



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन, ”पहलीमंजिल, पुरानेहाईकोर्टके सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-169/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-169/SVPIA-B/O&A/HQ/2024-25 Dated 25.07.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	115/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	01.08.2024
E	जारी करने की तारीख/ Date of Issue	:	01.08.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Smt. Nishath Parveen F No 515 Phase 3, Saripalla Red Bricks Village, Kulshetra, Mangaluru city, Karnataka - 575005.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे 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 प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हड्डों भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे 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 पे न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ६.५% अधिकतम १० करोड़ शुल्क हम 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, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief Facts of the case:

Smt. Nishath Parveen (hereinafter referred to as the said "passenger/ Noticee"), residing at F No 515 Phase 3, Saripalla Red Bricks Village, Kulshekar, Mangaluru city, Karnataka-575005, holding an Indian Passport Number No. W2356393, arrived by Emirates Flight No. EK 538 from Dubai to Ahmedabad and her boarding pass bearing Seat No. 33H, at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one female passenger namely Smt. Nishath Parveen, who arrived by Emirates Flight No. EK 538 on 05.05.2024 came from Dubai at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad is suspected to be carrying smuggled gold either in her baggage or concealed in her clothes/ body and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 05.05.2024 in presence of two independent witnesses for passenger's personal search and examination of her baggages.

2. The AIU Officers confirmed identity of Smt. Nishath Parveen by her Passport No. W2356393, who travelled by Emirates Flight No. EK 538 from Dubai to Ahmedabad and her boarding pass bearing Seat No. 33H, after she had crossed the Green Channel at the Ahmedabad International Airport. In the presence of the panchas, the AIU Officers asked Smt. Nishath Parveen if she has anything to declare to the Customs, to which she denied the same. The officers offered their personal search to the passenger, but the passenger denied and said that she had full trust on them. Now, the officers asked the passenger whether she wanted to be checked in front of an Executive Magistrate or Lady Superintendent of Customs, in reply to which she gave the consent to be searched in front of the Lady Superintendent of Customs.

2.1 The AIU Officers, in presence of the panchas, observed that Smt. Nishath Parveen had carried an orange-coloured trolley bag and a peach-coloured handbag. The officers, in presence of the panchas

carried out scanning of the trolley bags in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed.

2.2 The AIU Officers, in presence of the panchas, asked Smt. Nishath Parveen to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects she was wearing on her body/ clothes. Thereafter, the passenger readily removed the metallic substances from her body such as mobile, watch etc. and kept it on the tray placed on the table and after that officer asked her to pass through the Door Frame Metal Detector (DFMD) machine and while she passing through the DFMD Machine, a beep sound/ alert was generated. Thereafter, the AIU Officers in presence of panchas, again interrogated the passenger. The passenger now confessed that she carried 4 gold kadas, 2 ankle chain and one gold chain totally weighing **556.910** grams.

2.3 Thereafter, the AIU officer called the Government Approved Valuer and inform him that (i) four Gold Kadas (ii) two ankle chains and (iii) one gold chain is recovered from a passenger, Smt. Nishath Parveen and hence, he needs to come to the Airport for testing and Valuation of the said material. Thereafter, the Government Approved Valuer comes to the AIU office.

2.4 Here, Shri Kartikey Vasantrai Soni, the govt approved valuer, weigh the gold items recovered from the passenger and tested the said gold kadas and gold chains of the passenger and confirmed that the same are made up of pure gold. Shri Soni Kartikey Vasantrai prepared the valuation report for the same, wherein it is certified that the said item mentioned above are made up of 24 Carat gold of purity 999.0. The value of the gold jewellery has been calculated as per the Notification No. 32/2024-Customs (N.T.) dated 30.04.2024 (gold) and Notification No. 34/2024-Customs (N.T.) dated 02.05.2024 (exchange rate). He submitted his valuation report dated 05.05.2024 to the AIU Officer which is in Annexure-A. The panchas and the said passenger put their dated signatures on the said valuation reports.

The detail of the Valuation of the said gold jewellery separately is tabulated in below table:

Table-A

Sl. No.	Name of the Passenger	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Smt. Nishath Parveen	Four Gold kadas	4	319.99	999.0 24 Kt	23,55,126	20,27,036
		One Gold chain + two gold anklet	3	236.920		17,43,730	15,00,814
Total			7	556.910		40,98,858	35,27,849

The AIU officer took the photograph of the said gold jewellery separately which is as under:



2.5 The testing and valuation was done by Shri Kartikey Vasantrai Soni, in presence of the independent panchas the passenger and officers. All were satisfied and agreed with the testing and valuation Certificate dated 05.05.2024 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 certificate.

3. The following documents produced by the passenger Smt. Nishath Parveen were withdrawn under the Panchanama dtd. 05.05.2024:-

- i) Copy of Passport No. W2356393 issued at Bengaluru on 11.07.2022 valid up to 10.07.2032.
- ii) Boarding pass of Emirates Flight No. EK 538, Seat No. 33H from Dubai to Ahmedabad dated 05.05.2024.

4. Thereafter, the AIU officers asked in the presence of the panchas, to produce the identify proof documents of the passenger and the passenger produced the identity proof documents which have been verified and confirmed by the AIU officers and found correct.

5. Accordingly, (i) four Gold Kadas (ii) two ankle chains and (iii) one gold chain totally weighing **556.910 grams** having purity 999.0/24 Kt., having market value of **Rs.40,98,858/-** (Rupees Forty lakh ninety eight thousand eight hundred and fifty eight only) and having tariff value of **Rs.35,27,849/-** (Rupees Thirty-five lakhs Twenty Seven thousand eight hundred and forty nine only) recovered from the passenger, which was attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962, was seized vide Panchnama dated 05.05.2024, vide Seizure Memo dated 05.05.2024 issued from F. No. VIII/10-23/AIU/B/2024-25 dated 05.05.2024, under the provisions of Section 110(1) & (3) of the Customs Act, 1962 and accordingly the same was liable for confiscation as per the provisions of the Customs Act, 1962 read with Rules and Regulation made thereunder.

6. A Statement of Smt. Nishath Parveen was recorded under Section 108 of the Customs Act, 1962 on 05.05.2024, wherein she inter-alia stated that -

- (i) Her name, age and address stated above is true and correct. She was dealing in garments and fancy items business.
- (ii) She was a divorcee and living with her five children; that her education was upto 8th Standard.
- (iii) She used to travel overseas frequently for the purpose of buying garments and fancy items for her business. She departed to Dubai on 03.05.2024 from CSMI Airport Mumbai and returned on 05.05.2024 at SVPIA, Ahmedabad.

- (iv) The Emirates Flight No. EK 538 from Dubai arrived at SVPI Airport, Ahmedabad on 05.05.2024. Thereafter, she was intercepted by the officers of Air Intelligence Unit when she arrived at Arrival Hall of T-2 Terminal of SVPI International Airport when she was about to exit through the green channel. During her personal search, she confessed that she was carrying 4 gold kadas, 2 ankle chain and one gold chain total net weight 556.910 grams. The said gold items weighing 556.910 grams were seized by the officers under Panchnama dated 05.05.2024 under the provision of Customs Act, 1962.
- (v) She had purchased the said gold items from a shop in Dubai. She stated that all the gold items recovered from her belongs to her only.
- (vi) The money for the purchase of gold was paid by her. She borrowed the money from her friend settled in Dubai for years.
- (vii) She has not any bills for the purchase.
- (viii) She has purchased the said gold for selling to somebody else for earning money. She had not decided to whom the said gold be sold.
- (ix) The to and fro flight tickets were booked by her friend and the payment was also made by her friend.
- (x) She is well aware of the provisions of the Customs Act and she knew the smuggling of gold is punishable offence.
- (xi) She stated that this is the first time she engaged in the activities of smuggling of Gold.

7. The above said gold items with a total net weightment of 556.910 grams having purity of 999.0/24 Kt. and having market value of Rs.40,98,858/- (Rupees Forty lakh ninety eight thousand eight hundred and fifty eight only) and having tariff value of Rs.35,27,849/- (Rupees Thirty-five lakhs Twenty Seven thousand eight hundred and forty nine only) recovered from the said passenger, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealment total net weight 556.910 grams, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar and chains totally weighing 556.910 grams which were attempted to be smuggled by Smt. Nishath Parveen is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold, totally weighing 556.910 grams which was found

concealed/ hidden, as 4 gold kadas, 2 ankle chains and one gold chain on her body, were placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 05.05.2024, issued from F. No. VIII/10-23/AIU/B/2024-25, under Section 110 (1) & (3) of the Customs Act, 1962.

8. 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"*

VI) "Section 119 – Confiscation of goods used for concealing smuggled goods–*Any goods used for concealing smuggled goods shall also be liable to confiscation."*

VII) "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 laws:

9. It therefore appears that:

(a) The passenger had dealt with and actively indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold items totally weighing 556.910 grams having purity 999.0/24 Kt., by way of 4 gold kadas, 2 ankle chains and one gold chain hidden on her body, involving market value of Rs.40,98,858/- (Rupees Forty lakh ninety-eight thousand eight hundred and fifty-eight only) and having tariff value of Rs.35,27,849/- (Rupees Thirty-five lakhs Twenty-Seven thousand eight hundred and forty-nine only), 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. Therefore, the

improperly imported 556.910 grams of gold bar of purity 999.0/24 Kt. by the passenger, 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 the Customs Baggage Declaration Regulations, 2013.
- (c)** The improperly imported gold items by the passenger, Smt. Nishath Parveen, which was concealed/ hidden as 04 gold kadas, 2 ankle chains and one gold chain on her body, 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. Nishath Parveen, 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 123 of the Customs Act, 1962, the burden of proving that the said gold items totally weighing 556.910 Grams having purity 999.0/24 Kt. and having market value of Rs.40,98,858/- (Rupees Forty lakh ninety-eight thousand eight hundred and fifty-eight only) and having tariff value of Rs.35,27,849/- (Rupees Thirty-five lakhs Twenty-Seven thousand eight hundred and forty-nine only), which was concealed as 04 gold kadas, 2 ankle chains and one gold chain on her body, without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee, Smt. Nishath Parveen.

10. Now, therefore, **Smt. Nishath Parveen**, F No 515 Phase 3, Saripalla Red Bricks Village, Kulshetra, Mangaluru City, Karnataka-575005, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:-

- (i) The said gold items, totally weighing **556.910** grams, i.e. **04 gold kadas, 2 ankle chains, and one gold chain** having purity 999.0/24 Kt. and having market value of **Rs.40,98,858/-** (Rupees Forty lakh ninety-eight thousand eight hundred and fifty-eight only) and having tariff value of **Rs.35,27,849/-** (Rupees Thirty-five lakhs Twenty Seven thousand eight hundred and forty nine only), which was concealed/ hidden on her body, were placed under seizure under panchnama proceedings dated 05.05.2024 and Seizure Memo Order dated 05.05.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

11. DEFENCE REPLY:

The Noticee vide her letter dated 26.07.2024, forwarded through her Advocate Shri Rishikesh J Mehra submitted that –

"it is true that the noticee brought four gold kadas and one gold chain and two gold anklet total weighing 556.910 grams, while coming back to India from Dubai; the gold was purchased for her personal and family use; gold is not prohibited and only first time she was brought gold in jewellery form; the gold jewellery was worn by her on her hand; due to ignorance she could not declare the said gold jewellery."

Vide letter dated 29.07.2024, the Advocate of the Noticee requested for early personal hearing.

12. PERSONAL HEARING:

Personal hearing in this case was fixed on 31.07.2024, wherein Shri Rishikesh J Mehra, Advocate appeared on behalf of the passenger/ Noticee. Shri Rishikesh Mehra submitted written submissions dated 26.07.2024 and reiterated the same. He submitted that his client visited Dubai and while coming back to India, she brought gold articles/ jewellery. The seized gold was worn by her. He also submitted that the gold was purchased by his client from her personal savings and borrowed money from friends & relatives. He reiterated that his client brought Gold for her personal and family use. He submitted copies of gold purchase bills issued by M/s. Best Gold LLC, Dubai showing legitimate purchase of the said gold in the name of her. This is the first time she brought the said gold jewellery. The gold was not prohibited item and also was not in commercial quantity. Due to ignorance of law the gold was not declared by the passenger. He further submitted that his client is ready to pay applicable fine and penalty and requested for Re-Export/ 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 :

13. I have carefully gone through the facts of this case and the submissions made by the Advocate of the passenger in his written submissions as well as during the personal hearing and documents available on record. I find that the passenger had requested for early personal hearing, which was accepted and accordingly, the matter is taken up for decision on merits.

14. In the instant case, I find that the main issue that is to be decided is whether the gold i.e. 04 gold kadas, 2 ankle chains, and one gold chain having purity 999.0/24 Kt. and having market value of Rs.40,98,858/- (Rupees Forty lakh ninety-eight thousand eight hundred and fifty-eight only) and having tariff value of

Rs.35,27,849/- (Rupees Thirty-five lakhs Twenty-Seven thousand eight hundred and forty-nine only), which was concealed/ hidden on her body, were placed under seizure under panchnama proceedings dated 05.05.2024 and Seizure Memo Order dated 05.05.2024, on the reasonable belief that the said goods 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.

15. I find that the Advocate has submitted that the gold was brought by his client, for her personal use. The gold was purchased by his client. He requested to allow release of gold on payment of redemption fine. He has further added that gold is not prohibited and not in commercial quantity, due to ignorance of the law, the genuine lapse took place and thus a case has been booked against his client.

16. In this regard, I find that on the basis of passenger profiling and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers. The AIU Officers asked Smt. Nishath Parveen, if she has anything to declare to the Customs, to which she denied the same. While the passenger was passing through the DFMD Machine, a beep sound/ alert was generated. The passenger confessed that she carried 4 gold kadas, 2 ankle chain and one gold chain totally weighing **556.910** grams. 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. 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 the present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

17. 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 brought the said gold and did not declare the same even after asking by the Customs officers until the same was detected. Hence, I find that in view of the above-mentioned case citing, the passenger 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.

18. I find that the said gold totally weighing 556.910 grams was placed under seizure vide Seizure Order dated 05.05.2024 under Panchnama proceedings dated 05.05.2024. 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 05.05.2024, the passenger had admitted that she did not want to declare the seized gold carried by her to the Customs on her arrival to the SVPI Airport so that she could 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 made of 24Kt/999.0 purity gold totally weighing 556.910 Grams, having tariff value of Rs.35,27,849/- and market value of Rs.40,98,858/-. The recovered gold was accordingly seized vide Seizure Order dated 05.05.2024 under Panchnama proceedings dated 05.05.2024 in the presence of the passenger and Panchas.

19. I also find that the passenger has neither questioned the manner of panchnama proceedings nor controverted the facts detailed in the Panchnama during 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 has submitted that the said gold was purchased by her. The Noticee 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 05.05.2024, the passenger admitted that she had intentionally not declared the seized gold having total weight of 556.910 Grams on her arrival before the Customs officer with an intent to clear it illicitly and evade payment of Customs duty.

20. I thus find that the recovery of gold from the possession of the passenger which was hidden and not declared to the Customs with an intention to illicitly clear it from the 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 and while coming back to India, the Noticee carried the said gold, 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 Jewellery, as discussed above, 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 the 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.

21. 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).

22. Given the facts of the present case before me and the judgements and rulings cited above, the said gold, totally weighing 556.910 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.

23. I further find that the passenger had involved herself and abetted the act of carrying the said gold made up of 999.0/ 24Kt. purity gold having total weight of 556.910 grams. She has agreed and admitted in the statement recorded that she travelled with the said gold of 24Kt/999.0 purity having total weight of 556.910 grams 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 05.05.2024 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 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.

24. I also refer, CBIC Circular No: 495/5/92-Cus. VI dated 10.05.1993 which talks about the 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.

25. In view of the above discussions, I hold that the said gold, totally weighing 556.910 grams, recovered from the Noticee/ passenger are liable for confiscation. However, the impugned gold carried by the passenger was for personal use and not brought for another person for profit motive. 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.

26. 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.)*

27. 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)*

28. 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.

29. 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. Further, the above mentioned 3 orders of RA has been accepted by the department.

30. I also find that in Order No. 345/2022-CUS(WZ)/ASRA/MUMBAI dated 25.11.2022, in the case of Mrs. Manju Tahelani Vs. Principal Commissioner of Customs, Ahmedabad, passed by the Revision Authority, Government of India, Mumbai in which it was held in para 13 that –

"In the instant case, the quantum of gold under import is small and is not of commercial quantity. The impugned gold jewellery had been worn by the applicant on her person and Government observes that sometimes passengers resort to such methods to keep their valuables/ precious possessions safe. There are no allegations that the applicant is habitual offender and was involved in similar offence earlier. The fact of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling of commercial consideration."

31. I also find that in Order No. 245/2021-CUS(WZ)/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 redemption on suitable redemption fine and penalty."

32. I further find that the Hon'ble High Court of Delhi in a recent judgement dated 21.08.2023 in the case of Nidhi Kapoor and others, in para 156 of its order observed that –

"The Court holds that an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudicating Officer. For reasons aforesaid, the Court finds no illegality in the individual orders passed by the Adjudicating Officer and which were impugned in these writ petitions."

33. I find that hiding the seized goods 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.

34. I further find that the passenger had agreed and admitted in the statement recorded that she travelled with the said gold made up of 999.0/ 24Kt. purity gold having net weight of 556.910 Grams from Dubai to Ahmedabad. Despite her knowledge and belief that the gold carried by her in her person is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger

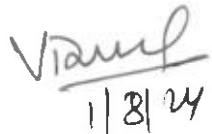
attempted to carry the said gold. The passenger in her statement dated 05.05.2024 stated that she did not declare the impugned gold as she wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has involved herself in carrying, removing, keeping and dealing 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 the provisions of Sections 112 of the Act and I hold accordingly.

35. Accordingly, I pass the order as under:

O R D E R

- i. I order confiscation of the impugned gold, i.e. **04 gold Kadas, 2 ankle chains and one gold chain** made up of 999.0/ 24Kt. purity gold having **total weight of 556.910 Grams** and having tariff value of **Rs.35,27,849/-** (Rupees Thirty-Five Lakhs Twenty-Seven Thousand Eight Hundred Forty-Nine only) and market value of **Rs.40,98,858/-** (Rupees Fourty Lakhs Ninety-Eight Thousand Eight Hundred Fifty-Eight Only) recovered and seized from the passenger Smt. Nishath Parveen vide Seizure Order dated 05.05.2024 under Panchnama proceedings dated 05.05.2024 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. Nishath Parveen to redeem the impugned goods, of 24Kt/999.0 purity gold having total weight of 556.910 Grams on payment of redemption fine of **Rs.8,50,000/-** (Rupees Eight Lakhs Fifty Thousand 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.2,00,000/-** (Rupees Two Lakhs Only) on Smt. Nishath Parveen under the provisions of Section 112 (a)(i) of the Customs Act, 1962.

36. Accordingly, the Show Cause Notice No. VIII/10-169/SVPIA-B/O&A/HQ/2024-25 dated 25.07.2024 stands disposed of.


18/8/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-169/SVPIA-B/O&A/HQ/2024-25 Date: 01.08.2024
DIN: 20240871MN0000222EDF

BY SPEED POST A.D.

To,
Smt. Nishath Parveen
F No 515 Phase 3,
Saripalla Red Bricks Village,
Kulshekar, Mangaluru city,
Karnataka - 575005.

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.

 (v) Guard File.