

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
,"सीमाशुल्कभवन"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद- 380009.
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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-262/SVPIA-C/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-262/SVPIA-C/O&A/HQ/2024-25 dated: 17.03.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	62/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	25.06.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	25.06.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Mrs. Nilofarbanu Moin Qureshi, 2751, Room No.2, Lodhwad, Nr. Matan Market, Mirzapur, Ahmedabad, Pin-380001.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी 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 इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

On the basis of passenger profiling and suspicious movements of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs,

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

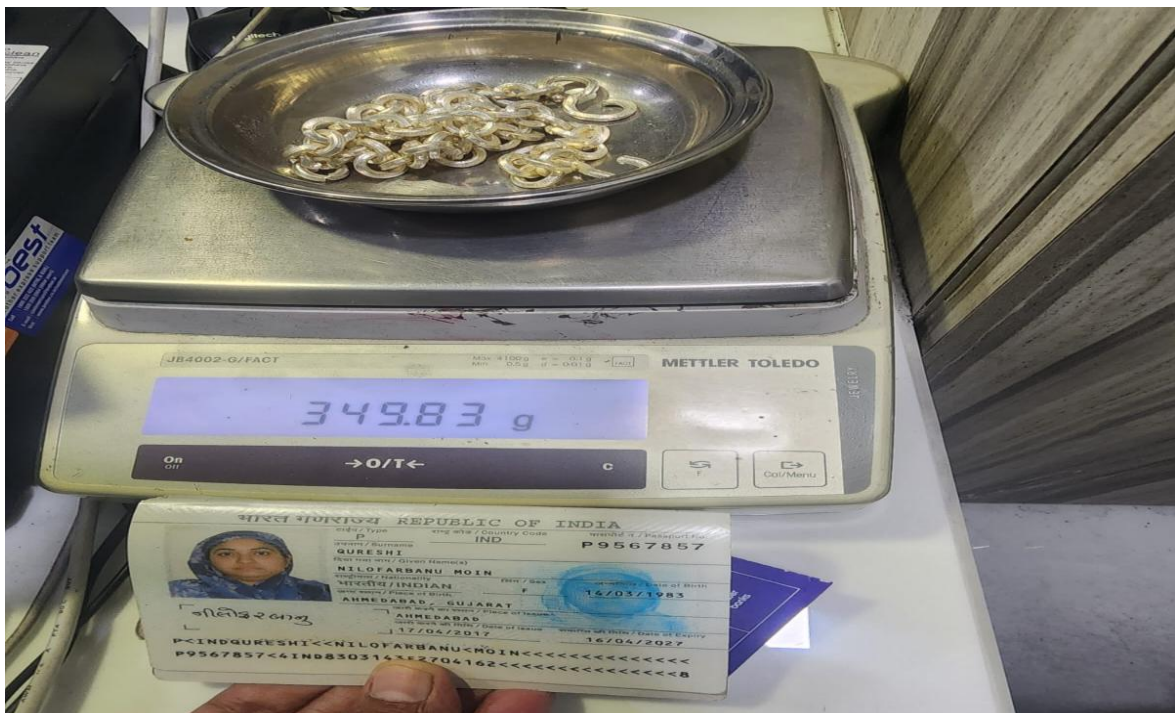
Ahmedabad, a female passenger named **Mrs. Nilofar Banu Moin Qureshi**, Aged 41 years (holding Indian Passport No. P9567857), residing at 2751, Room No.2, Lodhwad, Nr. Matan Market, Mirzapur, Ahmedabad, PIN 380001, Gujarat, who arrived from Jeddah to Ahmedabad by Indigo Flight No. 6E76 on 25.09.2024, was intercepted at the arrival Hall of the SVPIA, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 25.09.2024**.

2. Whereas, the passenger was questioned by the AIU officers as to whether she was carrying any dutiable/ contraband goods in person or in her baggage, to which she denied. The officers asked /informed the passenger that a search of her baggage as well as her personal search was to be carried out and gave her an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passenger desired to be searched in presence of a gazetted customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the officers. The officers then, scanned the baggage of the passenger in the X-Ray baggage scanning machine, which is installed near the AIU Office at Arrival Hall, Terminal II, SVPI Airport, Ahmedabad, and found nothing suspicious in the baggage. Then, the officers asked her to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. Thereafter, the passenger removed metallic objects from her body/ clothes such as mobile, purse etc. and kept them in a plastic tray placed on the table. During DFMD strong beep sound is heard at the lower part of the metal detector machine indicating that there is still some objectionable metal item on her body /clothes. Thereafter during detailed frisking of the passenger, Mrs. Nilofar Banu Moin Qureshi, the AIU officers in presence of the panchas observed that she is wearing thick anklets concealed/ hidden under the socks that she was wearing. These two anklets coated with white rhodium at the outset, appeared to be of 24 carat gold.

2.1 Thereafter, the AIU officer contacted the Government Approved Valuer Shri Kartikey Vasantraai Soni and informed him about the recovered items and he was requested to come to the Airport for testing.

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

The Government approved valuer informed that as the anklets are coated with white rhodium, testing of the same is possible only at his workshop. Therefore, the panchas, passenger and the AIU Officer left the airport premises in a government vehicle and reached the premises of the Government approved valuer at around 13:30 pm of 25.09.2024. On reaching the premises, the AIU Officer introduced the panchas as well as the passenger to Shri Kartikey Vasantrai Soni, Government approved valuer. After testing and weighing the said two anklets, the valuer informed that these anklets coated with white rhodium are made of pure gold having purity 999.0/24 kt. And its weight is 349.83 grams. The Photograph of the same is as under:



3. Whereas, after testing the said two anklets, the Government Approved Valuer, Shri Kartikey Vasantrai Soni confirms that two anklets totally weighing 349.830 gms are made of pure gold 24 Kt and vide certificate no. 953/2024-25 dated 25.09.2024 certifies that the two gold anklets are having tariff value of Rs. 24,15,286/- and Market value of Rs. 27,18,529/- & the value of the anklets has been calculated as per the Notification No. 61/2024-Customs (N.T.) dated 13.09.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). The calculation of total market value based on the unit market value of gold @ 77710.00 per 10 grams (999.0/24Kt) and the calculation of total tariff value based on the tariff value of gold prevailing at the time of valuation @ 69041.70 Rs. per 10 gram (999.0 24Kt) are as given below:

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

Sr. No.	Name of the passenger	Description of goods	Qty	purity	Net wt in grams	Tariff Value in Rs.	Market value in Rs.
1	Mrs. Nilofar Banu Moin Qureshi	Gold Anklet Coated with White Rhodium	02 Nos.	999.0, 24 Kt	349.830	2415286/-	2718529/-

Seizure of the above gold in form of Anklets:

4. The AIU Officer informs the panchas as well as the passenger Mrs. Nilofarbanu Moin Qureshi that two anklets are having purity of 999.0/24kt and are attempted to be smuggled to India with intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the AIU officers having a reasonable belief that the aforesaid two anklets are being attempted to be smuggled by the said passenger and are liable for confiscation as per the provisions of Customs Act, 1962; hence, the aforesaid two gold anklets are being placed under seizure vide seizure memo dated 25.09.2024.

5. Statement of Mrs. Qureshi Nilofarbanu Moin:

Statement of Mrs. Qureshi Nilofarbanu Moin was recorded under Section 108 of the Customs Act, 1962 on 25.09.2024, wherein she inter alia stated as under:

5.1 She gave her personal details like name, address, profession, family details and education etc.

5.2 Her date of birth is 14.03.1983. She lives with her parents and children at 716, Kuwavad, Behind Police Chowki, Mirzapur, Ahmedabad and that the address given in her passport is of her in-laws. She is financially dependent on her parents and have no monthly income of her own. Monthly income of her parents is approx. Rs. 18,000/-.

5.3 On being asked for her overseas travel, she stated that she travelled to Jeddah to perform Umrah on 01.09.2024 from Mumbai Airport and returned to Ahmedabad SVPI Airport on 25.09.2024 by Indigo Flight No.6E76 from Jeddah to Ahmedabad.

5.4 She has perused the Panchnama dated 25.09.2024 drawn at Arrival hall of Terminal-2 of SVPI Airport, Ahmedabad and she stated that she has been present during the entire course of the said panchnama

and agree with the contents of the said Panchnama. In token, she put her signature on every page of the panchnama.

5.5 On being asked about purchase of two anklets which were recovered during the Panchnama proceeding on 25.09.2024 at SVPI Airport, Ahmedabad, Mrs. Nilofar Banu Moin Qureshi stated that one person named Azaz Bhai had given her the anklets to carry from Jeddah to Ahmedabad. As these anklets were coated with white Rhodium, she under impression that they are of silver carried the same, following the instructions of Azaz Bhai.

5.6 Further, Shri Azaz bhai booked her tickets from Mumbai-Jeddah-Ahmedabad and borne other expenses also; that, she met Azaz bhai somewhere in Macca through a mutual friend and she don't know much about him and his whereabouts. She doesn't have mobile number and other personal details of Shri Azaz bhai.

5.7 Mrs. Nilofarbanu Moin Qureshi stated that she has never indulged in any smuggling activity in the past. This is first time when she carried gold to India.

5.8 Further, Mrs. Nilofarbanu Moin Qureshi stated that she was aware that smuggling of gold without payment of Customs duty is an offence. she was aware of the concealed gold in the form of two anklets but she did not make any declarations in this regard to evade the Customs duty. She has opted for green channel so that she can attempt to smuggle the gold without paying customs duty.

5.9 From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as the quantity of gold brought by the passenger is more than the permissible limit allowed to a passenger under the Baggage Rules. Hence it cannot be considered as a Bonafide baggage under the Customs Baggage Rules, 2016. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items i.e. two gold anklets 349.83 grams having purity 999/24 KT and having **Market Value of Rs. 27,18,529/- and Tariff Value as Rs. 24,15,286/-**, because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 349.83 Grams recovered from

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

Mrs. Nilofarbanu Moin Qureshi, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 349.83 Grams is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 349.83 Grams recovered from Mrs. Nilofarbanu Moin Qureshi, who had arrived from Jeddah to SVPI Airport, Ahmedabad by Indigo Flight No.6E76 on 25.09.2024 (**Seat No. 22E**) at the arrival Hall of the SVPIA, Ahmedabad were placed under seizure vide Panchnama dated 25.09.2024 and Seizure order dated 25.09.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. Summation:

The aforementioned proceedings indicates that Mrs. Nilofarbanu Moin Qureshi had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold i.e. two gold anklets weighing 349.830 grams having purity 999/24 KT and having Market Value of Rs. 27,18,529/- and Tariff Value of Rs. 24,15,286/-, liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure vide seizure memo dated 25.09.2024.

7. Legal provisions relevant to the case:

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

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, as amended 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. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

- 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 subsection (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, he may seize such goods.

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

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

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

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

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

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

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

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

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

(i) any dutiable or prohibited goods found concealed in any

manner in any package either before or after the unloading thereof;

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

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

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

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

(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted 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 he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

7.14 As per Section 123 of Customs Act 1962,

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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

goods shall be-

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

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

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

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

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

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

Customs Baggage Rules and Regulations:

7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

7.17 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage 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.

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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

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 ankletss, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in	10%	41

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

		<p>metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger</p> <p>(ii)Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls</p>		
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Condition no. 41 of the Notification:

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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

being superseded at any time of such short visits.

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

CONTRAVENTION AND VIOLATION OF LAWS

8. It therefore appears that:

- i) Mrs. Nilofarbanu Moin Qureshi had attempted to smuggle/improperly import 02 gold anklets coated with white rhodium totally weighing 349.830 Grams having purity 24KT /999.0 and having the Market Value of Rs.27,18,529/- (Rupees Twenty Seven Lakhs Eighteen Thousand Five Hundred Twenty Nine Only) and Tariff value as Rs.24,15,286/- (Rupees Twenty Four lakhs Fifteen Thousands Two Hundred and Eighty Six only), found concealed under the socks worn by the passenger, with a deliberate intention to evade payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The said passenger, Mrs. Nilofarbanu Moin Qureshi had knowingly and intentionally smuggled the said gold in the form of gold anklets coated with white rhodium, which are generally not worn in the Indian tradition, having Gross weight 349.830 grams, found concealed under the socks worn by her, on his arrival from Jeddah to Ahmedabad on 25.09.2024 by Indigo Flight No. 6E76 (Seat No. 22E) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by Mrs. Nilofarbanu Moin Qureshi, by way of concealment and without declaring it to Customs on arrival in India cannot be

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

treated as Bonafide household goods or personal effects. Mrs. Nilofarbanu Moin Qureshi 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, as amended.

- (ii) Mrs. Nilofarbanu Moin Qureshi by not declaring the gold brought by him in the form of 02 anklets coated with white rhodium totally weighing 349.830 gms having purity of 24Kt/999.0, found concealed under the socks worn by her, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (iii) The improperly imported/smuggled gold by Mrs. Nilofarbanu Moin Qureshi, in the form of 02 anklets coated with white rhodium totally weighing 349.830 gms having purity of 24Kt/999.0, found concealed under the socks worn by her, before arriving from Jeddah to SVPI Airport, Ahmedabad, on 25.09.2024 via Indigo Flight No. 6E76 (Seat No. 22E) at Terminal -2, SVPIA Ahmedabad, for the purpose of the smuggling 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.
- (iv) **Mrs. Nilofarbanu Moin Qureshi**, by the above-described acts of omission/commission and/or abetment has rendered herself 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 said 2 nos. of gold anklets coated with white rhodium totally weighing 349.830 grams, found ingeniously concealed under the socks worn by the passenger, Mrs. **Nilofarbanu Moin Qureshi** who arrived from Jeddah via Indigo Flight No. 6E76 (Seat No. 22E) at Terminal -2, SVPIA Ahmedabad on 25.09.2024 are not smuggled goods, is upon **Mrs. Nilofarbanu Moin Qureshi**,

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

who is the Noticee in this case.

09. Accordingly, a Show Cause Notice vide F.No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25 dated 17.03.2025 was issued to **Mrs. Nilofar Banu Moin Qureshi**, Aged 41 years (holding Indian Passport No. P9567857), residing at 2751, Room No.2, Lodhwad, Nr. Matan Market, Mirzapur, Ahmedabad, PIN 380 001, as to why:

- i. 02 gold anklets coated with white rhodium totally weighing 349.830 Grams having purity 24KT /999.0 and having the Market Value of Rs. 27,18,529/- (Rupees Twenty Seven Lakhs Eighteen Thousand Five Hundred Twenty Nine Only) and Tariff value as Rs. 24,15,286/- (Rupees Twenty Four lakhs Fifteen Thousand Two Hundred and Eighty Six only), found concealed under the socks worn by the passenger, **Mrs. Nilofarbanu Moin Qureshi**, who arrived from Jeddah to Ahmedabad on 25.09.2024 by Indigo Flight No. 6E76, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 25.09.2024 and Seizure Memo Order dated 25.09.2025, should not be confiscated under the provisions 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 **Mrs. Nilofarbanu Moin Qureshi**, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has not submitted any written submission to the Show Cause Notice issued to her.

11. The noticee was given opportunity for personal hearing on 05.05.2025, 16.05.2025 & 02.06.2025 but she failed to appear and represent her case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person or through virtual mode for three times but she failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and she do not have anything to say in her defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

11.1 Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

a) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

b). Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon'ble Court has observed that;

Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

d) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.). The Hon'ble Court has observed that:

Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

e) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon'ble CESTAT has observed that;

Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

- Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

f). The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

"Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed."

Discussion and Findings:

12. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file her reply/ submissions or to appear for the personal hearing opportunities offered to her. The adjudication proceedings cannot wait until the Noticee makes it convenient to file her submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

13. In the instant case, I find that the main issue to be decided is whether the **349.830 grams** of 02 gold anklets having purity of 999.0/24kt. and having tariff value of **Rs.24,15,286/-** and market value is **Rs.27,18,529/-** seized vide Seizure Memo/Order under Panchnama proceedings both dated 25.09.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

(hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act or otherwise.

14. I find that the panchnama dated 25.09.2024 clearly draws out the fact that the noticee, who arrived from Jeddah in Flight No. 6E-76 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of passenger profiling and suspicious movement, while noticee was attempting to exit through green channel without making any declaration to the Customs. The officer asked the noticee that whether she was carrying any dutiable/ contraband goods in person or in her baggage, to which she denied. The officers informed her that a detailed examination/search of his luggage as well as her personal search was required to be conducted. The officers then, scanned the baggage of the passenger in the X-Ray baggage scanning machine, which is installed near the AIU Office at Arrival Hall, Terminal II, SVPI Airport, Ahmedabad, and found nothing suspicious in the baggage. The officer asked the noticee to pass through the DFMD (Door Frame Metal Detector) after removing all metallic objects from her body/ clothes, while the noticee passed through the Door Frame Metal Detector (DFMD) Machine strong beep sound is heard at the lower part of the metal detector machine indicating that there is still some objectionable metal item on her body /clothes. Thereafter during detailed frisking of the noticee, Mrs. Nilofar Banu Moin Qureshi, the AIU officers in presence of the panchas observed that she is wearing thick anklets concealed/hidden under the socks that she was wearing. These two anklets coated with white rhodium at the outset, appeared to be of 24 carat gold. Now, it was necessary to confirm whether there was gold or not, the officer called the Govt. Approved Valuer.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantraai Soni examined the said anklets coated with white rhodium recovered from Mrs. Nilofar Banu Moin Qureshi. After testing and weighing the said two anklets, the valuer informed that these anklets coated with white rhodium are made of pure gold having purity 999.0/24 kt. and its weight is 349.83 grams and submitted his valuation report vide certificate No. 953/2024-25 dated 25.09.2024, wherein he mentioned that the total Market Value of the said recovered gold is **Rs.27,18,529/- and Tariff Value is Rs.24,15,286/-**. The value of the

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

said gold anklets has been calculated as per the Notification No. 61/2024-Customs (N.T.) dated 13.09.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate).

15. I find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in her statement dated 25.09.2024, she has clearly admitted that she had travelled from Jeddah to Ahmedabad by Flight No. 6E-76 dated 25.09.2024 carrying/concealed the gold in form of form anklets. She admitted that the said gold was not belong to her and also not purchased by her and same was given to her by a person named Azazbhai to whom she met him in Mecca and he has also booked her tickets from Mumbai-Jeddah-Ahmedabad and borne other expenses. Further, she mentioned that she had intentionally not declared the said gold anklets coated with white rhodium before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty; that she was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act, 1962 and the Baggage Rules, 2016.

16. 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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

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 negated 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. **From the said judgment of the Apex Court, it is amply clear that the goods are to be treated as 'prohibited' if there is failure to fulfil the conditions/restrictions imposed by the Government on such import or export. In this case, I find that the noticee had tried to remove the impugned good i.e. 02 gold anklets coated with white rhodium weighing 349.830 grams, by concealment and attempted to clear from the Customs authorities without declaration and without payment of Duty. Accordingly, the good brought by the noticee falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

Further, Hon'ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I Vs. Samynathan Murugesan [2009 (247) E.L.T 21 (Mad.)] relied on the definition of 'Prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003 (155) ELT 423(SC)] and has also held as under:-

"in view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold the imported gold was 'prohibited goods' since the respondent is not eligible passenger who did not satisfy the conditions"

17. I find that as per paragraph 2.20 of Foreign Trade Policy (FTP) as amended, *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 and the baggage rules, 2016.

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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

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

19. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold items having total weight of 349.830 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on her arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that she wanted to clear the gold items clandestinely without payment of eligible custom duty.

As per the above discussion and ratio of judgment of Supreme Court in case of Om Prakash Bhatia, the goods brought without fulfilling the conditions prescribed as per the Act, acquired the nature of “prohibited goods” and same are liable for Confiscation under Section 111 of Customs Act. Further, Section 2(39) of Customs Act, 1962 defines the word "smuggling", which clearly stated that, “smuggling in relation to any goods, means any act or omission which will render such goods liable

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

to confiscation under section 111 or section 113". The manner in which the said items were being carried/secreted/ concealed/ kept and from the motive as revealed from her statement behind dealing with such contraband goods, it appeared that the apprehended person was actively involved in "smuggling" of foreign origin gold in primary form and therefore, makes the goods seized from the possession of noticee, liable for confiscation. Therefore, there is no manner of doubt that "imported goods" if they are liable to confiscation under Section 111 are to be termed as "smuggled goods" as well.

20. I find that the noticee has clearly accepted that she had not declared the said gold anklets (coated with white rhodium), to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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, and para 2.26 of the Foreign Trade Policy 2015-20 as amended. 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.

21. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 349.830 gms., in form of gold anklets concealed under socks worn by her, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 349.830 gms., seized under panchnama dated 25.09.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By coating the gold with white rhodium to give a look of silver, concealed under socks worn by her and not declaring the same before the Customs, establishes that the passenger/noticee had a clear

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

intention to smuggle the gold clandestinely with the intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act. The test report shows the gold was of very high purity and was in primary form, indicates that the same was for commercial use. I find that the noticee has cleverly coated the pure raw gold having purity of 999.0/24kt with the white rhodium to falsely represent it as silver, with the intent to deceive customs officers. This action of noticee violates customs laws and regulations related to the import and export of goods, as it misrepresents the true nature and value of the items being imported. The nature of concealment reveals the mindset of the noticee to not only evade duty but smuggle the gold. It also reveals that the act committed by the noticee was conscious and pre-meditated. The circumstance that the anklets were coated with white rhodium and given an appearance of having been made of silver though it was made of pure gold of 999.0/24 carat, is sufficient to belief that the seized gold in form of anklets is for smuggling purpose. Had she not been intercepted by the Customs officer, the noticee would have gotten away with the gold and therefore, the same was correctly confiscated and making the noticee liable for penal action.

22. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 349.830 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.

23. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 349.830 gms., in form of anklets, having total Tariff Value of Rs.24,15,286/- and market Value of Rs.27,18,529/-, seized vide Seizure Memo/Order dated 25.09.2024 under the Panchnama proceedings dated 25.09.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of anklets under socks and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

24. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty and to smuggle the same. The records before me shows that the noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. 02 Gold anklets weighing 349.830 grams of 24Kt./ 999.0 purity, having total Market Value of Rs.27,18,529/- and Tariff Value Rs.24,15,286/-, were placed under seizure vide panchnama dated 25.09.2024. The passenger/noticee has

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

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

25. In view of the above discussions, I hold that the gold weighing 349.830 grams of 24Kt./999.0 purity, in form of anklets and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. 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. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble 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 has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

27. Further I find that in a case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUSin 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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

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).”

28. The Hon’ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)] has 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.

29. 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 7-10-2019 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 10-5-1993 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”.

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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

"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."*

24.....

25.....

"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."*

31. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner and nature of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to deceive/hoodwink the customs officers and to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold anklets. Thus, the noticee has failed to discharge the burden placed on her in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner and nature of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in form of anklets and coated with white rhodium to give appearance of silver, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 349.830 grams of 24Kt./999.0 purity in form of gold anklets, retrieved from the possession of noticee is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 349.830 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.**

32. I further find that the noticee had involved herself in the act of smuggling of gold weighing 349.830 grams of 24Kt./999.0 purity, in form of 02 anklets concealed under socks worn by her. Further, it is fact that the passenger/noticee has travelled with said gold in form of anklets coated with white rhodium from Jeddah to Ahmedabad 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

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

thereunder. 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". 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 weighing 349.830 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 is liable for confiscation under Section 111 of the Customs Act, 1962. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "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" and covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. Therefore, 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.

33. Accordingly, I pass the following Order:

ORDER

- i.)** I order **absolute confiscation** of the two Gold anklets weighing **349.830** grams having Market Value at **Rs.27,18,529/-** (Rupees Twenty Seven Lakhs Eighteen Thousand Five Hundred Twenty Nine Only) and Tariff Value is **Rs.24,15,286/-** (Rupees Twenty Four lakhs Fifteen Thousand Two Hundred and Eighty Six only) found concealed under the socks worn by the passenger, **Mrs. Nilofarbanu Moin Qureshi** and placed under seizure under

OIO No:62/ADC/SRV/O&A/2025-26
F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25

panchnama dated 25.09.2024 and seizure memo order dated 25.09.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii.)** I impose a penalty of **Rs. 7,00,000/-** (Rupees Seven Lakh Only) on Mrs. Nilofar Banu Moin Qureshi under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25 dated 17.03.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-262/SVPIA-C/O&A/HQ/2024-25 Date:25.06.2025

DIN: 20250671MN00000050F5

By SPEED POST A.D.

To,
Mrs. Nilofarbanu Moin Qureshi,
2751, Room No.2, Lodhwad,
Nr. Matan Market, Mirzapur,
Ahmedabad, Pin-380001.

Alternate Address

Mrs. Nilofarbanu Moin Qureshi
716, Kuwavad, Behind Police Chowki,
Mirzapur, Ahmedabad Pin-380001

Copy to :-

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