

OIO No:122/ADC/SRV/O&A/2025-26
F. No. VIII/10-285/SVPIA-B/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
 ,”सीमाशुल्कभवन“पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद– 380009.
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DIN No. **20250971MN000055355C**
PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-285/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-285/SVPIA-B/O&A/HQ/2024-25 dated: 28.05.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	122/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	10.09.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	10.09.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Ms. Hassina Zainab Banu Khan, D/o Shri Mohammed Rahimullah Khan, R N 1/101 Kausar APT Almas Colony, Kausa, Mumbai, Thane- 400612, Maharashtra
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

On the basis of passenger profiling of passengers, the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a passenger Ms. Hassina Zainab Banu Khan, aged 34 years, D/o Shri

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Mohammed Rahimullah Khan, having Indian Passport No. Y8550253 residing at R N 1/101 Kausar APT Almas Colony Kausa Mumbai, Thane-400612, Maharashtra, arriving on 14.12.2024 from Etihad Flight No. EY-240 from Abu Dhabi to Ahmedabad, at the arrival Hall of the SVPIA, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 14/15.12.2024.**

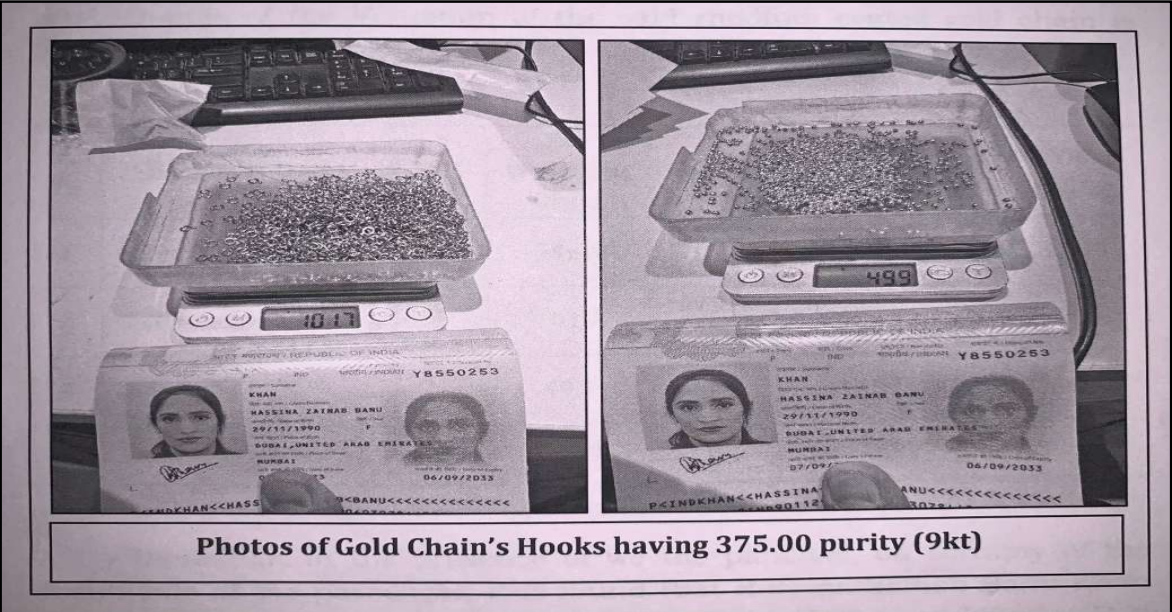
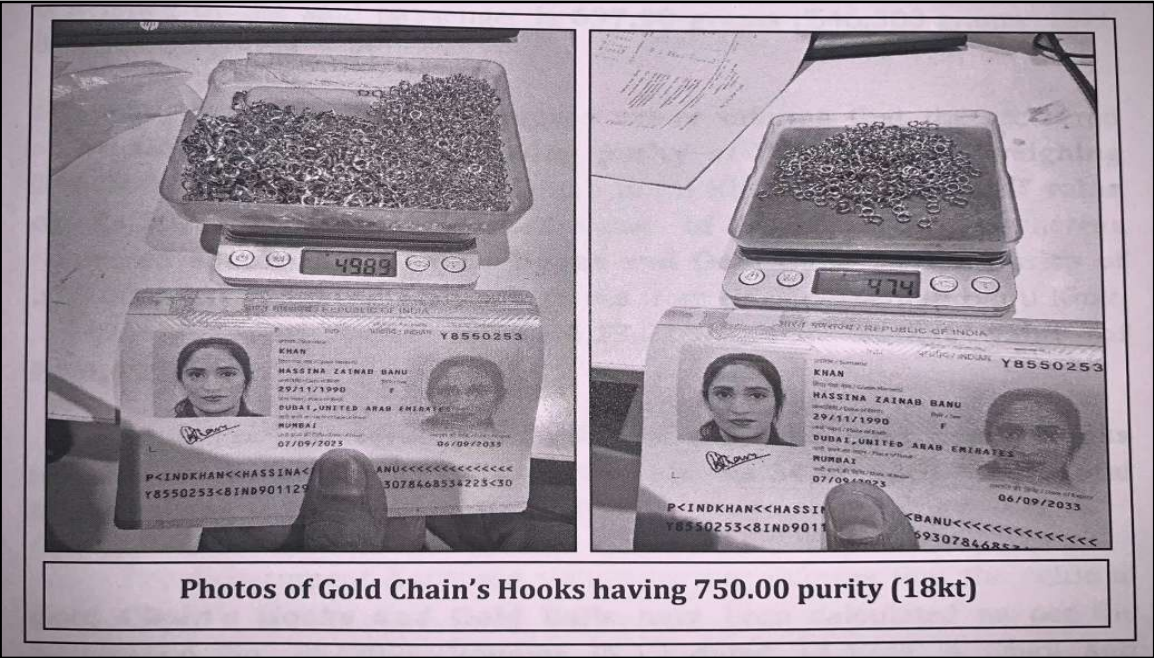
2. The passenger was questioned by the AIU officers as to whether she was carrying any dutiable/contraband goods in person or in her baggage, to which she denied. The officers informed the passenger that a search of her baggage as well as her personal search was to be carried out and gave her an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passenger desired to be searched in presence of a gazetted customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the officers. The officers asked her to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the passenger removed metallic objects from her body/clothes such as mobile, purse etc. and kept them in a plastic tray placed on the table. The said passenger then passed through the DFMD Machine and no beep sound was heard in the DFMD machine indicating there was nothing objectionable/dutiable on her body/clothes.

The AIU Officer scanned her Checked-in bags and Hand Bag on Baggage Scanning Machine (BSM) and on examination of the bags and hand bag of the passenger, gold chain's Hooks and Gold Balls were from hand bag and one of the trolley bags and found the total weight of the same was 697.900 grams after weighing the same.

2.1 Thereafter, the AIU officer called the Govt. Approved Valuer Shri Kartikey Vasantraai Soni and informed him that gold chain's Hooks and Gold Balls has been recovered from **Ms. Hassina Zainab Banu Khan**, who had arrived on 14.12.2024 by Etihad Flight No. EY-240 from Abu Dhabi to Ahmedabad at T-2 of SVPIA Ahmedabad and that he needed to come to the Airport for examination and for valuation of the same.

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2.2 The Govt. approved valuer arrived at the SVPIA Airport and took the photographs of the above said articles which are as under:



2.3. After testing and valuation of the gold chain's Hooks and gold Balls, the Government Approved Valuer vide her Certificate No. 1313/2024-25 dated 14.12.2024, gave the report as under:

Report No. 1313/2024-25 dated 14.12.2024						
Sr. No.	Item	Pcs.	Net weight	Purity	Market Value	Tariff Value
1	Gold chain's Hooks	-	546.30 grams	750.0/18 Kt	Rs. 32,38,466/-	Rs. 30,21,410/
2	Gold chain's Hooks	-	101.70 grams	375.0/9Kt	Rs. 3,01,439/-	Rs. 2,81,235/-

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3	Gold Balls	-	49.90 grams	375.0/9Kt	Rs. 1,47,904/-	Rs. 1,37,990/-
	Total	-	697.90 grams	-	Rs. 36,87,809/-	Rs. 34,40,636/-
	Value Notification	<i>Notification No. 85/2024-Customs (N.T.) dated 13.12.2024 (gold)</i>				
	Exchange Rate Notification	<i>Notification No. 11/2024-Customs (N.T.) dated 21.11.2024 (exchange rate)</i>				

2.4. Further, the Govt. Approved Valuer informed that the said gold chain's Hooks and Gold Balls, total weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt), are having total Market Value of Rs. 36,87,809/- (Thirty-Six Lakhs Eighty-Seven Thousand and Eight Hundred Nine only) and Tariff Value (Rs. 34,40,636/- Thirty-Four Lakhs Forty thousand and Six Hundred Thirty-Six only), which has been calculated as per the Notification No. 85/2024-Customs (N.T.) dated 13.12.2024 (gold) and Notification No. 11/2024-Customs (N.T.) dated 21.11.2024 (exchange rate). He submitted her valuation report to the AIU Officers.

3. The method of testing and valuation used by the valuer was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate given by the valuer and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. The following documents produced by the passenger were withdrawn under the Panchnama dated 14/15.12.2024:

- i. Copy of Passport No. Y8550253 issued at Mumbai on 07.09.2023 and valid up to 06.09.2033.
- ii. Boarding pass of Etihad Flight No. EY-240 from Abu Dhabi to Ahmedabad.

SEIZURE OF THE ABOVE GOLD BAR:-

4. The said gold chain's Hooks and gold balls totally weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt) having purity of 750.0/18 Kt and 375.0/9Kt were carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for

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confiscation under the Customs Act, 1962. Therefore, the said gold chain's Hooks and gold balls totally weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt) having purity 750.0/18 Kt and 375.0/9Kt and having market value of Rs. 36,87,809/- (Thirty-Six Lakhs Eighty-Seven Thousand and Eight Hundred Nine only) and Tariff Value Rs. 34,40,636/- (Thirty-Four Lakhs Forty thousand and Six Hundred Thirty-Six only), were placed under seizure vide Seizure Memo dated 15.12.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject sixteen gold bangles are liable for confiscation under Section 111 of the Customs Act, 1962.

Statement of Ms. Hassina Zainab Banu Khan:

5. Statement of Ms. Hassina Zainab Banu Khan was recorded under Section 108 of the Customs Act, 1962 on 15.12.2024, wherein she inter alia stated as under:

5.1 She has studied up to 12th standard and can read, write and speak Hindi & English language. Her monthly income is Rs.50,000/-.

5.2 She had travelled 03 times abroad during last 01 year. This time she travelled to Dubai on 09.12.2024, and came back on 14.12.2024 by Indigo Flight EY 240 from Abu Dhabi to Ahmedabad. She arranged her air tickets from savings.

5.3 She had travelled to Dubai to meet her family (Father, mother & brother) as they reside in Dubai only. While returning, she purchased the gold chain hooks and gold balls as these are used in her jewellery shop in Mumbai and buying these in Dubai would have saved lot of money for her. She borrowed money from sister and cousin to purchase these gold chain hooks and gold balls.

5.4 **Previously she was caught at Mumbai Airport on 19.10.2023 by Customs while she had concealed jewellery approx. 840 grams in her innerwear. But that jewellery belonged to her cousin Zahid who stays in Dubai. On that occasion, a case was made by Mumbai Customs against her.**

5.5 She was aware that smuggling of gold without payment of Customs duty is an offence. She was well aware of the concealed gold chain's Hook and gold balls but she did not make any declarations in this regard to

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evade the Customs duty. She had opted for green channel so that she can attempt to smuggle the gold without paying customs duty.

Summation:

6. The above said gold chain's Hooks and gold balls having purity 750.0/18 Kt and 375.0/9Kt weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt) recovered from Ms. Hassina Zainab Banu Khan was allegedly attempted to be smuggled into India, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the gold chain's Hooks and Gold Balls was attempted to be smuggled by Ms. Hassina Zainab Banu Khan, was liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold chain's Hooks and Gold Balls having purity 750.0/18 Kt and 375.0/9Kt weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt) having Tariff Value of Rs. 34,40,636/- and Market value of Rs. 36,87,809/- along with its packing material used to conceal the said items, was placed under seizure under the provision of Section 110 (1) and (3) of the Customs Act, 1962 vide Seizure memo Order dated 15.12.2024.

7. RELEVANT LEGAL PROVISIONS:

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

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, only bonafide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

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- 7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

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

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

- 7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- 7.11 As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.
- 7.12 Section 111. Confiscation of improperly imported goods, etc.:

The following goods brought from a place outside India shall be liable to confiscation:-

[\(a\)](#) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

[\(b\)](#) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

[\(c\)](#) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

[\(d\)](#) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

[\(e\)](#) any dutiable or prohibited goods found concealed in any manner in any conveyance;

[\(f\)](#) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

[\(g\)](#) any dutiable or prohibited goods which are unloaded

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from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

[\(h\)](#) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

[\(i\)](#) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

[\(j\)](#) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

[\(k\)](#) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

[\(l\)](#) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

[\(m\)](#) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

[\(n\)](#) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

[\(o\)](#) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

[\(p\)](#) any notified goods in relation to which any provisions of

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Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

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

any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

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

7.14 As per Section 123 of Customs Act 1962,

(1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

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

Customs Baggage Rules and Regulations:

7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and

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having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

7.17 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

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

7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.

7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs

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leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) Gold chain’s hooks and gold balls, other than tola chain’s hooks and gold balls, bearing manufacturer’s or refiner’s engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii)Gold in any form other than (i), including tola chain’s hooks and gold balls and ornaments, but excluding ornaments studded with stones or pearls	10%	41

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total

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

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

CONTRAVENTION AND VIOLATION OF LAWS:-

8. It therefore appears that:

- (a)** The passenger Ms. Hassina Zainab Banu Khan had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India by any way concerned in

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carrying, removing, depositing, harboring, keeping, concealing, or in any manner dealing with the said gold chain's Hooks and gold balls having purity 750.0/18 Kt and 375.0/9Kt weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt) having Tariff Value of Rs. 34,40,636/- (Thirty-Four Lakhs Forty thousand and Six Hundred Thirty-Six only) and Market value of Rs. 36,87,809/- (Thirty-Six Lakhs Eighty-Seven Thousand and Eight Hundred Nine only).

- (b)** The gold chain's Hooks and gold balls was found concealed by way of concealing in the hand bag and one trolley bag by the passenger and not declared to the Customs. The passenger indulged herself in the instant case of smuggling of gold 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 said gold chain's Hooks and Gold Balls weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt) of purity 750.0/18 Kt and 375.0/9Kt by Ms. Hassina Zainab Banu Khan by way of concealment and without declaring it to the Customs 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.
- (c)** By not declaring the value, quantity and description of the goods, 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.
- (d)** The passenger has failed to produce the purchase documents of the said gold bar and Custom duty payment

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documents/proof has also not been submitted by the passenger for the same.

- (e) The improperly imported gold chain's Hooks and Gold Balls by the passenger and without declaring it to the Customs, was thus liable for confiscation under Section 111 of the Customs Act, 1962.
- (f) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- (g) Ms. Hassina Zainab Banu Khan 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.
- (h) As per Section 123 of Customs Act 1962, the burden of proving that the gold chain's Hooks and Gold Balls **weighing 697.900 grams (546.30 grams having purity 750.0/18 Kt and 151.600 grams having purity of 375.0/9Kt)** of purity 750.0/18 Kt and 375.0/9Kt and having Tariff Value of Rs. 34,40,636/- (Thirty-Four Lakhs Forty thousand and Six Hundred Thirty-Six only) and Market value of Rs. 36,87,809/- (Thirty-Six Lakhs Eighty-Seven Thousand and Eight Hundred Nine only), found concealed with the passenger, without declaring it to the Customs, is not smuggled goods, is upon the passenger.

09. Accordingly, Ms. Hassina Zainab Banu Khan, aged 34 years, D/o Shri Mohammed Rahimullah Khan, having Indian Passport No. Y8550253 residing at R N 1/101 Kausar APT Almas Colony Kausa Mumbra, Thane-400612, Maharashtra, as to why:

- (i) Gold Chain's Hooks weighing 546.30 grams having purity of 750.0/18kt and 101.700 grams having purity of 375.0/9Kt and Gold Balls weighing 49.900 grams having purity 375.0/9Kt, all items having total weight of **697.900 grams** and having total Market Value of **Rs. 36,87,809/- (Thirty-Six Lakhs Eighty-Seven Thousand and Eight Hundred Nine only) and Tariff**

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Value Rs. 34,40,636/- (Thirty-Four Lakhs Forty thousand and Six Hundred thirty-Six only), found concealed in one hand bag and trolley bag carried by the passenger, **Ms. Hassina Zainab Banu Khan**, who arrived from Abu Dhabi to Ahmedabad on 14.12.2024 by Etihad Flight No. EY-240, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 14/15.12.2024 and Seizure Memo Order dated 15.12.2024, should not be confiscated under the provisions of Section 111(d), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) Penalty should not be imposed upon **Ms. Hassina Zainab Banu Khan**, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has not submitted any written submission to the Show Cause Notice issued to her, however, the authorized representative submitted 02 Revision Authority Order in their support.

11. The noticee was given opportunity for personal hearing on 07.07.2025, 21.07.2025 & 08.08.2025. On 08.08.2025, Shri Shubham Jhajharia, Advocate appeared for personal hearing on behalf of Smt. Hasina Zainab Banu Khan. He submitted the copy of Vakalatnama and also requested to attend the PH in person instead of video conferencing. He submitted that gold is of small quantity and purity of the same was 18K and 9K and was for personal use in form of jewellery and was not concealed. He submitted that his client is not very educated and therefore, her statement were wrongly recorded. He submitted that his client was not given opportunity to declare and pay duty and case was wrongly made to implicate his client. Further, at this stage in view of Section 125 of Customs Act, 1962 and as per settled position of law, the gold cannot be absolutely confiscated by the authority and the same has be released in favour of his client on payment of redemption fine and nominal penalty as his client is ready to pay applicable redemption fine and penalty. He submitted that Hon'ble Supreme Court, High Court and Tribunal has time and again held that gold is not prohibited item and will not cause any loss to revenue authority, if released on payment on payment of redemption fine and duty. He requested to take lenient view

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in the matter and submitted case law in his support. He has nothing more to add.

Discussion and Findings:

12. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file her reply/ written submissions, however, the noticee has availed the opportunity of personal hearing through her advocate on 08.08.2025. Accordingly, I, therefore, take up the case for adjudication, on the basis of evidences available on record.

13. In the instant case, I find that the main issue to be decided is whether the **697.900 grams** of gold chain's hook and gold balls concealed in her hand bag and trolley bag, having tariff value of **Rs.34,40,636/-** and market value is **Rs.36,87,809/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 14/15.12.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act or otherwise.

14. I find that the panchnama dated 14/15.12.2024 clearly draws out the fact that the noticee, who arrived from Abu Dhabi in Etihad Airways Flight No. EY-240 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Ahmedabad on the basis of passenger profiling, while noticee was attempting to exit through green channel without making any declaration to the Customs. The officers asked the noticee to pass through DFMD, while passing through the Door Frame Metal Detector (DFMD) Machine, no beep was heard indicating there was nothing suspicious on her body. The AIU Officer scanned her Checked-in bags and Hand Bag on Baggage Scanning Machine (BSM) and on examination of the bags and hand bag of the noticee, gold chain's Hooks and Gold Balls were recovered from hand bag and one of the trolley bags. After weighing the said gold items, the total weight of the same was found 697.900 grams.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantrai Soni examined the said gold chain's hooks and

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gold balls recovered from Ms. Hassina Zainab Banu Khan. After weighing the said gold chain's hooks and gold balls on his weighing scale, Mr. Kartikey Vasantrai Soni informed that the weight of said gold items comes to 697.900 grams with the purity of 750.0/18Kt and 375.0/9Kt and submitted his valuation report vide certificate No. 1313/2024-25 dated 14.12.2024, wherein he mentioned that the total Market Value of the said recovered gold was **Rs.36,87,809/- and Tariff Value was Rs.34,40,636/-**. The value of the gold bar has been calculated as per the Notification No. 85/2024-Customs (N.T.) dated 13.12.2024 (gold) and Notification No. 11/2024-Customs (N.T.) dated 21.11.2024 (exchange rate).

15. I also find that the passenger/noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. During the personal hearing, I noticed that the authorized representative alleged that the noticee was not much educated and therefore, the statement was wrongly recorded. In this regard, I find that the statement was tendered by the noticee voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that "It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court

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in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.

- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA"

I find that in the statement, the noticee had disclosed detailed information about her family details, her education, her work and profession. I find that the statement of noticee contain specific and intricate details, which could only have been furnished based on her personal knowledge and could not have been invented by the officers who recorded the said statement. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statement in question. I find that the statement was recorded without any threat, coercion or duress and the statement was typed as per her say and same was explained to her in Hindi. Therefore, the contentio of noticee that the same was wrongly recorded is not true to the fact and not tenable. In fact, in her statement dated 15.12.2024, she has clearly admitted that she had travelled from Abu Dhabi to Ahmedabad by Etihad Airways Flight No. EY-240 dated 14.12.2024 carrying gold chain's hooks and gold balls in her hand bag and one of the trolley bags. She admitted that the said gold was purchased by her from the money borrowed from her sister and cousin but she failed to submit any purchase invoice or any transaction related details/Bank details regarding the purchase. Further, she mentioned that she had intentionally not declared the gold of foreign origin before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty. She admitted that she had intentionally not filed any declaration form and not declared the same to evade the payment of customs duty. She was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act, 1962 and the Baggage Rules, 2016.

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16. Section 2(33) of the Customs Act, 1962 defines 'prohibited goods' as 'any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with'. The said definition implies that in cases where the conditions applicable for import of goods are not complied with, such goods would fall under the category of 'prohibited goods'. Further, I also note that in the instant case, the gold has not been brought in India by a nominated agency notified by the RBI or DGFT, as the case maybe and as such the same would be covered under the category of 'prohibited goods'. My above finding is aptly supported by the case law of **Om Prakash Bhatia reported at 2003 (155) ELT 423 (SC)** wherein it has been held by the Hon'ble Supreme Court as under:

*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 *Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 11(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 negated the said contention and held thus:-*

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*‘...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 word “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.”*

The above judgment has been followed by the Hon’ble High Court of Gujarat in the case of **Bhargavraj Rameshkumar Mehta reported at 2018 (361) ELT 260 (Guj)** wherein it has been observed as under:

15. *We may recall, the contention of the Counsel for the petitioner in this respect was that the gold at the relevant time was freely importable. Import of gold was not prohibited. Case of the petitioner would therefore, fall under clause (ii) of Section 112 and penalty not exceeding 10% of the duty sought to be evaded would be the maximum penalty imposable. Such contention shall have to be examined in the light of the statutory provisions noted above. As noted, Section 111 of the Act provides for various eventualities in which the goods brought from a place outside India would be liable for confiscation. As per clause (d) of Section 111, goods which are imported or attempted to be imported or are brought within the Customs quarters for import contrary to any prohibition imposed by or under the Act or any other law for the time being in force, would be liable for confiscation. Similarly, for dutiable or prohibited goods found concealed in any manner in any conveyance would also be liable to confiscation. As per Section 2(39) the term ‘smuggling’ would mean in relation to any goods, any act or omission which will*

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render such goods liable to confiscation under Section 111 or Section 113. **Thus, clearly Section 111 of the Customs Act prohibits any attempt at concealment of goods and bringing the same within the territory of India without declaration and payment of prescribed duty.** Term 'prohibited goods' as defined under Section 2(33) means any goods, the import or export of which is subject to any prohibition under the 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. This definition therefore, comes in two parts. The first part of the definition explains the term 'prohibited goods' as to mean those goods, import or export of which is subject to any prohibition under the law. The second part is exclusionary in nature and excludes from the term 'prohibited goods', in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. From the definition of term 'prohibited goods', in case of goods, import of which is permitted would be excluded subject to satisfaction of the condition that conditions for export have been complied with. **By necessary implication therefore in case of goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with.**

16. Further clarity in this respect would be available when one refers to the term 'dutiable goods' as to mean any goods which are chargeable to duty and on which duty has not been paid. We refer to this definition since Section 112 makes the distinction in respect of goods in respect of which any prohibition is imposed and dutiable goods other than prohibited goods. When clause (ii) of Section 112 therefor, refers to dutiable goods other than prohibited goods, it shall necessarily have the reference to the goods, import of which is not prohibited or of which import is permissible subject to fulfilment of conditions and such conditions have been complied with. Condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions. When clearly the goods are sought to be brought within the territory of India

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concealed in some other goods which may be carrying no duty or lesser duty, there is clear breach of conditions of import of goods though per se import of goods may not be prohibited.

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

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

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".*

Relying on the ratio of the judgments cited above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods" within the meaning assigned to the term under Section 2(33) of the Customs Act, 1962.

17. I find that the noticee has clearly accepted that she had not declared the said gold chain's hooks and gold balls, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20 as amended. Further as per Section 123 of the Customs Act,

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1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. I find from the statement that the noticee has claimed that the said gold chain's hooks and gold balls were purchased by her from the money borrowed from her sister and cousin. In this regard, I find that the noticee has failed to produce any purchase bill, borrowing receipt or any bank transaction showing that the gold was purchased by her and in legitimate way. Therefore, the claim of noticee that she had purchased the gold for her shop from the money borrowed is not creditworthy, as she mentioned that she had deals in artificial jewellery instead of real gold jewellery and therefore, there is no use of such gold hooks and gold balls in the artificial jewellery. The noticee has completely failed to discharge her burden placed on her in terms of Section 123 of Customs Act, 1962. If she would the genuine owner of said gold, she had come forward and submitted the documentary evidences which proves her claim, but she failed to do so.

18. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 18 kt/ 9kt purity weighing 697.900 gms., concealed in her hand bag and trolley bag, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 697.900 gms., seized under panchnama dated 14/15.12.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By secreting the gold chain's hooks and gold balls in her bags and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. I find that the manner of concealment was clever and premeditated. Further, from the statement, I find that it was not her first time to smuggle the gold as she was early booked for smuggling of gold in form of jewellery weighing 840.00 grams approx. by the Customs officers at Mumbai airport on 19.10.2023 and a case was booked for the same by the officers of Mumbai Customs. From the above, it is very evident that the noticee was well known to the facts that bringing of gold by way of concealment without declaring to the Customs is an offence and she undertake this act with full presence of mind and intentionally. The commission of above act made the impugned

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goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

19. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "*eligible passenger*" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 697.900 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

19.1 In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall 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;

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Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 356 (i) Gold chain's hooks and gold balls, other than tola chain's hooks and gold balls, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola chain's hooks and gold balls and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

If,-

1. *(a) the duty is paid in convertible foreign currency;*
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. *the gold or silver is,-*
(a) carried by the eligible passenger at the time of his arrival in India, or
(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and
(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming

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to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticee. *I find that a well-defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling.* It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject gold chain's hooks and gold balls in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –
(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;

I find that the said gold chain's hooks and gold balls concealed in her bags and was not declared to the Customs under Section 77 of the Customs Act, 1962 and she passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold chain's hook and gold balls which were found concealed and recovered in manner as described above, was made by the Noticee, in the prescribed declaration form. Also, I find that she was not eligible to import gold and that too undeclared in

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substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

(III) in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

In this regard, I find that total 697.900 grams of gold chain's hooks and gold balls of foreign origin which was recovered from possession of noticee and admittedly smuggled into India. On test, the gold was found to be of purity of 750.0/375.0/18kt/9kt. Moreover, I find that the noticee could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Ms. Hassina Zainab Banu Khan, thus failing to discharge her "burden of proof" that the gold was legally imported/possessed. She has also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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.

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Ms. Hassina Zainab Banu Khan in prescribed declaration form and same was admitted by the noticee in her statement that she intentionally not declared the gold to evade payment of eligible customs duty and hence the said gold is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

20. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold weighing 697.900 gms., concealed in her bags, having total Tariff Value of Rs.34,40,636/- and market Value of Rs.36,87,809/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 14/15.12.2024 liable to confiscation

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under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in the form of gold chain's hooks and gold balls concealed in her bags and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same to the Customs on her arrival at the Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

21. I find that the passenger/noticee has confessed of carrying gold weighing 697.900 grams and attempted to remove the said gold by concealing in her bags in form of gold chain's hook and gold balls and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

22. I find that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import

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items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India. It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

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

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24. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee had brought the gold chain's hook and gold balls having total weight 697.900 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that she wanted to clear the said gold clandestinely without payment of eligible custom duty. Moreover, from the travel history of the noticee, I find that the noticee went to Dubai on 09.12.2024 and returned from Dubai to India on 14.12.2024, well before the stipulated time of staying at least 06 months abroad to be considered as eligible passenger to bring the gold with him. I noticed that although test report shows that the recovered gold was found of purity of 18kt/9kt, however, apart from this the noticee failed to fulfil other mentioned conditions to import/bring the gold with her through baggage. Moreover, at the time of interception, she had no convertible foreign exchange with her which is pre-requisite condition to pay the applicable customs duty on the gold after declaration. Having no convertible foreign exchange with her shows her mind-set that she was not willing to declare the gold before the Customs Authority, therefore, the contention raised by the authorized representative that she was not given opportunity to declare the gold is frivolous and an afterthought.

25. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. The passenger/noticee has clearly admitted that despite having

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knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, she attempted to remove the gold by concealing in her bags and by deliberately not declaring the same on her arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) & Section 112(b) of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

26. Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty, during the personal hearing. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit to factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, *I find that ratio of judgments relied upon by the noticee, is not squarely applicable in the instant case.* I find that the manner of concealment in the instant case is clever and premeditated, which clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Moreover, the noticee is found as habitual

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offender as she was booked for smuggling of gold on earlier instances. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Further, from the SCN, Panchnama and Statement, I find that the noticee was not willing to declare the said gold item and tried to remove the gold chain clandestinely, to evade payment of customs duty. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Also, the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "--- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view of the judicial pronouncement above and nature of concealment alongwith the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as :-

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

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

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released on payment of redemption fine and duty under Section 125 of the Act.”

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

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

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

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

26.4 The Hon’ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary

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consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –

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

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

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

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

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

27. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in the form of gold chain’s hooks and gold balls in her

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hand bag and one of trolley bag, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 697.900 grams in form of gold chain's hooks and gold balls, concealed in her bags is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 697.900 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.**

28. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee concealed the gold in her bags in form of gold chain's hook and gold balls, which shows her malafide intention to evade the detection from the Authority and removing it illicitly without payment of duty. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the payment of Customs Duty by not declaring the gold weighing 697.900 grams. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on her part. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Section 112 of the Customs Act, 1962 and I hold accordingly.

29. Accordingly, I pass the following Order:

ORDER

- i.)** I order **absolute confiscation** of the Gold Chain's hooks and gold balls weighing **697.900** grams having Market Value at

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Rs.36,87,809/- (Rupees Thirty Six Lakhs Eighty Seven Thousand Eight Hundred and Nine Only) and Tariff Value is Rs.34,40,636/- (Rupees Thirty Four Lakhs Forty Thousand Six Hundred and Thirty Six only) concealed by noticee Ms. Hassina Zainab Banu Khan in her bags and placed under seizure under panchnama dated 14/15.12.2024 and seizure memo order dated 15.12.2024 , under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I impose a penalty of **Rs. 9,00,000/-** (Rupees Nine Lakh Only) on Ms. Hassina Zainab Banu Khan under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

30. Accordingly, the Show Cause Notice No. VIII/10-285/SVPIA-B/O&A/HQ/2024-25 dated 28.05.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-285/SVPIA-B/O&A/HQ/2024-25 Date: 10.09.2025

DIN: **20250971MN000055355C**

By SPEED POST A.D.

To,
Ms. Hassina Zainab Banu Khan,
D/o Shri Mohammed Rahimullah Khan,
R N 1/101 Kausar APT Almas Colony, Kausa,
Mumbai, Thane-400612, Maharashtra

Copy to :-

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