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भारत सरकार

GOVERNMENT OF INDIA

प्रधान आयुक्त, सीमाशुल्क कार्यालय (विमानपत्तन एवं हवाई माल परिवहन)

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (AP & ACO)

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)- 46/2025(AIU)

Date of Order: 31-12-2025

Ref. SCN No.- KOL/CUS/A&A/AC/AIU/102/2025 dated 19.08.2025

Order-in-Original No. - KOL/CUS/A&A/AC/AIU CELL/ 01 /2026

Date of Issue 02 . 01 . 2026

श्री सुरेश कुमार पी., सहायक आयुक्त, सीमाशुल्क, एन.एस.सी.बी. अन्तर्राष्ट्रीय विमानपत्तन, कोलकाता-700052, द्वारा पारित.

PASSED BY SHRI SURESH KUMAR P., ASSISTANT 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, स्ट्रांड 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 है, या दंड जहां अकेले दंड विवाद में हैं, डियूटी 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/102/2025 dated 19.08.2025, regarding the seizure of medicines (121 pcs Insulin Glargin Injection 100 IU/ml, 34 pcs Aerocort Inhaler and 12 Leishman's Stain Powder), collectively valued at Rs.1,14,788.71/- (Rupees One Lakh Fourteen Thousand Seven Hundred and Eighty-Eight and Seventy-One Paisa Only), from Mr. Syed Mohamed Musafar Gani, holder of Indian Passport No Z7535270 dated 19.12.2023, for attempting illegal exportation of such goods through N.S.C.B.I. Airport, Kolkata.

BRIEF FACTS OF THE CASE

1. On **06.03.2025**, acting upon specific intelligence received from DRI Hyderabad, a passenger named **Mr. Syed Mohamed Musafar Gani** (holder of Indian Passport No. Z7535270), who was scheduled to depart for **Myanmar** from NSCBI Airport, Kolkata, with one (01) piece of hand baggage and three (03) pieces of checked-in baggage, was intercepted by AIU officers near the departure boarding gate after completion of immigration and security check-in formalities. He was offloaded, and endorsements were made on his passport by the Immigration Department. Thereafter, the passenger along with his one (01) hand baggage and three (03) checked-in baggages was escorted to the AIU room, International Arrival Hall, for a thorough search.
2. After 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). A thorough search of one (01) black coloured checked-in baggage led to recovery of the following items:

Sl. No.	Articles Seized	Nos./Pcs.	Price per piece(INR)	Total Price (INR)
1.	InsulinGlargin Injection 100 IU/ml	121	769.01	93,050.21
2.	Aerocort Inhaler	34	331.25	11,262.50
3.	Leishman's Stain Powder	12	873.00	10,476.00
Total Value (as printed on the packets):				1,14,788.71

Subsequent search of the passenger and his remaining baggage in the presence of the Superintendent and witnesses yielded no incriminating goods. These bags were returned to the passenger.

3. On inquiry, the passenger failed to produce any licit documents supporting **legal acquisition, possession or importation** of the recovered goods. The goods were being exported without required documents or export authorization and were undeclared before Customs Authority, contravening Section 77 of the Customs Act, 1962. The recovered goods were concealed and attempted to be exported without a No-Objection Certificate ("NOC") from the Drug Controller of India. Accordingly, the recovered goods were seized under **Section 110 of the Customs Act, 1962**, on reasonable belief that the goods were attempted to be exported illegally in contravention of the Customs Act, 1962 read with the Drugs and Cosmetics Act, 1940 and therefore rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.
4. A **Search List**, a **Seizure Memo** and a **Panchanama**, all dated **07.03.2025**, incorporating all the details were prepared in presence of the two independent witnesses and the passenger himself. Copies of the search list and the seizure memo were handed over to the passenger under receipt.
5. In his **voluntary statement dated 07.03.2025** against summons dated 07.03.2025 issued under **Section 108 of the Customs Act, 1962**, the passenger inter alia stated that he acted as a carrier and earned about Rs.35,000/- monthly. He was the owner of the goods. He purchased the goods from his own savings without any proper receipts or documents. He acknowledged the offence in exporting goods without licit documents or declaration. His actions were motivated by financial gain.
6. Vide letter dated 26.04.2025, the passenger was notified that his presence was required for sampling at 11:30 am on 27.04.2025 at AIU, NSCBI Airport, Kolkata, with instruction that in his absence, samples would be drawn in the presence of two independent witnesses and treated as implied consent. Subsequently, the passenger appeared on 27.04.2025, and as per the letter dated 26.04.2025, samples marked A1 & A2, B1 & B2, C1 & C2 (one pair from each type of item, i.e., Insulin Glargine Injection 100 IU/ml, Aerocort Inhaler, Leishman's Stain Powder), were drawn from the seized black checked-in baggage in presence of two independent witnesses and AIU officers. The samples were sealed in separate orange envelopes with DRI seal.
7. Vide letter dated 21.05.2025, samples A1, B1, C1 were sent to the Assistant Drug Controller, O/o Asstt. Drug Controller, Custom House, Kolkata, for testing and clarification. The letter mentioned absence of supporting documents and lack of declaration by the passenger. In response, the **report dated 23.05.2025** from the Assistant Drug Controller stated that *supporting documents of the drug goods are required for further examination and, in case of non-availability, necessary action may be taken as per Customs norms*. Accordingly, **all samples were returned in one sealed envelope**.
8. To further investigate the matter, two more summonses dated 25.06.2025 and 13.07.2025 were issued under Section 108 of the Customs Act, 1962, requiring the passenger to appear at AIU, NSCBI Airport, Kolkata on 10.07.2025 and

21.07.2025 respectively, for statement and production of relevant documents. The passenger failed to appear or provide reason for non-compliance.

9. In view of the above facts and circumstances, Mr. Syed Mohamed Musafar Gani was called upon vide Show Cause Notice **KOL/CUS/A&A/AC/AIU/102/2025 dated 19.08.2025** to explain the matter before the Deputy/Assistant Commissioner of Customs, AIU Cell, NSCBI Airport, Kolkata within 30 (thirty) days of receipt of the notice, as to why:
- a. The impugned goods should not be treated as "Prohibited goods" in terms of the provisions of Section 2 (33) of the Customs Act, 1962.
 - b. The act of carrying said goods undeclared and without requisite documents should not be construed as "smuggling" within the meaning of Section 2(39) of the Customs Act, 1962.
 - c. The seized goods, valued at ₹1,14,788.71/-, should not be treated as "prohibited goods" under Section 2(33) of the Customs Act, 1962, read with Section 12 of the Drugs & Cosmetics Act, 1940, and confiscated under Section 113 of the Customs Act, 1962.
 - d. The one black-coloured baggage used for concealment should not be confiscated under Sections 118 & 119 of the Customs Act, 1962.
 - e. Penalty should not be imposed on him under Section 114 of the Customs Act, 1962 for the said acts of omission and commission.

REPLY TO THE SCN AND RECORDS OF PERSONAL HEARING

10. No reply to the **Show Cause Notice KOL/CUS/A&A/AC/AIU/102/2025 dated 19.08.2025** was received within the stipulated time.
11. Opportunities to be heard in person were accorded to the noticee to defend his case vide letters dated **09.10.2025, 17.10.2025, 11.11.2025 and 08.12.2025** to appear before the adjudicating authority on 16.10.2025, 31.10.2025, 19.11.2025 and 08.12.2025 respectively for personal hearing. The passenger appeared on 08.12.2025 for personal hearing. He accepted his mistake and requested to take lenient view in the matter.

DISCUSSION AND FINDINGS

12. I have perused the facts presented before me. The questions which need to be addressed in the instant matter are within the jurisdiction of the Customs Act 1962 and allied laws are 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 the act of "smuggling" as defined under Section 2(39) of the Customs Act, 1962;**
 - III. **Whether the goods seized are liable for confiscation under Section 113 of the Customs Act, 1962.**
 - IV. **Whether the act of the passenger renders to be penalized discretionarily under Section 114 of the Customs Act, 1962.**

13. In terms of **Section 2 (33)** of the 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 but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

The effect of 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 judgement the supreme court held as follows:

"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 the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods".

In the instant case, the seized goods, namely **Insulin Glargine Injection 100 IU/ml, Aerocort Inhaler, and Leishman's Stain Powder**, are pharmaceutical products falling within the definition of "drugs" under **Section 3(b) of the Drugs & Cosmetics Act, 1940**. Export of such drugs is regulated under **Section 12 of the Drugs & Cosmetics Act, 1940**, read with **Rules 94 to 97 of the Drugs & Cosmetics Rules, 1945**, which mandate possession of a valid export licence and compliance with prescribed conditions.

In regard to the **Point No. 12(I)**, I find that the passenger failed to produce any export licence, purchase invoice, or supporting documents. The **Assistant Drug Controller, Kolkata**, vide report dated **23.05.2025**, categorically stated that further examination could not be undertaken in the absence of supporting documents and advised Customs to take action as per norms. Thus, the attempted export of the seized drugs was in clear contravention of the Drugs & Cosmetics Act, 1940 and Rules made thereunder. As the passenger failed to observe the requisite conditions for exporting medicines out of India, the medicines seized from the possession of the passenger qualify as "prohibited goods" within the meaning of **Section 2(33) of the Customs Act, 1962**.

14. In regard to the **Point No. 12(II)**, it is essential to first see whether this is a case of smuggling as alleged by the SCN. 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;

As per **Section 77 of the Customs Act, 1962**, every passenger is statutorily required to make a declaration of the contents of his baggage. In the instant case, the passenger deliberately failed to declare the medicines despite carrying them in commercial quantity in his checked-in baggage. Further, the passenger could not produce any legitimate document or valid export licence for exporting the medicine which violates the provisions of the Drugs and Cosmetics Act, 1940 and the rules made thereunder. Further, the manner in which the passenger **attempted to transport the undeclared medicines** indicates a deliberate attempt at **concealment and evasion**. Accordingly, the **act of carrying undeclared medicines without authorization or valid licence, constitutes "smuggling" under Section 2(39) of the Customs Act, 1962**.

15. As per **Section 113 of the Customs Act, 1962**, goods attempted to be exported **contrary to any prohibition** imposed by law are **liable for confiscation**. Specifically:

Section 113(d): Goods attempted to be exported in violation of any law.

Section 113(e): Goods found concealed for export.

Section 113(h): Goods not declared in the baggage declaration.

In regard to the **point no. 12(III)**, Since the seized goods were attempted to be exported in violation of the prohibitions imposed under the **Drugs & Cosmetics Act, 1940**, they are liable to confiscation under **Section 113(d)** of the Customs Act, 1962. Further, as the goods were not declared in the baggage declaration in violation of Section 77, they are also liable to confiscation under **Section 113(h)**. The act of concealment in the checked-in baggage additionally attracts **Section 113(e)** of the Customs Act, 1962. Since the passenger **failed to produce any legal documents** for the seized goods, it is established that the seized **goods are liable for absolute confiscation under Sections 113(d), 113(e), and 113(h) of the Customs Act, 1962**.

16. As per search list the seized goods were kept/concealed in one (01) black coloured checked-in baggage. Also, the seized goods are liable to confiscation under section 113 of the Customs Act, 1962. As per section 118 and 119:

Section 118(b): (b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

Section 119: Any goods used for concealing smuggled goods shall also be liable to confiscation.

Therefore, in regard to **point no. 12(IV)**, I find that the black coloured checked-in baggage used for keeping/concealing and carrying the seized goods is liable for confiscation under **section 118 and 119 of the Customs Act, 1962**.

17. **Section 114 of the Customs Act, 1962 provides:** Penalty for attempt to export goods improperly, etc. –

Any person 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 113, or abets the doing or omission of such an act, 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 three times the value of the goods as declared by the exporter or the value as determined under this Act], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

In regard to the **point no. 12(V)**, The passenger's voluntary statement under **Section 108 of the Customs Act, 1962** clearly establishes his knowledge, intent, and conscious involvement in the attempted illegal export. He admitted acting as a carrier, purchasing the goods without documents, and attempting export for financial gain. Further, despite being given sufficient time and opportunities to the passenger for production of relevant documents in support of legal acquisition, possession and/or exportation of the seized goods, he failed to do so. Thus the principle of mens-reas on behalf of the passenger is established wherein it states that "The act is not culpable unless the mind is guilty". Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of the Hon'ble Apex Court laid down in the Judgment of **M/s Hindustan Steel Ltd. v. 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 cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or acts in conscious disregard of its obligation; but not in cases where there is a technical or venial breach of the provisions of the 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."

Such deliberate acts of commission and omission render him liable to

penalty under **Section 114(i) of the Customs Act, 1962**, which provides for imposition of penalty on any person who attempts to export prohibited goods in contravention of law. Considering the nature of the offence, the commercial quantity involved, and the clear mens rea, the passenger is held liable for imposition of penalty under **Section 114 of the Customs Act, 1962**.

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

ORDER

- a. The **seized goods** qualify as "**prohibited goods**" under **Section 2(33) of the Customs Act, 1962**.
- b. The act of **attempting to export undeclared goods without permission** constitutes "**smuggling**" under **Section 2(39) of the Customs Act, 1962**.
- c. I order for **absolute confiscation** of seized medicines (121 pcs Insulin Glargine Injection 100 IU/ml, 34 pcs Aerocort Inhaler and 12 Leishman's Stain Powder), collectively valued at **Rs 1,14,788.71/- (Rupees One Lakh Fourteen Thousand Seven Hundred and Eighty-Eight and Seventy-One Paisa Only)** under **Section 113(d), 113(e) & 113(h)** of the **Customs Act, 1962** read with **Drugs and Cosmetics Act, 1940** and the rules made thereunder.
- d. I also order for confiscation of one black coloured baggage used for concealing and keeping the seized goods under **Section 118 and Section 119 of the Customs act, 1962**.
- e. I also impose a penalty of **Rs 50,000/- (Rupees Fifty Thousand Only)** on **Mr. Syed Mohamed Musafar Gani** under **Section 114 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 favour 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- RBISOKLPA01, 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
Suresh Kumar P
Date: 31-12-2025
16:34:18 SURESH KUMAR P
ASSISTANT COMMISSIONER
Air Intelligence Unit (Cell)
NSCBI Airport, Kolkata-700052

To,

Mr. Syed Mohamed Musafar Gani,

holder of IPP No. Z7535270 dated 19.12.2023

S/o - Musafar Gani,

R/o - 12/174, Pavalakara Street, 2nd Floor, GPO,

Mannady, Chennai, PIN-600001, Tamil Nadu, India.

F. No. S1(VII)-46/2025(AIU)

Dated- 31-12-2025

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, NSCBI 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.
6. The Superintendent of Customs, SCH, Custom House, Kolkata with a request to display it on the Notice Board.
7. The Superintendent of Customs (Prev.), Appraising Sales Shed, Custom House, Kolkata.
8. The Superintendent of Customs (Prev.), Computer Cell, Custom House, Kolkata.
9. Office Copy.



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