सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260271MN0000222DE0

क	फ़ाइलसंख्या FILE NO.	S/49-93/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-688-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	29/AB/ADC/SRT-AIRPT/2024-25, dated 19.03.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Yusuf Ali Rehmani S/o Shri Ali Jusub rehmani, 85, Haroon Manzil, 1st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai-400009, Maharashtra.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3

	महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन) ,वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहै,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

Shri Yusuf Ali Rehmani S/o Shri Ali Jusub rehmani, 85, Haroon Manzil, 1st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai-400009, Maharashtra (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 29/AB/ADC/SRT-AIRPT/2024-25, dated 19.03.2025 (hereinafter referred to as "the impugned order") passed by Additional Commissioner, Customs, Surat International Airport, Surat (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of profiling, that the appellant was suspected to be carrying high-value dutiable/prohibited goods in-person or in the baggage, the AIU (Air Intelligence Unit) officers intercepted the appellant, holding Indian Passport No Z7463102, who arrived by Air India Express Flight No. IX-172 on 28.01.2024 From Sharjah to Surat International Airport, Surat. The officers asked the appellant whether he had anything to declare, which the appellant denied. The Customs officers then asked the appellant to remove all the metallic objects from his body and scanned his body with the hand-held metal detector. During scanning, a beep sound was heard near the chest area of the appellant. The appellant was asked to remove his vest, and the vest was scanned with the hand-held metal detector, whereby a beep sound was heard again. The said vest was then passed through the XBIS scanner machine in the arrival hall of Surat International Airport. During scanning, a dark image was seen in the scanner machine, indicating the presence of some metallic object in his vest. Thereafter, the Customs officers, along with the panchas and the appellant, proceeded to Shri Ambica Touch Refinery to burn the garment of the appellant for extraction of metal concealed therein. Thereafter, the garment was burnt in the furnace, and the ashes were collected and again melted in the furnace, upon which gold in bar form was obtained, and some ashes remained in the process. The gold bar and the remaining ashes obtained were packed in a plastic pouch, put in a green envelope, and sealed so they could not be tampered with.

2.1 The government-approved valuer was unreachable at that time, and hence, in the presence of the appellant and the panchas, the Customs officers cut open the sealed green envelope and weighed the gold bar in the weighing machine available in the Customs office located at the arrival hall of Surat International Airport. The gold bar was found to weigh 395.30 gms and was approximately valued at Rs. 22,00,801/-by the Customs officers.

When asked about this, the appellant informed that the said gold is 24 carats. The gold mentioned above recovered from the appellant appeared to have been smuggled inside India in clear violation of the provisions of the Customs Act of 1962. Therefore, the officers placed the said gold bar weighing 395.30 grams under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure Order dated 29.01.2024 under Panchnama proceedings dated 28/29.01.2024, on a reasonable belief that the same attempted to be smuggled by the appellant was liable for confiscation as per the provisions of the Customs Act, 1962.

2.3 Statement of the appellant was recorded on 29.01.2024 under Section 108 of the Customs Act, 1962, wherein he, stated that he was a trader and engaged in the sale of clothes and shoes; that he had studied upto 8th Std.; that he could read, write and understand English and Hindi Languages. On being shown and explained the panchnama dated 28/29.01.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, he put his dated signature on the panchnama in token of acceptance of the facts stated therein. He further stated that earlier he had made ten visits to Dubai for business purpose; that for the current trip, he had gone to Dubai on 27.01.2024 from International Airport, Mumbai; that the impugned gold recovered from his possession did not belong to him and he was not the owner of said gold; that one Mr. Parvezbhai had handed over the vest containing gold to him at Dubai; that he had met Mr. Parvezbhai at Dubai in connection with business purpose: that Mr. Parvezbhai met him outside Sharjah Airport on 28.01.2024 and handed over the vest to him and asked him to hand over the vest containing gold to a person, who would call him at Surat on his mobile number the following day; that he had met Mr. Parvezbhai a few times at Dubai, however his full name, details or mobile number was not known to him; that the details of person who was supposed to collect the gold from him were not known to him; that he had carried the gold as Mr. Parvezbhai had promised him that the person who would collect gold at Surat will give him Rs. 20,000/- upon handing over the gold to him; that he was not aware of the cost of gold and payment details. He further stated that he was aware that import of gold without payment of Customs duty was an offence, but he tried to smuggle the same for some monetary benefit; that as he intended to smuggle the gold by concealing the same, he did not declare the same upon his arrival before any Customs officer, that after clearing the immigration procedures, he collected his baggage and during checkout, the Customs officials intercepted him and further procedures as stated in Panchnama dated 28/29.01.2024 was carried out. He confessed that he was aware that he had committed an offence by smuggling gold for which he would have to face the consequences as prescribed under the Customs Law.

2.4 Shri Vikasraj Juneja, the Government Approved Valuer, on request arrived at the Surat International Airport on 30.01.2024 and, after examination of the said item under panchnama proceedings dated 30.01.2024, certified the same to be a gold nugget/bar of 99% purity weighing 395.300 gms having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/- as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024. Thereafter, the Government Approved Valuer issued valuation certificate No. 30.01.2024/1.

2.5 The appellant had actively involved himself in the instant case of smuggling of gold into India. The appellant had improperly imported Gold weighing 395.300 grams (net weight), having market value of Rs.25,65,497/- and tariff value of Rs.21,33,434/-, without declaring it to the Customs, by way of concealment in paste form in the vest (garment) worn by him. He concealed the said gold with a deliberate and mala fide intention to smuggle the said gold into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other Allied Acts, Rules and Regulations. The gold improperly imported by him with commercial considerations without declaration before the proper officer of Customs could not be treated as bonafide household goods or personnel effects, the appellant had thus contravened the Foreign Trade Policy 2015-20, 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019. By not declaring the value, quantity and description of the goods imported by him, the appellant violated the provision of Baggage Rules, 2015, read with section 77 of the Customs Act, 1962, read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

2.6 The gold improperly imported by the appellant by concealing the same in paste form in his vest without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962. The appellant, by his above-described acts of omission and commission on his part, had rendered himself liable to penalty under Section 112 of the Customs Act, 1962. As per Section 123 of the Customs Act 1962, the burden of proving that the said improperly imported gold, weighing 395.300 gms (net weight), having a market value of Rs. 25,65,497/ and tariff value of Rs.21,33,434/- without declaring it to the Customs, were not smuggled goods, was upon the appellant.

2.7 A show cause notice was issued to the appellant for confiscation of 01 gold nugget of purity 99% weighing 395.300 gms having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/-, seized vide Seizure Order dated 29.01.2024 under panchnama proceeding dated 28/29.01.2024 under Section 111(d), 111 (i) and 111(j) of the Customs Act, 1962 and for imposition of penalty under Section 112 of the Customs Act, 1962.

2.7 The Adjudicating authority vide impugned order has ordered for absolute confiscation of impugned 01 gold nugget of purity 99% weighing 395.300 gms having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/-, under Section 111(d), 111 (i) and 111(j) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs 25,65,497/- on the appellant under Section 112(b)(i) of the Customs Act,1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;

At the outset, Mr Yusuf Ali Rehmani submits that he is a trader and engaged in the sale of clothes. He admits the possession, carriage, transport and ownership of the gold weighing 395.300 gms under seizure, but denies the allegation that he carried the gold for one Mr Parvez Bhai for monetary consideration of Rs 20,000/-.

- The impugned Show Cause Notice issued without a valid and verifiable digital DIN (Document Identification Number) is invalid and it is to be considered that it was never issued. Therefore, the seized goods are liable to be released unconditionally
- Seizure order dated 29-1-24 was not served on the appellant. Seizure of the gold is therefore invalid. The gold is liable to be returned to the appellant unconditionally.
- The appellant contends that in a case of alleged smuggling where imported goods are to be confiscated, the first step to be taken by the Customs Officer where he has reason to believe that any provision of the Act has been, or is being or is attempted to be contravened, seize goods and take the goods in the possession of the Department. The appellant further contends that something

which is not validly seized and not in possession of the Departmental Authorities cannot not be confiscated, and the very provision relating to proposal made under the impugned SCN dated 30-5-24 should show that the goods must be validly seized and in the legal custody of the authority concerned before an order of confiscation could be passed in respect thereof. However, the appellant contends that the goods were not taken into custody by the proper officer by way of issuing a valid seizure memo/order. The contention of the appellant is sound and on an examination of the scheme of the Act it is not easily possible to say that an article which is not in its legal custody could be ordered to be confiscated by the adjudicating authority under the Act. He relied upon the following case laws in this regard:

(i) Patna High Court in the case of Union Of India & Ors vs Md.Mazid @ Md.Tufani on 20 July, 2011.

(ii) Bombay High Court in the case of Arvind Trading Company and Ors. vs State of Maharashtra and Ors. on 5 August, 1991

(iii) Bombay High Court in the case of Dina Baldev Pathak vs Collector of Customs and Ors. on 20 March, 1961 : AIR 1962 Bom 290, (1961) 63 BOMLR 873

(iv) Gujarat High Court in the case of Manilal Bhanabhai Patel vs Kaul and Ors. on 3 September, 1974: AIR 1976 Guj 134

(v) Allahabad High Court in the case of L. Kashi Nath Seth vs Collector, Central Excise, ... on 22 November, 1978 - AIR 1979 All 128

- The appellant's statement dated 29-1-24 was involuntary and against truth. It should not have been relied upon. It has long been established as a positive rule of criminal law, that no statement by an accused is admissible in evidence against him unless it is shewn by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority or by coercion and threat. The application of the confessions rule is of necessity contextual. Hard and fast rules simply cannot account for the variety of circumstances that vitiate the voluntariness of a confession. When reviewing a confession, a trial judge should therefore consider all the relevant factors. The judge should strive to understand the circumstances surrounding the confession and ask if it gives rise to a reasonable doubt as to the confession's voluntariness, taking into account all the aspects of the rule. The relevant factors include threats or promises, oppression, the operating mind requirement and trickery of the Investigating Agency. While obviously imminent threats of torture will render a confession inadmissible, most cases will not be so clear. An important consideration in all cases is to look for a *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or a promise. Oppressive conditions and circumstances clearly also have the potential to produce an involuntary confession.

- Gold is not a prohibited item. Gold seized from the appellant is not liable for confiscation. Gold is not a prohibited item. It is only a restricted item. Prohibition relates to goods which cannot be imported by any one, such as arms, ammunition, drugs etc. The intention behind the provisions of Section 125 is clear that import of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole. This would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with. In such a situation, the release of such goods confiscated would not cause any danger or detriment to public health. Admittedly, import of gold is permitted in case of certain category of persons, subject to certain conditions, therefore, it would not fall under the prohibited category as envisaged under the said provisions. The above view is also supported by Hon'ble High Court of Calcutta decision in the case of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009 (241) ELT 182 (Cal.). Hon'ble High court while deciding whether 'prohibited' has to be read as prohibited absolutely, held that the Court cannot insert any word in the statute since it is in the domain of the legislators. The Hon'ble High Court has also held that option given under Section 125 of the said Act in respect of prohibited goods and right given to authorities for redemption of the confiscated goods cannot be taken away by Court by inserting a particular word therein. The Hon'ble High Court further held that power has been given by legislators to a particular authority to act in a particular manner and the said authority must act accordingly and not otherwise at all. The gold imported by her are not to be treated as 'prohibited goods' and therefore the goods are not liable for confiscation under the provisions of Sections 111(d), (l) and (m) of the Customs Act, 1962. Gold is not prohibited for import and therefore an option should be given to the importer for redemption of the goods, even if the importer fails to fulfil the conditions for import of gold, on payment of fine. Gold being not prohibited under Customs Act and no special circumstances shown by the Adjudicating Authority to warrant absolute confiscation, the Adjudicating Authority was required to give option to redeem the same for home consumption in terms of Section 125 of the Customs Act, 1962. In this context it is considered necessary to refer to the relevant portion of Section 125 of Customs Act. The Hon'ble Supreme Court of India in the case of Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C) has held in reference to Section 2(33), 11 and 113(d) of Customs Act, 1962 that prohibition of importation or exportation can be subject to certain prescribed condition to be fulfilled before or after clearance of goods and if conditions are not fulfilled it may render the goods as prohibited goods. The said case was decided in the context of over invoicing of exported readymade garments. But in the instant case neither a case of absolute prohibition of imported gold has been established in the SCN because of which the gold brought by the appellant can be termed as prohibited goods as defined in Section 2 (33) of the Customs Act, 1962 as enunciated by the Supreme Court in the above referred case (Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C)). Even, the Hon'ble High Court of Andhra Pradesh in the case of Shaikh Jamal Basha vs GOI, 1997 (91) ELT 277 (AP) has also held that as per Rule 9 of Baggage Rules, 1979 read with Annexure-B, gold in any form other than ornament could be imported on payment of Customs Duty only and if the same was imported unauthorizedly the option to owner of the gold is to be given for redemption of the confiscated gold on payment of fine. The Hon'ble High Court of Bombay in the case of Union of India Vs Dhanak M Ramji (2003(248) ELT 128 (Bom)] and the Apex Court in the case of Sapna Sanjiv Kohli Vs Commissioner of Customs, Mumbai [2010(253) ELT A52 (SC)) has also held that gold is not prohibited goods and accordingly the gold dust was allowed to be redeemed on payment of fine and duties. In a recent Judgment dated June 21, 2016 in the case of Horizon Ferro Alloys Pvt. Ltd. & others vs Union of India, the division bench of Punjab and Haryana High Court has held that, If the goods are not expressly "prohibited" for importation, the petitioner company who is owner, as well as importer, would be entitled to an option to redeem the goods even upon adjudication. The petitioner company has admitted misdeclaration in the three Bills of Entry and is willing to pay the differential duty on the Cigarettes for seeking its provisional release, and is willing to resort to statutory route of self-surrender by invoking jurisdiction of Settlement Commission for settlement of case at once upon issuance of show cause cum demand notice in respect of these three Bills of Entry. The settlement Commission is statutorily empowered to grant immunities from penalty, fine and prosecution under the Customs Act, 1962. The petitioners submitted that although the R-22 Gas is a 'restricted' item for import, and the goods Cigarettes and the R-22 Gas were imported by concealment, however, none of these goods are expressly notified as 'prohibited' for importation. Imported Goods can only be seized under Section 110 of the Act when there exists a reasonable belief that the same are liable to confiscation under Section 111. In respect of such goods even if the same are confiscated upon the culmination of adjudication under Section 28 read with 124 of the Act, the owner/importer 'shall' be given an option to redeem the goods on payment of redemption fine in terms of Section 125 of the Customs Act. Section 110A of the Act provides for provisional release of seized goods even pending adjudication. The division bench comprising Justice M. Jeyapaul and Justice Harinder Singh Sidhu has observed that in the context of Section 125 if the word "prohibited" is construed as to apply in respect of every violation of any regulation or restriction or statutory procedural requirement, the word 'shall' in said Section would be rendered redundant and meaningless. If the definition of 'prohibited goods is applied in the context of Section 125, it would result in absurdity rendering the word 'shall' redundant and otiose, because there cannot be any situation where the goods would be liable to confiscation under Section 111 and 113 as the case may be without there being any violation of the provisions under the Customs Act, 1962 or under any other law or rules, regulations made thereunder. Therefore, in the context of statutory provisions of Section 125, so as to give a meaningful application to both words 'may' and 'shall' used in the said Section, the definition of 'prohibited goods' is inapplicable by application of settled principles of statutory interpretation. The Tribunal was therefore correct in observing that under Section 125 of the Customs Act, unless the importation or exportation of goods is expressly "prohibited" the Adjudication Authority would be obliged to offer to the Owner the goods an option to pay fine in lieu of confiscation.

- Section 125 of the Customs Act, 1962 provides that goods should be redeemed to the owner of the goods or to the person from whose possession the goods were seized if the owner is not known. In those cases owner was someone else. Question arises as to whether circumstances of those cases be equated with the instant case? Was the owner of the goods in the present case is known? In this case, nobody else claimed ownership of the gold. In view of this fact it cannot be held that the owner of the goods was not known and therefore the gold cannot be redeemed to the appellant. The appellant relied upon:

  (i) Suresh Kumar Agarwal V. Collector of Customs, Madras (1998 (103) E.L.T. 18 (A.P.)

  (ii) Bhargav B. Patel in Appeal No. C/381/10-Mum reported in 2015-TIOL-1951-CESTAT-Mum

  (iii) Commissioner of Customs(AP) Vs Alfred Menezes {2009 (242)ELT 334 BOM}

  (iv) Dhanak Madhusudan Ramii Versus Commissioner of Customs (Airport), Mumbai [2009 (237) E.L.T. 280 (Tri. - Mumbai)]

  (v) A. RAJKUMARI Versus COMMR. OF CUS. (AIRPORT-AIRCARGO), CHENNAI [2015 (321) ELT 540] upheld by Hon'ble Supreme Court [Commissioner v. A. Rajkumari - 2015 (321) E.L.T. A207 (S.C.)]

  (vi) MOHD. ZIA UL HAOUE before Government of India T2014/314)849 GoI) redemption of the goods was allowed on payment of fine

  (vii) Yaqub Ibrahim Yusuf Vs Commr. of Customs [2011(263) ELT 685]

  (viii) Shaikh Jamal Basha vs Government of India – 1992 (91) ELT 227(AP)

  (ix) Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai – 2006 (205) ELT 383 (Tri-Chennai)

  (x) COMMR.OF CUS.& C. EX., DELH1-1V Versus ACHIEVER INTERNATIONAL 2012 (286) E.L.T. 180 (Del.)

  (xi) RAJARAM BOHR A Versus UNION OF INDIA 2015 (322) E.L.T. 337 (Cal.)

  (xii) ASHOK KUMAR VERMA - 2019 (369) E.L.T. 1677 (G.O.I.) - Order No. 83/2018-Cus., dated 1-8-2018 in F.No. 375/59/B/16-RA

  (xiii) *MOHAMMED HUSAIN AYYUB CHILWAN* - 2019 (369) E.L.T. 1784 (Tri. - Hyd.)

(xiv) ROSHNI MATHURDAS KOTHADIA Versus COMMISSIONER OF CUS., HYDERABAD - 2019 (369) E.L.T. 1784 (Tri. - Hyd.)

- Under para 12 (ii) of the impugned Show Cause Notice, it was proposed to impose penalty under Sections 112 on the appellant. The appellant submits that what was communicated in the SCN was vague and ambiguous. It could not be made out from the show cause notice whether the charge was being made with reference to Section 112(a) or (b). Therefore, the show cause notice should be struck down on the ground of ambiguity.
- Decision in the case of Abdul Razak vs Union of India relied upon by the Additional Commissioner of Customs cannot be made applicable to the case of the appellant.
- The Hon'ble Andhra Pradesh High Court in the case of Shaikh Jamal Basha vs Government of India – 1992 (91) ELT 227(AP) has held that option to pay fine in lieu of confiscation has to be given to imported gold as the same is otherwise entitled to be imported on payment of duty. In the case of Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai – 2006 (205) ELT 383 (Tri-Chennai), the Chennai Bench of the Tribunal has allowed redemption of the confiscated gold on payment of redemption fine. Further, the Government of India in the case of Mohd Zia Ul Haque Vs Addl Commissioner of Customs, Hyderabad vide revision order no 443/12-Cus dated 8-8-12, 2014 (214) ELT 849 (GOI) allowed the confiscated gold to be redeemed on payment of redemption fine.
- Often it is found that goods are not eligible for import as per Import Policy. In such cases, re-export of such goods is permitted as per EXIM Policy. However, in such cases, penalty and redemption fine is payable. In CC v. Elephanta Oil 2003(152) ELT 257 (SC), it was held that even if goods are confiscated and goods are allowed to be re-exported, penalty can be levied. Power to levy penalty u/s 112 is different from power of confiscation of goods u/s 125 and giving option to pay fine in lieu of confiscation. Permission for re-export in such cases may be given – Collector v. N Patel – 1992 (62) ELT 674 (GOI). In Kusumbhai Dahyabhai Patel v. CC (P) – 1995 (79) ELT 292 (CEGAT) also, it was held that even if goods are allowed to be re-exported, redemption fine can be imposed. In K&K Gems v. CC 1998(100) ELT 70 (CEGAT), it was held that fine in lieu of confiscation i.e. redemption option can be imposed.
- Penalty imposed on the appellant is disproportionate to the value of gold imported by her. Imposition of heavy penaly on the appellant is not sustainable.

- The appellant claims ownership of the gold and redemption of the gold under absolute confiscation on payment of reasonable fine and penalty.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 21.01.2026 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. Before going into the merits of the case, I find that the appeal filed by the appellant, have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant has requested for condoning the delay in filing the said appeals on the grounds that he was out of station and was unable to pursue as per order in stipulated time, and brief the Advocate causing delay in filing the appeal. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962

6. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in the present appeal are as under;

(a) Whether the impugned order directing absolute confiscation of the impugned 01 gold nugget of purity 99% weighing 395.300 gms having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/- without giving option for redemption under Section 125(1) of Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;

(b) Whether the quantum of penalty amounting to Rs. 25,65,497/- imposed on the appellant, under Section 112(b)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 It is observed that on the basis of profiling, that the appellant was suspected to be carrying high-value dutiable/prohibited goods in-person or in the baggage, the AIU (Air Intelligence Unit) officers intercepted the appellant, holding Indian Passport No Z7463102, who arrived by Air India Express Flight No. IX-172 on 28.01.2024 From Sharjah to Surat International Airport, Surat. The officers asked the appellant whether he had anything to declare, which the appellant denied. The Customs officers then asked the appellant to remove all the metallic objects from his body and scanned his body with the hand-held metal detector. During scanning, a beep sound was heard near the chest area of the appellant. The appellant was asked to remove his vest, and the vest was scanned with the hand-held metal detector, whereby a beep sound was heard. The said vest was then passed through the XBIS scanner machine in the arrival hall of Surat International Airport. During scanning, a dark image was seen in the scanner machine, indicating the presence of some metallic object in his vest. Thereafter, the Customs officers, along with the panchas and the appellant, proceeded to Shri Ambica Touch Refinery to burn the garment of the appellant for extraction of metal concealed therein. Thereafter, the garment was burnt in the furnace, and the ashes were collected and again melted in the furnace, upon which gold in bar form was obtained, and some ashes remained in the process. The gold bar and the remaining ashes obtained were packed in a plastic pouch, put in a green envelope, and sealed so they could not be tampered with. The Govt. Approved Valuer, Shri Vikasraj Juneja, after examination of the said item under panchnama proceedings dated 30.01.2024, certified the same to be a gold nugget/bar of 99% purity weighing 395.300 gms having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/-. The said gold were seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 28/29.01.2024. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of seized gold weighing 395.300 grams concealed in paste form in his vest at the time of his arrival in India. Thereby, he has violated the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013. These facts are not disputed.

6.1 I find that it is undisputed that the appellant had not declared the seized gold weighing 395.300 grams concealed in paste form in his vest to the Customs on his arrival in India. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of seized gold weighing 395.300 grams concealed in paste form in his vest. The appellant had, in his confessional statement, accepted the fact of non-declaration of gold before Customs on arrival in India. Therefore, the confiscation of gold by the adjudicating authority was justified as the appellant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112 of the Customs Act, 1962.

6.2 I have also perused the decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India relied upon by the appellant and other decisions also. I find that the Revisionary Authority has in all cases taken similar view that failure to declare the gold and failure to comply with the prescribed condition of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant are consequently liable for penalty. Thus, it is held that the undeclared 24-carat gold weighing 395.300 grams concealed in paste form in his vest, having a market value of Rs. 25,65,497/- and its tariff value Rs. 21,33,434/- are liable to confiscation and the appellant is also liable to penalty.

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

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

Thus, it is clear that even though gold is not enumerated as prohibited goods under Section 11 of the Customs Act, 1962, but it is to be imported on fulfilment of certain conditions, still, if the conditions for such import are not complied with, then import of gold will fall under prohibited goods. Hence, I find no infirmity in the impugned order on this count.

6.4 It is further observed that the adjudicating authority in the instant case had relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker), Hon'ble High Court of Madras in the case of Samynathan

Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)] and Order No 17/2019-Cus dated 07.10.2019 in F. No. 375/06/B/2017-RA of Government of India, Ministry of Finance, Department of Revenue – Revisionary Authority in the case of Abdul Kalam Ammangod Kunhamu and other decisions as discussed in the impugned order, had held that smuggling of gold was done by the appellant and had ordered for absolute confiscation of gold nugget/bar of 99% purity weighing 395.300 gms concealed in paste form in his vest having a market value of Rs. 25,65,497/- and tariff value of Rs. 21,33,434/-.

6.5 It is also observed from the facts and records of the present case that the appellant had ingeniously concealed 24-carat gold nugget/bar weighing 395.300 grams in paste form in his vest with an intention to smuggle the same without payment of duty. The 24-carat gold nugget/bar weighing 395.300 grams concealed in paste form in his vest was detected during his personal search on the basis of his profiling. The appellant in his statement recorded under Section 108 of the Customs Act, 1962 on 29.01.2024 had admitted his offence. The gold was ingeniously concealed paste form in his vest. Thus, the present case is not of simple non declaration of gold but an act of smuggling as the gold was concealed in paste form in his vest.

6.6 I rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of V.K. MOHAMMAD ALI Versus COMMISSIONER OF CUSTOMS, COCHIN [2019 (369) E.L.T. 1538 (Tri. – Bang)], wherein the Hon'ble Tribunal has upheld the decision of adjudicating authority for absolute confiscation of undeclared seized gold. The relevant paras are as under:

> ***6.*** *The brief issue for consideration in the case is to decide whether the adjudicating authority as a discretion to release the gold confiscated or the seized gold requires allowing to be redeemed on payment of fine in lieu of confiscation in terms of Section 125 of the Customs Act, 1962. Section 125 of the Customs Act reveals as under:*
>
> *"(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit*
> *:*

कार्यालय आयुक्त (अपील) अहमदाबाद

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods."

6.1 *A plain reading of the above provision gives understanding that while the adjudging officer may permit the redemption of goods on payment of fine in lieu of confiscation of goods which are prohibited in nature, he shall, in the case of other goods, 'may' permit redemption on payment of fine in lieu of confiscation.*

6.2 *There are two situations which emerge out of the legal position which needs to be addressed; firstly, whether the impugned goods are in the nature of prohibited goods wherein the adjudicating authority has an option to permit the goods to be redeemed on payment of fine in lieu of confiscation. Secondly, whether the adjudging officer has a discretion so as to allow or not such goods to be redeemed on payment of fine in lieu of confiscation.*

6.3 *For an appreciation of the same, it is required to see what are prohibited goods is Section 2(33) of the Customs Act, 1962 defines prohibited goods as follows :*

Prohibited goods means "any goods, the import or export on which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

In view of the above, for the goods to acquire a nature of being prohibited who either be prohibited under Customs Act or any other law for the time being in force or the goods should have been imported wherein the conditions subject to which the goods are permitted to be imported are not complied with. Admittedly, the impugned gold is not prohibited either under Customs Act or any other law for the time being in force at the material time. As per the records of the case, the appellant have not submitted anything to show on record that the goods have been properly imported. It is to be inferred that the impugned gold has been imported without following the due process of law that is to say without following the procedures thereof. Therefore, it is to be held that the impugned goods have acquired the nature of being prohibited goods in view of Section 2(33) of the Customs Act, 1962.

6.4 *Having found that the impugned goods have acquired the nature of prohibited goods, the issue which remains to be decided as to whether the adjudicating authority can exercise [its] discretion to allow the goods to be redeemed. Going by the wordings of Section 125, it is clear that in such circumstances i.e. whether the goods are prohibited, the adjudicating authority 'may' permit the redemption. That being the case the Tribunal cannot sit in judgment over the discretion exercised by the* *competent authority duly empowered under the statute. We find that as submitted by the Learned DR, the Hon'ble High Court of Madras has categorically held that: "When a prima facie case of attempt to smuggle the goods is made out, it is not upon the Tribunal, the issue not give positive directions to the adjudicating authority, to exercise option in favour of the respondents". We also find that this Bench of the Tribunal (supra) in a case involving identical circumstances has upheld the absolute confiscation of gold biscuits of foreign origin seized from a passenger who claimed that the same were purchased in Mumbai.*

7. *In view of the above, we find that the Order-in-Appeal does not require any intervention and as such the appeals are rejected*

6.7 I also rely upon the decision of the Hon'ble Tribunal, Bangalore in the case of Ismail Ibrahim Versus Commissioner of Customs, Bangalore [2019 (370) ELT 1321 (Tri Bang)], wherein the Hon'ble Tribunal following the decisions of Hon'ble High Court of Kerala in the case of Ambali Karthikeyan [2000 (125) ELT 50 (Ker)] and Hon'ble High Court of Karnataka in the case of K. Abdulla Kunhi Abdul Rahaman [2015 (330) ELT 148 (Kar)] had upheld the absolute confiscation of gold in case where two gold bars weighing 2000.14 grams were concealed discreetly in the baggage wrapped in white paper and kept in plastic pouch. In present case also, substantial quantity of gold i.e. 395.300 grams concealed discretely and ingeniously in paste form in his vest.

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

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

statement. The Appellate Authority in para (11) of the said O-I-A, has also noted that, on 11.07.2022, the Authorised representative of the Applicant, Shri Nazeer, who is the father of the Applicant, has admitted to his son's offence and has also stated the Applicant has committed this offence knowingly for financial gains. The impugned gold items smuggled into India via ingenious body concealment cannot be considered as bonafide baggage. The entire proceedings have also been covered under a Mahazar in presence of independent witnesses which also corroborates the sequence of events.

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

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

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

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

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

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

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

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

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

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

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

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

6.9 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Ms Ros Maszwin Binti Abdul Kadir, Order No. 184/2024-CUS, dated 04.09.2024 wherein absolute confiscation of one long crude gold chain of 24 carat purity weighing 1.2 kgs valued at Rs 39,70,800/-, wrapped in a condom which was found concealed in lower inner garment, was upheld.

6.10 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Sh Rafi Syed, Order No. 175/2024-CUS, dated 28.08.2024 wherein absolute confiscation of 39 gold bars of 24 carat purity weighing 3800 grams valued at Rs 1,16,58,400/-, concealed inside plastic pouches containing dates, was upheld.

6.11 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Shri Riyas Khan, Order No. 190/2024-CUS, dated 09.09.2024 wherein absolute confiscation of two cut gold bits and 78 gold ingots of 24 carat purity weighing 2620 grams valued at Rs 87,42,940/- concealed in play station joy sticks, was upheld.

6.12 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Shri Japarulla Kalifulla, Order No. 237/2024-CUS, dated 27.11.2024 wherein absolute confiscation of one gold rod weighing 276.000 grams valued at Rs 9,38,400/-, concealed ingeniously, was upheld.

6.13 I further rely upon the recent decision of the Hon'ble Revisionary Authority in the case of Smt Vellaiyammai, Order No. 200/2024-CUS, dated 24.09.2024 wherein absolute confiscation of one unfinished gold chain of 24kt weighing 99.800 grams valued at Rs 3,15,767/-, recovered during personal search, was upheld.

6.14 I also rely upon the decision of Hon'ble High Court of Kerala in the case of Abdul Razak Versus Union of India [2012 (275) ELT 300 (Ker)] maintained in the Hon'ble Supreme Court [2017 (350) ELT A173 (SC)], wherein the passenger, a carrier, tried to smuggle 8 kg of gold concealed in emergency light, mixie, grinder, car horns etc. was held to be absolutely confiscated and not allowed to be released on redemption fine. The relevant para is reproduced as under:

> ***"6.*** *After hearing both sides and after considering the statutory provisions, we do not think the appellant, as a matter of right, can claim release of the goods on payment of redemption fine and duty. Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. There is no need for us in this case to consider the conditions on which import is permissible and whether the conditions are satisfied because the appellant attempted to smuggle out the goods by concealing the same in emergency light, mixie, grinder and car horns etc. and hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal import of gold. Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."*

In the present case also the appellant, working as carrier, concealed the seized gold in paste form in his vest with an intention to smuggle the same into India. The gold was detected only on the personal search of the appellant on the basis of his profiling. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of gold.

6.17 In view of the above observations, and relying upon the decision of Hon'ble Tribunal, Bangalore, the Hon'ble High Court of Kerala, the Hon'ble Supreme Court and the Hon'ble Revisionary Authority, it is clearly established that the concealment in this case was ingenious as substantial quantity of gold weighing 395.300 grams was intentionally and ingeniously concealed in paste form in his vest to evade detection by the Customs authorities. The appellant did not intend to declare the said gold and the same was detected only on personal search of the appellant. He also admitted that he was carrying the said gold and intended to clear the same without paying Customs duty from the Airport. Thus, in my considered view, this is not a case of simple non declaration of gold but a planned and intentional smuggling of gold into India. Therefore, the adjudicating authority has rightly exercised his discretion for absolute confiscation of seized gold nugget/bar of 24-carat weighing 395.300 grams concealed in paste form in his vest, having a market value of Rs. 25,65,497/- and its tariff value Rs. 21,33,434/-under Customs Act, 1962. In view of above, the absolute confiscation of seized gold nugget/bar of 24-carat weighing 395.300 grams concealed in paste form in his vest, having a market value of Rs. 25,65,497/- and its tariff value Rs. 21,33,434/- is upheld.

5.19 Further, in respect of imposition of penalty amounting to Rs 25,65,497/- on the appellant for bringing undeclared gold nugget/bar of 24-carat weighing 395.300 grams concealed in paste form in his vest, having a market value of Rs. 25,65,497/- and its tariff value Rs. 21,33,434/-, the appellant has attempted to bring gold into India without declaring the same and concealing the same ingeniously in paste form in his vest. The quantum of gold is substantial and the appellant had smuggled gold by ingeniously and intentionally concealing the same in paste form in his vest. The appellant was aware that smuggling of gold without payment of customs duty is an offence and also admitted that he was carrying the said gold and intendent to clear the same without paying Customs duty from the Surat International Airport, Surat. Thus, I am of the considered view, that the penalty of Rs 25,65,497/- imposed on the appellant under Section 112(b)(i) of the Customs Act, 1962, in the impugned order by the adjudicating authority, is appropriate as per provisions of Section 112(b)(i) of the Customs Act, 1962 and commensurate with the omissions and commissions of the appellant. Therefore, there is no infirmity in the impugned order and the same is upheld.

6. In view of above, the appeal filed by the appellant is rejected.

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

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

By Registered Post A.D.

F.No. S/49-93/CUS/AHD/2025-26/5940 Dated –26.02.2026

To,

(i) Shri Yusuf Ali Rehmani
S/o Shri Ali Jusub rehmani,
85, Haroon Manzil, 1st Floor,
Room No. 13/14, Shaida Marg, Dongri,
Charnull, Mumbai-400009, Maharashtra,

(ii) Rishikesh J Mehra, B/1103, Dev Vihaan,
Behind 3rd Eye Residency, Motera Stadium Road,
Motera, Sabarmati, Ahmedabad-380005,

Copy to:

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