



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन, ”पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-38/SVPIA-C/O&A/HQ/2024-25
B	कारणबता ओनोटिस संख्या - तारीख / Show Cause Notice No. and Date	:	VIII/10-38/SVPIA-C/O&A/HQ/2024-25 dated 29.05.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	66/ADC/VM/O&A/2024-25
D	आदेश तिथि / Date of Order-In-Original	:	12.06.2024
I	जारीकरने की तारीख / Date of Issue	:	12.06.2024
F	द्वारा पारित / Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	To, Smt. Karishmababen Ayubhai Sheikh, 160, Madni Society Near Water Tank, Meghraj, Aravalli, Gujarat-383350.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त का कार्यालय, सीमा शुल्क (अपील), 4 वीं मंजिल, हड्डको भवन, ईश्वर मुवन मार्ग, नवरंगपुरा, अहमदाबाद -380014 में कर सकता है।		
(3)	अपील के साथ केवल पाँच रुपये (5.00 रुपये) के न्यायालय शुल्क टिकट लगा होना चाहिए, और इसके साथ होना चाहिए :		
(i)	अपील की एक प्रति और		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पाँच रुपये (5.00 रुपये) के न्यायालय शुल्क टिकट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने के इच्छुक व्यक्तिको 7.5% (अधिकतम 10 करोड़ रुपये) शुल्क जमा करना होगा, जहां शुल्क या इयूटी और जुर्माना विवाद में हैं, याजुर्माना, जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर, सीमा शुल्क अधिनियम, 1962 के धारा 129 के प्रावधानों का अनुपालन न करने के लिए अपील को खारिज कर दिया जाएगा।		

Brief facts of the case :

Smt. Karishmababen Ayubhai Sheikh, (D.O.B: 01.06.1992) (hereinafter referred to as the said "passenger/Noticee"), residential address as per passport is 160, Madni Society, Near Water Tank, Meghraj, Aravalli, Gujarat-383350, holding Indian Passport No. B 7316663, arrived by Air Arabia Flight No. 3L 111 from Abu Dhabi to Ahmedabad on 05.01.2024 (Seat No.14 C) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to the Customs, under Panchnama proceedings dated 05.01.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying pink coloured trolley bag and one hand bag.

2. Thereafter, The AIU officer asked the passengers if she had anything to declare to the Customs, in reply to which she denied. The Lady AIU officer informed the passenger that she would be conducting her personal search and detailed examination of her baggage. The AIU officer scanned the checked in baggage of the passenger in the X-Ray baggage scanning machine, which is installed near Green Channel at Arrival Hall, Terminal II, SVPII Airport, Ahmedabad but nothing objectionable is found. The AIU officers offered their personal search to the passengers, but the passenger denied saying that she is having full trust on the AIU officers. Now, the Lady AIU officer asked the passenger whether she wants to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gives her consent to be searched in front of the Superintendent of Customs. Now, the AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/ clothes. Further, the passenger readily removed all the metallic objects such as mobile, wallet, belt etc. and

kept in a plastic tray and passed through the DFMD machine. On passing through DFMD, a beep sound was heard indicating there is something objectionable/ dutiable on her body/ clothes. The AIU officers interrogated repeatedly to the passenger, that something objectionable/ dutiable on her body/ clothes, but she replied in negative.

2.1 Thereafter, the officers of AIU, the passenger and the Panchas moved to the AIU office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. During frisking of the passenger Smt. Karishmabahen Ayubhai Sheikh examined thoroughly by the Lady AIU officer. During examination of her hand, which was hide by burkha, the lady officer found that seven yellow colour bangles were worn by the passenger, three in left hand and four in right hand. On being asked, the passenger Smt. Karishmabahen Ayubhai Sheikh told the officer that the said bangles are made of gold. Thereafter, the Customs officer called the Government Approved Valuer at around 6.00 AM on 05.01.2024 and informed him that seven (07) gold bangles had been detected from the passenger and hence, he needs to come to the Airport for testing and valuation of the said material. Thereafter, at around 11:00 AM on 05.01.2024, Government Approved Valuer reached at the Airport. On reaching the Airport, the AIU officer introduced the Panchas as well as the passengers to one person namely Shri Kartikey Soni Vasantrai, Government Approved Valuer. The Government approved Valuer weighs the said seven bangles and informed that the net weight of the said seven bangles is 700 grams. After testing the said yellow-coloured bangles, the Government Approved Valuer vide his report No. 1087/2023-24 dated 05.01.2024 confirmed that it is pure gold. After completion of the procedure, the Government Approved Valuer informed that 07 Gold bangles are totally weighing 700 Grams having purity 999.0/24kt.

The photograph of the same is as under:



2.2 Thereafter, the Government Approved Valuer informed that the recovered 07 gold bangles from Smt. Karishmabahen Ayubhai Sheikh is having net weight of **700 Grams**, purity 999.0/24kt, having tariff value of **Rs.39,45,428/-** (Rupees Thirty-Nine Lakh Forty-Five Thousand Four Hundred Twenty-Eight only) and Market value of **Rs.45,25,500/-** (Rupees Forty-Five Lakh Twenty-Five Thousand Five Hundred only). The value of the gold bangles has been calculated as per the Notification No. 95/2023-Customs (N.T.) dated 29.12.2023 (gold) and Notification No. 01/2024-Customs (N.T.) dated 04.01.2024 (exchange rate).

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 1087/2023-24 dated 05.01.2024 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates.

3. Smt. Karishmabahen Ayubhai Sheikh produced following documents, under the Panchnama dated 05.01.2024.

- (i) Copy of Passport No. B 7316663 issued at Ahmedabad on 15.11.2023 and valid up to 14.11.2033.
- (ii) Boarding pass of Air Arabia Flight No. 3L 111 from Abu Dhabi to Ahmedabad dated 05.01.2024 having seat No. 14-C.

4. Accordingly, 07 Gold bangles weighing 700.00 Grams having purity 999.0/24 Kt. recovered from Smt. Karishmabahen Ayubbhai Sheikh was seized vide Panchnama dated 05.01.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bangles were smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A statement of Smt. Karishmabahen Ayubbhai Sheikh was recorded on 05.01.2024, under Section 108 of the Customs Act, 1962, wherein she inter alia stated that -

- (i) she is working as a Nursing staff in Krishna Hospital, Modasa lives with his old aged mother, father & brother at 162, Madni Society N/R Water Tank, Meghraj, Arvalli, Gujarat-383350, Gujarat;
- (ii) she went to Abu Dhabi on 01.01.2024 and returned on 05.01.2024 by Air Arabia Flight No. 3L 111. She booked air ticket by travel agent.
- (iii) that she had never indulged in any illegal/smuggling activities, but this is my first time when she carried gold in the form of bangles;
- (iv) she had been present during the entire course of the Panchnama dated 05.01.2024 and she confirmed the events narrated in the said Panchnama drawn on 05.01.2024 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) she was aware that smuggling of gold without payment of Customs duty is an offence. She was aware of the 07 gold bangles worn by her, but she did not make any declarations in this regard to evade the Customs duty. She confirmed the recovery of 700.00 Grams gold, having Tariff value of Rs.39,45,428/- and market value of Rs.45,25,500/- having purity 999.0/24 KT derived as narrated under the Panchnama dated 05.01.2024. She had opted for green channel so that she can attempt to smuggle the gold without paying customs duty.

6. The above said seven gold bangles weighing 700.00 grams, valued at Rs.39,45,428/- (Tariff value) and Market value of Rs.45,25,500/- recovered from Smt. Karishmabahen Ayubbhai Sheikh, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the

same in the form of bangles worn by her which was hidden by burkha, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bangles weighing 700.00 grams which was attempted to be smuggled by Smt. Karishmabahen Ayubhai Sheikh, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bangles weighing 700.00 grams was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 05.01.2024.

7. **RELEVANT LEGAL PROVISIONS:**

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions.—*In this Act, unless the context otherwise requires,—*

(22) "goods" includes—

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

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

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section 11A – Definitions -*In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage.— *The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

IV) "Section 110 – Seizure of goods, documents and things.— (1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

V) "Section 111 – Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:-

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

VI) "Section 112 – Penalty for improper importation of goods, etc.— Any person,-

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

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) "Section 3(2) - The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."

II) "Section 3(3) - All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."

III) "Section 11(1) - No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

Contravention and violation of law:

8. It therefore appears that:

(a) The passenger Smt. Karishmabahen Ayubhai Sheikh had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 700.00 grams having purity 999.0/24 Kt. and having Tariff value of Rs.39,45,428/- (Rupees Thirty Nine Lakh Forty Five Thousand Four Hundred Twenty Eight Only) and market Value of Rs.45,25,500/- (Rupees Forty Five Lakh Twenty Five Thousand Five Hundred Only). The said gold was concealed in the form of bangles worn by her which was covered by burkha and not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported Seven gold bangles weighing 700.00 grams of purity 999.0/24 Kt. by Smt. Karishmabahen Ayubhai Sheikh by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as *bonafide*

household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b) By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported gold by the passenger Smt. Karishmabahen Ayubhai Sheikh found concealed in the form of bangles worn by her which was covered by burkha, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (d) Smt. Karishmabahen Ayubhai Sheikh by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- (f) As per Section 123 of the Customs Act 1962, the burden of proving that the seven gold bangles weighing 700.00 grams of purity 999.0/24 Kt. and having Tariff value of Rs.39,45,428/- and Market value of Rs.45,25,500/- concealed in the form of bangles worn by her which was covered by burkha without declaring it to the Customs, is not smuggled goods, is upon the passenger Smt. Karishmabahen Ayubhai Sheikh.

9. Now, therefore, **Smt. Karishmababen Ayubhai Sheikh**, residing at 160, Madni Society Near Water Tank, Meghraj, Aravalli, Gujarat-383350, India, holding Indian Passport No. B 7316663, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad-380009, as to why:

- (i) Seven Gold Bangles weighing **700.00** grams having purity 999.0/24 Kt. and having Tariff value of **Rs.39,45,428/-** (Rupees Thirty-Nine Lakh Forty-Five Thousand Four Hundred Twenty-Eight Only) and market Value of **Rs.45,25,500/-** (Rupees Forty Five Lakh Twenty Five Thousand Five Hundred Only) worn by the passenger which was covered by burkha and placed under seizure under Panchnama proceedings dated 05.01.2024 and Seizure Memo Order dated 05.01.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (j) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

10. DEFENCE REPLY:

The Advocate Shri Rishikesh J Mehra, submitted written reply in the matter on behalf of his client dated 30.05.2024, wherein he submitted that;

- a. his client brought seven gold Bangles which was worn by her on her hand and purchased by himself from her personal savings;
- b. he submits copy of purchase bill of M/s. White Classic Gold and Diamond Trading LLC of said seized gold articles, which are in the name of the pax; which was produced at the time of drawing panchnama, however, the same is not taken on record.
- c. the Gold was not ingeniously concealed and not in commercial quantity.
- d. He relied upon following judgements wherein release of gold has been allowed on payment redemption fine & duty;

- e. his client had brought the gold bars first time along with him;
- f. his client is ready to pay fine, penalty and duty;
- g. a lenient view may be taken before deciding the case on merits.

Case laws relied upon by the notice: -

1. Order In Original No: JC/PK/ADJN/381/2021-22 Date of Order 31.03.2022 And Date of Issue 12.04.2022 Joint Commissioner Of customs CSMI Airport Mumbai V/s Ms. Rashmi Satish Mandelia (3 Gold Biscuits (Bars) 349.000 Concealed Re-Export Nee Case granted RF, PP).
2. Order No: 280/2022-CUS (WZ)/ASRA/MUMBAI DATED 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Priyal Sanjay Chokshi (3 Pieces of crude Gold Bangles 140.00 Grams Concealed Re-Export Nee Case granted RF, PP).
3. Order No: 281/2022-CUS (WZ) /ASRA/MUMBAI/ DATED 26.09.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Bina Sanjay Chokshi (2 Pieces of crude Gold Bangles 175.00 grams Concealed Re-Export Nee Case granted RF, PP).
4. Order No: 389/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 29.03.2023 IN C/A Pr. Commissioner of Customs (Appeals), Mumbai Zone-III v/s Ms. Ruby Paul Vincent Chettiar (crude Gold Chain 200.00 grams Concealed Re-Export Nee Case granted RF, PP).
5. Order No: 65/2023-CUS (WZ) /ASRA/MUMBAI/ DATED. 30.01.2023 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Ms. Jahida Bano (2 crude Gold Bangles and 4 gold Bangles total weighing 304.00 grams Concealed Re-Export Nee Case granted RF, PP).
6. Order No: 402/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 16.12.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Taheri (1 cute Pieces of crude/raw Gold Bar 195.00 grams Concealed Re-Export Nee Case granted RF, PP).
7. Order no: 349/2022-CUS (WZ) /ASRA/MUMBAI/ DATED. 29.11.2022 IN C/A Pr. Commissioner of Customs, CSI Airport Mumbai v/s Mr. Kakali Sardar (8 Gold Bangles 2 Gold Rings 550.000 Grams Concealed Re-Export granted on RF, PP).
8. Order-in-Original No. 128/ADC/VM/O&A/2023-24 dated 01.08.2023 in the case of Nishant Dilipbhai Patel, re-export granted on payment of Redemption Fine and Penalty.

In the circumstances narrated above, the goods seized in question may be allowed to be released on payment of fine or as per the procedure laid down under the Customs Act, 1962.

The Advocate of the Noticee also requested for early hearing in matter, which was accepted.

11. PERSONAL HEARING:

Personal Hearing in this case was fixed on 06.06.2023. Shri Rishikesh J Mehra, Advocate appeared for Personal Hearing on behalf of Smt. Karishmababen Ayubhai Sheikh. Shri Rishikesh Mehra submitted written submissions dated 30.05.2024 and reiterated the same. He also submitted that the gold was purchased by his client from her personal savings and borrowed money from her friends. This is the first time she brought the seized gold, i.e. 07 gold bangles. Due to ignorance of law the gold was not declared by the passenger. The gold is not prohibited item. The gold is not commercial quantity and was not concealed/ hidden. The gold i.e. Bangles were worn on her hands, which was clearly visible. He further submitted that his client is ready to pay applicable Customs Duty, fine and penalty and requested for release of seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

DISCUSSION & FINDINGS

12. I have carefully gone through the facts of this case and the submissions made by the passenger in her written submission as well as during the personal hearing and documents submitted. I find that the passenger has requested for release of the seized gold. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issues that are to be decided is whether the seized gold i.e. seven gold bangles, of 24Kt/ 999.0 purity, totally weighing 700.00 grams and having tariff value of Rs.39,45,428/- (Rupees Thirty-Nine Lakhs Fourty-Five Thousand Four Hundred Twenty-Eight Only) and market value of Rs.45,25,500/- (Rupees Fourty-Five Lakhs Twenty-Five Thousand Five Hundred Only) carried by the passenger, which were seized vide Seizure Order dated 05.01.2024 under Panchnama proceedings dated 05.01.2024 on the reasonable belief that the said gold were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the passenger is liable for penalty under the provisions of Section 112 of the Act.

14. I find that the Advocate of the Noticee appeared for personal hearing and submitted that the gold was brought by his client, for her personal use. The gold was purchased by his client from her savings and borrowed money

from Dubai He requested to allow release of gold on redemption fine. He has further added that gold is not prohibited item and was not in commercial quantity, the genuine lapse took place and thus a case has been booked against his client.

15. In this regard, I find that while passing through DFMD a beep sound was heard indicating there is an objectionable item on her body. The AIU officer asked her whether anything dutiable/ objectionable item hidden on her body to which she replied in negative. During frisking and examination of her hands, which was hide by burkha, the lady Customs Officer found seven bangles was worn by the passenger, three in left hand and four in right hand. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and she intentionally wanted to clear the same without payment of Customs duty which is also admitted by her in her statement dated 05.01.2024. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

16. In this regard, I find that the Customs Baggage Rules, 2016 nowhere mentions about carrying gold in commercial quantity. It simply mentions about the restrictions on gold carried by the international passengers. Further, the Hon'ble Apex Court in Om Prakash Bhatia case reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the passenger had hidden the gold and did not declare the same even after asking by the Customs officers until the same was detected on her passing through the Door Frame Metal Detector (DFMD). Hence, I find that in view of the above-mentioned case citing, the passenger by her act of secreting the gold with an intention of clearing the same illicitly from Customs area by not declaring the same to Customs have held the impugned gold liable for confiscation under Section 111 of the Customs Act, 1962.

17. I find that the said seven gold bangles, were placed under seizure vide Seizure Order dated 05.01.2024 under Panchnama proceedings dated 05.01.2024. The seizure was made under Section 110 of the Customs Act, 1962 on a reasonable belief that the said goods were attempted to be smuggled into

India and liable for confiscation. In the statement recorded on 05.01.2024, the passenger had admitted that she did not want to declare the seized gold carried by her to the Customs on her arrival at SVPIA, with an intent to clear it illicitly and evade the payment of Customs duty payable thereon. It is also on record that the Government Approved Valuer has tested and certified that the said gold bangles are weighing 700.00 grams of 24kt/ 999.00 purity gold; having tariff value of Rs.39,45,428/- and market value of Rs.45,25,500/-. The recovered gold bangles were accordingly seized vide Seizure Order dated 05.01.2024 under Panchnama proceedings dated 05.01.2024 in the presence of the passenger and Panchas.

18. I also find that the passenger has neither questioned the manner of panchnama proceedings nor controverted the facts detailed in the panchnama during the course of recording her statement. Every procedure conducted during the panchnama proceedings by the Customs Officers is well documented and made in the presence of the panchas as well as the passenger. The passenger in her statement dated 05.01.2024 has stated that the said seven gold bangles were purchased by her from Dubai and also produced purchase bill thereof. The passenger has clearly admitted that she had intentionally not declared the gold recovered and seized from her on her arrival before the Customs with an intent to clear it illicitly and evade payment of Customs duty which is an offence under the Customs Act, 1962 and the Rules and Regulations made under it. In fact, in her statement dated 05.01.2024, the passenger admitted that she had intentionally not declared the seized gold of 24Kt/ 999.0 purity having net weight of 700.00 Grams on her arrival before the Customs officer with an intent to clear it illicitly and evade payment of Customs duty.

19. I thus find that the recovery of gold from the possession of the passenger which was concealed and not declared to the Customs with an intention to illicitly clear it from the Customs Airport to evade the payment of Customs duty is an act of smuggling and the same is conclusively proved. By her above act of commission, it is proved beyond doubt that the passenger has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find that the gold imported by the passenger was purchased by her from Dubai, however, the same has not been declared before the Customs to evade payment of tax. Therefore, the gold imported by the passenger in the form of seven gold

bangles and deliberately not declared before the Customs on her arrival in India cannot be treated as a bonafide household goods and thus the passenger has contravened the Para 2.26 of the Foreign Trade Policy 2015-20 and thereby 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 read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

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

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

21. Given the facts of the present case before me and the judgement and rulings cited above, the impugned gold made of 24 kt/999.0 purity, totally weighing 700.00 Grams, recovered from the said passenger, that was kept undeclared and placed under seizure would be liable to confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act. I find that the passenger is not a carrier and the said gold was brought by her for her personal use and not carried on behalf of some other person with a profit motive.

22. I further find that the passenger had involved herself and abetted the act of carrying seven gold bangles made up of 999.0/ 24Kt. purity gold having net weight of 700.00 grams by concealing under burkha in such a way that no

one can see it easily. She has agreed and admitted in the statement recorded that she travelled with the said gold bangles of 24Kt/999.0 purity having net weight of 700.00 grams hidden under burkha worn by her from Dubai to Ahmedabad. Despite her knowledge and belief that the gold carried and undeclared by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to clear the said gold without making any declaration. The passenger in her statement dated 05.01.2024 stated that she did not declare the impugned gold as she wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has actively involved herself in carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under provisions of Sections 112 of the Act and I hold accordingly.

23. I also refer, CBIC Circular No: 495/5/92-Cus. VI dated 10.05.1993 which talks about concealment of gold in order to smuggle it into India. So, I find that ingenious concealment is one of the important aspects of deciding on redemption/ non-redemption of the goods. Accordingly, I proceed to decide the issue.

24. In view of the above discussions, I hold that the said gold recovered from the Noticee are liable for confiscation. However, since the impugned gold carried by the passenger was for personal use and not brought for another person for profit motive. Further, the passenger has hidden gold under burkha she worn, which cannot be termed as an ingenious concealment. As such, I use my discretion to give an option to redeem the impugned seized gold on payment of a redemption fine, as provided under Section 125 of the Act.

25. I find that this issue of re-demption of gold has travelled through various appellate fora. I find that in the following cases, Hon'ble Supreme Courts, High Courts, the appellate fora allowed redemption of seized goods;

- i. *Sapna Sanjeev Kohli vs. Commissioner – 2010(253) E.L.T.A52(S.C.).*
- ii *Union of India vs. Dhanak M Ramji – 2010(252) E. L. T. A102(S.C.)*
- iii *Shaikh Jamal Basha Vs. G.O.I. – 1997(91) E. L. T. 277(A. P.)*
- iv *Commissioner of Cust. & C. Ex. Nagpir-I Vs. Mohd. Ashraf Armar – 2019(369) E. L. T. 1654 (Tri. Mumbai)*

- v *Shri R. P. Sharma, Additional Secretary in RE Ashok Kumar Verma – 2019(369) E. L. T. 1677 (G. O. I.)*
- vi *Suresh Bhosle Vs. Commissioner of Customs (Rev.) Kolkatta – 2009(246) E. L. T. 77(Cal.)*
- vii *T. Elavarasan Versus Commissioner Of Customs (Airport), Chennai reported at 2011 (266) E.L.T. 167 (Mad.)*

26. I find that when there are judgements favouring redemption, there are contra judgement which provide for absolute confiscation of seized gold attempted to be smuggled into India as follows;

- i. *Abdul Razak Vs., U. O. I. – 2012(275) E. L. T. 300 (Ker.) maintained by Hon'ble Supreme Court – 2017(350) E. L. T. A173(SC)*

27. I further find that ingenious concealment is one of the important aspects for deciding on the redemption/ non-redemption of the goods. Further, while deciding the case, the CBIC Circular / Instruction F. No: 275/17/2015-CX. 8A dated 11.03.2015 is also looked into, which emphasized that Judicial discipline should be followed while deciding pending show cause notices/appeals.

28. I find that the option to redemption has been granted and absolute confiscation is set-a-side vide order No. 12/2021-CUS(WZ)/ASAR dated 18.01.2021 by the Revision authority, GOI issued under F. No: 371/44/B/2015-RA/785 dated 29.01.2021. Similar view was taken by Revision Authority vide Order No. 287/2022-CUS(WZ)/ASAR/Mumbai dated 10.10.2022; Order No. 245/2021- CUS(WZ)/ASAR dated 29.09.2021 issued under F. No: 371/44/B/15-RA/2020 dated 06.10.2021 and Order No: 314/2022-Cus (WZ)/ASAR/Mumbai dated 31.10.2022 issued from F. No: 371/273/B/WZ/2018 dated 03.11.2022. All the above mentioned 3 orders of RA has been accepted by the department.

29. I also find that in Order No: 245/2021-CUS9WZ)/ASAR/MUMBAI dated 29.09.2021 in case of Shri Memon Anjum, the Revisionary Authority set aside the order of absolute confiscation. The Revisionary Authority in Para 14 observed as under:

"Government notes that there is no past history of such offence/violation by the applicant. The part of impugned gold jewellery was concealed but this at times is resorted to by travellers with a view to keep the precious goods secure and safe. The quantity/type of gold being in form of gold chain and 3 rings is jewellery and is not commercial in nature. Under the circumstance, the Government opines that the order of absolute confiscation in the impugned case is in excess and

unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allowed for redemption on suitable redemption fine and penalty."

30. I find that hiding the seized goods concealed/ hidden under burkha cannot be considered as an ingenious concealment even though the charge of non-declaration of the seized gold is established. Further, the ownership of the seized gold by the passenger cannot be denied, as she claims ownership of seized gold. Further, she brought gold for the first time and hence it is not a case of habitual offender. Looking to the facts that this is not a case of ingenious concealment, I am of the considered opinion that under section 125 of the Customs Act, 1962, the option for redemption can be granted.

31. I further find that the passenger had involved herself and abetted the act of carrying 7 gold bangles made up of 999.0/ 24Kt. purity gold having net weight of 700.00 Grams by hiding under burkha worn. She has agreed and admitted in the statement recorded that she travelled with seven gold bangles made up of 999.0/ 24Kt. purity gold having net weight of 700.00 Grams from Dubai to Ahmedabad. Despite her knowledge and belief that the gold carried by her by hiding under clothes and undeclared in her person is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to carry the said gold. The passenger in her statement dated 05.01.2024 stated that she did not declare the impugned gold as she wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has involved herself in carrying, removing, keeping, concealing and dealing with the undeclared gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under provisions of Sections 112 of the Act and I hold accordingly.

32. Accordingly, I pass the order as under:

ORDER

- i. I order confiscation of the impugned gold i.e. seven gold bangles made up of 999.0/ 24Kt. purity gold having net weight of 700.00 Grams and having tariff value of Rs.39,45,428/- (Rupees Thirty-Nine Lakhs Fourty-Five Thousand Four Hundred Twenty-Eight Only) and market value of Rs.45,25,500/- (Rupees Fourty-Five Lakhs Twenty-Five Thousand Five Hundred Only) recovered and seized from passenger Smt.

Karishmabahen Ayubhai Sheikh vide Seizure Order dated 05.01.2024 under Panchnama proceedings dated 05.01.2024 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii. I give an option to Smt. Karishmabahen Ayubhai Sheikh to redeem the impugned gold of 24Kt/999.0 purity having net weight of 700.00 Grams on payment of redemption fine of **Rs.9,00,000/-** (Rupees Nine Lakhs Only) under Section 125(1) of the Customs Act, 1962. In addition to redemption fine, the passenger would be liable for payment of applicable duties and other levies/ charges in terms of Section 125(2) of the Customs Act, 1962.
- iii. I impose a penalty of **Rs.3,00,000/- (Rupees Three Lakhs Only)** on Smt. Karishmabahen Ayubhai Sheikh under the provisions of Section 112 (a) (i) of the Customs Act, 1962.

33. Accordingly, the Show Cause Notice No. VIII/10-38/SVPIA-C/O&A/HQ/2024-25 dated 29.05.2024 stands disposed of.


12/06/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-38/SVPIA-C/O&A/HQ/2024-25
DIN: 20240671MN0000666C0B

Date: 12.06.2024

BY REGISTERED POST A.D.

To,
Smt. Karishmabahen Ayubhai Sheikh,
160, Madni Society Near Water Tank,
Meghraj, Aravalli, Gujarat-383350.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (v) Guard File.