

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

, "सीमाशुल्कभवन"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद- 380009.

दूरभाष : (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in, फैंक्स : (079) 2754 2343

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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-07/SVPIA-C/O&A/HQ/2025-26
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-07/SVPIA-C/O&A/HQ/2025-26 dated: 29.05.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	120/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	09.09.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	09.09.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Mahammadjuned Khanji, S/o Shri Abdulaziz Habib Khanji, 1118, Navi Masjid, Was, AT &PO Bhagal (Jagana), TA-Palanpur, Banaskantha-385 001, Gujarat India
(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।		

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

Brief facts of the case: -

On the basis of suspicious movement of the passenger, the Air Intelligence Unit (AIU) Officers, SVPIA, Customs Ahmedabad, intercepted a male passenger named Shri Mahammadjuned Khanji, Son of Shri Abdulaziz Habib Khanji (D.O.B. 01.06.1979) (hereinafter referred to as the said "passenger/Noticee"), residing at 1118, Navi Masjid Was, AT & PO: Bhagal (Jagana) TA-Palanpur, Banaskantha, Pin-385001, Gujarat, India (address as per passport), holding an Indian Passport No.S7567957, arriving from Jeddah (JED) to Ahmedabad(AMD) on 30.12.2024 via Indigo Flight No. 6E 76 (Seat No. 16A) , at the arrival hall of the Terminal-2 of SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings thereof were recorded under the Panchnama dated 30.12.2024.

2. Whereas, the passenger was questioned by the AIU Officers as to whether he was carrying any contraband/dutiable goods in person or in baggage to which he denied. The Officers asked/ informed the passenger that a search of his baggage as well his personal search was to be carried out and give him 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.

2.1 The AIU officers then asked the passenger to put his baggage in the X-Ray baggage scanning machine, installed near Green Channel at Arrival Hall, Terminal-II, SVPI Airport, Ahmedabad. The Officers found nothing objectionable in the baggage. The passenger, Shri Mahammadjuned Khanji was then asked to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal -2 building, after removing all metallic objects from his body/ clothes. The passenger readily kept mobile, wallet, wrist watch in a plastic tray and passed through the DFMD machine. During DFMD, strong beep sound was heard at the lower part of the metal detector machine indicating the presence of some objectionable/ dutiable items on his body/ clothes. The AIU Officers again asked the passenger

OIO No: 120/ADC/SRV/O&A/2025-26
 F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

if has anything to declare to the Customs, to which the passenger again denied. Further, during detailed personal search/ frisking of the passenger, Shri Mahammadjuned Khanji, the AIU Officers recovered six gold bangles concealed inside the plastic bag in the right pocket of the pyjama that he was wearing. All these bangles recovered from the passenger, prima facie, appeared to be made of gold having purity 24 Carat. Photo graph of the recovered items is as under:



2.2 Thereafter, the AIU Officer called the Government Approved Valuer and informed him that six bangles purportedly of gold have been recovered from the passenger and that he needed to come to the Airport for verification, examination and valuation of the recovered items. After some time, one person arrived at the office of AIU located at the Arrival hall of Terminal-2 of SVPI Airport. The officers introduced him to the Panchas and the passenger, as Shri Kartikey Soni Vasantrai, Government Approved Valuer. Then, the Government Approved Valuer weighed the recovered items i.e. six bangles and after testing the same, the Valuer vide his report No. 1354/2024-25 dated 30.12.2024 confirmed that the said bangles are made of pure gold having purity 999.0/24 Kt. Photographs of the same are as under :



OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

2.3 After completion of the procedure, the Government Approved Valuer vide its report No. 1354/2024-25 dated 30.12.2024 confirmed that net weight of the gold bangles recovered from the passenger, Shri Mahammadjuned Khanji is 440.00 gms. The value of these items is calculated as per the Notification No. 85/2024-Customs (N.T.) dated 13.12.2024 (Gold) and Notification No. 13/2024-Customs (N.T.) dated 20.12.2024 (Exchange Rate). The details of the gold recovered, as per the certificate No.1354/2024-25 dated 30.12.2024 are as under:

Name of the passenger	Description of goods	Qty (in Nos.)	Purity	Net wt in grams	Market value in Rs.	Tariff Value in Rs.
Shri Mohammad juned Khanji	Gold Bangles	06	999.0, 24 Kt	440.000	34,68,520/-	32,67,475/-

3. Thus, as per the Certificate No. 1354/2024-25 dated 30.12.2024, certified that the items recovered are of pure gold, having purity 999.0/24 Kt., weighing 440.00 gms. and are having the Market Value of Rs.34,68,520/- (Rupees Thirty-Four Lakhs Sixty-Eight Thousand Five Hundred and Twenty Only) and Tariff value as Rs.32,67,475/- (Rupees Thirty-two lakhs sixty-seven thousand four hundred and seventy-five only), which has been calculated as per the Notification No. 85/2024-Customs (N.T.) dated 13.12.2024 (Gold) and Notification No. 13/2024-Customs (N.T.) dated 20.12.2024 (Exchange Rate). The calculation of the total market value is based on the unit market value of gold @78830 per 10 grams (999.0 24 Kt.) and the calculation of the total tariff value is based on the tariff value of gold prevailing at the time of valuation @74260.80 Rs. Per 10 grams (999.0 24 Kt).

Seizure of the above Gold Bangles:

4. The said gold items i.e. six Nos. of bangles weighing 440.000 gms, that has been recovered concealed under the clothes by the passenger 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. Therefore, the said gold items totally weighing 440.000 grams having purity 999.0/24 Kt. and having the Market Value of Rs.34,68,520/- (Rupees Thirty Four Lakhs Sixty Eight Thousand Five Hundred and Twenty Only) and Tariff value as Rs.32,67,475/- (Rupees Thirty two lakhs sixty seven thousands

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

four hundred and seventy five only) were placed under seizure vide Order dated 30.12.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold bangles are liable for confiscation under Section 111 of the Customs Act, 1962.

5. Statement of Shri Mahammedjuned Khanji :

Statement of Shri Mahammedjuned Khanji was recorded under Section 108 of the Customs Act, 1962 on 30.12.2024, wherein he inter alia stated his personal details like name , address and family details as mentioned in the statement are true and correct and that he is educated up to class 8th and that he is working as a salesman in the sweet shop at Mumra, Mumbai and residing at Mumbai and that his family is residing at Palanpur. He also stated that he is the sole bread earner of his family and that his monthly income is around Rs.12,000/-.

5.1 He further stated that he had gone to Jeddah to perform Umrah on 01.12.2024 and returned back on 30.12.2024 and this is his first visit to abroad. He further stated that the seized gold items i.e. Six Nos. of bangles with purity 999.0/24 Kt. recovered from his possession did not belong to him as the same were given to him by one person at Jeddah Airport with directions to hand over the same to the person at Ahmedabad, who is going to come to receive the same at outside the Ahmedabad Airport. On being asked, he further stated that he neither had details about the person who handed over the gold items to him nor about the person who is going to receive the same at Ahmedabad and that he agreed to bring the gold bangles (06 Nos.) to Ahmedabad, in lieu of money.

He also stated that these gold items were brought by him by way of concealing/ hiding/concealing the same inside the plastic bag in the right pocket of the pyjama that he was wearing, so as to evade payment of Customs duty. These gold bangles were then seized by the officers under Panchnama dated 30.12.2024, under the provisions of the Customs Act, 1962.

5.2 He was also aware that import of gold by way of concealment and evasion of duty is an offence and that he knowingly did not make any declaration on his arrival and opted for green channel, as an attempt to smuggle the gold without payment of customs duty.

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

5.3 He perused the Panchnama dated 30.12.2024 and stated that the facts narrated therein are true and correct. Shri Mahammadjuned Khanji stated that he has never indulged in any smuggling activity in the past. This is first time when he carried gold to India.

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. six bangles weighing 440.00 gms having purity 999.00/24 Kt. and having the Market Value of Rs.34,68,520/- (Rupees Thirty Four Lakhs Sixty Eight Thousand Five Hundred and Twenty Only) and Tariff value as Rs.32,67,475/- (Rupees Thirty two lakhs sixty seven thousands four hundred and seventy five only). Instead the same were ingeniously hidden in the pocket of the pyjama he was wearing, because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold bangles totally weighing 440.000 Grams recovered from Shri Mahammadjuned Khanji, 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 bangles totally weighing 440.00 Grams is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold bangles totally weighing 440.00 Grams recovered from Shri Mahammadjuned Khanji, who had arrived from Jeddah to SVPI Airport, Ahmedabad by Indigo Flight No. 6E 76 on 30.12.2024 at the arrival Hall of the SVPIA, Ahmedabad were placed under seizure vide Panchanama dated 30.12.2024 and Seizure order dated 30.12.2024 by the AIU Officers of Customs under the reasonable belief that the subject gold bangles are liable for confiscation.

6. Summation:

The aforementioned proceedings indicates that Shri Mahammadjuned Khanji had attempted to smuggle the aforesaid gold bangles into India and thereby rendered the aforesaid gold items having the Market Value of Rs.34,68,520/- (Rupees Thirty Four Lakhs Sixty Eight Thousand Five

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

Hundred and Twenty Only) and Tariff value as Rs.32,67,475/- (Rupees Thirty two lakhs sixty seven thousands four hundred and seventy five only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under seizure vide Order dated 30.12.2024 issued under the Provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold Bangles are liable for confiscation under Section 111 of the Customs Act, 1962.

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 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 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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

the permission of the proper officer or contrary to the terms of such permission;

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

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

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

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

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

(p) any notified goods in relation to which any provisions of 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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

7.14 As per Section 123 of Customs Act 1962,

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

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

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

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

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

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

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

Customs Baggage Rules and Regulations:

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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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:

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) Gold cut bar, 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 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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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) **Shri Mahammadjuned Khanji** had attempted to smuggle/improperly import 06 Nos. of gold bangles totally weighing 440.00 grams having purity 999.00/24 Kt. and having Market Value of Rs.34,68,520/- (Rupees Thirty Four Lakhs Sixty Eight Thousand Five Hundred and Twenty Only) and Tariff value as Rs.32,67,475/- (Rupees Thirty two lakhs sixty seven thousands four hundred and seventy five only), found concealed under the pyjama worn by him (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, **Shri Mahammadjuned Khanji** had knowingly and intentionally smuggled the said gold items i.e.06 gold bangles weighing 440.000 gms, by ingeniously concealing the same under the pyjama worn by him, on his arrival from Jeddah to Ahmedabad on 30.12.2024 by Indigo Flight No.6E 76 (Seat No. 16A) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

imported gold by **Shri Mahammadjuned Khanji**, by way of concealment in the pyjama worn by him and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. **Shri Mahammadjuned Khanji** 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) **Shri Mahammadjuned Khanji** by not declaring the gold brought by him in the form of 06 Nos of gold bangles, having purity 999.00/24 Kt., totally weighing 440.00 grams that was found concealed in the pyjama worn by him, 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 **Shri Mahammadjuned Khanji**, in the form of six gold bangles totally weighing 440.00 grams having purity 999.00/24 Kt., found concealed under the pyjama worn by him, before arriving from Jeddah to SVPI Airport, Ahmedabad, on 30.12.2024 via Indigo Flight No. 6E76 (Seat No. 16A) at Terminal -2, SVPIA Ahmedabad on 30.12.2024, 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) **Shri Mahammadjuned Khanji**, by the above-described acts of omission/commission and/or abetment has rendered himself 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 gold items totally weighing 440.00 grams, found concealed under the pyjama worn by the passenger, **Shri Mahammadjuned Khanji** who arrived from Jeddah via Indigo Flight No. 6E76 (Seat No.16A) at Terminal -2, SVPIA Ahmedabad on 30.12.2024 are not smuggled goods, is upon **Shri**

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

Mahammadjuned Khanji, who is the Noticee in this case.

10. Accordingly, a Show Cause Notice was issued to **Shri Mahammadjuned Khanji**, Son of Shri Abdulaziz Habib Khanji (D.O.B. 01.06.1979), residing at 1118, Navi Masjid Was, AT &PO: Bhagal (Jagana) TA-Palanpur, Banaskantha, Pin-385001, Gujarat, India (address as per passport), as to why:

- (i) The gold items i.e. Six Gold bangles, totally weighing 440.00 grams having purity 999.00/24 Kt. and having Market Value of **Rs.34,68,520/- (Rupees Thirty Four Lakhs Sixty Eight Thousand Five Hundred and Twenty Only)** and Tariff value as **Rs.32,67,475/- (Rupees Thirty two lakhs sixty seven thousands four hundred and seventy five only)**, found concealed under the pyjama worn by the passenger, **Shri Mahammadjuned Khanji**, who arrived from Jeddah to Ahmedabad on 30.12.2024 by Indigo Flight No. 6E 76, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 30.12.2024 and Seizure Memo Order dated 30.12.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i) , 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon **Shri Mahammadjuned Khanji**, 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:

11. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

12. The noticee was given opportunity for personal hearing on 18.07.2025, 25.07.2025 & 08.08.2025. Shri Sameer Mansuri, Advocate and Authorized representative appeared for personal hearing on 12.08.2025 on behalf of noticee and requested to attend the PH in person instead of video conferencing. He submitted that his client alongwith his family went to Jeddah for Umrah Purpose for the first time and while returning to India, he purchased the gold in form of Bangles having total weight of 440.00 grams, however he has no purchase bill in respect of

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

said gold. He further submitted that his client was no so well adapted with the Customs Provisions and regulations, due to ignorance of law he was not able to declare the same. He further submitted that the gold ornaments (bangles) were worn by the accompanying female family members, however, on reaching at Ahmedabad Airport his client kept all the gold bangles with him for security purpose as they have to travel long distance to a village Bhagal in Palanpur Taluka of Gujarat. He submitted that his client is ready to pay applicable duty, fine and penalty and requested to release the gold. He requested to take a lenient view in the matter.

Discussion and Findings:

13. I have carefully gone through the facts of the case. Though sufficient opportunity for filing written reply had been given, the Noticee has not come forward to file his reply/ submissions, however, the noticee has availed the opportunity of personal hearing granted to him and submitted his reply in the personal hearing. Accordingly, I take up the case for adjudication on the basis of evidences available on record and submission made by the noticee during the personal hearing.

14. In the instant case, I find that the main issue to be decided is whether the 440.00 grams of gold items i.e. Six Gold Bangles with purity of 999.0/24KT found concealed in plastic bag in right pocket of the pyjama worn by the noticee, having Tariff Value of Rs. 32,67,475/- and Market Value of Rs. 34,68,520/-, seized vide Seizure Memo/Order under Panchnama proceedings both dated 30.12.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

15. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement that Shri Mahammadjuned Khanji was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the noticee as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 30.12.2024 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

which the said noticee replied in negative. The AIU officer asked the noticee to pass through the Door Frame Metal Detector after removing all metallic objects with him and while passing through the said DFMD, a Beep sound was heard at the lower part of the metal detector machine indicating the presence of some objectionable/ dutiable items on his body/clothes. During personal search/ detailed frisking of the passenger, the AIU Officers found 06 bangles in plastic bag in right pocket of his pyjama.

16. It is on record that Shri Kartikey Vasantraai Soni, the Government Approved Valuer, weighed the said gold items i.e. Six Gold Bangles and informed that the total weight of said gold bangles comes to **440.00** Grams having purity 999.0/24KT which were hidden/concealed, in pocket of pyjama. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold items i.e. Six Gold Bangles weighing 440.00 was **Rs.32,67,475/-** and Market value was **Rs.34,68,520/-**. The details of the Valuation of the said gold bar are tabulated as below:

Name of the passenger	Description of goods	Qty (in Nos.)	Purity	Net wt in grams	Market value in Rs.	Tariff Value in Rs.
Shri Mohammad Juned Khanji	Gold Bangles	06	999.0, 24 Kt	440.000	34,68,520/-	32,67,475/-

17. 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 his statement. The offence committed was admitted by the noticee in his statement recorded on 30.12.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962. I find from the content of the statement dated 30.12.2024 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and as per his say and after understanding and reading the same, he put his dated signature. He clearly admitted that he was aware that importation of gold in commercial quantity in baggage is not allowed and same was liable for Customs Duty, therefore, to avoid the payment of duty, he intentionally did not declare the same and tried to remove without declaration. It is on the record that

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

the noticee had tendered his 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. The judgments relied upon in this matter as follows:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that “Statement recorded by a Customs Officer under Section 108 is a valid evidences”
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that “It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962”
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon’ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that “Confessional Statement corroborated by the Seized documents admissible even if retracted.”
- Hon’ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA”

18. Further, I find that during the personal hearing the authorized representative mentioned that due to ignorance of law the noticee was unable to declare the same and not well versed with the Customs Provisions, Rules and Regulation. In this regard, I observed that, in any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. Hon’ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others has held that *ignorance of law*

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]. Therefore the plea of the noticee that due to ignorance of law, he was unable to declare the gold bangles is not tenable and far from the truth as he clearly admitted in his statement that he intentionally not declare the gold bangles to clear them illicitly without payment of duty.

19. 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 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.

20. 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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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.

21. 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 440.00 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on his arrival which is also an integral condition to import the gold and same had been admitted in his voluntary statement that he wanted to clear the gold items clandestinely without payment of eligible custom duty. Moreover, the prescribed conditions of the eligible passenger, of staying abroad continuously more than six months is not fulfilled in the instant case. Apart from that the noticee has not any convertible foreign exchange with him for payment of duty as required, which shows the intention of the noticee that he did not want to pay customs duty and opted green channel without making any declaration.

22. 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:-

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

“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 11(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 11 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 11(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 11(d) of Customs Act, 1962. “Any prohibition” means every prohibition. In others words, all types of

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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 goods i.e. Six Gold Bangles weighing 440.00, by concealment and attempted to clear from the Customs authorities without declaration and without payment. Accordingly, the goods brought by the noticee falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

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"

23. Further, the noticee has claimed that he himself purchased the said gold bangles in Jeddah while returning to India after performing Umrah. 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.

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

Merely claiming the ownership on the gold without any supporting documentary evidences viz, purchase invoice, bank transactions details, which proves that the gold was purchased in legitimate way and as bona fide personal use, does not make him owner. **Therefore, the claim of noticee that the said gold bangles were purchased by him is not genuine and an afterthought.**

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 gold is a notified item and when notified goods 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 terms of Section 123 of Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence during the personal hearing. Therefore, I hold that the noticee has nothing to submit in his defense and claim of the noticee that the gold was purchased by him is not tenable on basis of no documentary evidence.

24. Further, the noticee has accepted that he had not declared the said gold items viz. 06 gold bangles concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the said gold items i.e. Six Gold Bangles weighing 440.00 grams, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his 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.

25. From the facts discussed above, it is evident that noticee had carried the said gold weighing 440.00 grams, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold items

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

of 24KT/999.00 purity totally weighing 440.00 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold items and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate 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.

26. 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 his possession, as envisaged under Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he had tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 440.00 grams concealed by him, 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 weighing 440.00 grams, having Tariff Value of Rs.32,67,475/- and Market Value of Rs.34,68,520/- recovered

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 30.12.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form of gold bangles concealed in his pocket, 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 he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

27. I find that the Noticee confessed of carrying the said gold of 440.00 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

28. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold items

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

weighing 440.00 grams, having Tariff Value of Rs.32,67,475/- and Market Value of Rs.34,68,520/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 30.12.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold items total weighing 440.00 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

29. I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Merely claiming the ownership without any documentary backing, is not proved that the gold was purchased in legitimate way and belonged to the noticee. 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 intention of noticee was not to declare the said gold items viz. gold bangles and tried to remove them clandestinely, to evade payment of customs duty. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Also in the judgment 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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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 am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as :-

29.1 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]

29.2 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.

29.3 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;

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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).*

29.4 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.

29.5 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

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

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

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

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

30. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold items and thus, 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 is **ingenious** in nature, as the noticee put the gold bangles in plastic bag and concealed the same in his pyjama pocket with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 440.00 grams of 24Kt./999.0 purity in form of gold bangles, is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 440.00 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.**

31. As regard imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Mahammadjuned Khanji, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold in form of bangles in his pocket. On deciding the penalty in the

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

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 smuggle the said gold items and attempting to evade the Customs Duty by not declaring the said gold items weighing 440.00 grams having purity of 999.0 and 24K. 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 his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold items i.e. Six Gold Bangles weighing 440.00 grams, carried by him. He has agreed and admitted in his statement that he travelled from Jeddah to Ahmedabad with the said gold items. Despite his knowledge and belief that the gold carried by him 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 of 440.00 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he 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) and Section 112(b) of the Customs Act, 1962 and I hold accordingly.

32. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of gold items i.e. Six Gold Bangles weighing **440.00** grams of purity of 999.0 (24KT.) found concealed, in pocket of his pyjama, having Market value of **Rs.34,68,520/-** and Tariff Value of **Rs.32,67,475/-**, which were placed under seizure under Panchnama dated 30.12.2024 and seizure memo order dated 30.12.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and

OIO No: 120/ADC/SRV/O&A/2025-26
F. No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26

111(m) of the Customs Act, 1962;

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

33. Accordingly, the Show Cause Notice No. VIII/10-07/SVPIA-C/O&A/HQ/2025-26 dated 29.05.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-07/SVPIA-C/O&A/HQ/2025-26 Date: 09.09.2025

DIN: 20250971MN000081838E

BY SPEED POST AD

To,
Shri Mahammadjuned Khanji,
Son of Shri Abdulaziz Habib Khanji,
1118, Navi Masjid, Was, AT &PO Bhagal (Jagana),
TA-Palanpur, Banaskantha-385 001,
Gujarat India
Email i.d. : khanji79@gmail.com

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.