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भारत सरकार

GOVERNMENT OF INDIA

प्रधान आयुक्त, सीमाशुल्क 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)- 253/2024(AIU)

Date of Order: 09-09-2025

Ref. SCN No. – KOL/CUS/A&amp;A/AC/AIU/60/2025 dated 02.06.2025

Order-in-Original No. – KOL/CUS/A&amp;A/AC/AIU CELL/243/2025

Date of Issue: 09.09.2025

श्री अर्घ्य भट्टाचार्य, सहायक आयुक्त, सीमाशुल्क, एन.एस.सी.बी. अन्तर्राष्ट्रीय विमानपत्तन, कोलकाता-700052, द्वारा पारित.

**PASSED BY SHRI ARGHYA BHATTACHARYYA, ASSISTANT COMMISSIONER OF CUSTOMS, NSCB 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 001 700 - के समक्ष अपील कर सकते हैं।

Any person deeming himself aggrieved by the order may appeal against the same to the Commissioner of Customs (Appeals), 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 हैं, या दंड जहां अकेले दंड विवाद में हैं, इयूटी 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.

**Subject: Order-in-Original in connection with the Show Cause Notice No. KOL/CUS/A&A/AC/AIU/60/2025 dated 02.06.2025, regarding the seizure of one (01) piece of yellow metallic chain made of 24K gold of foreign origin, weighing 109.820 grams and collectively valued at INR 8,05,640/-, from Mr. Harminster Singh Baweja, holder of Indian Passport No. Z7937915 dated 11.09.2024, and residing at 71 KH No 236, 2nd Floor, Himgiri Enclave, A-BLK, Street No-03, Burari, Delhi, PIN-110084, India, who arrived from Bangkok on SpiceJet Airlines Flight No. SG084 dated 14.12.2024 at NSCBI Airport, Kolkata.**

### **BRIEF FACTS OF THE CASE**

#### **1. Interception**

On 14.12.2024, **Mr. Harminster Singh Baweja**, holder of Indian Passport No. Z7937915 dated 11.09.2024 and a resident of 71 KH No 236, 2nd Floor, Himgiri Enclave, A-BLK, Street No-03, Burari, Delhi, PIN-110084, India, arrived from **Bangkok** by **Spice Jet Airline flight no. SG- 084 dated 14.12.2024** at NSCBI Airport, Kolkata. He was intercepted at the Green Channel in the International Arrival Hall of NSCBI Airport while he was proceeding towards the exit gate with his baggage.

The passenger was asked whether he was carrying any **contraband, prohibited, restricted goods or any gold item** in his baggage or in person, he denied carrying such goods. However, not being satisfied with his reply, AIU officers escorted the passenger along with his one pc of hand baggage and one pc of checked-in baggage to the AIU room in the International Arrival Hall for thorough search.

#### **2. Search of the passenger and his belongings**

After completing procedural formalities in compliance of **Section 102 of the Customs Act, 1962**, the search of the passenger and his baggage was conducted in presence of two independent witnesses and the Superintendent of Customs (AIU). The hand baggage and checked-in baggage of the passenger was searched but nothing incriminating was found. Thereafter, Personal search of the passenger was conducted which resulted in the **recovery of one (01) piece of yellow metallic chain** believed to be made of gold of foreign origin **weighing 109.820 grams** kept inside the hip-pocket of the trousers worn by the passenger.

### 3. Valuation of the goods

To verify the nature of the recovered yellow metallic chain, a **government-approved valuer, M/s S.K. Jewellers**, was called to examine and assess its value. M/s S.K. Jewellers submitted a **report on 14.12.2024**, confirming that the recovered one (01) piece of yellow metallic chain **was made of 24K gold**, with a **total weight of 109.820 grams** and a **valuation of ₹8,05,640/-**.

### 4. Seizure of the goods

The passenger failed to provide any legitimate documentation to substantiate the **legal acquisition, possession, or importation** of the recovered goods. The passenger did not declare the recovered goods before the proper officer of Customs. His attempt to bypass Customs Duty by concealing the goods and failing to declare them constituted an infringement of the Customs Act, 1962. This led to the reasonable belief that the goods were being illegally imported into India without declaration, violating the provisions of the Customs Act, 1962, and the Foreign Trade (Development and Regulation) Act, 1992. Consequently, the recovered goods were seized under Section 110 of the Customs Act, 1962 and thereby rendering the same liable to confiscation under relevant provisions of the Customs Act, 1962.

### 5. Sampling of the goods

Representative samples in duplicate for authentication purposes were drawn and marked as 'A1' and 'A2' weighing 2.550 gram and 1.800 gram respectively from the yellow metallic chain recovered from the passenger. Representative samples were kept in separate transparent plastic pouches and further kept in two (02) separate brown-coloured envelopes and sealed with seal having inscription "**Directorate of Revenue Intelligence**" in presence and under the signatures of the passenger and two independent witnesses.

The remaining yellow metallic chain, **weighing 105.47 gram (excluding samples)**, was kept in an aluminium box, which was further wrapped with beige-coloured cloth and duly sealed with **DRI Seal** having inscription "**Directorate of Revenue Intelligence**" in presence and under the signatures of the passenger and the two independent witnesses.

### 6. Documentation

A **Search List**, a **Panchnama** and a **Seizure Memo, dated 14.12.2024**, incorporating all the details were prepared in presence of the passenger and the two independent witnesses. Copies of Search List and Seizure Memo were handed over to the passenger under receipt. The process of search and

seizure was completed in a peaceful manner and no damage was caused either to the passenger or to his property.

#### 7. Voluntary Statement of the passenger

In his **voluntary statement dated 14.12.2024**, against Summons dated 14.12.2024 issued under **Section 108 of the Custom Act, 1962, Mr. Harminder Singh Baweja** inter-alia stated that he was a business man. He went to Bangkok to buy garments. He accepted his guilt and stated that he did this act in greed of money.

Two more Summones dated 28.01.2025 and 02.03.2025 were issued to the passenger. The passenger appeared on 13.03.2025 against Summons dated 02.03.2025 wherein he reiterated his previous statement. He accepted his mistake of smuggling gold into India and he was ready to pay any penalty imposed on him. He also requested that his case may be decided at the earliest.

#### 8. CRCL report of the Samples

The extracted sample (**A1**) from the seized goods was sent to the CRCL laboratory, Custom House, Kolkata-700001 for quality/purity analysis against **Lab No. 774/SZD(G) dated 10.01.2025**. Lab report dated 16.01.2025 confirmed that the sample was composed of gold with **99.6%** purity by weight.

#### 9. Show Cause Notice

In view of the above facts and circumstances, Mr. Harminder Singh Baweja was called upon vide Show Cause Notice **KOL/CUS/A&A/AC/AIU/60/2025 dated 02.06.2025** to explain the matter before the Deputy/ Assistant Commissioner of Customs, Air Intelligence Unit Cell, Upper Arrival, NSCBI Airport, Kolkata, Pin- 700052, West Bengal within 30 (Thirty) days of receipt of the notice 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. one (01) piece of yellow metallic chain of 24K gold of foreign origin weighing 109.820 gram and valued at Rs. 8,05,640/- should not be confiscated under Section 111 of the Customs Act, 1962.
- d. Penalty should not be imposed on Mr. Harminder Singh Baweja under Section 112 of the Customs Act, 1962 for his act of commission and/or omission.

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

10. No reply to the **Show Cause Notice KOL/CUS/A&A/AC/AIU/60/2025 dated 02.06.2025** has been received within the stipulated time.
11. The noticee was given multiple chances to appear in person and present his case before the adjudicating authority. Letters were issued from this office on **01.08.2025, 13.08.2025 and 21.08.2025**, clearly informing the noticee of the scheduled dates of personal hearing and requesting his attendance. Despite due service of these communications, the noticee failed to appear on the scheduled dates and did not request any adjournment or extension of time for appearance. No authorized representative appeared on his behalf either.

### **DISCUSSION AND FINDINGS**

12. After reviewing the facts presented, the following key questions must be addressed under the Customs Act, 1962, and related laws:
  - I. **Do the seized goods qualify as "prohibited goods" under Section 2(33) of the Customs Act, 1962?**
  - II. **Do the passenger's actions constitute "smuggling" as defined in Section 2(39) of the Act? Additionally, can the imported goods be classified as "bona fide baggage" under Sections 77, and 79?**
  - III. **Are the seized goods subject to confiscation under Sections 111(d), 111(i), 111(j), and 111(l)?**
  - IV. **Should the passenger be penalized under Sections 112(a) and 112(b) based on the circumstances?**

#### **13. Determination of Issue (I): Whether the Goods are "Prohibited"**

**Section 2(33)** of the Customs Act, 1962 defines "prohibited goods" as any goods whose import or export is prohibited under the Act or any other law in force, unless they meet the prescribed conditions for lawful import or export.

The Supreme Court, in **Om Prakash Bhatia vs. Commissioner of Customs**, New Delhi (2003(6) SCC 161), clarified that any goods imported without complying with statutory conditions qualify as "prohibited goods."

In this case, **one piece of yellow metallic chain** (24K, 109.820 gram, of foreign origin) was brought into India without declaration to the customs authorities, violating import regulations. Since gold imports are subject to restrictions, failure to declare them before the proper officer renders them "**prohibited goods**" under **Section 2(33) of the Customs Act, 1962**.

Thus, the failure to disclose these goods upon arrival and the absence of valid supporting documents classify them as improperly imported and subject to further scrutiny.

#### 14. **Determination of Issue (II): Whether the Act Constitutes "Smuggling"**

**Section 2(39)** defines "smuggling" as any act or omission that makes goods liable for confiscation under Sections 111 or 113 of the Customs Act.

**Section 111** lists various instances where goods are liable for confiscation, including:

*(d) Goods imported contrary to prohibitions under the Act or any other law.*

*(i) Dutiable or prohibited goods found concealed in any manner.*

*(j) Removal of dutiable or prohibited goods from customs area without permission*

*(l) Goods not declared in violation of baggage rules and section 77*

In this case, the passenger attempted to bring: **one piece of yellow metallic chain made of 24 karat gold of foreign origin.**

As per **Test Report No. Lab No. 774/SZD(G) dated 10.01.2025**, the seized gold sample has a purity of 99.6% (w/w), which does not match the locally available gold in India but is consistent with gold typically smuggled from foreign countries. Based on this evidence, the gold sheet was seized under a reasonable belief that it was smuggled, as defined under Section 2(39) of the Customs Act, 1962.

The act of deliberately avoiding declaration indicates an intent to evade customs duty. The concealment and non-disclosure align with the definition of smuggling under Section 2(39) since the goods are liable for confiscation under Section 111.

**Section 77** of the Customs Act requires passengers to declare their baggage contents to the proper officer upon arrival. In this case, the passenger failed to do so. Rule 5 of the Baggage Rules, 2016 made under Section 79 of the Customs Act, 1962 provides restriction upto 20 grams of gold jewellery with a value cap of Rs. 50,000/- to be imported as bona fide baggage free of duty by an Indian male passenger, residing abroad who is coming to India after a period of not less than one year of staying abroad. In this case the goods were valued at more than fifty thousand rupees therefore the seized goods cannot be considered as Bonafide baggage for duty free clearance. Therefore, by attempting to pass through the Green Channel without declaring the gold and without paying customs duty, the passenger violated **Section 77 and 79 read with the Baggage Rules, 2016.**

#### 15. **Determination of Issue (III): Liability for Confiscation under Section 111.**

**Section 123** of the Customs Act shifts the burden of proof to the person from whom the goods were seized. It states, if goods are seized under

reasonable belief of being smuggled, the person in possession must prove they are legally imported. This applies specifically to gold and manufactured gold items, as well as other notified goods.

In this case, the passenger failed to provide any valid evidence or documentation to establish that the gold was legally imported into India. Since the passenger could not discharge this burden, the goods are presumed to be smuggled.

As the goods qualify as smuggled under Section 2(39) and were brought into India without proper declaration or documentation, they are liable for confiscation under the following provisions of Section 111:

**Section 111(d):** *Goods imported in violation of any prohibition imposed by law.*

**Section 111(i):** *Concealed dutiable or prohibited goods.*

**Section 111(j):** *Removal of dutiable or prohibited goods from customs area without permission*

**Section 111(l):** *Goods not declared in the baggage declaration as required under Section 77.*

Additionally, the concealment and non-declaration of the seized goods before the customs authorities suggest an intent to bypass duty payments, further justifying confiscation and penal action.

#### 16. **Determination of Issue (V): Liability for Penalty under Section 112**

Under **Section 112**, any person involved in improper importation, concealment, or handling of goods liable for confiscation under Section 111 is subject to a penalty. The relevant provisions state:

*Section 112(a): Any act or omission leading to confiscation attracts a penalty.*

*Section 112(b): Anyone knowingly handling, transporting, or dealing with such goods is also subject to penalty.*

In this case, the passenger wilfully attempted to smuggle the gold sheet for personal financial gain by avoiding customs duty and failing to disclose the goods. Therefore, he is liable for penalty under Section 112.

#### 17. **Conclusion**

Based on the evidence, applicable legal provisions, and failure of the passenger to justify the legality of the goods, I conclude that, the seized goods qualify as smuggled goods under Sections 2(39) and 123 of the Customs Act, 1962. The goods are liable for confiscation under Sections 111(d), 111(i), 111(j), and 111(l).

The passenger's actions warrant a penalty under Section 112(a) and 112(b) for knowingly attempting to smuggle goods for monetary gain.

18. Upon careful consideration of the facts, evidence, and legal provisions cited, and in exercise of the powers conferred as the Adjudicating Authority, I pass the following order:

**ORDER**

- a. The **seized goods** qualifies as "**prohibited goods**" under **Section 2(33) of the Customs Act, 1962**
  - b. The act of the noticee is an act of **smuggling** in terms of **Section 2(39) of the Customs Act, 1962**.
  - c. I order for **absolute confiscation** of one piece of yellow metallic chain, made of **24K gold** of foreign origin, **weighing 109.820 gram** and **valued at INR 8,05,640/-** under **Section 111 of the Customs Act, 1962**.
  - d. I also impose a penalty of **₹75,000/- (Rupees Seventy Five Thousand Only)** on **Mr. Harminder Singh Baweja** under Section 112 of the Customs Act, 1962 for the act of omission and commission on his part.
19. 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 **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  
ARGHYA BHATTACHARYYA  
Date: 09-09-2025  
11:19:46

**Arghya Bhattacharyya**  
**ASSISTANT COMMISSIONER**  
**Air Intelligence Unit (Cell)**  
**NSCBI Airport, Kolkata-700052**

To,

**Harminder Singh Baweja**,  
(holder of IPP No. Z7937915 dated 11.09.2024)  
S/o- Manjeet Singh,  
R/o- 71 KH No 236, 2nd Floor, Hingiri Enclave, A-BLK,  
Street No-03, Burari, Delhi, PIN-110084, Delhi, India.

**F. No. S1(VII)-253/2024(AIU)**

**Dated- 09-09-2025**

**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, NCBI Airport, 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, for updation in 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.), Currency Shed, Custom House, Kolkata.
8. The Superintendent of Customs (Prev.), Computer Cell, Custom House, Kolkata with a request to upload it on the department's website.
9. Office Copy.



**Superintendent of Customs (P)  
Air Intelligence Unit (Cell)  
NSCBI Airport, Kolkata-700052**