities and necessary duty payment would have been made without any difficulty; that the statement taken under section 108 of the Customs Act,1962 was given under duress and fear of being arrested and the threat was given by the officers as such; furthermore the same would have been immediately retracted after knowing the Department's statement under the provisions of section 108 of the Customs Act,1962, hence the same is contrary to law. He further submitted that the noticee had made very clear on 11/12.03.2025 that the seized goods belonged to him but to no avail and the officers were hell bent on booking a case against him i.e. the noticee had been given some more time, he would have definitely after discussing with officers filed a declaration as required under law. It is not the case of the department that he had left the airport without payment of duty or that he was apprehended outside the airport or Customs area. It is always open for the passenger to disclose prior to completion of his baggage.

10.5. He stated in addition of the said SCN, it had been stated as to why penalty should not be imposed upon his under section 112 of the Customs Act, 1962. The noticee has not acquired possession of or in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111(d), 111(i), 111(j), 111(l) and 111(m). Also penalty has been proposed under section 112 of the Customs Act, 1962. It may be stated that the noticee was not a repeated offender that he had simply failed to declare the gold in the declaration. He stated that the statement taken under section 108 of the Customs Act,1962 was given under duress and fear of being arrested and the threat was given by the officers and also not allowed to read and not allowed to write in his own handwriting in **Gujrati** which he knows very well as such; furthermore, the same would have been immediately retracted after knowing the Department's statement under the provisions of section 108 of the Customs Act,1962, hence the same is contrary to law. He further submitted that the statement was recorded under duress and threat and the statement recorded was not sustainable as can be seen from the below mentioned provisions of section 138B of the Customs Act,1962

Section 138B in the Customs Act, 1962

1/138B. Relevancy of statements under certain circumstances. -

(1) A statement made and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the case of **Noor Aga v/s State of Punjab** in the Hon'ble Supreme Court of India, the same has been reiterated which is reproduced as under:

There is another aspect of the matter which cannot also be lost sight of.

A search and seizure or an arrest made for the purpose of proceeding against a person under the Act cannot be different only because in one case the authority was appointed under the Customs Act and in the other under another. What is relevant is the purpose for which such arrest or search and seizure is made and investigation is carried out. The law applicable in this behalf must be certain and uniform.

Even otherwise Section 138B of the 1962 Act must be read as a provision containing certain important features, namely:

(a) There should be in the first instance statement made and signed by a person before a competent custom official.

(b) It must have been made during the course of enquiry and proceedings under the Customs Act.

Only when these things are established, a statement made by an accused would become relevant in a prosecution under the Act. Only then, it can be used for the purpose of proving the truth of the facts contained therein. It deals with another category of case which provides for a further clarification. Clause (a) of sub-section (1) of Section 138B deals with one type of persons and clause (b) deals with another. The Legislature might have in mind its experience that sometimes witnesses do not support the prosecution case as for example panch witnesses and only in such an event an additional opportunity is afforded to the prosecution to criticize the said witness and to invite a finding from the court not to rely on the assurance of the court on the basis of the statement recorded by the Customs Department and for that purpose it is envisaged that a person may be such whose statement was recorded but while he was examined before the court, it arrived at an opinion that is statement should be admitted in evidence in the interest of justice which was evidently to make that situation and to confirm the witness who is the author of such statement but does not support the prosecution although he made a statement in terms of Section 108 of the Customs Act. We are not concerned with such category of witnesses. Confessional statement of an accused, therefore, cannot be made use of in any manner under Section 138B of the Customs Act. Even otherwise such evidence is considered to be of weak nature.

Article 20 (3) of the Indian Constitution. Clause (3) of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself. 3. it is a protection against such compulsion resulting in his giving evidence against himself.

10.6 He submitted that the noticee cannot be penalized under section 112 as the department has no evidence proving that the noticee in any way has done any of the action enumerated above in the manner alleged contrary to the provisions of the Customs Act, 1962. It has been consistently held by the Hon'ble Courts, Tribunals and Revisionary Authority of Govt. of India that if the import of commodities is not completely banned, Gold is not prohibited then such commodities or articles could be released on redemption fine.

Section 112(b) in the Customs Act, 1962

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, —

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty²¹⁶ [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty²¹⁹ [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

[(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;] [(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty²²¹ [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

10.7 Further, he submitted There is a plethora of Judgements both for and against the release of gold seized in Customs Cases. A combined reading of all the cases with specific reference to the policy/Rules in vogue at the relevant times, will show that depending on circumstances of each case in hand and the profile of the person involved, the goods in question may become “Prohibited” which are otherwise not listed in the prohibited categories. However, despite the goods being prohibited the same can be released or re-exported in the discretion of the Adjudicating Authority, which discretion has to be exercised as per the canons laid down by the Hon. Apex Court as discussed above. In this connection, following case laws are submitted to show that the gold in the illegal custody of Customs is liable to be released on redemption fine:-

1. *Yakub Ibrasher Yousuf 2011(263) ELT-685(Tri.Mum) and subsequently 2014-Tiol-277-Cestst-Mum*

The Hon Tribunal while allowing redemption of gold not declared before Customs held: - Redemption Fine- option of- Option of redemption has to be given to person from whose possession impugned goods are recovered. – On the facts of the case option of redemption fine allowed to person who illicitly imported gold

with a view to earn profit by selling it, even though she had not claimed its ownership - Section 125 of Customs Act 1962. [para5.6]

2. *Shaikh Jameel Pasha Vs Govt. Of India 1997(91) ELT277(AP)*

The Hon. High Court of Andhra Pradesh in the above case, while deciding the Scope of section 125 to allow redemption of gold brought by passenger unauthorizably held that: - Redemption Fine –Customs– Gold in the form other than ornaments imported unauthorizably– Option to pay fine lieu of confiscation to be given to the importer in terms of the second part of section 125(1) of Customs Act, 1962, goods being otherwise entitled to be imported on payment of duty,

3. Kadar Mydeen v/s Commissioner of Customs (Preventive), West Bengal 2011(136) ELT 758): - Gold brought as a baggage by the appellant not declared – Confiscation under section 111(d) of the Customs Act,1962 sustainable- However, option given to appellant to redeem the same on payment of a fine of Rs.1.5 lakhs Section 125 ibid.
4. Order No: 426/04 issued vide File No: 380/57/8 2004-RA-Cus dated 21.9.2004 passed by the Revisionary Authority, Government of India, upholding the order of the Commissioner of Customs (Appeals) Mumbai Airport order redemption of the non-declared seized gold imported by an eligible passenger on payment of fine, penalty and duty:

LIST OF LATEST REVISION AUTHORITY ORDERS

1. Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)
2. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)
3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Poket Case granted RF, PP)
5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.
6. 2019(369) E.L.T.1677(G.O. I) in c/a Ashok Kumar Verma.
7. Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi.. (Eligible passenger granted RF, PP.)
8. Order No: 954/2018 CUS(WZ)/ASRA/MUMBAI DT. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF, PP.)
9. Order No: 29/2018 CUS(WZ)/ASRA/MUMBAI DT. 31.01.20128 in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)

10. Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF, PP)
11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).
12. Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
13. Order No: 214/2021 CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
14. Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI DT. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
15. Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)
16. Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022 in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)
17. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).
18. Order No. 287/2022 CUS(WZ)/ASRA/MUMBAI DT 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).
19. Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)
20. Order No. 284/2022 CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 in c/a Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)
21. Order No. 314/2022 CUS(WZ)/ASRA/MUMBAI DT 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)
22. Order No. 56/2023 CUS(WZ)/ASRA/MUMBAI DT 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)
23. Order No. 10/2019 CUS(WZ)/ASRA/MUMBAI DT 30.09.2019 in c/a Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)

24. Order No. 404 & 405/2023 CUS(WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)
25. Order No. 349/2022-CUS(WZ)/ASRA/MUMBAI DT 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)
26. Order No. 395-396/2023-CUS(WZ)/ASRA/MUMBAI DT 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
27. Order No. 352/2022-CUS(WZ)/ASRA/MUMBAI DT 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
28. Order No. 309/2022-CUS(WZ)/ASRA/MUMBAI DT 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)
29. Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
30. Order No. 516-517/2023-CUS(WZ)/ASRA/MUMBAI DT 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)
31. Order No. 786/2023 CUS(WZ)/ASRA/MUMBAI DT 25.10.2023 in c/a Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
32. Order No. 885/2023 CUS(WZ)/ASRA/MUMBAI DT 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
33. Order No. 883/2023 CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
34. Order No. 907-909/2023 CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
35. Order No. 899/2023 CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)
36. Order No. 898/2023-CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
37. Order No. 880-882/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

38. OIA No. AHD-CUSTOM-000-APP-176-23-24 DT 25.09.2023 IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
39. OIA No. AHD-CUSTOM-000-APP-179-23-24 DT 26.09.2023 IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
40. Order No. 961/2023-Cus (Wz)/Asra/Mumbai Dt. 29.12.2023 in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
41. Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Ahmedabad (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)
42. Order No. 830-831/2023-Cus (Wz)/Asra/Mumbai Dt .05.12.2023 in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)

It has also been held by the Hon'ble CESTAT:

That there may be consistency in the approach of the adjudicating authorities while deciding similar issues. Reliance in this regard is placed on the decision rendered in the case of Copier Company Vs Commissioner of Customs, Chennai (2007 (218) ELT-142 (Tribunal) order of the lower authority for the gold/ absolutely:

"The word prohibited" occurring in sub-section- (1) above and the word prohibition' occurring in section 111(d) have to be construed on similar considerations as 'Prohibition' has been held to include (restriction' vide Shaikh Mohd. Omer (Supra). The word 'Prohibited' occurring in section 125(1) can also be understood in the sense of 'restricted'.

It would follow that in the case of second-hand photo-copiers restricted for import, the adjudicating authority, may, in its discretion, consider allowing the importer/ owner of the goods to redeem the same against payment of fine. In exercising this discretion, the authority may take the relevant factors into account. We are of the view that these factors must be relatable to the goods in question. For instance, if the goods are unconditionally prohibited from importation, reasons for claiming redemption. On the other hand, if the goods are conditionally prohibited from importation (i.e. no importation without specific licence), the importer owner may claim redemption of easier grounds. In the instant case, absolute confiscation which has its roots in the provisions of section 125(1) of the Customs Act, 1962.

For the reasons already recorded, we set aside the impugned orders and allow these appeals by way of remand directing the Commissioner to fine the appellants, can option to redeem the goods under section 125 of the Customs Act, 1962, against payment of a reasonable fine which shall be determined after shearing the party."

*In the case of **Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.)** the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.*

1. **A. Rajkumari vs C C (Chennai) 2015(321) ELT540(Tri-Chennai)**

In this case redemption of absolutely confiscated gold was allowed against reasonable in despite the fact that 70(Seventy) gold bars (10 Tolas each) were found

concealed in the Air Conditioner brought by the passenger. This case was also affirmed by the Hon. Apex Court vide 2015(321) ELTA 207 (SC). Therefore, what transpires from this recent judgement of the Hon. Supreme Court (Supra) is that even in case of clever (ingenious) concealment of gold, the option of redemption under section 125 of Customs Act 1962 can be exercised to secure ends of Justice. The ratio of this judgement is squarely applicable to the present case. Relying on the latest judgments in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been on redemption Fine and personal Penalty.

1. High Court of Judicature at Allahabad Sitting at Lucknow

Judgment Reserved on : 07.04.2023

Judgment Pronounced on: 05.05.2023

Court No.01 Case :- Civil Misc Review Application No. - 156 of 2022

Applicant :- Commissioner Of Customs, Lucknow (In CUSA 7 Of 2019)

Opposite Party :- Sri Rajesh Jhamatmal Bhat And Another

Counsel for Applicant :- Dipak Seth

Counsel for Opposite Party :- Sanjay Kumar

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Subhash Vidyarthi, J.

2. Rajasthan High Court Manoj Kumar Sharma vs Union of India on 17 February, 2022 Bench: Akil Kureshi, Sudesh Bansal High Court of Judicature for Rajasthan Bench at Jaipur D.B. Civil Writ Petition No. 12001/2020 Manoj Kumar Sharma S/o Late Shri Bhagirath Sharma, residing at Flat No. 209, Al Zahida Building Hor Al Anz, Deira, Don Mueang (Thailand) Through Authorised Signatory Yogesh Joshi S/o Om Prakash Joshi R/o House No. 1061, Uniyaro Ka Rasta, Chandpole Bazar, Jaipur (Raj) -----Petitioner

Versus

1. Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, Room No. 46, North Block, New Delhi 110001
2. The Principal Commissioner and Additional Secretary, Government of India, Ministry of Finance, Department of Revenue, 14th Hudco Vishala Building, B Wing, 6th Floor, Bhikaji, Cama Place, New Delhi-110066
3. The Commissioner of Customs, Jodhpur, Hqrtrs at New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005
4. The Deputy Commissioner of Customs, Terminal-2, Arrival Hall, International Airport, Jaipur

11. He, further submitted that the statement was recorded under duress and threat and that he had never on the previous occasion brought any gold or for that matter any offending goods while he travelled to India. Department has been unable to show that the noticee did travel on occasions with offending goods. This being the first instance on his entire life, he may be pardoned of the consequences just because he failed to seek timely directives from the customs officials at the airport. This prayer before the authority may be taken into consideration for causing justice and arriving at a favorable decision against the noticee.

12. He submitted that the noticee has been accused of carrying goods himself, no Indian or foreign currency or any other offending goods or even offending documents was recovered from the noticee's person which would remotely indicate his involvement in a transaction in the nature of smuggling. He further state that the goods may be released to the noticee at the earliest even provisionally for which the noticee is ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN. It is also craved that if the same is not

possible to release the gold on payment of fine and penalty, orders for **Re-export** may be given too, for which the noticee is ready to pay penalty too.

13. The noticee craves leave to add to alter, amend and/ or modify all or any of the foregoing submissions, before any decision is taken or any orders are passed in the above matter. He further requested that a personal hearing may be granted to the Noticee. The Noticee craves leave to make such further submissions, as they may be so advised, after the conclusions of such personal hearing.

PERSONAL HEARING

14. The noticee was given opportunity for personal hearing on 29.09.2025. Shri Rishikesh Mehra, Advocate and Authorised Representative of the noticee requested for appeared for personal hearing on 30.09.2025 and same was granted. Accordingly, Shri Rishikesh Mehra appeared on 30.09.2025 on behalf of the noticee i.e. Shri Hemant Tomar, and produced copy of Vakalatnama to represent the case.

14.1. Shri Rishikesh Mehra submitted written submissions dated 06.09.2025 and reiterated the same. He submitted that his client the Noticee came from Thailand to India and Gold Bars brought for his personal use, the gold is not in commercial quantity. He has produced the Bill of purchase gold from Giriraj Trading Company Ltd. The Noticee has hidden the valuable goods for safety purpose. He was having fear of Loot/ theft. The Gold is not prohibited goods. Requested to release the goods on payment of duty and fine. He has relied on order of GOI, Dptt. of Revenue Order No. 516-517/2023 and submitted the copy of the order in which, GOI has release the gold in same identical case. He requested to take lenient view in the matter and allow to release the gold on payment of duty and fine and penalty.

DISCUSSION AND FINDINGS:

15. I have carefully gone through the facts of the case. The Noticee had submitted his written submission through his Advocate and Representative on dated 06.09.2025. The noticee has availed the opportunity of personal hearing granted to him on 30.09.2025 and reiterated the written submission dated 06.09.2025 in the personal hearing. Accordingly, I take up the case for adjudication on the basis of evidences available on record and submission made by the noticee during the personal hearing.

16. In the instant case, I find that the main issue to be decided is whether the 724.720 grams of gold bar with purity of 999.0/24Kt. found concealed inside the waist band of the jeans wore by the passenger, having Market Value of Rs.64,59,429/-(Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff value as Rs.58,98,540/-(Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only), seized vide Seizure Memo/Order dated 12.03.2025 under Panchnama proceedings dated 11/12.03.2025 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

17. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement that **Shri Hemant Tomer** was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the noticee as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 11/12.03.2025 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to which the said noticee replied in negative. The AIU officers asked the passenger to pass through

the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal -2 building, after removing all metallic objects from his body/ clothes. While passing through the DFMD machine after removing all the metallic objects from body/clothes, no beep sound was heard indicating that no objectionable/ dutiable items was on his body/ clothes. Further, it was observed that the said passenger was wearing a jeans pant with unusually thick waist band, the AIU Officers thoroughly examined the said jeans pant and found that the weight of the said jeans pant was heavier than usual and the waist band of the jeans pant was thick and very heavy. During further examination, it was observed that some material was concealed inside the waist band of the jeans pant by way of stitching. On being asked about the same, the passenger, Shri Hemant Tomar informed that he was carrying gold paste mixed with chemical in transparent plastic strip covered with white tape which was concealed by him inside waist band of his jeans pant. Thereafter the DRI & AIU officers cut the thick visible edge of waist band of the said jeans pant and one strip containing semi solid gold and chemical mix paste was extracted covered with white plastic tape. Thereafter, the officers called the Government Approved Valuer (Shri Kartikey Vasantrai Soni) for inspection and valuation for the same.

18. It is on record that Shri Kartikey Vasantrai Soni, The Government Approved Valuer vide his Certificate No. 1765/2024-25 dated 12.03.2025, certified that the gold bar, weighing 724.720 grams (Net Weight) is having purity 999.0/24 Kt. and having Market Value of Rs.64,59,429/- (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value as Rs.58,98,540/- (Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only) has been derived from 829.080 grams (Gross Weight) of semi solid strip containing gold and chemical mix that was recovered, from inside the waist band of the jeans of the passenger, on 11.03.2025. The details of the Valuation of the said gold bar are tabulated as below:

Name of passenger	Details of gold Items	PCS	Certificate no.	Net Weight	Purity	Market value (Rs)	Tariff Value (Rs)
Shri Hemant Tomer	01 gold bar recovered from the semi solid strip containing gold and chemical mix	01	1765/2024-25	724.720 Gram	999.0 24Kt	64,59,429/-	58,98,540/-

19. I find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. The offence committed was admitted by the noticee in his statement recorded on 11/12.03.2025 under Section 108 of the Customs Act, 1962. I find from the content of the statement dated 11/12.03.2025 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and as per his say and after understanding and reading the same, he put his dated signature. He clearly admitted that he was aware that importation of gold in commercial quantity in baggage is not allowed and same was liable for Customs Duty, therefore, to avoid the payment of duty, he intentionally did not declare the same and tried to remove without declaration. It is on the record that the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows: -

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is valid evidence"

- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that “It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962”
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon’ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that “Confessional Statement corroborated by the Seized documents admissible even if retracted.”
- Hon’ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA”

20. Further, I find that during the personal hearing the authorized representative mentioned that due to ignorance of law the noticee was unable to declare the same and not well versed with the Customs Provisions, Rules and Regulation. In this regard, I observed that, in any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. Hon’ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that *ignorance of law is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]*. Therefore, the plea of the noticee that due to ignorance of law, he was unable to declare the one strip containing semi solid gold and chemical mix paste was extracted covered with white plastic tape is not tenable and far from the truth as he clearly admitted in his statement that he intentionally not declared the one strip containing semi solid gold and chemical mix paste was extracted covered with white plastic tape to clear them illicitly without payment of duty.

21. I find that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger’s baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is “Restricted” and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer’s or refiner’s engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. *As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the “eligible passenger” at the time of his arrival in India or imported by him within 15 days of his arrival in India.* It has also been explained for purpose of the notifications, “eligible

passengers” means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

22. Further, as per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that as per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. Further, the Board has also issued instructions for compliance by “eligible passenger” and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

23. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold items having total (Net Weight) 724.720 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that he wanted to clear the gold items clandestinely without payment of eligible custom duty. Moreover, the prescribed conditions of the eligible passenger, of staying abroad continuously more than six months is not fulfilled in the instant case. Apart from that the noticee has not any convertible foreign exchange with him for payment of duty as required, which shows the intention of the noticee that he did not want to pay customs duty and opted green channel without making any declaration.

24. With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following: -

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under: - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. “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 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 the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 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 purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negatived 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 restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. **From the said judgment of the Apex Court, it is amply clear that the goods are to be treated as 'prohibited' if there is failure to fulfil the conditions/restrictions imposed by the Government on such import or export. In this case, I find that the noticee had tried to remove the impugned goods i.e. one (01) gold bar weighing 724.720, by concealment and attempted to clear from the Customs authorities without declaration and without payment of custom duty. Accordingly, the goods brought by the noticee falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

Further, Hon'ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I Vs. Samynathan Murugesan [2009 (247) E.L.T 21 (Mad.)] relied on the definition of 'Prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003 (155) ELT 423(SC)] and has also held as under:

"In view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold the imported gold was 'prohibited goods' since the respondent is not eligible passenger who did not satisfy the conditions"

25. Further, the noticee has claimed that he himself purchased the said one (01) gold bar in Thailand while returning to India. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that "in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt". And "Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them". From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of

the ornaments and have to provide the source of money from which gold was purchased.

Merely claiming the ownership on the gold without any supporting documentary evidences viz, purchase invoice, bank transactions details, which proves that the gold was purchased in legitimate way and as bona fide personal use, does not make him owner. **Therefore, the claim of noticee that the said one (01) gold bar were purchased by him is not genuine and an afterthought.**

Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. As gold is a notified item and when notified goods are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence during the personal hearing. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold was purchased by him is not tenable on basis of no documentary evidence.

26. Further, the noticee has accepted that he had not declared the said gold items i.e. one (01) gold bar concealed by him in form of semi solid strip containing gold and chemical mix, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the one (01) gold bar weighing 724.720 grams (Net Weight), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved.

27. From the facts discussed above, it is evident that noticee had carried the said gold weighing 724.720 Grams (Net Weight), while arriving from Don Mueang (Thailand) to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold items of 24KT/999.00 purity totally weighing 724.720 Grams (Net Weight), liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold items and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

28. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e. Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he had tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under

Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 724.720 Grams (Net Weight) concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 724.720 Grams (Net Weight), having Market Value of Rs.64,59,429/-(Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value as Rs.58,98,540/-(Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only) recovered and seized from the noticee vide Seizure Order dated 12.03.2025 under Panchnama proceedings dated 11/12.03.2025 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form of semi solid substance consisting of Gold and Chemical mix, inside the waist band of the jeans, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

29. I find that the Noticee confessed of carrying the said gold of 724.720 Grams (Net Weight) concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

30. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the willful intention to smuggle the impugned

goods. The said gold items weighing 724.720 Grams (Net Weight), having Market Value of Rs.64,59,429/-(Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value as Rs.58,98,540/-(Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only) recovered and seized from the noticee vide Seizure Order dated 12.03.2025 under Panchnama proceedings dated 11/12.03.2025. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold items total weighing 724.720 Grams (Net Weight), by deliberately not declaring the same by him on arrival at airport with the willful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

31. I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Merely claiming the ownership without any documentary backing, is not proved that the gold was purchased in legitimate way and belonged to the noticee. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the intention of noticee was not to declare the said gold item viz. one (01) gold bar and tried to remove them clandestinely, to evade payment of customs duty. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that 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; has to be based on relevant consideration". Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Also, in the judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, **I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.** Further, to support my view, I also relied upon the following judgment which are as:

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

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he

has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act.”

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

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

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

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, “restriction”, also means prohibition, as held by the Hon’ble Apex Court in Om Prakash Bhatia’s case (cited supra).

31.4 The Hon’ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. Sinnasamy 2016 (344) E.L.T. 1154 (Mad.) held- *Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified-*

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

31.5 In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

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

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

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

32. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold items and thus, failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee put the one (01) gold bar in semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans by the passenger intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 724.720 Grams (Net Weight) of 24Kt./999.0 purity in form of semi solid substance consisting of Gold and Chemical mix, is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 724.720 Grams (Net Weight) of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.**

33. As regard imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee **Shri Hemant Tomer**, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold in form of semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that *“The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.”* In the instant case, the noticee was attempting to smuggle the said gold items and attempting to evade the Customs Duty by not declaring the said one (01) gold bar weighing 724.720 Grams (Net Weight) having purity of 999.0 and 24K. Hence, the identity of the goods is not

established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said one (01) gold bar weighing 724.720 Grams (Net Weight), carried by him. He has agreed and admitted in his statement that he travelled from Don Mueang (Thailand) to Ahmedabad with the said gold items. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said one (01) gold bar of 724.720 Grams (Net Weight), having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 and I hold accordingly.

34. Accordingly, I pass the following Order:

ORDER

- (i) I order **absolute confiscation** of One (01) Gold Bar, having purity 999.0/24 Kt., weighing 724.720 Grams (Net Weight) and having the Market Value of **Rs.64,59,429/-**-(Rupees Sixty-Four Lakhs Fifty-Nine Thousand Four Hundred Twenty-Nine only) and Tariff Value as Rs.58,98,540/--(Rupees Fifty-Eight Lakhs Ninety-Eight Thousand Five Hundred Forty only) derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 829.080 Grams, found concealed inside the waist band of the jeans wore by the passenger, **Shri Hemant Tomar**, who arrived from Don Mueang to Ahmedabad on 11.03.2025 by Air Asia Flight No. FD 144, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under Panchnama proceedings dated 11/12.03.2025 and Seizure Memo Order dated 12.03.2025, under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) I impose a penalty of **Rs. 16,25,000/- (Rupees Sixteen Lakhs Twenty-Five Thousand Only)** on **Shri Hemant Tomer** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

35. Accordingly, the Show Cause Notice No. VIII/10-38/SVPIA-C/O&A/HQ/2025-26 dated 26.08.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN:20251171MN0000317224

F. No. VIII/10-38/SVPIA-C/O&A/HQ/2025-26

Date:24/11/2025

BY RPAD/E-MAIL**To**

**Shri Hemant Tomar,
B-17, Shiromani Society,
Honey moon Party Plot,
Nava Naroda, Ahmedabad-PIN-382345
Gujarat, India**

Copy to:

- (i)** The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
- (ii)** The Deputy Commissioner of Customs (Task Force), Ahmedabad.
- (iii)** The Deputy/Assistant Commissioner of Customs (AIU), T-2 Terminal, Sardar Vallabhbhai Patel International Airport, Ahmedabad-380003.
- (iv)** The Deputy/Assistant Commissioner of Customs (Airport) T-2 Terminal, Sardar Vallabhbhai Patel International Airport, Ahmedabad-380003.
- (v)** The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (vi)** Guard File