OIO No: 23/ADC/SRV/O&A/2025-26
F. No: VIII/10-282/SVPIA-A/O&A/HQ/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन ,"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
दूरभाष :(079) 2754 4630**E-mail:** cus-ahmd-adj@gov.inफैक्स :(079) 2754 2343

DIN No. 20250571MN0000222CC6

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-282/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**23/ADC/SRV/O&A/2025-26**
D	आदेशतिथि/ Date of Order-In-Original	:	**13.05.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**13.05.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Smt. Bhumi Manish Mayani**, W/o Manish Kantilal Mayani, 52, JK Sagar Vatika, Near Sarvodaya School, 80 ft. road, BH. Pragteshwar Temple, Mavdi, Rajkot, Gujarat, India, Pin-360004.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे 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 मंज़िल, 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 ड्यूटी 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 and suspicious movement of passengers, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a female passenger namely, Smt. Bhumi Manish Mayani, aged 40 years (D.O.B. 23.12.1984) (Mobile No.-9825600677) (Passport No. W6293444), W/o Manish Kantilal Mayani, residing at 52, JK Sagar Vatika, Near Sarvodaya School, 80 ft. road, BH. Pragteshwar Temple, Mavdi, Rajkot, Gujarat, India, Pin-360004 arriving by Indigo Airlines Flight No. 6E-1478 from Dubai to Ahmedabad at Terminal – 2 of the SVP International Airport, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. The passenger was asked by the AIU Officers whether she had made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which she replied in negative and informed that she was not carrying any dutiable items with her. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings was recorded under **Panchnama dated 26.11.2024**.

2. The passenger was questioned by the AIU officers as to whether she was carrying any dutiable/contraband goods in person or in her baggages, to which she denied. The officers asked/informed the passenger that a search of her baggages 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 custom officer. Before commencing the search, the officers offered themselves to the said passenger for conducting her personal search, which was declined by the said passenger imposing faith in the officers.

2.1 Thereafter, in the presence of the panchas, the AIU officers instructed the passenger to put her entire luggage on the X-Ray Bag Scanning Machine installed near the Green Channel at terminal 2 of SVPI Ahmedabad for scanning. On scanning of the said baggages in the X-ray machine no objectionable image was seen. Thereafter, the AIU officers once again asked the passenger if she was carrying any contraband/ Restricted/dutiable goods which she wanted to declare to the customs, but the passenger still replied in negative. Thereafter, in the presence of the panchas, the AIU officers asked Smt. Bhumi Manish

Mayani to walk through the Door Frame Metal Detector (DFMD) machine; before passing through the said DFMD Machine, the passenger was asked to remove all the metallic objects she was wearing on her body/clothes. Thereafter, the passenger removed metallic objects from her body/ clothes such as mobile, wallet etc., and kept in a plastic tray and passed through the DFMD. While she passed through the said DFMD, a Beep sound was heard and red lights were seen from the said DFMD. The officers asked the passenger whether she had any metallic object/ valuable items on her body/ her garments to which Smt. Bhumi Manish Mayani informed that she had 02 Gold Kadas hidden in her Sleeves of the Sweater.

2.2 Thereafter, the Officers decided to conduct personal search of the said passenger. The officers asked Smt. Bhumi Manish Mayani as to whether she desired her search to be conducted before a Magistrate or a Gazetted Officer of Customs to which Smt. Bhumi Manish Mayani stated that her search may be conducted before Gazetted officer of Customs. Before conducting the personal search, the officers offered themselves to be searched by the passenger, which was politely declined by the passenger imposing full faith in the officers. The AIU officers conducted thorough personal search of Smt. Bhumi Manish Mayani wherein 02 Gold Kadas were recovered from the Sleeves of the Sweater of the passenger. On being asked by the officers, the passenger informed that said 02 Gold Kadas were purchased by her during her stay in Dubai.

3. Thereafter, the AIU officers, called Government Approved Valuer Shri Soni Kartikey Vasantrai and informed that he needed to come to the Airport for examination and valuation of the 02 Gold Kada suspected to be Gold of foreign origin which had been recovered from Smt. Bhumi Manish Mayani. After that, the Government Approved Valuer reached the airport premises and the AIU officers introduced the panchas as well as the passenger to the said person named Shri Kartikey Vasantrai Soni, Government Approved Valuer.

3.1 After testing the said items, the Government Approved Valuer submitted Valuation Report (Annexure-A) certification no. 1242/2024-25 dated 26.11.2024**(RUD-2)** and confirmed that it was pure gold. Further, he informed that the said 02 Gold Kadas were having purity 999.0/24kt weighing 499.690 Grams and market value was Rs.

38,85,090/- (Rupees Thirty Eight Lakh Eighty Five Thousand and Ninety Only) and tariff value is Rs. 35,25,768/- (Rupees Thirty Five Lakh Twenty Five Thousand Seven Hundred and Sixty Eight Only). Shri Soni Kartikey Vasantrai had given his valuation report of the said items as per the Notification No. 80/2024-Customs (N.T.) dated 14.11.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). The Valuation details of which are as under:-

Sl. No.	Details of Items	PCS	Net Weight In Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Kadas	2	499.690	999.0 24Kt	Rs.3885090/-	Rs.3525768/-
	Total	**2**	**499.690**		**Rs.3885090/-**	**Rs.3525768/-**

4. The aforementioned Gold items totally weighing 499.690 grams having purity 999.0/24kt recovered from the aforesaid passenger had been 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 confiscation under the Customs Act, 1962. Accordingly, the said gold items were placed under seizure and handed over to the Ware House In-charge, Customs, SVPI Airport, Ahmedabad vide Ware House Entry Nos. 7084 dated 26.11.2024.

5. Statement of Smt. Bhumi Manish Mayani was recorded under Section 108 of the Customs Act, 1962 on 26.11.2024, wherein she inter alia stated as under:-

5.1. She gave her personal details like name, age, address, education, profession and family details and informed that she was a home maker.

5.2. She further stated that she went to Dubai to meet her brother and BAPS temple visit with her husband and there she and her husband bought the said 02 gold Kadas from Dubai.

5.3. She further stated that she was present during the entire panchnama proceedings dated 26.11.2024 and the fact narrated therein was true and correct.

5.4 She stated that she was aware that smuggling of gold without payment of Customs duty was an offence and she was aware of the concealed gold in the form of 02 Gold Kadas hidden in her Sleeves

of the Sweater having purity of 999.0/24kt total weighing 499.690 grams but she did not make any declarations in this regard to evade payment of Customs duty.

6. From the investigation conducted in the case, it appears that Bhumi Manish Mayani had attempted to smuggle total 499.690 grams of 999.0/24 kt. Pure gold item totally having total market value of Rs. Rs.38,85,090/-. Since this item was clearly meant for commercial purpose and hence did not constitute Bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Accordingly, the aforesaid 24 Kt. Pure gold item having total weight of 499.690 grams and having total market value of Rs 38,85,090/-was seized under the provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that the same was liable to be confiscated in terms the provisions of Section 111 of the Customs Act, 1962.

7. LEGAL PROVISIONS RELEVANT TO THE CASE

Foreign Trade Policy 2015-20 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 bona fide 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.

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

(n) any dutiable or prohibited goods transited with or without transhipment 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 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 she 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 he are smuggled goods, the burden of proving that he 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 was seized; and

(ii) if any person, other than the person from whose possession the goods was 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 passenger who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare his/her 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 bon-fide 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 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 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 ii. Gold in any form other than (i), including tola bars 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 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/her arrival in India declaring his/her intention to take delivery of the gold or silver from such a customs bonded

warehouse and pays the duty leviable thereon before his/her 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.

8. 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

9. It therefore appears that:

(i) Smt. Bhumi Manish Mayani had attempted to smuggle/improperly import 999.0/24 Kt. Pure gold items as detailed hereunder, having total weight 499.690 grams and having total market value of Rs. Rs.38,85,090/-with a 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. Smt. Bhumi Manish Mayani knowingly and intentionally smuggled the said gold items upon her arrival from Dubai to Ahmedabad by Indigo Airlines Flight No. 6E-1478 on 26.11.2024 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold items smuggled by Smt. Bhumi Manish Mayani, cannot be treated as bonafide household goods or personal effects. Smt. Bhumi

Manish Mayani has, thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.

(ii) Smt. Bhumi Manish Mayani, by not declaring the said gold items before the proper officer of the Customs have contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(iii) The said gold items smuggled by Smt. Bhumi Manish Mayani, without declaring it to the Customs are liable for confiscation under Section 111(d), 111(l) and 111(m) read with Section 2 (22),(33), (39) of the Customs Act, 1962.

(iv) Smt. Bhumi Manish Mayani by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.

(v) As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon Smt. Bhumi Manish Mayani, who are the Noticee in this case.

10. The passenger Smt. Bhumi Manish Mayani through her advocate and authorized representative vide letter dated 03.12.2024 submitted request for waiver of SCN. He submitted that his client visited Dubai alongwith her husband and brought gold jewellery for her family from their personal savings and borrowed money from her husband's friend. He submitted the bill of seized gold in name of passenger. He submitted that his client has orally declared the goods. He submitted that there are numbers of judgments wherein gold has been released or allowed for re-export on payment of redemption fine. He submitted that his client has been explained orally, the clauses and provisions of the Customs Act, 1962 which would be included in the SCN and they have understood them very well. After understanding the clauses and provisions of the Customs Act, 1962, she has requested for waiver of SCN and submitted that she did not want any further investigation in the matter and requested to decide the matter on merits. He submitted that his client is ready to pay applicable duty, fine and penalty and opts

for waiver of SCN. He requested for providing personal hearing in the matter. He further submitted that the goods were not in commercial quantity and was purchased for family members; due to ignorance law and first time she has brought the gold with her and therefore unable to declare the same.

Further, the authorized representative submitted written submission on 15.04.2025 vide letter dated 08.04.2025 wherein re-iterated his waiver of SCN request and submitted case law in their defense which are as:-

- OIO No. 235/ADC/VM/O&A/2023-24 dated 04.03.2024 in case of Shri Mohammed Juned Saiyed passed by Additional Commissioner of Customs, Ahmedabad (ingenious concealed strips inside middle of trolley bag, (Redemption Fine and Penalty imposed))
- OIO No. 114/ADC/VM/O&A/2024-25 dated 01.08.2024 in case of Smt. Ashiyanabanu Altafbhai Rathod passed by Additional Commissioner of Customs, Ahmedabad wherein redemption fine and Penalty was imposed
- OIO No. 115/ADC/VM/O&A/2024-25 dated 01.08.2024 in case of Smt. Nishath Parveen passed by Additional Commissioner, Customs, Ahmedabad
- OIA No. AHD-CUSTM-000-APP-176-23-24 dated 25.09.2023 in c/a Ms. Shaikh Anisa Mohammed Amin Vs. Commissioner of Customs (Appeals), Ahmedabad
- OIA No. AHD-CUSTM-000-APP-179-23-24 dated 26.09.2023 in case of Mr. Shaikh Imran Abdul Salman Vs. Commissioner of Customs (Appeals), Ahmedabad
- OIA No. AHD-CUSTM-000-APP-332-23-24 dated 13.12.2023 in Mr. Kachhadia Mahipal Vitthalbhai Vs. Commissioner of Customs (Appeals), Ahmedabad.

11. PERSONAL HEARING:

Personal hearing in this case was fixed on 15.04.2025, wherein Shri Rishikesh J Mehra, Advocate appeared on behalf of the passenger/ Noticee. He produces copy of Vakalatnama to represent the case and requested to appear for personal hearing in person instead of video conferencing. The noticee through her letter dated 03.12.2024 requested for waiver of SCN/Oral SCN under the provisions of Section 124 of Customs Act, 1962. Accordingly, the request for non-issuance of

written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the representative of the noticee has been explained the provisions of Section 124 thoroughly regarding the provision for issuing SCN and waiver of SCN has been granted and matter is taken up for decision on merits. Shri Rishikesh Mehra submitted written submissions on 15.04.2025 vide letter dated 08.04.2025 and reiterated the same. He submits that the gold was not ingenious concealment and produced the purchase bill and gold was purchased from her personal savings and borrowed money from her friend circle. He also submits that the gold is not prohibited item and it is the first time she brought gold. Due to ignorance of law the gold was not declared by the passenger. He further submits that his client is ready to pay applicable Customs Duty, fine and penalty and requested for release of seized gold.

DISCUSSION & FINDINGS:

12. I have carefully gone through the facts of this case and the submissions made by the Advocate of the noticee in his written submissions as well as during the personal hearing and documents available on record. I find that the noticee had requested for waiver of Show Cause Notice in written as well as her representative re-iterated the same during PH. Before proceeding further, I would like to go through the provisions for waiver of SCN as envisaged in Section 124 of Customs Act, 1962 as under:-

> ***"124. Issue of show cause notice before confiscation of goods, etc.****—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*
>
> *(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter:*

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]"

Perusal of Section 124 of the Act states that a Show Cause Notice may be issued in Oral on the request of noticee. If an oral SCN waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. I find that the noticee through her letter dated 03.12.2024 requested for waiver of SCN/Oral SCN after preciously go through the provisions of Show Cause Notice under Section 124 of Customs Act, 1962. Therefore, the Oral SCN/Waiver of SCN can be granted under Section 124 of Customs Act, 1962 on his/her written request and after following the principle of natural justice. In the instant case, I find that the noticee has herself along with her representative has submitted her request letter for waiver of SCN which was consciously signed by her authorized representative and he has also attended the PH. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

13. In the instant case, I find that the main issue that is to be decided is whether the gold i.e. two gold kadas of 24Kt/ 999.0 purity, totally weighing 499.690 grams and having tariff value of Rs.35,25,768/- and market value of Rs.38,85,090/- carried by the noticee, which were seized vide Seizure Order dated 26.11.2024 under the Panchnama proceedings dated 26.11.2024 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 noticee is liable for penalty under the provisions of Section 112 of the Act.

14. I find that the Noticee herself as well as through her Advocate has submitted that the gold was brought by her, for his personal use from

her personal saving and money borrowed from friend circle. The gold was purchased by her client from Dubai. The Authorized Representative requested to allow release of gold on payment of redemption fine and also submitted that gold is not prohibited and not in commercial quantity. He further submitted that his client has brought the gold first time alongwith her and therefore, unable to declare the same and requested to take a lenient view in the matter.

15. In this regard, I find that on the basis of suspicious movement of Smt. Bhumi Manish Mayani, she was intercepted when she was trying to exit through green channel. The baggage of Smt. Bhumi Manish Mayani was passed through the X-Ray Baggage Scanning Machine, on detailed examination of her baggage, nothing objectionable substance was noticed. Furter, while passing through the DFMD after removing the metallic objects, a loud beep sound was heard, indicating some suspicious goods alongwith her. Further, the noticee, Smt. Bhumi Manish Mayani in presence of panchas confessed that she has carried two gold kada concealed under sleeves of the sweater. It is also on record that the Govt. approved valuer examined all recovered items and submit his report vide certificate no. 1242/2024-25 dated 26.11.2024. wherein he submitted that the recovered gold items were of purity of 24kt/999.0. The details of same are as under:-

Sl. No.	Details of Items	PCS	Net Weight In Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Kadas	2	499.690	999.0 24Kt	Rs.3885090/-	Rs.3525768/-
	Total	**2**	**499.690**		**Rs.3885090/-**	**Rs.3525768/-**

Hence, I find that the noticee 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 present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

16. It is on the record the noticee had tendered her statement 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. For that, I relied upon the judgments as under:-

- 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 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."

17. With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following:-

"Further, Section 2(33) of the Act defines "Prohibited Goods" as under:- Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. *"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 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 the goods are not complied with, it would be considered to be prohibited goods.* This would also be clear from the Section 11 of Customs Act, 1962 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 purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. *This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negatived the said contention and held thus:-* "… what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (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 Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. **Hence, in the instant case, Gold brought was under restriction/prohibition. Relying on the ratio of the judgment stated above, I find that the goods brought by and recovered from possession Smt. Bhumi Manish Mayani, are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

18. 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 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, 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.

19. 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 his/her bon-fide baggage of 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.

20. 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 bone 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 from the content of the statement tendered by the noticee under Section 108 of Customs Act, 1962 that the noticee travelled to Dubai on 25.11.2024 and returned back on 26.11.2024 which clearly establish that the noticee is not an "eligible passenger" in terms of the conditions prescribed to become an eligible passenger. 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 has been admitted in his voluntary statement that the noticee wants to clear the gold items clandestinely without payment of eligible custom duty.

21. Further, the noticee has accepted in the statement that she had not declared the said gold concealed by her, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold and evade the payment of duty. Accordingly, there is sufficient evidence to say that the noticee had kept the said gold items viz. two gold kadas of 999.0/24Kt purity, totally weighing 499.850 grams and having Market Value of Rs. 38,85,090/- and Tariff Value of Rs. 35,25,768/-, which were in her possession and concealed by her in her sleeves of sweater and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold items recovered from her possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the noticee 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 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further

as per Section 123 of the Customs Act, 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. In her submission/request letter submitted through advocate, the noticee has submitted the copy of bills. On going through the bill, I find that, the description of the goods mentioned as " TTB Ten Tola Bar", however the goods found in possession and seized from the noticee are "02 Gold Kadas", therefore, bill is not appeared genuine. Also, at the time of personal hearing the authorized representative on behalf of noticee submitted that the gold items were purchased by her client from her personal savings and money borrowed from her friend circle. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that *"in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt".* And *"Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them"*. From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Merely submission of invoice/bill copy without any documentary backing, is not proved that the goods purchased in legitimate way and as bona fide personal use. Further, during the personal hearing, it was mentioned that the gold was purchased from personal savings and from the money borrowed from her friends. However, I find that the noticee has failed to establish the claim with the documentary evidences such as borrowing transaction and purchase transaction.

22. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is 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* 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 items weighing 499.850 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold items weighing 499.850 grams, having Tariff Value of Rs. 35,25,768/- and Market Value of Rs.38,85,090/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 26.11.2024 liable to confiscation under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of kadas and in commercial quantity in her sleeves of sweater, it is observed that the 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 items and failed to declare the same on her arrival at the Customs 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 is

liable to confiscation under the Act. Moreover, the noticee failed established the licit importation of the said goods. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

23. I thus, find that the recovery of gold from the possession of the noticee which was concealed 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 his above act of commission, it is proved beyond doubt that the noticee has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find from the statement that the gold brought by the noticee from Dubai, however the same has not been declared before the Customs to evade payment of customs duty. Therefore, the gold imported by the noticee in the form of Jewellery, viz. 02 gold kadas and deliberately not declared before the Customs on her arrival in India and in commercial quantity 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. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only be banks authorized by RBI or other authorized by DGFT and to some extent by passengers. Therefore, gold which is restricted item for import but which was imported without fulfilling the conditions for import becomes prohibited goods in terms of Section 2(33) and it is liable for confiscation under Section 111 of Customs Act, 1962.

23.1 As per the provisions 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;

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 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, subject to fulfilment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfilment 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 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. As per the respective statements of Smt. Bhumi Manish Mayani recorded under Section 108 of the Customs Act, 1962, she went to Dubai on 25.11.2024 and returned back on 26.11.2024 well before the stipulated time of stay as prescribed under Notification. I find that 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 goods i.e 02 gold Kadas in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

23.2 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 items were not declared by Smt. Bhumi Manish Mayani 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 jewellery which were found concealed and recovered in manner as described above, was made by the Noticee Smt. Bhumi Manish Mayani, in the prescribed declaration form. Also, I find that noticee is not eligible to import gold and that too undeclared in substantial quantity of 499.850 grams and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

23.3 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 gold items totally weighing 499.850 Grams recovered from the possession of noticee having market value of Rs. 38,85,090/- and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt. Further, 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 Smt. Bhumi Manish Mayani, thus failing to discharge their "burden of proof" that the gold was legally imported/possessed. They have 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 Smt. Bhumi Manish Mayani in prescribed declaration form. I also find that the noticee was not eligible to import the said gold items

concealed by noticee in sleeves of sweater and that too undeclared in terms of Section 77 of Customs Act, 1962 and hence the said gold items are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

24. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the noticee, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold items weighing 499.850 grams, were recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the noticee concealed the said gold in form of jewellery concealed in sleeves of sweater worn by her. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

25. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold items to avoid detection by the Customs Authorities. Further, the noticee has failed to prove licit import of the seized gold items. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold items in form of jewellery concealed in sleeves of her sweater with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold items weighing 499.850 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in her statement dated 26.11.2024 stated that she has carried the said gold items concealed in sleeves of her sweater to evade payment of Customs duty. Under her waiver request, the noticee has agreed to pay the duty,

penalty, fine and requested to redeem the gold on payment of redemption fine. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

> **Section 125. Option to pay fine in lieu of confiscation. -** *(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [1] [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*
>
> *[2] [* ***Provided*** *that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed]:*
>
> ***Provided*** *further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

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."* Further, in the judgment of 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 the judicial pronouncement above and nature of

concealment alongwith the facts of the case, **I donot inclined to exercise the option to allow redemption fine in lieu of confiscation of gold.** Further, to support my view, I also relied upon the following judgment which are as :-

25.1. 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 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]

25.2. 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.

25.3. 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).

25.4 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 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.

25.5. 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".

25.6. 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."*

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*"**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**."*

25.7. I find that the noticee has relied upon various case law submitted during the Personal Hearing by her authorized representative, however, I find that the Hon'ble Supreme Court in case of Ambica Quarry Works Vs. State of Gujarat & Others [1987 (1) S.C C.213] observed that *"the ratio of any decision must be understood in the background of fact of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it."* Further, in case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd 2003 (2) SC 111, the Hon'ble Apex Court observed *" it is well settled that a little difference in facts or additional fact may make a lot of difference in the precedential value of a decision."* In view of above, I hold that every case has different moments and facts when compare in minute-to-minute details. With respect to case law submitted it is stated that every case is unique and facts are different in every case, the same has to be considered accordingly. The orders are having different facts and even a small change in facts can completely change the complexion of the case and hence, *I find that judgments relied upon by the noticees, are not squarely applicable in the instant 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.***

26. Given the facts of the present case before me and the judgements and rulings cited above, the said gold items viz. 02 gold kadas totally weighing 499.850 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold items weighing 499.850 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962**.

27. I further find that the noticee had involved herself and abetted the act of smuggling of the said gold items weighing 499.850 grams, carried by her. 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 nature of concealment of gold items is ingenious in nature and clearly showed that the noticee was not inclined to declare the same and she wants to clear the gold items clandestinely, to evade the payment of applicable 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 bona fide 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 Customs Duty by not declaring the gold items weighing 499.850 grams (02 gold kadas of purity 999.0/24Kt). 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. I further find that the noticee had involved herself and abetted the act of smuggling of the said gold items weighing 499.850 grams, carried by her. She has agreed and admitted in her statement that she travelled from Dubai to Ahmedabad with the said gold items concealed in under sleeves of sweater worn by her. Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold items weighing 499.850 grams, having purity 999.0/24Kt, by concealment.

Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act,1962 and I hold accordingly.

28. Accordingly, I pass the following Order:

O R D E R

i. I order absolute confiscation of the impugned gold items i.e. two Gold kadas weighing 499.850 grams made up of 999.0/24kt purity having tariff value of **Rs.35,25,768/-** (Rupees Thirty Five Lakhs Twenty Five Thousand Seven Hundred Sixty Eight only) and market value of **Rs.38,85,090/-** (Rupees Thirty Eight Lakhs Eighty Five Thousand Ninety Only) recovered and seized from the noticee Smt. Bhumi Manish Mayani vide Seizure Order dated 26.11.2024 under Panchnama proceedings dated 26.11.2024 under the provisions of Section 111(d), 111(l) & 111(m) of the Customs Act, 1962;

ii. I impose a penalty of **Rs.7,50,000/-** (Rupees Seven Lakh Fifty Thousand Only) on Smt. Bhumi Manish Mayani under the provisions of Section 112 (a)(i) & Section 112 (b)(i) of the Customs Act 1962.

29. This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

Signed by
Shree Ram Vishnoi
Date: 13-05-2025 12:56:44

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-282/SVPIA-A/O&A/HQ/2024-25 Date:13.05.2025
DIN: 20250571MN0000222CC6

BY SPEED POST A.D.

To,
Smt. Bhumi Manish Mayani,
W/o Manish Kantilal Mayani,
52, JK Sagar Vatika, Near Sarvodaya School,
80 ft. road, BH. Pragteshwar Temple,
Mavdi, Rajkot, Gujarat, India, Pin-360004.

Copy to:

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