



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

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दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250771MN000082348F

क	फाइलसंख्या FILE NO.	S/49-311/CUS/AHD/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-154-25-26
	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	14.07.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	220/ADC/SRV/O&A/2024-25 dated 08.01.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	14.07.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Mr Sonikkumar Harishkumar Soni, Dadaji ni Khadki, Haveli Mahollo, Vaso, Kheda, Gujarat - 387380.
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) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरता होतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव	



	(आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	वैज्ञानिक रूप में आयातित कोई माल।
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कम हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमा शुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साधमूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमा शुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य सी.डी. फीस, दण्ड, जब्त और विविध मदों के शीर्षक के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर. 6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसी फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्रहोनेचाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहज़ाररूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, 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) रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्रहोनेचाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

Mr. Sonikkumar Harishkumar Soni, Dadaji ni Khadki, Haveli Mahollo, Vaso, Kheda, Gujarat - 387380 (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. 220/ADC/SRV/O&A/2024-25 dated 08.01.2025 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs, Ahmedabad, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, on the basis of suspicious movement, holding Indian Passport No. L8623908, was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU") on arrival at SVP International Airport, Ahmedabad from Brisbane, Australia by Singapore Airlines Flight No SQ 530 on 18.07.2019, when he was about to exit through the Green Channel. The AIU Officers asked the appellant, if he was carrying any contraband/dutiable goods in person or in his baggage to which appellant denied. The appellant was asked to walk through the Door Frame Metal Detector (DFMD) after removing all the metallic objects he was wearing on his body. The appellant readily removed his belt, wallet, mobile, ring etc. and kept them in plastic tray and thereafter walked through the DFMD and a loud beep was generated in the upper part of the DFMD. The AIU officer again asked the appellant whether he was still having any metallic substance left in his clothes, at this the appellant re-checked his clothes and confirmed that he did not have any such material left in his clothes. The appellant was again asked to walk through the DFMD, and on his passing through the DFMD, a loud beep was again heard. Thereafter on sustained questioning the appellant confessed that he has concealed/hidden metallic substance in his right arm on his bicep under the shirt. The appellant removed the Silver Colour coated metallic kada and gave it to the officers. The said Silver Colour coated metallic kada was thereafter scratched with a knife to which it revealed a bright shiny yellow colour inside. On being shown it to the appellant, he confirmed that it was made of 24 Carat Gold.

2.1 The Government Approved Valuer, confirmed that the silver coloured metallic kada was made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of Rs.12,62,987/- and market value of Rs.14,48,285/-.

2.2 The said Gold Kada Coated with white Rhodiurn coating was 24kt Gold purity 999.0 and was weighing 400.300 Grams was Rs.14,48,285/-





(Local Market Value) and Rs.12,62,987/- (Tariff Value) recovered from the appellant was attempted to be smuggled into India with an intent to evade payment of Customs duty and was a clear violation of the provisions of Customs Act, 1962. Thus, having a reasonable belief that the said Gold in form of Rhodium Coated Gold Kada was attempted to be smuggled by the appellant was liable for confiscation under the provisions of Customs Act, 1962; hence, it was placed under seizure vide panchnama dated. 18/19.07.2019 drawn by the officer of customs under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962.

2.2 Statement of the appellant was recorded on 19.07.2019 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, admitted that he had intentionally not declared the said substance before the Customs Authorities on his arrival at SVPI Airport, Ahmedabad and wanted to clear it illicitly and evade payment of duty; that he was fully aware that clearing Gold jewellery without declaring before Customs, with an intention to evade payment of Customs duty was an offence under the provisions of Customs Act, 1962 and regulations framed there under; that he agreed that he had evaded Customs duty on 24 kt. Gold Kada Coated with white Rhodium weighing 400.300 Grams having purity 999.0 was Rs. 12,62,987/- (Tariff Value) and Rs. 14,48,285/- (Local Market Value) recovered from him.

2.3 In absence of any import documents evidencing legitimate import of the said gold in the form of Rhodium Coated Gold Kada, the same appears to be smuggled goods in terms of the provisions of Section 2(39) of the Customs Act, 1962. It further appears that Gold Kada Coated with white Rhodium imported by the appellant is to be construed as 'smuggling' within the meaning of Section 2(39) of the Customs Act, 1962. By using the modus of concealing of the Gold Kada Coated with white Rhodium in his right arm on his bicep under the shirt which he wore, it appears that the appellant was fully aware that the goods would be offending in nature on its import. It appears that the appellant has involved himself in carrying, keeping, concealing and have dealt with the offending goods in a manner which he knew or have reasons to believe that the Gold Kada Coated with white Rhodium carried by him is liable to confiscation under the section 111(d), 111(1), 111(1) and 111(m) of the Customs Act, 1962. It, therefore, appears that the appellant has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.



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2.4 A Show Cause Notice No. VIII/10-84/SVPIA/HQ/O&A/2019-20 dated 08.01.2020 was issued to the appellant for confiscation of Gold Kada Coated with white Rhodium totally weighing 400.300 Grams valued at Rs. 12,62,987/- (Tariff Value) and Rs. 14,48,285/- (Market Value), placed under seizure under panchnama dated 18/19.07.2019, under Section 111(d), 111(i), 111(1) & 111(m) of the Customs Act, 1962 and for imposition of penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

2.5 The said Show Cause Notice was adjudicated by the Joint Commissioner of Customs, Ahmedabad, vide Order-in-Original No. 35/JC/SM/O&A/2020-21 dated 28.08.2020, wherein the Joint Commissioner has ordered for absolute confiscation of the Gold Kada Coated with white Rhodium totally weighing 400.300 Grams valued at Rs. 12,62,987/- [Tariff Value] and Rs. 14,48,285/- [Market Value], under the provisions of Section 111(d), 111(1), 111(1) & 111(m) of the Customs Act, 1962 and also imposed penalty of Rs.1,00,000/- under Section 112(a) and 112(b) under sub-clause 112(i) of the Customs Act 1962.

2.6 Aggrieved by the said Order-in-Original No. 35/JC/SM/O&A/2020-21 dated 28.08.2020, the appellant filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The said appeal was decided by the Commissioner (Appeals), Customs, Ahmedabad vide Order-in-Appeal No. AHD-CUSTOM-000-APP-1607-21-22 dated 23.03.2022, wherein he remanded the case to the adjudicating authority.

2.7 In de novo adjudication the Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of Gold Kada Coated with white Rhodium totally weighing 400.300 Grams valued at Rs. 12,62,987/- [Tariff Value] and Rs. 14,48,285/- [Market Value], under the provisions of Section 111(d), 111(1), 111(1) & 111(m) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 4,00,000/- on the appellant under Section 112 (a)(i) of the Customs Act, 1962.

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

- Personal Jewelry, not a "Smuggled" Item: The Gold Kada in question is the personal jewelry, worn openly on the Appellant's right arm and there was no attempt of any deliberate concealment on the part of Appellant. Various courts repeatedly held that the personal ornaments worn by passengers-especially those originally taken out of India-cannot be treated at par with "smuggled goods"

absent clandestine conduct. The Appellant had previously taken this Kada out of India (in March 2018) before returning with it. In such scenarios, re-importation of personal effects originally belonging to an Indian resident is typically not dutiable, provided re-import formalities are met (or, at a minimum, the passenger had a bona fide belief that no new duty liability arises).

- Section 80 of the Customs Act, 1962 states that if any dutiable or prohibited goods are found in a passenger's baggage, but the passenger makes a true declaration or at least requests re-export, 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." The Appellant orally requested the Customs officers to allow him to re-export the Kada upon departure. The Impugned Order lacks proper reasoning for denying this request. It also fails to make any effort to verify the Appellant's claim by reviewing the CCTV footage of the relevant time.
- No Willful Misdeclaration: To invoke penalty under Section 112(a)/(b), Customs must establish conscious or willful intent to contravene the law. The Appellant never concealed the Kada inside baggage or body cavities; it was on his arm, visible, though partly under a shirt sleeve. Even the door frame metal detector beeped, so the presence of a metallic item was not hidden. An inexperienced traveler's confusion about baggage declarations-especially for an item personally worn-is not conclusive evidence of smuggling intent.
- Retracted Statements Under Duress: The statements recorded under Section 108 of the Customs Act were retracted at the earliest opportunity (in the first reply to SCN). Retraction of an inculpatory statement places the burden on Customs to produce independent corroboration of "smuggling" or "intent to evade." The Adjudicating Authority has merely repeated those statements in the Impugned Order without meaningful corroboration.
- Failure to Deal with Precedents and Submissions: The Commissioner (Appeals), in the first round, specifically remanded the matter back because certain arguments and case laws (pointing out that personal jewelry worn on the body, especially of Indian origin, can be re-imported without penal consequences) were not evaluated. Despite remand directions, the fresh Order again glosses over or summarily dismisses these submissions without reasoned findings.



*[Handwritten signature]*



- Mechanical Reiteration of the Original Findings: The Impugned Order effectively re-states the original allegations and overlooks salient facts that (i) the gold was of Indian origin, (ii) the passenger requested re-export, and (iii) no prior direct confrontation or seizure has occurred on earlier visits-showing no pattern of smuggling. Such mechanical re-adjudication defeats the purpose of a remand and violates the principle of speaking order mandated by law.
- Absolute vs. Option of Redemption Fine: Even if the authority considers the goods "confiscable," absolute confiscation is an extreme step typically reserved for prohibited or illicitly imported items. Gold, as a commodity, is no longer under absolute prohibition (earlier "prohibited" status of gold under older EXIM policies was relaxed years ago). The various Courts and Tribunals repeatedly held that if at all confiscation is warranted, authorities should ordinarily allow release on payment of redemption fine, unless the item is clearly contraband or prohibited per se. However, in appellant's case, the Impugned Order did not explain why milder remedies (e.g., redemption fine, payment of duty, or re-export) are inapplicable.
- Section 125 of the Customs Act: Section 125(1) stipulates that when goods are confiscated, the adjudicating authority shall give the owner an option to pay in lieu of confiscation a fine (called redemption fine) except where the import of the goods is prohibited. Here, gold per se is not a forbidden/prohibited good. The adjudicating authority's resort to absolute confiscation is disproportionate and legally incorrect.
- The impugned order has wrongly classified the gold kada as "prohibited" whereas gold is only a restricted commodity as per the Foreign Trade Policy and Customs Law. Therefore, Absolute confiscation is harsh and arbitrary, especially since the item was openly worn and not clandestinely concealed. The appellant relied upon the following decisions:
  - Yakub Ibrahim Yusuf v. Commissioner of Customs (2011 (263) E.L.T. 685 (Tri. -Mumbai))
  - Recent decision by the Delhi High Court (W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023, Judgment dated 21 August 2023).
  - The decision of GOI in case of MOHD. ZIA UL HAQUE, 2014 (314) E.L.T. 849 (G.O.I.) in Order No. 336/2012-Cus., dated 8-8-2012 In F. No. 373/1/B/2012-RA.



- Omkar Jewellers v. Commissioner of Customs [2014 (312) E.L.T. 776 (Tri. -Del.)],
- Vimlesh Kumar Neema v. Commissioner of Customs [2007 (219) E.L.T. 346 (Tri. -Ahmd.)],
- Chinnakaruppan v. Commissioner of Customs [2007 (207) E.L.T. 138 (Tri. -Chennai)]

- The Adjudicating Authority wrongly relied upon cases involving organized smuggling or concealment (e.g., Malabar Diamond Gallery P. Ltd. v. Addl. Dir. General, DRI, Chennai 2016 (341) E.L.T. 65 (Mad.) and Khemani Purshottam Mohandas v. CC, CSI Airport, Mumbai - 2017 (354) E.L.T. 275 (Tri. Mumbai)), where facts clearly indicated intent of commercial smuggling or deliberate concealment. However, in the present case, no commercial motive or concealment was present. Thus, such precedents are not applicable, and their application by the adjudicating authority is erroneous.
- Procedural Lapse vs. Criminal Intent: The department has not proven beyond reasonable doubt that the appellant had a clear intent to smuggle or evade customs duties. Mere non-declaration due to ignorance of procedure or bona fide belief does not amount to smuggling. Delhi High Court (W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023, judgment dated 21<sup>st</sup> August 2023), it is submitted that gold is not a prohibited item under the Customs Act, 1962, but rather a restricted item. In our present case, the Gold Kada in question was openly worn by the Noticee, without any concealment. Therefore, mere procedural violations or non-declaration at customs do not amount to smuggling unless there is clear intent to evade duty.
- Ignorance of Law vs. Mens Rea: The Adjudicating Authority has dismissed appellant's plea of ignorance. However, ignorance or bona fide misunderstanding, especially by an infrequent traveler, must be considered as mitigating circumstances when imposing penalties. Appellant's genuine belief regarding non-declaration of personal Jewelry worn is credible and should have been duly considered as per principles laid down by higher judiciary. From the above it is clear that penalty upon a person can be imposed only if he knows or has reason to believe that the goods, he is handling are liable to confiscation under Section 111 of the Customs Act, 1962. In the instant case, appellant was under the reasonable belief that the baggage declarations contain only declaration about the luggage carried by him and not about the



anything worn in person. Also, the said Gold Kada was worn by the appellant in person in his right arm. Hence, mere non declaration in baggage declaration under bonafide belief, cannot be considered as concealment of Gold Kada with intent to evade the payment of Customs Duty. The department could not produce any evidence, except the statements of appellant and his wife, that too were retracted by them as recorded under duress/pressure. Therefore, no penalty is imposable upon appellant and the impugned Order in Original is liable to be set aside.

- Violation of Principle - "No Enhancement Without Departmental Appeal or Cross-Objection": It is a settled position in law that when an appellant files an appeal against an adjudicating authority's order, the appellate authority or even the adjudicating authority (upon remand) cannot enhance or increase the penalty or punishment unless the department has filed a cross-objection or an appeal specifically requesting such enhancement. In the present case, the appellant filed an appeal against the Order-in-Original No. 35/JC/SM/O&A/2020-21 dated 28.08.2020, challenging the confiscation and penalty of 1,00,000 imposed originally. The Department had neither filed any cross-objection nor an independent appeal against this order. Thus, it did not contest the quantum of penalty imposed earlier. However, in the remanded proceedings, the adjudicating authority has acted beyond jurisdiction and has increased the penalty imposed earlier from 1,00,000 to ₹4,00,000 without providing any justification or reasoning for this enhancement, which is impermissible under law and show the biased approach of learned adjudicating authority.
- Absence of Reasoning In Enhancement of Penalty: An adjudicating authority is required to pass a reasoned order demonstrating clearly why a particular penalty or enhancement of penalty is warranted. Merely increasing the penalty without providing any justification or explanation for the same constitutes arbitrary action, which is impermissible under the principles of natural justice. The impugned Order-in-Original dated 08.01.2025 does not contain any rational explanation or legal reasoning for why the penalty was increased from 1,00,000 to 4,00,000 or beyond. This arbitrary enhancement, especially in the absence of any departmental appeal or cross-objection, is legally unsustainable and beyond the jurisdiction of the adjudicating authority.
- Jurisdiction of the Original Authority Post-Remand: it is settled position of law that When a higher authority remands a case, the



lower authority must act within the limits of the remand order. If the remand order did not expressly authorize enhancement of penalty, the original authority exceeded its jurisdiction by imposing a harsher penalty.

4. Shri Naresh Satwani, Consultant, appeared for personal hearing on 02.07.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

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

(a) Whether the impugned order directing absolute confiscation of Gold Kada Coated with white Rhodium totally weighing 400.300 Grams valued at Rs. 12,62,987/- [Tariff Value] and Rs. 14,48,285/- [Market Value], under the provisions of Section 111(d), 111(1), 111(1) & 111(m) of the Customs Act, 1962 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. 4,00,000/- imposed on the appellant, under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

It is observed that the appellant, on the basis of suspicious movement, holding Indian Passport No. L8623908, was intercepted by the officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU") on arrival at SVP International Airport, Ahmedabad from Brisbane, Australia by Singapore Airlines Flight No SQ 530 on 18.07.2019, when he was about to exit through the Green Channel. The appellant was asked to walk through the Door Frame Metal Detector (DFMD) after removing all the metallic objects he was wearing on his body. The appellant readily removed his belt, wallet, mobile, ring etc. and kept them in plastic tray and thereafter walked through the DFMD and a loud beep was generated in the upper part of the DFMD which resulted in detection of Silver Colour coated metallic kada and the appellant confirmed that it was made of 24 Carat Gold. The Government Approved Valuer, confirmed that the silver coloured metallic kada was made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of Rs.12,62,987/- and market value of Rs.14,48,285/-. The appellant did not declare the said gold before Customs with an intention to escape payment of duty. These facts have



also been confirmed in the statement of the appellant recorded under Section 108 of the Customs Act, 1962 on the same day. There is no disputing the facts that the appellant had not declared possession of gold 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 to the Customs on his arrival in India. Further, in his statement, the appellant had admitted the knowledge, possession, carriage, non-declaration and recovery of the seized gold. The appellant had, in his confessional statement, accepted the fact of non-declaration of gold before Customs on arrival in India. Therefore, the confiscation of gold by the adjudicating authority was justified as the applicant had not declared the same as required under Section 77 of the Customs Act, 1962. Since the confiscation of the seized gold is upheld, the appellant had rendered himself liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

6.2 I have also perused the decision of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India on the issue in hand. I find that the Revisionary Authority has in all these cases taken similar view that failure to declare the gold and failure to comply with the prescribed conditions of import has made the impugned gold "prohibited" and therefore they are liable for confiscation and the appellant is consequently liable for penalty. Thus, it is held that the undeclared silver coloured metallic kada made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of Rs.12,62,987/- and market value of Rs.14,48,285/- 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....."*

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

6.4 In respect of absolute confiscation of silver coloured metallic kada made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of Rs.12,62,987/- and market value of Rs.14,48,285/-, it is observed that the adjudicating authority in the instant case relying on the decisions of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), Hon'ble Kerala High Court in the case of Abdul Razak [2012 (275) ELT 300 (Ker), Hon'ble High Court of Madras in the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], Malabar Diamond Gallery Pvt. Ltd [2016-TIOL-1664-HC-MAD-CUS], Hon'ble High Court of Madras in the case of P Sinnasamy [2016 (344) ELT 1154 (Mad)] 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 the decision of Hon'ble High Court of Delhi in the case of Rameshwar Tiwari Vs Union of India [2024 17 centax 261 (Del)] in paras 20.1 to 21 of the impugned order, had ordered for absolute confiscation of silver coloured metallic kada made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of Rs.12,62,987/- and market value of Rs.14,48,285/-.

6.5 I find that the Hon'ble CESTAT, Ahmedabad has in the case of Commr. of C. Ex., Cus. & S.T., Surat-II Vs Dharmesh Pansuriya [2018 (363) E.L.T. 555 (Tri- Ahmd)] considered the decision of Hon'ble High Court of Madras in the case of Commissioner of Customs (Air) Chennai-I Vs P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad)] and the decision of Hon'ble High Court of Bombay in the case of Commissioner Vs Alfred Menezes [2009 (242) E.L.T. 334 (Bom)], and were of the view that in case of prohibited goods as defined under Customs Act, 1962, the adjudicating authority may





consider imposition of fine and need not invariably direct absolute confiscation of the goods. The relevant paras are reproduced hereunder:

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

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

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

*9. This principle is later followed by the Hon’ble Madras High Court recently in P. Sinnasamy’s case (supra). Thus, in view of the aforesaid principle, even if the goods in question are considered as prohibited goods as defined under the Customs Act, the adjudicating authority may consider imposition of fine and need not invariably direct absolute confiscation of the goods. In these premises, thus to consider the issue raised at the bar that whether the gold bars removed from the Unit in SEZ without permission and contrary to the Circulars issued by RBI and Customs, became prohibited goods, or otherwise, in our view, becomes more an academic exercise and hence need not be resorted to.*

*10. The other argument advanced by the Ld. AR for the Revenue is that in view of the judgment of Hon’ble Madras High Court in P. Sinnasamy’s case, discretion conferred under the provision cannot be arbitrary and it is to be exercised in judicious manner. From the finding of the Ld. Commissioner, we notice that even though he has not considered the goods as prohibited ones, observing it in the sense that*



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



6.6 I have also gone through the judgement of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Nagpur-I Vs Mohd. Ashraf Armar [2019 (369) E.L.T. 1654 (Tri Mumbai)] wherein the Hon'ble Tribunal, after considering the decision of Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003 (155) E.L.T. 423 (SC), has upheld the order of Commissioner (A) who set aside the order of absolute confiscation ordered by the adjudicating authority and allowed redemption of 1200.950 gm of concealed gold valued at Rs. 27,02,137/- on payment of fine of Rs 5,50,000/-. The relevant paras are reproduced hereunder:

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

"From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or



exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import (Control) Order, 1955. The Court negatived the said contention and held thus: -

'...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the words "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import (Control) Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues".

5. Going by the bare reading of the said interpretation, it can be said that in the definition of prohibited goods in terms of Section 2(33) of the Customs Act, 1962, any such goods means any such restricted and prohibited goods and not any other goods. It is in this contest the whole analyses of prohibited goods is made by the Hon'ble Apex Court and not in respect of any other goods other than prohibited and restricted goods. Gold being a permitted goods for importation, cannot



be said to be restricted goods in applying such an interpretation but ceiling on the maximum quantity that could be imported could never be equated with restriction or prohibition to such importation. Admittedly, appellant's intention to evade duty by suppressing such import is apparent on record for which Commissioner (Appeals) has rightly confirmed fine and penalty under relevant provisions of the Customs Act but absolute confiscation of gold, which is permitted to be imported to India, solely on the ground that it was brought in concealment cannot be said to be in conformity to law or contradictory to decision of Hon'ble Apex Court given in Om Prakash Bhatia's case. Hence the order.

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

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



"16. In the present case, the Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act. The Tribunal has recorded that the respondents had brought impugned Gold from Bangkok to Gaya International Airport without declaring the same to Customs Authorities and there was nothing to explain as to how the Customs authorities posted at Gaya International Airport could not detect such huge quantity of gold being removed from Gaya International Airport by passengers on their arrival and there was no explanation as to how the respondents procured gold before they were intercepted at Mughalsarai Railway Station and the Tribunal has dismissed the Appeals for the aforesaid reason and has affirmed the order passed by the Commissioner (Appeals) holding that the import of gold was not prohibited under the Foreign Trade Policy or any other law and, therefore, there is no sufficient ground for absolute confiscation of the gold.



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

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

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

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

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



on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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

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

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

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

(c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker)]



has, observed at para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized...."

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

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

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

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

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

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

6.9 Further, It is observed that in the recent decision vide Order No 516-517/2023-CUS (WZ)/ASRA/MUMBAI, dated 30.06.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after going through the details of the case wherein the passenger was wearing brown coloured cloth belt



fastened around her abdomen and when the belt was cut open resulted in recovery of brown coloured powder with water pasted in glue, purported to containing gold weighing 2800 grams (gross). The Hon'ble revisionary authority relying on various decisions of High Court and Apex Court, has allowed gold to be redeemed on payment of redemption fine. The relevant paras of the order are reproduced hereunder:

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

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

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

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

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





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

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

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

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

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

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

13 Government notes that the quantity of impugned gold dust (converted into bars) under import, is neither substantial nor in commercial quantity. The appellant claimed ownership of the impugned gold and stated that the same was brought for marriage purpose. There are no other claimants of the said gold. There is no allegation that the appellants are habitual offenders and was involved in similar offence earlier. The fact of the case indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. The absolute confiscation of the impugned gold, leading to dispossession of the gold in the instant case is therefore harsh and not reasonable. Government considers granting an option to the appellant to redeem the gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

14. In view of above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned gold seized from the appellant. The seized gold from the appellant i.e. impugned gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster



*weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and totally valued at Rs 41,07,735/- is allowed to be redeemed on payment of a fine of Rs 8,10,000/- (Rupees Eight Lakh Ten Thousand only)."*

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

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

6.12 Further, the Hon'ble High Court of Allahabad in the case of Commissioner of Customs, Aliganj, Lucknow Versus Rajesh Jhamatmal Bhat [2022 (382) ELT 345 (All)] had upheld the decision of Hon'ble Tribunal wherein the Hon'ble Tribunal had upheld the decision of Commissioner (Appeal) wherein 4076 grams of gold bars recovered from the specially designed cavities made in the shoes, valued at Rs. 1,09,98,018/- was allowed to be redeemed on payment of redemption fine and penalty. The Hon'ble Tribunal had reduced the redemption fine from 25,00,000/- to Rs 15,00,000/- and penalty was also reduced from 10,00,000/- to 5,00,000/- as ordered by the Commissioner (Appeal). The Hon'ble High Court



observing that gold was not prohibited under the Foreign Trade Policy or any other law for the time being in force and, therefore, there is no sufficient ground for absolute confiscation of the gold upheld the decision of Hon'ble Tribunal.

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

6.14 In view of above decisions of the Principal Commissioner & ex-officio Additional Secretary to Government of India, I am of the considered view that in present case also there is no allegation that the appellant is habitual offender and was involved in similar offence earlier. The appellant was not a part of organised smuggling syndicate. The appellant in the grounds of appeal submitted that had previously taken this Kada out of India (in March 2018) before returning with it. In such scenarios, re-importation of personal effects originally belonging to an Indian resident is typically not dutiable, provided re-import formalities are met or, at a minimum, the passenger had a bona fide belief that no new duty liability arises. Thus, there is no dispute in respect of the ownership of the seized gold. The appellant was not a carrier. There is nothing on record to suggest that the concealment was ingenious. The investigation of the case has not brought any smuggling angle but the investigation suggest that this is case of non-declaration of gold with intention of non-payment of Customs duty. Further, a copy of appeal memorandum was forwarded to the adjudicating authority for his comment and submission of case laws on similar matter but no reply was received till date. The fact of the present case also indicates that it is a case of non-declaration of gold, rather than a case of smuggling for commercial consideration. The absolute confiscation of impugned gold, leading to dispossession of the gold in the instant case is,



therefore, harsh. Therefore, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad and Mumbai as detailed in the above paras, I am of the considered view that the absolute confiscation of silver coloured metallic kada made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of ₹.12,62,987/- and market value of ₹.14,48,285/- is harsh. I, therefore, set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allow redemption of silver coloured metallic kada made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of ₹.12,62,987/- and market value of ₹.14,48,285/-, on payment of fine of ₹. 2,00,000/- and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962.

6.15 In respect of request for re-export of the impugned gold, it is observed that the appellant was holding Australian Citizenship and has submitted the certificate Evidence No 1300510437 dated 20.09.2024, by issued by Mayor Peter Flannery City of Moreton Bay. Thus the appellant is an Australian Citizen. The appellant had claimed ownership of gold and desired to take it back. I have also gone through the recent decision vide Order No 404-405/2023-CUS (WZ)/ASRA/MUMBAI dated 30.03.2023 of the Principal Commissioner & ex-officio Additional Secretary to Government of India, the Hon'ble Revisionary Authority, after observing that the passenger was having resident status of Doha/Qatar, allowed re-export of goods. In view of above, I allow re-export of seized gold on payment of redemption fine as discussed above and any other charges payable in respect of the impugned gold

6.16 Further, in respect of imposition of penalty amounting to Rs 4,00,000/- on the appellant for non-declaration of silver coloured metallic kada made of pure gold weighing 400.300 grams, having purity 999.0/24Kt., having Tariff value of ₹.12,62,987/- and market value of ₹.14,48,285/-, following the decisions of Principal Commissioner & ex-officio Additional Secretary to Government of India, the decision of Hon'ble High Court of Allahabad sitting at Lucknow in the Civil Misc Review Application No 156/2022 filed by Commissioner of Customs, Lucknow, and the decision of Hon'ble Tribunal, Ahmedabad, Mumbai and Allahabad as detailed in the above paras, I am of the considered view that penalty of Rs. 4,00,000/- ordered by the adjudicating authority in the impugned order is

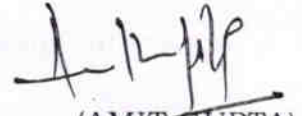




harsh and unreasonable. The appellant in the grounds of appeal has submitted that in the remanded proceedings, the adjudicating authority has acted beyond jurisdiction and has increased the penalty imposed earlier from ₹ 1,00,000 to ₹ 4,00,000 without providing any justification or reasoning for this enhancement, which is impermissible under law. He further contended that the adjudicating authority is required to pass a reasoned order demonstrating clearly why a particular penalty or enhancement of penalty is warranted. Merely increasing the penalty without providing any justification or explanation for the same constitutes arbitrary action. Therefore, I reduce the penalty to ₹. 1,00,000/-.

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

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

  
(AMIT GUPTA)

COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.No. S/49-311/CUS/AHD/2024-25  
To, 2620


Dated -14.07.2025

- (i) Mr Sonikkumar Harishkumar Soni,  
Dadaji ni Khadki, Haveli Mahollo, Vaso,  
Kheda, Gujarat - 387380,



**Copy to:**

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

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CUSTOMS (APPEALS), AHMEDABAD.