

OIO No: 40/ADC/SRV/O&A/2025-26
F. No: VIII/10-279/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन,” पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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DIN No. 20250571MN000000D81B

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-279/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूलआदेशसंख्या/ Order-In-Original No.	:	40/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	28.05.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	28.05.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Dharmender Hiranand Lilani & Ms. Aayushi Dharmender Lilani, 42, Ved Bunglows, Near Kamdarnagar, Noblenagar, Nana Chiloda, Ahmedabad-382330
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील(चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5% (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ज्यूटी 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, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a male passenger and a female passenger

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namely Shri Dharmender Hiranand Lilani holding India Passport no. N9257857 and his daughter Ms. Aayushi Dharmender Lilani, holding Indian passport no. W6911138, both resident of 42, Ved Bungalows, Near Kamdarnagar, Noblenagar, Nana Chiloda, Ahmedabad-382330 arriving by Air Arabia Flight no. G9 418 from Sharjah to Ahmedabad at Terminal – 2 of the SVP International Airport, Ahmedabad, while they were attempting to exit through green channel without making any declaration to the Customs. Both the passengers were asked by the AIU Officers whether they had made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which they replied in negative and informed that they were not carrying any dutiable items with them. Passenger's personal search and examination of their baggage was conducted in presence of two independent witnesses and the proceedings were recorded under **Panchnama dated 06.11.2024**.

2. The passengers were questioned by the AIU officers as to whether they were carrying any dutiable/ contraband goods in person or in their baggages, to which they denied. The officers asked /informed the passengers that a search of their baggages as well as their personal search were to be carried out and gave them an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passengers desired to be searched in presence of a gazetted custom officer. Before commencing the search, the officers offered themselves to the said passengers for conducting their personal search, which was declined by the said passengers imposing faith in the officers.

2.1 Thereafter, in the presence of the panchas, the AIU officers instructed the passengers to put their entire luggage on the X-Ray Bag Scanning Machine installed near the Green Channel at terminal 2 of SVPI Ahmedabad for scanning. On scanning of the said baggages in the X-ray machine no objectionable image was seen. Thereafter, the AIU officers once again asked the passenger if they were carrying any contraband/ Restricted/dutiable goods which they wanted to declare to the customs, but the passengers still replied in negative. Thereafter, in the presence of the panchas, the AIU officers asked Shri Dharmender Lilani to walk through the Door Frame Metal Detector (DFMD) machine; before passing through the said DFMD Machine, the passenger was asked to remove all the metallic objects he was wearing on his

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body/clothes. Thereafter, the passenger removed metallic objects from his body/ clothes such as mobile, purse, gold chain, golden pendant and ring etc. worn by him which were kept hidden under his garments and kept them in a plastic tray placed on the table. On being asked, the passenger informed the AIU officers that the aforesaid ornaments were made of gold. Thereafter, the AIU officers asked him to pass through the Door Frame Metal Detector (DFMD) machine. When the passenger passed through the DFMD Machine, no beep sound was heard indicating that there was nothing objectionable/dutiable goods/items on his body/clothes.

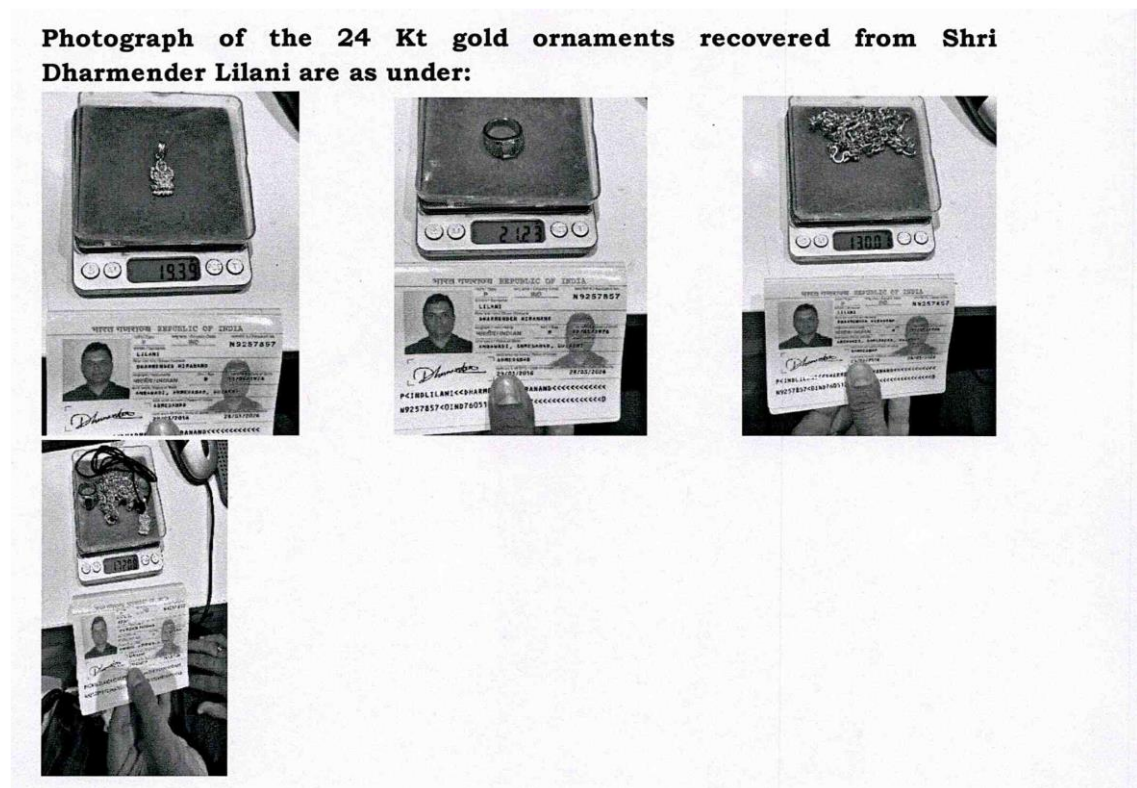
2.2. Thereafter, in the presence of the panchas, the AIU officers asked Ms. Aayushi Dharmender Lilani to walk through the Door Frame Metal Detector (DFMD) machine; before passing through the said DFMD Machine, the passenger was asked to remove all the metallic objects she was wearing on her body/clothes. Thereafter, the passenger removed metallic objects from her body/ clothes such as mobile, purse, 2 anklets etc. worn by her which were kept hidden under her trouser and kept them in a plastic tray placed on the table. On being asked, the passenger informed the AIU officers that the aforesaid ornaments were made of gold. Thereafter, the AIU officer asked her to pass through the Door Frame Metal Detector (DFMD) machine. When the passenger passed through the DFMD Machine, no beep sound was heard indicating that there was nothing objectionable/dutiable goods/items on her body/clothes.

2.3 Thereafter, the AIU officers, called Government Approved Valuer Shri Soni Kartikey Vasantrai and informed that he needed to come to the Airport for examination and valuation of the gold items. After that, the Government Approved Valuer reached the airport premises and the AIU officers introduced the panchas as well as the passengers to the said person viz. Shri Kartikey Vasantrai Soni, Government Approved Valuer.

2.4 The Government Approved Valuer confirmed that Gold jewellerys were made of gold 999.0/24Kt and issued certificate no. 1179/2024-25 dated 06.11.2024 certifying that value of 01 Gold Chain weighing 130.010 Grams, 01 Gold Ring coated with white Rhodium weighing 21.230 Grams and 01 Gold Pendant weighing 19.390 Grams, Total weighing 170.630 Grams, each having purity of 999.0/24Kt recovered from Shri Dharmender Lilani and has Market Value of Rs.13,84,134/-

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(Rupees Thirteen Lakh Eighty Four Thousand One Hundred Thirty Four Only) and Tariff Value of Rs.12,81,624/- (Rupees Twelve Lakh Eighty One Thousand Six Hundred Twenty Four Only). He further issued Certificate no. 1180/2024-25 dated 06.11.2024 indicating that the value of 02 Gold Anklets Coated with White Rhodium weighing 230.400 Grams having purity of 999.0/24Kt, recovered from Ms. Aayushi Lilani had Market Value of Rs.18,68,544/- (Rupees Eighteen Lakh Sixty-Eight Thousand Five Hundred Forty-Four Only) and Tariff Value of Rs.17,30,564/- (Rupees Seventeen Lakh Thirty Thousand Five Hundred Sixty-Four Only). Total weight all the items comes to 401.030 grams having total Market Value of Rs. 32,52,678/- and total Tariff Value of Rs.30,12,188/-. The photographs of the same are as:-



Photograph of the 24 Kt gold ornaments recovered from Ms. Aayushi Lilani is as under:

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The value of the aforesaid gold ornaments had been calculated as per the Notification No. 73/2024-Customs (N.T.) dated 30.10.2024 (gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). The Valuation details of which are as under:-

Sr. No.	Name of passenger	Certificate no.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1	Shri Dharmender Lilani	1179/ 2024-25 dated 06.11.2024	1 Ring, 1 Chain and 1 Pendant	170.630	24 Kt	13,84,134/-	12,81,624/-
2	Ms. Aayushi Lilani	1180/ 2024-25 dated 06.11.2024	2 anklets (Rhodium Coated)	230.400	24 Kt	18,68,544/-	17,30,564/-
	Total			401.030	999.0/ 24 Kt	32,52,678/-	30,12,188/-

Seizure of the gold:

3. The aforementioned gold items totally weighing 401.030 grams having purity 999.0/24kt recovered from the both passengers i.e Shri Dharmendra Lilani and Ms. Aayushi Lilani had been carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Accordingly, the said gold items were placed under seizure and handed over to the Ware House In-charge, Customs, SVPI Airport, Ahmedabad vide Ware House Entry Nos. 7041 and 7042 both dated 06.11.2024.

4. Statement of Shri Dharmender Hiranand Lilani and Ms. Aayushi Dharmender Lilani.

4.1 Statement of Shri Dharmender Hiranand Lilani was recorded under Section 108 of the Customs Act, 1962 on 06.11.2024, wherein he inter alia:

4.1.1. He gave his personal details like name, age, address, education, profession and family details and informed that he worked at Snur Textile, Saranpur, Ahmedabad as a salesman.

4.1.2. He went to Dubai for travelling purpose with his daughter Miss Aayushi Dharmender Lilani on 01.11.2024 and came back on 06.11.2024. He stated that while his stay in Dubai, he bought 01 Gold Chain, 01 Gold Ring coated with white Rhodium and 01 Gold Pendent which were recovered from him alongwith 02 Gold anklets that were recovered from his daughter Miss. Aayushi Dharmender Lilani during the proceedings of Panchnama dated 06.11.2024. He further stated that he had bought these gold items for his elder daughter who was likely to get married in February 2025.

4.1.3. He further stated that he was present during the entire panchnama proceedings dated 06.11.2024 and the fact narrated therein were true and correct.

4.1.4 He stated that he was aware that smuggling of gold without payment of Customs duty was an offence and he was aware of the concealed gold in the form of 01 Gold Chain, 01 Gold Ring coated with white Rhodium and 01 Gold Pendent but he did not make any declarations in this regard to evade payment of Customs duty.

4.2 Statement of Ms. Aayushi Dharmender Lilani was recorded under Section 108 of the Customs Act, 1962 on 06.11.2024, wherein she inter alia:

4.2.1. She gave her personal details like name, age, address, education, profession and family details and informed that she was a student presently pursuing B.CA, 2nd Year, from Indus University, Shilej, Thaltej, Ahmedabad.

4.2.2. She went to Dubai for travelling purpose with her father Shri Dharmender Hiranand Lilani on 01.11.2024 and came back on 06.11.2024. She stated that while her stay in Dubai, her father bought

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the said 02 gold anklets coated with white Rhodium and handed over to her on 05.11.2024 and asked her to wear in her ankles.

4.2.3. She further stated that she was present during the entire panchnama proceedings dated 06.11.2024 and the fact narrated therein were true and correct.

4.2.4 She stated that she was aware that smuggling of gold without payment of Customs duty was an offence and she was aware of the concealed gold in the form of 02 gold anklets coated with white Rhodium but she did not make any declarations in this regard to evade payment of Customs duty.

5. 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 both passengers are 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 Baggages 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 passengers had not declared the said gold items having total weight of 401.030 grams having purity 999.0/24 Kt and having Market Value of Rs.32,52,678/- and Tariff Value of Rs.30,12,188/- because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold item totally weighing 401.030 grams recovered from Shri Dharmender Liliani and Ms. Aayushi Lilani, was 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 item totally weighing 401.030 Grams is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold item totally weighing 401.030 Grams recovered from Shri Dharmender Liliani and Ms. Aayushi Lilani, who had arrived from Sharjah to Ahmedabad (AMD) on 06.11.2024 by Air Arabia Flight No. G9 418, at the arrival hall of the SVPIA, Ahmedabad was placed under seizure vide Panchnama dated 06.11.2024 and Seizure order dated 06.11.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. Summation:

From the investigation conducted in the case, it appears that Shri Dharmender Hiranand Lilani had attempted to smuggle total 170.630 Grams of 999.0/24 kt. Pure gold items totally having total market value of Rs. 13,84,134/- and Ms. Aayushi Dharmender Lilani had attempted to smuggle total 230.400 Grams of 999.0/24 kt. Pure gold items totally having total market value of Rs. 18,68,544/-. Since these items were clearly meant for commercial purpose and hence did not constitute Bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Accordingly, the aforesaid 24 Kt. Pure gold items having total weight of 401.030 grams and having total market value of Rs. 32,52,678/- were seized under the provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that the same were liable to be confiscated in terms the provisions of Section 111 of the Customs Act, 1962.

7. LEGAL PROVISIONS RELEVANT TO THE CASE

Foreign Trade Policy 2015-20, 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.
- 7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any

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person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property;
- 7.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- 7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- 7.11 As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, she may seize such goods.
- 7.12 Section 111. Confiscation of improperly imported goods, etc.:

The following goods brought from a place outside India shall be

liable to confiscation:-

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

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

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

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

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

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

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

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

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

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

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(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, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods

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which she knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

7.14 As per Section 123 of Customs Act 1962,

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

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

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

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

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

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

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

Customs Baggage Rules and Regulations:

7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passenger who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare his 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.

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

- 7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.
- 7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 - Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

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

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the

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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 Dharmender Liliani and Ms. Aayushi Lilani had attempted to smuggle/improperly import 999.0/24 Kt. Pure gold items viz. 1 Ring, 1 Chain, 1 Pendant & 2 anklets (Rhodium Coated), having total weight 401.030 grams and having total market value of Rs.32,52,678/- with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Shri Dharmender Liliani and Ms. Aayushi Lilani have knowingly and intentionally smuggled the said gold items upon his arrival from Sharjah to Ahmedabad by Air Arabia Airlines Flight No. G9 418 on 06.11.2024 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold items viz. 1 Ring, 1 Chain, 1 Pendant & 2 anklets (Rhodium Coated) smuggled by Shri Dharmender Liliani and Ms. Aayushi Lilani, cannot be treated as bonafide household goods or personal effects. Shri Dharmender Liliani and Ms. Aayushi Lilani has, thus contravened the Foreign Trade Policy 2015-20 as amended and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.
- (ii) Shri Dharmender Hiranand Liliani and Ms. Aayushi Dharmender Liliani, by not declaring the said gold items before the proper officer of the Customs have contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

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- (iii) The said gold items smuggled by Shri Dharmender Hiranand Lilani and Ms. Aayushi Dharmender Lilani, without declaring it to the Customs are liable for confiscation under Section 111(d), 111(l) and 111(m) read with Section 2 (22),(33), (39) of the Customs Act, 1962.
- (iv) Shri Dharmender Hiranand Lilani and Ms. Aayushi Dharmender Lilani by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon Shri Dharmender Hiranand Lilani and Ms. Aayushi Dharmender Lilani, who are the Noticee in this case.

10. The passengers Shri Dharmender Liliani and Ms. Aayushi Lilani vide letter dated 10.11.2024 and 12.12.2024 submitted request for waiver of SCN and vide letter dated 09.11.2024 the authorized representative has also requested for waiver of SCN. They have submitted that they are the owner of gold jewellery and not found involved in similar offence earlier. Due to no knowledge of the customs rules, they are unable to declare the same and the gold was belonged to them for their personal use.

11. PERSONAL HEARING:

To follow the principle of natural justice, personal hearing in the matter was granted on 15.04.2025 & 29.04.2025. Shri M.B Bhansali, Advocate and authorized representative attended the PH on behalf of both Noticees on 29.04.2025. He produces copy of Vakalatnama to represent the case and requested to appear for personal hearing in person instead of video conferencing. The noticees through their letter dated 10.11.2024 & 12.12.2024 requested for waiver of SCN/Oral SCN under the provisions of Section 124 of Customs Act, 1962. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the representative of the noticees has been explained the provisions of Section 124 thoroughly regarding the provision for issuing SCN and waiver of SCN has been granted and matter is taken up for decision on merits. Shri Mahavir Bhansali submits that the gold was not ingenious concealment as same was in form of jewellery and

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representation referred to in clause (b) may, at the request of the person concerned be oral.

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

Perusal of Section 124 of the Act states that a Show Cause Notice may be issued in Oral on the request of noticee. If an oral SCN/ waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. I find that both noticees themselves as well as through their advocate/authorized representative requested for waiver of SCN/Oral SCN after preciously go through the provisions of Show Cause Notice under Section 124 of Customs Act, 1962 vide letter dated 09.11.2024, 10.11.2024 & 12.12.12024. Therefore, the Oral SCN/Waiver of SCN can be granted under Section 124 of Customs Act, 1962 on their written request and after following the principle of natural justice. In the instant case, I find that both noticee themselves as well as through their representative has submitted their request letter for waiver of SCN which was consciously signed and Authorized representative has attended the PH. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

13. In the instant case, I find that the main issue that is to be decided is whether the gold items i.e. 1 Ring, 1 Chain, 1 Pendant & 2 anklets (Rhodium Coated) all of 999.0/24kt purity, totally weighing 401.030 grams and having total Market Value of Rs. 32,52,678/- and Tariff Value of Rs. 30,12,188/-, carried by the noticees Shri Dharmender Lilani and Ms. Aayushi Lilani, which were seized vide Seizure Order dated 06.11.2024 under the Panchnama proceedings dated 06.11.2024 on the reasonable belief that the said goods were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as ‘the Act’) or not and whether both passengers are liable for penalty under the provisions of Section 112 of the Act.

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14. It is on the record the both the noticees had tendered their statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. For that, I relied upon the judgments as under:-

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

Further, I find that none of them have retracted from their tendered statement.

15. I find that on the basis of passengers profiling and suspicious movement Shri Dharmender Liliani and Ms. Aayushi Lilani, were intercepted by the AIU officers, when they were trying to exit through green channel without making any declarations. The baggage of Shri Dharmender Liliani and Ms. Aayushi Lilani was passed through the X-Ray Baggage Scanning Machine, however, nothing suspicious noticed. Further, while passing through the DFMD after removing the metallic objects, no beep sound was heard, indicating there is nothing suspicious with them. However, on verification of the objects put by them on plastic tray while passing through the DFMD machine, 01 ring, 01 chain and 01 pendant was recovered which was worn by Shri Dharmender Lilani and concealed under his garments. Also 02 anklets

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both rhodium coated were recovered from Ms. Aayushi Lilani which were worn and concealed under trouser. It is also on record that the Govt. approved valuer examined recovered item and submit his report vide certificate no. 1179 & 1180/2024-25 dated 06.11.2024. wherein he submitted that the recovered gold items were of purity of 24kt/999.0. The details of same are as under: -

Sr. No.	Name of passenger	Certificate no.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1	Shri Dharmender Lilani	1179/2024-25 dated 06.11.2024	1 Ring, 1 Chain and 1 Pendant	170.630	24 Kt	13,84,134/-	12,81,624/-
2	Ms. Aayushi Lilani	1180/2024-25 dated 06.11.2024	2 anklets(Rhodium Coated)	230.400	24 Kt	18,68,544/-	17,30,564/-
	Total			401.030	999.0/24 Kt	32,52,678/-	30,12,188/-

Hence, I find that both noticees were well aware about the fact that the gold is dutiable item and they intentionally wanted to clear the gold items without payment of Customs duty. I find that the authorized representative during PH submitted that due of Ignorance of law they were not able to declare the gold items which were in their possession. I find 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. Therefore, the explanation given by them cannot be held to be genuine and creditworthy.

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

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goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court 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 both the noticees have tried to remove the impugned goods i.e. 01 gold ring, 01 gold chain, 01 gold pendant & 02 gold anklet, by concealment and attempted to clear from the Customs authorities without declaration and without payment. Accordingly, the goods brought**

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by the noticees falls under the ambit of “Prohibited Goods” under the definition of Section 2(33) of the Customs Act, 1962.

17. I find that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger’s baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is “Restricted” and subject to fulfilment of conditions imposed under the Customs Act, 1962, the baggage rules, 2016.

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

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

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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 both noticees have brought the gold item having total weight 401.030 grams which is more than the prescribed limit. Further, none of them have declared the same before customs on his arrival which is also an integral condition to import the gold and same has been admitted in their voluntary statements that they want to clear the gold items clandestinely without payment of eligible custom duty.

20. Further, both noticees have accepted that they had not declared the said gold concealed by them, on their arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold items viz. 01 gold ring, 01 gold chain, 01 gold pendant and 02 gold anklet. Accordingly, there is sufficient evidence to say that both noticees had kept the said gold items viz. 01 gold ring, 01 gold chain, 01 gold pendant and 02 gold anklet all of 999.0/24Kt purity, totally weighing 401.030 grams and having Market Value of Rs. 32,52,678/-/- and Tariff Value of Rs. 30,12,188/-, which was in their possession and concealed by them in their garments and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from their possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it

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is proved that both noticees violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20 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. During the personal hearing, the authorized representative has submitted that the gold items were purchased by them and for their personal use. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that “in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt”. And “Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them”. From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Merely claiming that the gold was purchased by them without submission of any invoice/bill copy alongwith other documentary evidences viz, bank transaction details which proves that the gold purchased in legitimate way and as bona fide personal use, does not make them owner.

21. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that both Noticees had not filed the baggage declaration form and had not declared the said gold items which were in their 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 they were tried to exit

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through Green Channel which shows that they were 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 they have not declared the gold items before customs authority. It is also observed that the imports were also for non-bonafide purpose. Therefore, the said improperly imported gold items viz 01 gold ring, 01 gold chain, 01 gold pendant and 02 gold anklet, total weighing 401.030 grams concealed by them, 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, both noticees have rendered the said gold items weighing 401.030 grams, having Tariff Value of Rs. 30,12,188/- and Market Value of Rs.32,52,678/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 06.11.2024 liable to confiscation under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of jewellery in their garments and in commercial quantity, it is observed that both noticees were fully aware that the import of said goods is offending in nature. It is, therefore, very clear that they have knowingly carried the gold items and failed to declare the same on their arrival at the Customs Airport. It is seen that they have involved themselves in carrying, keeping, concealing, and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same is liable to confiscation under the Act. Moreover, both noticees failed to establish, the licit importation of the said gold items. It is, therefore, proved beyond doubt that both noticees have committed an offence of the nature described in Section 112 of the Customs Act, 1962 making them liable for penalty under Section 112 of

the Customs Act, 1962.

22. I thus, find that the recovery of gold items from the possession of the noticees shri Dharmender Lilani (01 gold ring, 01 gold chain and 01 gold pendant) and Ms. Aayushi Lilani (02 gold anklets) which were concealed and not declared to the Customs with an intention to illicitly clear it from the Airport to evade the payment of Customs duty is an act of smuggling and the same is conclusively proved. By their above act of commission, it is proved beyond doubt that both noticees have violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find from their respective statement that the gold items were declared before the Customs to evade payment of customs duty. Therefore, the gold imported by both noticees in the form of jewellery and deliberately not declared before the Customs on their arrival in India and in commercial quantity cannot be treated as a bonafide household goods and thus both of them have contravened the Para 2.26 of the Foreign Trade Policy 2015-20 as amended and thereby Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No.50/2017-Customs dated 30.06.2017 as amended. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by banks authorized by RBI or other authorized by DGFT and to some extent by passengers. Therefore, gold which is restricted item for import but which was imported without fulfilling the conditions for import becomes prohibited goods in terms of Section 2(33) and it is liable for confiscation under Section 111 of Customs Act, 1962.

22.1 As per the provisions of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

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

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-

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Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

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

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

If,-

*1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and*

2. the gold or silver is,-

(a) carried by the eligible passenger at the time of his arrival in India, or

(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

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

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has

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not availed of the exemption under this notification or under the notification being superseded at any time of such short visits

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

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

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

I find that the said gold items were not declared by Shri Dharmender Liliani and Ms. Aayushi Lilani to the Customs under Section 77 of the Customs Act, 1962 and they passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold jewellery which were found concealed and recovered in manner as described above, was made by the Noticees Shri Dharmender Liliani and Ms. Aayushi Lilani, in the prescribed declaration form. Also, I find that both are not eligible to import gold and that too undeclared in substantial quantity of 401.030 grams and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

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

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

In this regard, I find that gold items totally weighing 401.030 Grams recovered from the possession of noticee Shri Dharmender Lilani and Ms. Aayushi Lilani having market value of Rs. 32,52,678/- and admittedly smuggled into India. On test, those gold items were found to be of purity of 999.0/24kt. Further, I find that both noticees could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Shri Dharmender Liliani and Ms. Aayushi Lilani, thus failing to discharge their "burden of proof" that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

Section 77. Declaration by owner of baggage. - *The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Dharmender Liliani and Ms. Aayushi Lilani in prescribed declaration form. I also find that both noticee were not eligible to import the said gold items in form of jewellery concealed in garments worn by them and that too undeclared in terms of Section 77 of Customs Act, 1962 and hence the said gold items are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

23. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited

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goods'. This makes the gold seized in the present case "prohibited goods" as both noticees, trying to smuggle it, were not eligible passengers, as per the conditions, to bring it into India or import gold into India in baggage. The said gold weighing 401.030 grams, were recovered from their possession and were kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, they have concealed the said gold items under garments. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by both of them.

24. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that both noticees had attempted to smuggle the seized gold jewellery to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold jewellery. Thus, both of them have failed to discharge the burden placed on them in terms of Section 123. Further, from the SCN, Panchnama and Statements, I find that the manner of concealment of the gold items shows the intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold items weighing 401.030 grams, carried and undeclared by them with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, both of them in their voluntary statements dated 06.11.2024 stated that they had carried the said gold in concealed manner to evade payment of Customs duty. Under their waiver request, both of them have agreed to pay the duty, penalty, fine and requested to redeem the gold on payment of redemption fine. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods ¹ [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

² [**Provided** that where the proceedings are deemed to be concluded under

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the proviso to sub-section (2) of [section 28](#) or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed]:

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of [section 115](#), such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Now in the latest 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 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 do not inclined to exercise the option to allow redemption fine in lieu of confiscation of gold.** Further, to support my view, I also relied upon the following judgment which are as :-

24.1. 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

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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]

24.2. 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.

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

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

24.4 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

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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.

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

24.6. 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.**”*

24.7. I find that the noticee has relied on a case law of revisionary authority order F.No. 371/97/B/2022-RA dated 19.01.2024. in this regard, I find that the Hon’ble Supreme Court in

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case of *Ambica Quarry Works Vs. State of Gujarat & Others* [1987 (1) S.C C.213] observed that “the ratio of any decision must be understood in the background of fact of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it.” Further, in case of *Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd* 2003 (2) SC 111, the Hon’ble Apex Court observed “it is well settled that a little difference in facts or additional fact may make a lot of difference in the precedential value of a decision.” In view of above, I hold that every case has different moments and facts when compare in minute-to-minute details. With respect to case law submitted it is stated that every case is unique and facts are different in every case, the same has to be considered accordingly. The orders are having different facts and even a small change in facts can completely change the complexion of the case and hence, *I find that judgment relied upon by the noticee, is not squarely applicable in the instant case. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*

25. Given the facts of the present case before me and the judgements and rulings cited above, the said gold items in form of jewellery totally weighing 401.030 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold weighing 401.030 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.**

26. I further find that both noticees had involved themselves and abetted the act of smuggling of the said gold items weighing 401.030 grams, carried by them. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of both noticees is established as the nature of concealment of gold is ingenious in nature and clearly showed that both of them were not inclined to declare the same and they want to clear the gold clandestinely, to evade the payment of applicable duty. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon’ble Apex Court laid down in the judgment of *M/s. Hindustan Steel Ltd Vs. State of Orissa*; wherein the Hon’ble Apex Court observed that “The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case

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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, both of them were attempting to evade the Customs Duty by not declaring the gold weighing 401.030 grams (01 gold ring, 01 gold chain, 01 gold pendant and 02 gold anklets, all of 999.0/24Kt). Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on their part. I further find that both had involved themselves and abetted the act of smuggling of the said gold items weighing 401.030 grams, carried by them. They had agreed and admitted in their statements that they travelled from Sharjah to Ahmedabad with the said gold items in form of jewellery concealed by them in their garments. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold items weighing 401.030 grams, having purity 999.0/24Kt by concealment. Thus, it is clear that both noticees have concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold items which they know very well and has reason to believe that the same are 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 both noticees are liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

27. Accordingly, I pass the following Order:

ORDER

- i. I order absolute confiscation of the impugned gold items (01 gold ring, 01 gold chain and 01 gold pendant all having weight 170.630 grams found in possession of Shri Dharmender Lilani and 02 gold anklets of weighing 230.400 grams found in

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possession of Ms. Aayushi Lilani) having total weight of **401.030 grams** made up of 999.0/24kt having total tariff value of **Rs.30,12,188/-** and market value of **Rs.32,52,678/-** recovered and seized from the noticees Shri Dharmender Liliani and Ms. Aayushi Lilani vide Seizure Order dated 06.11.2024 under Panchnama proceedings dated 06.11.2024 under the provisions of Section 111(d), 111(l) & 111(m) of the Customs Act, 1962;

- ii. I impose a penalty of **Rs.3,00,000/-** (Rupees Three Lakh Only) on Shri Dharmender Hiranand Liliani under the provisions of Section 112 (a)(i) & Section 112 (b)(i) of the Customs Act 1962.
- iii. I impose a penalty of **Rs.4,50,000/-** (Rupees Four Lakh Fifty Thousand Only) on Ms. Aayushi Dharmender Lilani D/o Shri Dharmender Lilani under the provisions of Section 112 (a)(i) & Section 112 (b)(i) of the Customs Act 1962.

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

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250571MN000000D81B

BY SPEED POST A.D.

To,
Shri Dharmender Hiranand Lilani
42, Ved Bungalows,
Near Kamdarnagar, Noblenagar,
Nana Chiloda, Ahmedabad-382330

&

Ms. Aayushi Dharmender Lilani,
42, Ved Bungalows,
Near Kamdarnagar, Noblenagar,
Nana Chiloda, Ahmedabad-382330

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Copy to:

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