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भारत सरकार

GOVERNMENT OF INDIA

प्रधान आयुक्त सीमा शुल्क का कार्यालय (विमानपत्तन एवं हवाई माल परिसर)



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (AP &amp; ACC)

एन.एस.सी.बी. अन्तर्राष्ट्रीय विमानपत्तन, कोलकाता-700052

N.S.C.B. International Airport, Kolkata-700052

(Email id- aiucell-kolcusap@gov.in)

F.No. - S1(VII)-222/2024(AIU)

Date: 25-08-2025

Ref. SCN No. - KOL/CUS/A&amp;A/ADC/AIU/47/2025 DATED 23.04.2025

Order-in-Original No. - KOL/CUS/A&amp;A/ADC/AIU CELL/156/2025

Dated: 26.08.2025

श्री अमित भारद्वाज, अपर आयुक्त, सीमा शुल्क, एन.एस.सी.बी. अन्तर्राष्ट्रीय विमानपत्तन, कोलकाता-700052, द्वारा पारित.

PASSED BY SHRI AMIT BHARDWAJ, ADDITIONAL COMMISSIONER OF CUSTOMS, NSCBI AIRPORT, KOLKATA - 700 052

1. यह प्रति संबंधित व्यक्ति के प्रयोग के लिए निःशुल्क जारी की गयी है।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट हो तो इस आदेश के विरुद्ध, इस आदेश के जारी होने के 60 दिनों के अन्दर सीमा शुल्क आयुक्त (अपील), सीमा शुल्क भवन, 15/1, स्ट्रैंड रोड, कोलकाता - 700 001 के समक्ष अपील कर सकते हैं।

Any person deeming himself aggrieved by the order may appeal against the same to the Commissioner of Customs (Appeal), Customs House, 15/1, Strand Road, Kolkata-700 001 within 60 (sixty) days from the date of the receipt.

3. इस आदेश के खिलाफ, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या दंड जहां अकेले दंड विवाद में हैं, ड्यूटी या दंड के 7.5% के अग्रिम भुगतान पर सीमा शुल्क आयुक्त (अपील) के समक्ष अपील किया जा सकता है।

An appeal against the order shall lie before the Commissioner of Customs (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.

4. यदि कोई भी व्यक्ति, इस आदेश या निर्णय के खिलाफ अपील करने के इच्छुक हैं,

या अपील विचाराधीन हो तो मांगा गया शुल्क अथवा जुर्माना, अथवा लगाया गया दंड जमा करना होगा एवं भुगतान का सबूत अपील के साथ पेश करना होगा, असफल होने पर सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अंतर्गत गैर अनुपालन हेतु अपील खारिज किया जा सकता है।

Any person desirous of appealing against the order or decision shall, pending the appeal, deposit the duty demanded or the fine, penalties levied therein and produce proof of such payment along with the appeal failing which the appeal is liable to be rejected for non compliance with the provisions of Section 129E of the Customs Act, 1962.

#### BRIEF FACTS OF THE CASE

**1.** On 08.11.2024, based on surveillance at the Immigration Area of the Arrival Hall of NSCBI Airport, Kolkata, One passenger named Mohammed Shahid (herein after referred to as the "Pax/Noticee"), (D.O.B. 27/06/1981), holder of Indian Passport No. Z7498846 dated 04.12.2023 issued at Kolkata, S/o- Mohammed Adil, R/o- 17/C Dent Mission Road, Khidirpur, Kolkata, PIN: 700023, West Bengal, India, arriving from Abu Dhabi by Flight No:3L-166 dated 07.11.2024, was followed from the Immigration counter and was intercepted by the officers of Air Intelligence Unit (AIU) when he was crossing the Green Channel and was approaching towards the exit gate of the International Arrival Hall of NSCBI Airport, Kolkata with his one (01) piece of hand baggage and one (01) piece of checked-in baggage.

**2.** The passenger was asked whether he was carrying any contraband/prohibited/restricted goods in his baggage or in person, to which he replied in negative. Not being satisfied with his reply, hand baggage and checked-in baggage of the said passenger were scanned at the X-ray machine installed at the Green Channel. The image of the hand baggage of the passenger showed mobile phones. Thereafter, the said passenger, along-with his hand baggage and checked-in-baggage was brought to the AIU Room in the International Arrival Hall for further thorough search. Before proceeding with the search of the passenger, in compliance of Section 102 of the Customs Act, 1962, the passenger was served a notice and he agreed to be searched before the Superintendent of Customs (AIU).

**3.** Meanwhile, two independent witnesses were also called inside the AIU room. The search of the checked-in-baggage was conducted in presence of the two independent witnesses and the Superintendent of Customs (AIU), but nothing incriminating was found. Then, a thorough search of his one (01) piece of hand baggage resulted in the recovery of 13 Pcs of iPhone 16 PRO Max & 07 Pcs of iPhone 16 PRO.

**4.** The prices of the mobile phones were determined from the official website of the Apple Store . The 13 Pcs of iPhone 16 PRO Max each valued at Rs. 1,22,797/- per pc (after deduction of Tax Amount), collectively valued at INR 15,96,361/- and the 07 Pcs of iPhone 16 PRO each valued at Rs. 1,01,610/- per pc (after deduction of Tax Amount) were valued at INR 7,11,270/-. The total value of the goods so recovered was ascertained to be INR 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty-One only). Thereafter, personal search of the pax was conducted in presence of the two independent witnesses and the Superintendent of Customs (AIU) but nothing incriminating was found.

**5.** On being asked for any licit document in support of the possession, acquisition or importation of the said recovered goods, the passenger produced Invoice No. INV0099 dated 06.11.2024 for a total amount of AED 43,650/-. On verification of the invoice, it was observed that the produced Invoice was for 5 pcs of iPhone 16 PRO Max 256GB and 10 pcs of iPhone 16 PRO 256 GB without mentioning the Product serial number. Hence, the goods recovered could not be co-related with the Invoice produced by the passenger. In such circumstances, the recovered iPhones mentioned above were seized under Section 110 of the Customs Act, 1962 on reasonable belief that the recovered goods were of foreign origin and were illegally imported into India and attempted to be cleared by way of non-declaration and by the way of concealment, in contravention of the provisions of the Customs Act, 1962, read with Foreign Trade (Development & Regulation) Act, 1992, thereby, rendering the same liable to confiscation under the provisions of the act, *ibid*. The goods i.e. one (01) grey coloured hand baggage of brand name 'Life Sport Performance' was also seized under the provisions of the Customs Act, 1962 as this bag was used for carrying the seized goods. The Boarding pass of the passenger was also seized under the provisions of the act *ibid*, on the belief that it would be useful for and relevant to the further proceedings of the case.

**6.** A Panchnama dated 08.11.2024 was drawn on spot. A Seizure Memo under Section 110(1) of the Customs Act, 1962 was handed over to the passenger under receipt. A Search List incorporating the above-mentioned facts was prepared under the signatures of the pax, independent witnesses and the Seizing officer.

**7.** The seized goods of foreign origin i.e. 20 Apple iPhones (13 pcs of iPhone 16PRO Max and 07 pcs of iPhone 16 PRO) recovered from the possession of Mohammed Shahid were kept in the hand baggage with marks "Life Sport Performance" which was used to conceal the smuggled items and were re-packed and duly sealed with inscription "Directorate of Revenue Intelligence" in presence and under the signatures of the passenger, the Superintendent of Customs, AIU

and two independent witnesses. The Boarding Pass of the passenger was also kept in an envelope sealed with inscription "Directorate of Revenue Intelligence" in presence and under the signatures of the passenger, the Superintendent of Customs, AIU and two independent witnesses.

**8.** In response to the Summons dated 08.11.2024, Voluntary Statement dated 08.11.2024 of the passenger under section 108 of the Customs Act, 1962 was recorded, wherein the passenger inter-alia stated that he has studied till class 8 and that he can read, write and understand Urdu, Hindi and English; that he lives with his wife and has two children; that he used to purchase garments from Dubai and sell them into India in local markets in Khidderpore, Kolkata; that he earns around INR 30,000/-per month; that he visited Dubai on 07.11.2024 by Fly Dubai airlines from Kolkata to purchase garments; that he is the owner of the said seized goods and that he has bought the seized goods from the Deira market in, Dubai, that he has also produced the invoice No. INV0099 dated 06.11.2024 for 15 pieces of iPhone 16 (5 pieces of 16 Pro max 256GB, 10 pieces of 16 Pro 256GB); that he is aware that carrying goods in commercial quantity as baggage and non-declaration of the same before Customs is an offence but he did the act in the greed of some money.

**9.** Meanwhile, in response to Notice for disposal under section 150(1) dated 28.11.2024, an application addressed to the Joint Commissioner of Customs, AIU, NSCBI Airport, Kolkata, from the passenger was received, wherein he stated that valuation of his seized goods in this instant case, i.e. 13 pieces of iPhone 16 Pro Max and 7 pieces of iPhone 16 Pro was not calculated properly. In this regard, he requested to waive off the show cause notice and demanded adjudication of the case at the earliest to release the seized goods. He also requested to appoint a new evaluator to determine the actual valuation of the seized goods and that he was ready to bear all the cost of appointing a new evaluator. Accordingly, an email was sent to the passenger informing him about the list of empaneled chartered engineers as per Public Notice No. 04/2023 dated 13.01.2023.

**10.** Thereafter, a summons dated 08.01.2025 was issued to the passenger. Accordingly, the passenger appeared on 24.01.2025 and tendered his statement dated 24.01.2025, wherein he stated that he had not arranged for any empaneled chartered engineer with regard to his own letter for appointment of some other empaneled chartered engineer, he also requested to grant him 30 days time to arrange for the same; that he has no idea regarding the Importation Policy of electronics goods as per the DGFT Notification No. 13/2024-25 dated 20.05.2024.

**11.** Furthermore, a summons dated 17.03.2025 was issued to the passenger wherein he was summoned to appear before the Superintendent of Customs on 31.03.2025. The passenger appeared on 04.04.2025 instead of 31.03.2025 owing to his medical reasons, as stated in the statement. In his voluntary statement dated 04.04.2025, the relevant points he stated are that he did not have any documents other than the invoice he submitted on the date of seizure; that he had some left over currency with him around USD 3,000/- which he used to make the initial payment and bought the goods on loan from the market in Dubai on condition that he would repay the remaining amount after selling the goods in India and for earning some considerable profit; that he submitted a letter in response to Notice for Disposal under section 150(1) dated 18.02.2025 requesting to release the seized iPhones on the payment of fine and penalty, and he also requested to change his current correspondence address to Merlin River View, Block-Tide, Flat No.-10D, 15 No. Kabiditha Sahani, Khidderpore, Kolkata-700023, West Bengal, India, as he is currently residing at this address.

**12. Analysis of the legal position vis-à-vis facts of the case:**

12.1 In view of above referred legal provisions, the high valued mobiles [i.e. 13 Apple iPhone (16 Pro Max) and 07 Apple iPhone (16 PRO)] recovered from Mohammed Shahid on 08.11.2024 are imported goods upon which duties of Customs are leviable as per Section 12 of the Customs Act, 1962. The accused did not make a declaration to the proper officer upon his arrival at NSCBI Airport, Kolkata, as required under Section 77 of the Customs Act, 1962, for clearance of the said goods. As per Regulation 3 of Customs Baggage Declaration Regulations, 2013, read with Section 81 of the Customs Act, 1962, Mohammed Shahid was supposed to declare the said goods before the Customs for the purpose of determining the duty liability that may arise. Instead, he opted to not declare the said goods before the Customs Authority that were liable to duty. The passenger admitted in his statement recorded under Section 108 of the Customs Act, 1962, that he was attempting to smuggle the said goods in greed of earning higher/more profit.

12.2 Section 79 of the Customs Act, 1962, read with Rule 3 of Baggage Rules, 2016, allows an Indian resident arriving from countries other than Nepal, Bhutan or Myanmar for free allowance of Rs. 50,000/- on bonafide baggage. However, the total value of the seized goods (i.e. Rs. 23,07,631/-) is far more than that stipulated limit and therefore, the said goods are not eligible for import free of duty in baggage.

12.3 In view of the aforesaid facts, Mohammed Shahid, appears to have not declared the said seized goods, recovered from him, before the proper officer of the Customs at the Airport with the intent of evading the applicable customs duties. Thus, he appears to have contravened the provisions of Section 77 of the Customs Act, 1962, and Rule 3 of Customs Baggage Declaration Regulations, 2016, read with Section 81 of the Customs Act, 1962. Due to non-declaration of the said goods by the passenger before the proper officer of the Customs, the said goods cannot be considered to be bonafide baggage.

12.4 In terms of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act, 1992), no person can import except under an Importer-Exporter Code (IEC) number. But import of any goods as Passenger Baggage under the Baggage Rules is regulated by Para 2.27(a) of the Foreign Trade Policy, 2023, which allows a passenger to import only bonafide household goods and personal effects as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance. As such, any imported goods in the baggage which are not bonafide household goods and personal effects of the passenger would not qualify as "Passenger Baggage" to avail exemption in terms of the Rule 3 of Baggage Rules, 2016, and would be construed as Prohibited Goods in terms of the above mentioned provisions of the Foreign Trade (Development and Regulation) Act, 1992, read with Foreign Trade (Development & Regulations) Amendment Act, 2010.

12.5 In the instant case, the seized goods are not the used personal effects and the total value of the seized goods is estimated at Rs. 23,07,631/-, i.e., much more than Rs.50,000/-. In CBIC instruction issued vide F. No. 495/6/96-Cus.VI dated 06.05.1996 and reiterated in Circular Nos. 29/2000-Cus., dated 11.04.2000 and Circular No.9/2001-Cus., dated 22.01.2001, it is clearly stated that the import of goods in commercial quantities would not be permissible within the scope of the Baggage Rules, even on payment of baggage rate of duty. The seized goods having aggregate value of Rs. 23,07,631/- brought illegally into India by the said passenger in commercial quantity for monetary gain and not for personal use, and without any Import Export Code cannot be considered as bonafide personal baggage as per the Customs Act 1962, Baggage Rules, 2016 and Foreign Trade Policy, 2023. As such, the said seized goods would appropriately be construed as 'Prohibited Goods' under Section 2(33) of the Customs Act, 1962.

12.6 Thus, the said goods 13 Apple Iphone (16 Pro Max) and 07 Apple iPhone (16PRO)] collectively valued at Rs. 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty One only) appear to be liable to confiscation as

envisaged under Section 111 of the Customs Act, 1962.

12.7 The passenger also failed to comply with the provisions as laid down in the Notification No. 13/2024-25 dated 20.05.2024 issued by DGFT, Delhi.

### **13. Role played by Mohammed Shahid:**

Mohammed Shahid was caught by the Officers of AIU at NSCBI Airport, Kolkata, when he was coming from Abu Dhabi, with the said seized goods [i.e., 13 Apple Iphone (16 Pro Max) and 07 Apple iPhone (16 PRO)], collectively valued at ₹ 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty One only) by concealing them inside his hand baggage without having declared the same before the proper officer of the Customs and thus, without paying the applicable customs duty on the said goods. In the statement recorded under Section 108 of the Customs Act, 1962, Mohammed Shahid, admitted that he attempted to smuggle the seized mobiles into India in lure of monetary benefit. Thus, Mohammed Shahid appears to have knowingly involved in the said act of fraudulent evasion of the Customs duty leviable on the seized mobiles by non-declaration and concealment in contravention of Section 77 of the Customs Act, 1962, and Rule 3 of Customs Baggage Declaration Regulations, 2016, read with Section 81 of the Customs Act, 1962. He also failed to comply with the provisions as laid down in the Notification No. 13/2024-25 dated 20.05.2024 issued by DGFT, Delhi.

The seized goods also appears to be prohibited goods as per the provisions of notification no. 13/2024 dated 20.05.2024 issued by the DGFT wherein it is categorically stated that;

"The import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order,2021, as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards (BIS) and comply to the 'Labelling Requirements' published by BIS, as amended from time to time', or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 1929 dated 26.04.2023."

In the instant case, the passenger even after getting ample opportunities, failed to provide the BIS certification in respect of the seized goods as envisaged in the notification discussed above. Thus, the goods smuggled by the passenger appears to be prohibited goods. For the said acts of commission and/or omission

by Mohammed Shahid rendering the said seized goods liable to confiscation under Section 111 of the Customs Act, 1962 and thus he rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

**14.** Now, therefore, Mohammed Shahid, S/o- Mohammed Adil, R/o- Merlin River View, Block-Tide, Flat No.-10D, 15 No. Kabiditha Sahani, Khidderpore, Kolkata-700023, West Bengal, India is hereby called upon under the provisions of Section 124 of the Customs Act, 1962 to show cause in writing within 30 (thirty) days from the date of receipt of this notice, to the Additional/Joint Commissioner of Customs, Air Intelligence Unit, Arrival Upper, NSCBI Airport, Kolkata-700052 as to why: -

a. The impugned goods may not be declared as "prohibited goods" under Section 2(33) of the Customs Act, 1962;

b. The act of the passenger should not be construed as the act of "smuggling" of goods into India under Section 2(39) of the Customs Act, 1962;

c. The seized goods i.e. 13 Apple Iphone (16 Pro Max) and 07 Apple iPhone (16PRO) collectively valued at ₹ 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty One only) recovered from the conscious possession and control of Mohammed Shahid should not be confiscated under Section 111 of the Customs Act, 1962 and in terms of Notification No. 13/2024-25 dated 20.05.2024 issued by DGFT, Delhi as discussed supra;

d. The seized 01 (one) piece of hand baggage having no commercial value, used for keeping/concealing/carrying the impugned goods, recovered from Mohammed Shahid should not be confiscated under Section 118 of the Customs Act, 1962 as discussed supra;

e. Penalty should not be imposed upon Mohammed Shahid under Section 112(a) and/ or 112 (b) of the Customs Act, 1962 for his act of commission and / or omission, which rendered the impugned goods under seizure, liable to confiscation under Section 111 of the Act ibid as detailed herein above;

**REPLY TO THE SCN AND RECORDS OF PERSONAL HEARING**

**15.** No reply to the Show Cause Notice having SCN no. KOL/CUS/A&A/ADC/AIU/47/2025 DATED 23.04.2025 has been received in this unit.

**16.** Opportunities to be heard in person were granted to him to appear before the Competent Authority on 18.06.2025 and 24.07.2025, in which the passenger appeared on 24.07.2025 and gave a submission dated 24.07.2025 requesting to

take a lenient view in the case and prayed for release of his goods with imposition of minimum fine and penalty.

#### DISCUSSION AND FINDINGS

**17.** I have perused the facts presented before me. The questions that need to be addressed in the instant matter are within the jurisdiction of the Customs Act 1962 and allied laws and are enumerated as under:

- i. Whether the goods are "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;**
- ii. Whether the act of the passenger will be considered as the act of "smuggling" as defined under Section 2(39) of the Customs Act, 1962;**
- iii. Whether the goods seized, i.e. 13 pcs. Apple Iphone (16 Pro Max) and 07 pcs. Apple iPhone (16PRO) collectively valued at ₹ 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty One only) are liable for confiscation under Section 111(d), 111(i), 111(j) and 111(l) of the Customs Act, 1962 and in terms of Notification No. 13/2024-25 dated 20.05.2024 issued by DGFT, Delhi;**
- iv. Whether the seized 01 (one) piece of hand baggage having no commercial value, used for keeping/concealing/carrying the impugned goods, is liable for confiscation under Section 118 of the Customs Act, 1962;**
- v. Whether the act of the passenger renders the passenger to be penalized discretionarily under Section 112 of the Customs Act, 1962;**

**18.** The question is whether the goods are prohibited goods and the same can be decided as per section 2(33) of the Customs Act, 1962.

The section 2(33) of the act reads as follows:

*"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;*

In regard to the **Point No. 17.(i), as per the Notification no. 13/2024-25 dtd 20.05.2024, issued by the Department of Commerce (DGFT):**

*"Import policy of electronics and IT goods: " The import of goods(new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the "Electronics and Information Technology Goods ( Requirement of Compulsory Registration) Order, 2021 as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards(BIS),*

*as amended from time to time, or on specific exemption letter from Ministry of Electronics and Information Technology(MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 1929 dtd 26.04.2023. The importer shall re-export such prohibited goods reaching Customs ports else the Customs authorities shall deform the goods beyond use and dispose of the goods as scrap under intimation to Ministry of Electronics and Information Technology(MeitY)."*

It is observed that as per *Part 3 of the Electronics and Information Technology goods (Requirement of Compulsory Registration) Order, 2021- vide DGFT Notification No. 13/2024-25 Dated 20.05.2024 - "Import policy for electronics and IT Goods: The Import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021, as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards (BIS) and comply to the Labelling Requirements published by BIS , as amended from time to time, or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 1929 dated 26.04.2023. The Importer shall re export such prohibited goods reaching Customs Ports else the Customs Authorities shall deform the goods beyond use and dispose of the goods as scrap under intimation to Ministry of Electronics and Information Technology (MeitY).*

In the instant case, the seized goods are not the used personal effects and the total value of the seized goods is estimated at Rs. 23,07,631/-, i.e. much more than Rs.50,000/-. In CBIC instruction issued vide F.No. 495/6/96-Cus.VI dated 06.05.1996 and reiterated in Circular Nos. 29/2000-Cus., dated 11.04.2000 and Circular No.9/2001-Cus., dated 22.01.2001, it is clearly stated that the import of goods in commercial quantities would not be permissible within the scope of the Baggage Rules, even on payment of baggage rate of duty. The seized goods having aggregate value of Rs. 23,07,631/- brought illegally into India by the said passenger in commercial quantity for monetary gain and not for personal use, and without any Import-Export Code, it cannot be considered as bonafide personal baggage as per the Customs Act 1962, Baggage Rules, 2016 and Foreign Trade Policy, 2023.

On perusal of the provisions of notification mentioned supra, it is found that the seized goods are considered as "prohibited goods" *under Part 3 of the Electronics and Information Technology goods (Requirement of Compulsory Registration) Order, 2021- vide Notification No. 13/2024-25 Dated 20.05.2024* as the conditions

mentioned in the notification mentioned supra are not met and thus, relying upon the case law wherein the effect of the interpretation of the words prohibited goods was considered in **Om Prakash Bhatia Vs. Commissioner of Customs, New Delhi (2003(6) SCC 161)** and in the said judgment, the Hon'ble Supreme Court held "*that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods*" and in the instant case, as discussed supra, the conditions envisaged in the notification mentioned supra were not met and placing reliance on the proportion of the case law, I decide that the goods are 'prohibited goods' under section 2(33) of the Customs Act, 1962.

**19.** In regard to the **Point No. 17. (ii)**, it is essential to first see whether this is a case of smuggling as alleged by the Show Cause Notice. The word 'Smuggling' is defined in the section 2(39) of the Customs, Act 1962 as follows:

*(39)smuggling, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

Therefore, it needs to be seen whether the said goods are liable to be confiscated under section 111 as it is the case of import as alleged in the SCN. The relevant provisions of section 111 read as follows:

**Section 111. Confiscation of improperly imported goods, etc.-**

The following goods brought from a place outside India shall be liable to confiscation:

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

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

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

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

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

Further, the word 'Import' has been defined in the section 2(23) as follows:

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

In the instant case, it is evident that Mohammed Shahid was caught red-handed by the Officers of AIU at NSCBI Airport, Kolkata, when he was coming from Abu Dhabi, with the said seized goods [i.e. 13pcs. Apple iphone (16 Pro Max) and 07pcs. Apple iPhone (16 PRO)], collectively valued at ₹ 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty One only) by concealing them inside his hand baggage without having declared the same before the proper officer of the Customs and thus, without paying the applicable customs duty on the said goods. In the statement recorded under Section 108 of the Customs Act, 1962, Mohammed Shahid, admitted that he attempted to smuggle the seized mobiles into India in lure of monetary benefit. Thus, it is clear that Mohammed Shahid have knowingly involved in the said act of fraudulent evasion of the Customs duty leviable on the seized mobiles by non-declaration and concealment in contravention of Section 77 of the Customs Act, 1962, and Rule 3 of Customs Baggage Declaration Regulations, 2016, read with Section 81 of the Customs Act, 1962. He also failed to comply with the provisions as laid down in the Notification No. 13/2024-25 dated 20.05.2024 issued by DGFT, Delhi. For the same reason, his act of attempting to bring the seized goods into India in a concealed manner without payment of duty, tantamount to '**smuggling**' within the meaning of **Section 2(39) of the Customs Act, 1962** .

**20.** Further, as per **Section 77 of the Customs Act, 1962**:

*"the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the Proper Officer;"*

Also, as per **Section 79 of the Customs Act 1962**, which exempts only bona fide baggage from duty, the Proper Officer may, subject to any rules made under Sub-section (2), pass free of duty—

*a. Any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;*

*b. Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that value of each such article and the total value of all such articles does not exceeds such limits has may be specified in the rules;*

In terms of Section 123 of the Customs Act, 1962, mobile phones are notified goods under the Act *ibid* and onus of the proof that the seized Goods are not smuggled lies on the person from whom the goods were recovered as they failed to declare the same and they were intercepted along with the seized goods when they crossed the Green Channel at NSCBI Airport while coming from Dubai. In the instant case, the noticee failed to provide any documents to prove that the goods were licitly procured and subsequently brought in the country after following all the applicable laws/notifications relevant at that point of time.

In respect to the **Point No. 17. (iii) & (iv)**, it is evident from the discussion made *supra* that the noticee did not declare the phones before the proper officer on arrival in India in violation of the provision of section 77 of the Customs Act, 1962 *ibid*. He tried to clear the phones without payment of duty by suppressing the same before the proper officer.

Further, the noticee also failed to comply with the provisions as laid down in the Notification No. 13/2024-25 dated 20.05.2024 issued by DGFT, Delhi. The seized goods also appears to be prohibited goods as per the provisions of notification no. 13/2024 dated 20.05.2024 issued by the DGFT wherein it is categorically stated that;

"The import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order,2021, as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards (BIS) and comply to the 'Labelling Requirements' published by BIS, as amended from time to time', or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 1929 dated 26.04.2023."

In the instant case, the passenger even after getting umpteen opportunities failed to provide the BIS certification in respect of the seized goods as envisaged in the notification discussed above.

Since, the goods are smuggled goods, I hold them liable to be confiscated under **Sections 111(d), 111(i), 111(j) and 111(l)** of the Customs Act, 1962 and the **01 (one) piece of hand baggage** having no commercial value, used for keeping/concealing/carrying the impugned goods to be confiscated under **Section 118** of the Customs Act, 1962.

**21.** Section 112 in The Customs Act, 1962

**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*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-*

*(i). in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees] [Substituted by Act 14 of 2001, Section 107, for certain words (w.e.f. 11.5.2001)], whichever is the greater;*

*(ii). in the case of dutiable goods, other than prohibited goods, subject to provisions of section 114A, to a penalty [not exceeding ten percent of the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;*

*Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]*

*(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 3 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;*

*(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 4 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;*

*(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 5 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]*

In regard to the **Point No. 17.(v)**, in the instant case, it is evident that

Mohammed Shahid, appears to have not declared the said seized goods, recovered from him, before the proper officer of the Customs at the Airport with the intent of evading the applicable customs duties. In the statement recorded under Section 108 of the Customs Act, 1962, Mohammed Shahid, admitted that he attempted to smuggle the seized mobiles into India in lure of monetary benefit. Thus, it is clear that Mohammed Shahid knowingly involved in the said act of fraudulent evasion of the Customs duty leviable on the seized mobiles in contravention of Section 77 of the Customs Act, 1962, and Rule 3 of Customs Baggage Declaration Regulations, 2016, read with Section 81 of the Customs Act, 1962. Thus, Mohammed Shahid is also liable for personal penalty under Section 112 of the Customs Act, 1962.

**22.** Thereby, in the exercise of the powers conferred as the Adjudicating Authority, I hereby order as follows:

**ORDER**

- a. The goods are prohibited goods as per section 2(33) of the Customs Act, 1962 as discussed above.
- b. The act of the passenger is an act of smuggling as per section 2(39) of the Customs Act, 1962.
- c. I order for Absolute Confiscation of the seized goods, i.e. **13 pcs. Apple iphone (16 Pro Max) and 07pcs. Apple iPhone (16PRO) collectively valued at ₹ 23,07,631/- (Twenty-Three Lakh Seven Thousand Six Hundred Thirty One only)** under Section 111(d), 111(i), 111(j) and 111(l) of the Customs Act, 1962. I also order for Absolute Confiscation of the **01 (one) piece of hand baggage having no commercial value**, used for keeping/concealing/carrying the impugned goods under Section 118 of the Customs Act, 1962.
- d. I impose a penalty of Rs. 2,30,000/- (Rupees Two Lakh and Thirty Thousand Only) on Mohammed Shahid under Section 112 of the Customs Act, 1962 for the act of omission and commission on his part.

**23.** The penalty may be submitted/deposited forthwith to the undersigned

I. By Pay Order/Demand Draft drawn in favor of "**RBI A/c. Commissioner of Customs, Kolkata**" OR

II. Through online banking to the **Account No. 5066203002**, Name of the Bank- **Reserve Bank Of India**, Name of the Branch- **PAD Kolkata**, **IFSC Code- RBIS0KLP01**, Name- **Commissioner of Customs** OR

III. Through **TR-6** by visiting Custom House, 15/1, Strand Road, Kolkata under intimation to this office.

Digitally signed by  
Amit Bhardwaj  
Date: 25-08-2025  
12:11:58



**AMIT BHARDWAJ**  
**ADDITIONAL COMMISSIONER**  
**Air Intelligence Unit (Cell)**  
**NSCBI Airport, Kolkata-700052**

**To**

**Mohammed Shahid, (D.O.B. 27/06/1981),**  
**Indian Passport No. Z7498846 dated 04.12.2023 ,**  
**S/o- Mohammed Adil, R/o- Merlin River View, Block-Tide,**  
**Flat No.-10D,15 No. Kabiditha Sahani, Khidderpore,**  
**Kolkata-700023, West Bengal,India.**

**F. No. S1(VII)-222/2024(AIU)**

**Date:**

**Copy forwarded for information and necessary action to:**

1. The A.C./D.C./SCP, Central Adjudication Cell, Custom House, Kolkata.
2. The A.C. /D.C./SCP, Review Cell, Custom House, Kolkata.
3. The A.C./D.C./SCP, STRC, Custom House, Kolkata.
- 4.The A.C./D.C./SCP, Disposal (AP & ACC), Custom House, Kolkata.
5. The Seizing unit/Custodian i.e. Air Intelligence Unit Customs, NSCBI Airport, Kolkata with request to update the S1(VII) register.
6. The Superintendent of Customs, SCH, Custom House, Kolkata with request to display it on the Notice Board.
7. The Superintendent of Customs (Prev.), Computer Cell, Custom House, Kolkata with request to upload it on the Official website.
8. The Superintendent of Customs (Prev.), Appraising Sales Shed, Custom House, Kolkata.
9. Office Copy.

*Spur*  
28/08/2025

**Superintendent of Customs (P)**

**Air Intelligence Unit (Cell)**

**NSCBI Airport, Kolkata-700052**

