

OIO No:44/ADC/SRV/O&A/2025-26
F. No. VIII/10-257/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
 "सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-257/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या- तारीख / Show Cause Notice No. and Date	:	VIII/10-257/SVPIA-A/O&A/HQ/2024-25 dated: 07.02.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	44/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	05.06.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	05.06.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Himmat Singh Shaktawat, S/o Shri Kishan Singh Shaktawat, VPO Parda Itiwar Karva Khas, Teh Aspur, Dungarpur, Rajasthan- 314021
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

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On the basis of passenger profiling and suspicious movements of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a male passenger Shri Himmat Singh Shaktawat, aged 49 years S/o. Kishan Singh Shaktawat, having Indian Passport No.B6043315 residing at VPO Parda Itiwar Karva Khas, Tehsil- Aspur, Dungarpur, Rajasthan- 314021, arriving from Kuwait to Ahmedabad on 11.09.2024 via Indigo Flight No. 6E-1244 from (Seat No. 9F), at the arrival Hall of the 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 were recorded under the said **Panchnama dated 11.09.2024.**

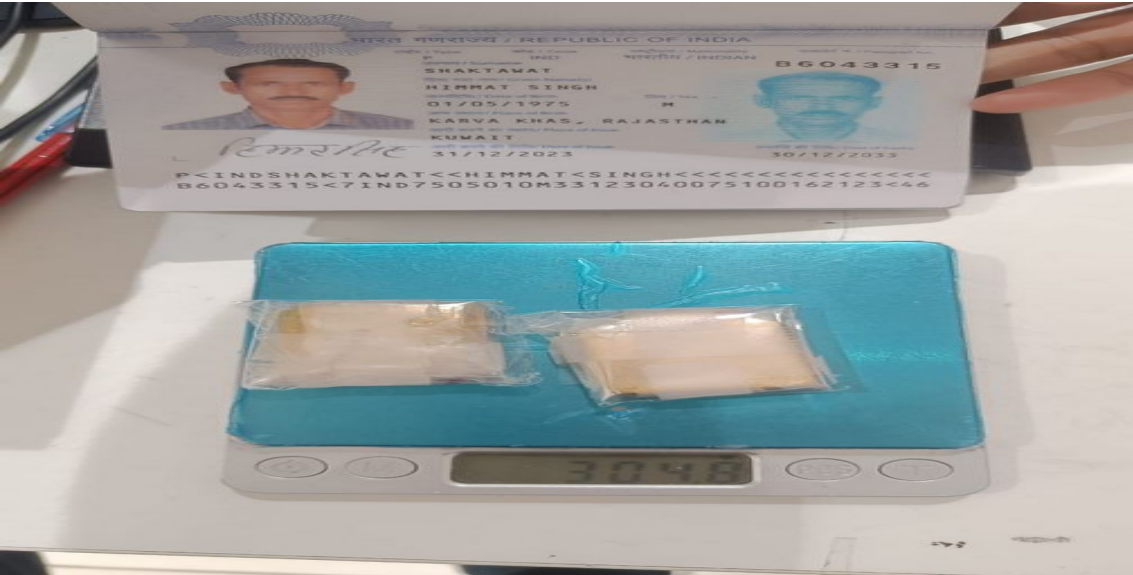
2. The passenger was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. The officers asked /informed the passenger that a search of his baggage as well as his personal search was to be carried out and gave an option 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. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival Hall of Terminal 2 building; While he passed through the said DFMD, a Beep sound was heard and red lights were seen from the said DFMD. The officers asked Shri Himmat Singh Shaktawat whether he had any metallic object/ valuable items on his body/ his garments to which Shri Himmat Singh Shaktawat informed that he had 02 Gold cut bars in his Underwear. The said passenger then handed over the two transparent plastic packages containing rectangular light-yellow colour metal bars concealed in his Underwear to the AIU Officers.

2.1 Thereafter, the AIU officer called the Govt. Approved Valuer and informed that two transparent plastic packages containing rectangular

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light-yellow colour metal bars of foreign origin was recovered from the Underwear of **Shri Himmat Singh Shaktawat**, who had arrived from Kuwait to Ahmedabad on 11.09.2024 by Indigo Flight No. 6E-1244 (Seat No. 9F) at T-2 of SVPIA Ahmedabad and that he needed to come to the Airport for examination and valuation.

2.2 After that, the Government Approved Valuer reached the airport premises. Thereafter, the AIU officers introduced the panchas as well as the passenger to the said person viz. Shri Kartikey Vasantrai Soni, Government Approved Valuer. Shri Kartikey Vasantrai Soni took weight of the said 2 Gold cut bars and checks the nature and purity of the same. Shri Soni informed that the gross weight of the said items is 304.800 Grams. The photograph of the above said articles i.e. 02 Gold cut bars are as under;



3. After testing the 2 Gold cut bars, the Government Approved Valuer confirmed that it is pure gold and Shri Soni Kartikey Vasantrai issued a Certificate, vide Certificate No. 847/2024-25 (Annexure - A) dated 11.09.2024, wherein it is certified that the gold cut bar are having purity 999.0/24kt, weighing 302.920 grams. The Photograph and valuation provided by the said Govt. Approved Valuer is summarized as under:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	CUT GOLD BARS 02 CUT	2	302.920	999.0 24Kt	Rs.22,48,272/-	Rs.20,68,429/-

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3.1 Further, the Govt. Approved Valuer informed that the total Market Value of the said 02 gold cut bars having purity 999.00/ 24 Kt is Rs. 22,48,272/- (Rupees Twenty-Two Lakhs Forty-Eight Thousand Two Hundred Seventy-Two Only) and tariff value is Rs. 20,68,429/- (Rupees Twenty Lakhs, Sixty-Eight Thousand, Four Hundred and Twenty-Nine Only), which has been calculated as per the Notification No. 56/2024-Customs (N.T.) dated 30.08.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). He submits his valuation report to the AIU Officers.

Seizure of the above gold bar:

4. The said 02 gold cut bars totally weighing 302.920Grams was carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said 02 gold cut bars totally weighing 302.920 grams having purity 999.00/24Kt & having market value of Rs. 22,48,272/- (Rupees Twenty Two Lakhs Forty Eight Thousand Two Hundred Seventy Two Only) and Tariff Value Rs. 20,68,429/- (Rupees Twenty Lakhs, Sixty Eight Thousand, Four Hundred and Twenty Nine Only), was placed under seizure vide order dated 11.09.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject 02 gold cut bars are liable for confiscation under Section 111 of the Customs Act, 1962.

5. Statement of Shri Himmat Singh Shaktawat:

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Statement of Shri Himmat Singh Shaktawat was recorded under Section 108 of the Customs Act, 1962 on 11.09.2024, wherein he inter alia stated as under:

5.1 He gave his personal details like name, age, address, education, profession and family details and informed that he is a labour at an AC related service provider in Kuwait.

5.2 He informed that he was not a frequent flyer and had been working in Kuwait for last 18 years.

5.3 He perused the Panchnama dated 11.09.2024 and stated that the fact narrated therein were true and correct.

5.4 He further stated that the 02 Gold cut bars recovered from his during Panchnama dated 11.09.2024 was handed over to him by his acquaintance named Shri Manohar Singh, who was also living in Kuwait. He further stated that he had attempted to smuggle the said 02 Gold cut bars illegally into India to earn money and that he was aware that smuggling of gold without payment of duty was an offence.

From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of The Baggage Rules, 1998, 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, 02 gold cut bars totally weighing 302.920 Grams having purity of 24 KT/999.0 was recovered from the Underwear of **Shri Himmat Singh Shaktawat**, who had arrived from Kuwait to Ahmedabad on 11.09.2024 by Indigo Flight No. 6E-1244 (Seat No. 9F) at T-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 1998. 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 02 gold cut bars totally weighing 302.920 Grams having purity of 24 KT/999.0 because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said 02 gold cut bars totally weighing 302.920 Grams having purity of 24 KT/999.0 recovered from **Shri Himmat Singh Shaktawat**, were attempted to be smuggled into India

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with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said 02 gold cut bars totally weighing 302.920 Grams having purity of 24 KT/999.0 are liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said 02 gold cut bars totally weighing 302.920 Grams recovered from the Underwear of **Shri Himmat Singh Shaktawat** at Terminal -2, SVPIA Ahmedabad on 11.09.2024 were placed under seizure vide Panchanama dated 11.09.2024 and Seizure order dated 11.09.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. Summation:

The aforementioned proceedings indicates that **Shri Himmat Singh Shaktawat**, had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having Market value of Rs. 22,48,272/- (Rupees Twenty Two Lakhs Forty Eight Thousand Two Hundred Seventy Two Only) and Tariff Value Rs. 20,68,429/- (Rupees Twenty Lakhs, Sixty Eight Thousand, Four Hundred and Twenty Nine Only) as on 11.09.2024, liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure.

7. Legal provisions relevant to the case:

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

- 7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20 as amended, 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

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stay abroad.

- 7.2 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.
- 7.3 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.
- 7.4 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:

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 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;
- 7.7 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.
- 7.8 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.
- 7.9 As per Section 11(3) of the Customs Act, 1962 any

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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.

- 7.10 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.
- 7.11 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.
- 7.12 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

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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

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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.

7.13 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.

7.14 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.

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

Customs Baggage Rules and Regulations:

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- 7.16 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.
- 7.17 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 the bona-fide 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.

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

- 7.18 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.
- 7.19 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

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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 cut bar, 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 (ii)Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

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.

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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.

- 8** 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.

CONTRAVENTION AND VIOLATION OF LAWS

- 9.** It therefore appears that:

- (i) **Shri Himmat Singh Shaktawat** had attempted to smuggle/improperly import 02 Gold cut bars totally weighing 302.920Grams having purity 24KT /999.0 and having Market value of Rs. 22,48,272/- (Rupees Twenty-Two Lakhs Forty-Eight

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Thousand Two Hundred Seventy-Two Only) and Tariff Value Rs. 20,68,429/- (Rupees Twenty Lakhs, Sixty-Eight Thousand, Four Hundred and Twenty-Nine Only) as on 11.09.2024, recovered from his Underwear, with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The said passenger **Shri Himmat Singh Shaktawat** had knowingly and intentionally smuggled the said gold in his Underwear on his arrival from, Kuwait to Ahmedabad on 11.09.2024 by Indigo Flight No. 6E-1244 (Seat No. 9F) at Terminal -2, SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by **Shri Himmat Singh Shaktawat**, by way of concealment in his Underwear and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. **Shri Himmat Singh Shaktawat** 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 Himmat Singh Shaktawat**, by not declaring the 02 Gold cut bars concealed in his Underwear, 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 Himmat Singh Shaktawat**, concealed gold in his Underwear before arriving from Kuwait to Ahmedabad on 11.09.2024 by Indigo Flight No. 6E-1244 (Seat No. 9F) at Terminal -2, SVPIA Ahmedabad, 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), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

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- (iv) **Shri Himmat Singh Shaktawat**, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the said 02 gold cut bars totally weighing 302.920grams which was recovered from the Underwear of **Shri Himmat Singh Shaktawat** who arrived Kuwait to Ahmedabad on 11.09.2024 by Indigo Flight No. 6E-1244 (Seat No. 9F) at Terminal -2, SVPIA Ahmedabad are not smuggled goods, is upon **Shri Himmat Singh Shaktawat**, who is the Noticee in this case.

10. Accordingly, a Show Cause Notice was issued to **Shri Himmat Singh Shaktawat**, aged 49 years S/o. Kishan Singh Shaktawat, having Indian Passport No. B6043315 residing at VPO- Parda Itiwar Karva Khas, Teh. Aspur, Dungarpur, Rajasthan- 314021, as to why:

- (i) The 02 Gold cut bars weighing 302.920 Grams having purity 24KT /999.0 and having Market Value of Rs. 22,48,272/- (Rupees Twenty Two Lakhs Forty Eight Thousand Two Hundred Seventy Two Only) and Tariff Value Rs. 20,68,429/- (Rupees Twenty Lakhs, Sixty Eight Thousand, Four Hundred and Twenty Nine Only) wrapped in two transparent plastic packages concealed in Underwear by passenger, **Shri Himmat Singh Shaktawat**, who arrived from Kuwait to Ahmedabad on 11.09.2024 by Indigo Flight No. 6E-1244 (Seat No. 9F) at Terminal -2, SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 11.09.2024 and Seizure Memo Order dated 11.09.2024,, 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 the **Shri Himmat Singh Shaktawat**, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

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11. The noticee through his advocate vide letter dated 09.05.2025 submitted his written reply at the time of personal hearing wherein he denies all the allegation. He admitted of having 02 gold cut bars weighing 302.920 grams with him. He submitted that the statement given under Section 108 of Customs Act, 1962 was given under duress and therefore, the statement was not true and cannot be relied upon. He submitted that gold is neither prohibited nor restricted, hence question for confiscation under Section 111 of Customs Act, 1962 does not arise and also not liable for penal action under Section 112 of Customs Act, 1962. He submitted while coming back to India from Kuwait, he purchased the gold for his personal use and for his family. He was working in the Kuwait since 2007 and he is an eligible passenger as he was coming India after six months stay at abroad as he went to Kuwait on 04.07.2023 and returned on 11.09.2024. He submitted that he had produced the bill in his name but the same was not taken on record at any stage of investigation. He also mentioned that the statement recorded under Section 108 of the Customs Act, 1962 was taken under duress and therefore the same was not true. He submitted that the gold cut bar was hidden for the safety purpose as he was having of theft. He submitted that gold is not prohibited goods and he brought the gold first time. Due to ignorance of law, he was unable to declare the same. He had orally declared the gold before the authority in terms of Circular No. 09/2001-Cus dated 22.02.2001. He was un illiterate person and studied upto 9th standard. There is plethora of judgments wherein release of gold has been allowed on payment of redemption fine, or passenger has been allowed for release/re-export in lieu of fine. In his statement he also mentioned that the gold belongs to him and purchased by him. He submitted that he was not understand what was written in the panchnama and statement as both were typed in English and he was forced to sign them. He submitted that he was not penalized under Section 112 as there was no evidence of any action which he had done in contrary to the Act. The relied on the following judgments:-

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: -

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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]

1. 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 unauthorisedly held that: -

Redemption Fine –Customs– Gold in the form other than ornaments imported unauthorisedly– 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,

2. 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.

04 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. Latest judgement of the Revisionary Authority, New Delhi are also enclosed herewith which is self-explanatory:

Further, he submitted the latest RA 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)

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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 Underwear 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

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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).

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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)

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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-CUSTM-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)

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39. OIA No. AHD-CUSTM-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)

Further, he submitted the case law wherein NRI passenger had been allowed release of goods in lieu of RF and PP.

1. Order no: 404-405/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 30.03.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Huzefa Khuzefa Mamuwala (2. Shri Shabbir Ranijiwala (10 Pieces of Gold cut bar 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)
2. Order no: 58/2020-CUS (WZ) /ASRA/MUMBAI/ DATED. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Shabbir Taherally Udaipurwala (Gold WEIGHING 466.640 grams Concealed Re-Export Nee Case granted RF, PP)
3. Order no: 605/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 22.08.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Shri Hitesh laxmichand gagani (1 Gold kada and 1 gold chain 350.890 grams Concealed Re-Export Nee Case granted RF, PP)
4. Order no: 61/2020-CUS (WZ) /ASRA/MUMBAI/ DATED. 21.05.2020 IN C/A Pr. Commissioner of Customs, Ahmedabad v/s Shri Basheer Mohammed Mansuri (10 Pieces of Gold cut bar 1166.700 grams Concealed Re-Export Nee Case granted RF, PP)

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5. Order In Original No: JC/PK/ADJN/381/2021-22 Date Of Order 31.03.2022 And Date of Issue 12.04.2022 Joint Commissioner Of customs CSMI Airport Mumbai V/s Ms. Rashmi Satish Mandelia (3 Gold Biscuits (Bars) 349.000 Concealed Concealed Re-Export Nee Case granted RF, PP)
6. Order no: 280/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Priyal Sanjay Chokshi (3 Pieces of crude Gold Bangles 140.00 Grams Concealed Re-Export Nee Case granted RF, PP)
7. Order no: 281/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP)
8. Order no: 389/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 200.00 grams Concealed Re-Export Nee Case granted RF, PP)
9. Order no: 65/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP)
10. Order no: 402/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP)
11. Order no: 349/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 29.11.2022 IN C/A Pr. Commissioner of Customs, CSI Airport

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Mumbai v/s Mr. Kakali Sardar (8 Gold Bangles 2 Gold Rings
550.000 Grams Concealed Re-Export granted on RF, PP)

Further, he relied upon the judgments in cases as:-

- 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.

Further, *relying on the latest judgements in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been released on redemption Fine and personal Penalty:-*

- High Court of Judicature at Allahabad Sitting at Lucknow, in CIVIL MISC REVIEW APPLICATION No. - 156 of 2022 in case of Sri Rajesh Jhamatmal Bhat And Another
- Rajasthan High Court, Manoj Kumar Sharma S/O Late Shri ... vs Union of India on 17 February, 2022

He further states that the goods may be released at the earliest even provisionally for which he 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 he is ready to pay penalty too and requested for a personal hearing in the matter.

12. The noticee was given opportunity for personal hearing on 16.05.2025 but the authorized representative vide mail dated 16.05.2025 has requested to attend the PH on 20.05.2025 due to some pre occupied work on 16.05.2025. Shri Rishikesh J Mehra, Advocate on behalf of the noticee Shri Himmat Singh Shaktawat appeared for personal hearing on 20.05.2025. He produced copy of Vakalatnama to represent the case. Shri Rishikesh Mehra submitted written submission and re-iterated the same. He submitted that his client is working as electrician in Kuwait since 2007. He went Kuwait on 04.07.2023 and returned to India on 11.09.2024 after 14 months, so he became an eligible passenger to bring gold. He submitted that gold was not in commercial quantity and not ingeniously concealed. He is an illiterate person and does not familiar with the Customs Rules and Regulation.

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He requested to take lenient view in the matter and allow to re-export of the gold. He submitted various case law in his support. He has nothing more to add.

Discussion and Findings:

13. I have carefully gone through the facts of this case, written submission and the record of Personal Hearing.

14. In the instant case, I find that the main issue to be decided is whether the 302.920 grams of 02 gold cut bars (hidden/concealed in his underwear) of 24KT (999.0 purity), having Tariff Value of Rs. 20,68,429/- and Market Value of Rs. 22,48,272/-, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 11.09.2024 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.

15. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement that Shri Himmat Singh Shaktawat was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 11.09.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector after removing all metallic objects with him and while he passed through the said DFMD, a Beep sound was heard and red lights were seen from the said DFMD. The officers asked Shri Himmat Singh Shaktawat whether he had any metallic object/ valuable items on his body/ his garments to which Shri Himmat Singh Shaktawat informed that he had 02 Cut Gold Bars in his Underwear. The said passenger then handed over the two transparent plastic packages containing rectangular light yellow colour metal bars concealed in his Underwear to the AIU Officers.

16. It is on record that Shri Kartikey Vasantryai Soni, the Government Approved Valuer, weighed the said 02 gold cut bars and informed that the weight of said bars is **302.920** Grams having purity 999.0/24KT

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which were hidden/concealed in his underwear. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 02 gold cut bars is **Rs.20,68,429/-** and Market value is **Rs.22,48,272/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold cut bars	02	302.920	999.0/24Kt	22,48,272/-	20,68,429/-

17. Under his submission, the noticee alleged that the statement recorded on 11.09.2024 was not voluntary and the same was recorded forcefully. In this regard, 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 11.09.2024 under Section 108 of the Customs Act, 1962. It is on the record 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. I find from the content of the statement dated 11.09.2024 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard and an afterthought, as I also not find any retraction filed by the noticee. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his signature on the Statement after understanding the same as explained by the officers to him. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him in Hindi. He clearly admitted that he did not make any declaration as he wanted to clearly the same without payment of Customs Duty. The offence committed is admitted by the noticee in his statement recorded on 11.09.2024 under Section 108 of the Customs Act, 1962. 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

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

18. Further, he submitted in his submission that he is an illiterate person and due to ignorance of law, he was unable to declare the same as it was his first instance of carrying the gold with. In this regard, 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.)]

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19. 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.

20. 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

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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.

21. 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 cut bars having total weight 302.920 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 rod clandestinely without payment of eligible custom duty.

22. Further, he alleged that the gold is not fall under the “Prohibited goods”. 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

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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 negated the said contention and held thus:- “... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to” any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. “Any prohibition” referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in section 111(d) of the Customs Act, 1962 includes 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 good i.e. 02 gold cut bars, by concealment and attempted to clear from the Customs authorities without declaration and without payment. Accordingly, the good brought by the noticee falls under the ambit of “Prohibited Goods” under the definition of Section 2(33) of the Customs Act, 1962.**

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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"

23. Further, it was alleged by the noticee that he had no intention to mis declare the gold but he was apprehended before going to counter for declaration and he was having bill for gold in his name but same was not taken into account by the officers at any stage of investigation. In this regard, I find that, the panchnama narrates the fact that the impugned gold cut bars were not declared by the noticee on his own and also not declared even after asking by the officers and it was recovered only after he was passing through the DFMD and a loud beep was heard while passing through the same which indicates he had something metallic object and after that the noticee admitted that he had concealed the said gold in his underwear with sole purpose to remove it illicitly without declaring it before customs officers. It is evident that the noticee smuggled the said gold cut bars and did not declare it at red channel counter with an intention to evade customs duty. Therefore, the alibi that he wanted to declare the gold and before declaration he was apprehended is baseless and merits no credence. Further, I find no copy of invoice on the record as claimed by the noticee that he had invoice alongwith and produced the same before officers but same was not taken into account. On contrary, in his statement he clearly admitted that the gold cut bars were given by a person named shri Manohar Singh who was an acquaintance/colleague and does not belong to him and he would receive Rs. 10,000/- from Shri Manohar Singh for successful delivery of the same at Ahmedabad, therefore, the claim of the noticee that the gold was purchased by him from his personal saving and for his personal purpose and was having a purchase bill in his name is baseless and not creditworthy. Also, if he had invoice, he would have submitted it alongwith his written submission or produced at the time of personal hearing but he failed to

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do so, which evidently clear that he has nothing to submit and making a false claim on the gold without any documentary evidences, apart from the invoice, he was also unable to submit any bank transaction showing the legitimate purchase of the said gold cut bars. 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 that the gold was purchased by him without submission of any invoice/bill copy alongwith other documentary evidences viz, 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, 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 goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized in terms of Section 123 of Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence in his written submission as well as 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.

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24. Further, the noticee has accepted that he had not declared the said gold cut bars concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the said 02 gold cut bars, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved.

25. From the facts discussed above, it is evident that noticee had carried the said gold weighing 302.920 grams, while arriving from Kuwait to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold cut bar of 24KT/999.00 purity totally weighing 302.920 grams, 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 cut bars 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.

26. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible

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

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 302.920 grams, having Tariff Value of Rs.20,68,429/- and Market Value of Rs.22,48,272/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 11.09.2024 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 gold cut bars concealed in his underwear, 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.

27. I find that the Noticee confessed of carrying the said gold of 302.920 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read

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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.

28. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold cut bar weighing 302.920 grams, having Tariff Value of Rs.20,68,429/- and Market Value of Rs.22,48,272/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 11.09.2024. 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 cut bar weighing 302.920 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

29. Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, alongwith defense submission. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were

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made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, I find that judgments relied upon by the noticee, is not squarely applicable in the instant case. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Merely claiming the ownership without any documentary backing, is not proved that the goods 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 noticee was not want to declare the said gold cut bars 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*

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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.” Now in the latest 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 :-

29.1. 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]

29.2. 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.

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29.3. 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).

29.4 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.

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29.5. 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”.

29.6. 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.**”*

30. Under submission, the noticee has requested for re-export of the gold cut bars in case where release of gold was not allowed on redemption fine. Before discussion, I would like to reproduce the relevant provision of Section 80 of Customs Act, 1962 as :-

Section 80. Temporary detention of baggage. -

*Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and **in respect of which a true declaration has been made under section 77,** the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India 1 [and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be*

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returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name].

On a plain reading, it appears that a declaration under Section 77 is pre-requisite condition for detention/re-export in terms of Section 80ibid. Hon'ble Allahabad High Court has, in case of Deepak Bajaj [2019 (365) ELT 695 (All.)] held that a declaration under Section 77 is a sine qua non for allowing re-export under Section 80. In this case, the noticee had made no written declaration in respect of the subject gold. Further, Hon'ble Delhi High Court has, in case of Jasvir Kaur vs. UOI [2019(241)ELT 521 (Del.)] held that re-export "cannot be asked for as a right-----". The passenger cannot be given a chance to try his luck and smuggle gold into country and if caught he should be given permission to re-export." Therefore, the option under Section 80 of the Act would not be applicable to him and accordingly, the request for re-export is therefore, rejected.

31. 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 rod 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 concealed the gold cut bars in his underwear with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 302.920 grams of 24Kt./999.0 purity in form of gold cut bars, concealed in his underwear is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 302.920 grams 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.**

32. I find from the statement that the gold cut bars were neither purchased by the noticee nor belongs to him rather they were handover by a person named Shri Manohar Singh. Further, I find that the noticee is not an illiterate person and studied upto 9th standard and working in Kuwait since 2007 and have basic knowledge of the fact that smuggling

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is an offense. Further, I find that the noticee consciously accepted the offer of smuggling the gold cut bars, offered to him by another person, for financial gain. This implies that the noticee was aware that he was transporting gold illegally and motivated by financial gain, such as receiving payment or a commission for his involvement in the smuggling. This establishes that the noticee was acting as an agent for someone else, likely an organization or individual involved in the smuggling network. The admission in statement highlights the motive (financial gain) for participating in the illegal activity and suggesting a deliberate choice to engage himself in it. In essence, admitting to smuggling for monetary gain, even when done on behalf of another, demonstrates a clear understanding of the illegal nature of the act and a conscious decision for personal benefit.

33. As regard imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Himmat Singh Shaktawat, 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 cut bars in his underwear, thus, established that the concealment of said gold cut bars is ingenious in nature. 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 smuggled the gold cut bars and attempting to evade the Customs Duty by not declaring the gold cut bars weighing 302.920 grams 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 02 gold cut bars weighing 302.920 grams, carried by him. He has agreed and admitted in his

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statement that he travelled from Kuwait to Ahmedabad with the said gold in form cut bars concealed in his underwear. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 302.920 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) of the Customs Act, 1962 and I hold accordingly.

34. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of 02 gold cut bars weighing **302.920** grams having purity of 999.0 (24KT.) wrapped in two transparent plastic packages concealed in Underwear, having Market value of **Rs.22,48,272/-** and Tariff Value of **Rs.20,68,429/-**, placed under seizure under Panchnama dated 11.09.2024 and seizure memo order dated 11.09.2024, under the provision 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. 5,50,000/- (Rupees Five Lakh Fifty Thousand Only)** on **Shri Himmat Singh Shaktawat** 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/10-257/SVPIA-A/O&A/HQ/2024-25 dated 07.02.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250671MN0000010160

BY SPEED POST AD

To,
Shri Himmat Singh Shaktawat,
S/o Shri Kishan Singh Shaktawat,
VPO Parda Itiwar Karva Khas,
Teh Aspur, Dungarpur,
Rajasthan- 314021

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.