

OIO No.26/AB/ADC/SRT-AIRPT/2024-25
F. No.VIII/26-46/AIU/CUS/2023-24



अपर आयुक्त, सीमा शुल्क कार्यालय
OFFICE OF THE ADDITIONAL COMMISSIONER
OF CUSTOMS
सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT
 4th Floor, CUSTOMS HOUSE, Beside SMC Ward
 Office,Althan-Bhimrad Road, Althan, Surat –
 395007 ; Tel. No.- 0261-2990051
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PREAMBLE

A	डी आई ऐन/DIN	20250371MN0000111FF6
B	फ़ाइल संख्या / File No.	F. No. VIII/26-46/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-46/AIU/CUS/2023-24 dated 16.07.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	26/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	18.03.2025
F	जारी करने की तिथि/ Date of Issuance	19.03.2025
G	द्वारा पारित / Passed by	Shri Anunay Bhati Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and address of Passenger	Ms. Rubinaben Rasulbhai Pinjara D/o Shri Rasulbhai Pinjara, Akbarni Vadi, Kholvad, Kamrej, Surat Rural, PIN-394190, Gujarat

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है |

1. This copy is granted free of charge for the private use of the person to whom it is issued.
२. इस आदेश से अपने को व्यथित महसुस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है | इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट की स्टाम्प लगा होना चाहिए |

2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.
३. अपील के साथ निम्नलिखित चीजे संलग्न की जाए |

3. The following documents must be enclosed along with the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश की प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो |

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

BRIEF FACTS OF THE CASE:

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Based on passenger profiling, the officers of the Air Intelligence Unit (in short "AIU") and Customs officers of Surat International Airport (hereinafter referred to as the "Officers"), in the presence of panchas under Panchnama proceedings dated 21/22.02.2024 Surat on 21.02.2024, intercepted one passenger, near the green channel of the arrival hall of Surat International Airport, named Ms. Rubinaben Rasulbhai Pinjara (hereinafter referred to as the "Passenger/Noticee"), Age: 36 years, D/o Shri Rasulbhai Pinjara, residing at Akbarni Vadi, Kholvad, Kamrej, Surat Rural, Pin-394190, Gujarat, India, holding passport No. U1286791, who had arrived at Surat International Airport on 21.02.2024 from Sharjah on Air India Express Flight No. IX-172.

2. On being inquired whether she was carrying any dutiable/restricted/ prohibited goods or gold items in her baggage or person, she replied in negative. The officers then informed the passenger that they would conduct her personal search and a detailed examination of her baggage. Before proceeding with the search of the passenger in compliance with Section 102 of the Customs Act, 1962, she was asked whether she would like to be searched in the presence of the nearest Magistrate or Gazetted Officer of Customs, to which she consented to be searched before the Gazetted officers of Customs. The Customs officer then scanned her body with the hand-held metal detector. During scanning, a beep sound was heard when the hand-held metal detector was passed over the waist portion of the blue colour jeans pant worn by the passenger. The jeans pant worn by the passenger were then passed through the XBIS scanner machine in the arrival hall of Surat Airport. While scanning, a dark image indicating the presence of some metallic object in the waist portion of the jeans pants, which the passenger was wearing, was seen in the scanner machine. The waist portion of the jeans pants was then cut open with the paper knife, whereupon three paper strips containing paste-like material were recovered. The said three strips were found to have a gross weight of 450.00 grams.

3. Thereafter, the Customs officers passed both the pieces of baggage carried by her through the XBIS Scanner machine and also thoroughly checked her baggage after withdrawing its contents. However, on scanning and thoroughly checking the baggage, no objectionable/prohibited goods were found. Thereafter, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery for melting of the paste-like material contained in paper strips recovered from the jeans pants of the passenger. At Shri Ambica Touch Refinery, the said material was melted in the furnace, whereupon gold in nugget form was obtained and also some ashes remained in the process. Thereafter, the gold nugget so obtained was kept in a pouch, packed in a green envelope, and sealed in such a manner that it could not be tampered with.

4. Thereafter, the Customs officers called Shri Vikasraj Juneja, the Government Approved Valuer, and informed her regarding the recovery of gold from a passenger and requested her to come to the Airport for testing and valuation of the gold nugget so recovered. The valuer arrived at the Surat International Airport on 22.02.2024. The Customs officers introduced the panchas and the passenger to the valuer. Thereafter, the sealed green envelope at Shri Ambica Touch Refinery was cut open, and after examination and weighment of the gold nugget, the valuer informed that a 24 carat Gold nugget weighing 382.090 grams, having a purity of 99% carat, had been obtained from the passenger. The market value of 382.090 grams gold nugget was Rs. 24,24,743/- (Rupees Twenty-Four Lakh Twenty Four Thousand Seven Hundred Forty-Three only), and its tariff value was Rs. 20,27,981/- (Rupees Twenty Lakh Twenty Seven Thousand Nine Hundred Eighty One only) as per Notification No. 12/2024-Cus (NT) dated 15.02.2024 and Notification No. 13/2024 – Cus(NT) dated

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15.02.2024. Thereafter, the valuer issued a valuation certificate dated 22.02.2024. The Customs officers took custody of the said gold nugget weighing 382.090 grams.

5. The above-mentioned Gold nugget weighing 382.090 grams of purity 99% having a market value of Rs. 24,24,743/- and tariff value of Rs. 20,27,981/- recovered from the passenger i.e., Ms. Rubinaben Rasulbhai Pinjara, was placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 22.02.2024 under Panchnama proceedings dated 21/22.02.2024, on a reasonable belief that the said gold was smuggled into India and was liable for confiscation under provisions of the Customs Act, 1962. Further, the blue color jeans pants used for the concealment of said gold also appeared liable for confiscation and hence were placed under seizure. The Boarding pass of Ms. Rubina, a copy of her passport, and a copy of her Aadhar Card were withdrawn from her for further investigation by the officers.

6. Further, a statement of Ms. Rubinaben Rasulbhai Pinjara was recorded on 22.02.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she inter alia stated as under:

- that she was residing at Akbarni Vadi, Kholvad, Kamrej, Surat Rural, Pin-394190, Gujarat with her parents, brother, sister-in-law, and their children; that she worked as an artisan and works from home; that she had studied up to 10th Std.; that she could read, write and understand English and Hindi Languages.
- that she was shown and explained the panchnama dated 21/22.02.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, she put her dated signature on the panchnama in token of acceptance of the facts stated therein.
- that this was her first visit to Dubai as a tourist; that she had gone to Abu Dhabi from Surat Airport via Chennai Airport on 12.02.2024; that the gold recovered from her possession did not belong to her and she did not know the owner of the said gold; that she had met an unknown person outside Sharjah Airport, who gave her one blue colour jeans pant and asked her to hand over the same to a person who would call her at her mobile number after she arrived at Surat; that the said unknown person informed her that the said jeans pant contains gold in paste form and she was required to wear the said pant while travelling from Sharjah to Surat; that the unknown person at Sharjah informed her that the person who would collect the jeans pant from her at Surat would give her Rs. 10,000/- for carrying the said jeans pant containing gold paste to Surat.
- that she tried to smuggle the gold for some monetary benefit; that as she intended to smuggle the gold by concealing it, she did not declare it upon her arrival before any Customs officer; that after clearing the immigration procedures, she collected her baggage; that during checkout, she was intercepted by the Customs officials, and further procedures as stated in Panchnama dated 20/21.02.2024 were carried out.
- that she was aware that she had committed an offence by smuggling gold for which she would have to face the consequences as prescribed under the Customs Law.

7. LEGAL PROVISIONS RELEVANT TO THE CASE:

- a)** As per para 2.26 of Foreign Trade Policy 2015-20- “Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.”
- b)** 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.”
- c)** 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.”
- d)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 – “no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”
- e)** 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.”
- f)** As per Section 2(3) of the Customs Act, 1962 – “baggage” includes unaccompanied baggage but does not include motor vehicles.
- g)** 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;
- h)** 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, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”
- i)** 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.”
- j)** 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

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proper officer.”

k) 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.”

l) Any goods which are imported or attempted to be imported or 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 shall be liable to confiscation under section 111 (d) of the Customs Act 1962.

m) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.

n) 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 are liable to confiscation under Section 111 (j) of the Customs Act 1962.

o) As per Section 112 of the Customs Act 1962- “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 which she know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”

p) As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

q) As per Section 123 of Customs Act 1962 (Burden of proof in certain cases)

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

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

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

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

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

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

r) As per Customs Baggage Declaration Regulations, 2013- “all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.”

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- s)** As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold in any form, other than monetary gold and silver in any form, is amended from 'Free' to 'Restricted'; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

8. CONTRAVENTION AND VIOLATION OF LAWS

It therefore appeared that:

- a)** Ms. Rubinaben Rasulbhai Pinjara had actively involved herself in the instant case of smuggling of gold into India. The said passenger had improperly imported Gold weighing 382.090 grams (net weight), having a market value of Rs. 24,24,743/- and tariff value of Rs. 20,27,981/-, as per Notification No. 12/2024-Cus(NT) dated 15.02.2024 and Notification No. 13/2024 – Cus(NT) dated 15.02.2024, without declaring it to the Customs, by way of concealment in paste/dust form inside the waist portion of jeans pant worn by the passenger. She concealed the said gold with a deliberate and mala fide intention to smuggle the same into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962, and other allied Acts, Rules, and Regulations. The gold improperly imported by her with commercial considerations without declaration before the proper officer of Customs cannot be treated as bona fide household goods or personnel effects. Ms. Rubinaben Rasulbhai Pinjara has thus contravened the Foreign Trade Policy 2015-20, 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
- b)** By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with the section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- c)** The gold improperly imported by the passenger, Ms. Rubinaben Rasulbhai Pinjara by concealing the same in paste/dust form without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- d)** Ms. Rubinaben Rasulbhai Pinjara, by her above-described acts of omission and commission on her part had rendered herself liable to penalty under Section 112 of the Customs Act, 1962.
- e)** As per Section 123 of the Customs Act 1962, the burden of proving that the said improperly imported gold, weighing 382.090 grams (net weight), having market value of Rs. 24,24,743/- and tariff value of Rs. 20,27,981/- without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, Ms. Rubinaben Rasulbhai Pinjara.
- f)** The blue-coloured jeans and pants used to conceal the impugned gold also appeared liable for confiscation under Section 119 of the Customs Act, 1962.

9. Accordingly, a Show Cause Notice F. No VIII/26-46/AIU/CUS/2023-24 dated 16.07.2024 was issued to Ms. Rubinaben Rasulbhai Pinjara calling upon her to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated at 4th Floor, Customs House, Beside SMC

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Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:

- (i) The recovered one gold nugget of 24 carats (purity 99%) weighing 382.090 grams having market value of Rs. 24,24,743/- (Rupees Twenty-Four Lakh Twenty-Four Thousand Seven Hundred Forty-Three only) and tariff value of Rs. 20,27,981/- (Rupees Twenty Lakh Twenty-Seven Thousand Nine Hundred Eighty-One only), seized vide Seizure Order dated 22.02.2024 under panchnama proceeding dated 21/22.02.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii) The blue colour jeans pants seized vide Seizure Memo dated 22.02.2024 should not be confiscated under Section 119 of the Customs Act, 1962;
- (iii) A penalty should not be imposed upon her under Section 112 of the Customs Act, 1962.

10. DEFENCE REPLY

In the Show Cause Notice dated 16.07.2024 issued to the noticee, the noticee was asked to submit her written reply/defence submission to the said notice within the stipulated time; however, no reply/defence submission to the Show Cause Notice was received from the noticee within specified time or beyond.

11. RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, an opportunity to be heard in person was granted to the noticee to appear for a personal hearing on 07.01.2025 and 28.02.2025 and vide letters of even file dated 26.12.2024 and 19.02.2025, respectively. The noticee requested an adjournment to a later date. The noticee attended the personal hearing on 11.03.2025 in virtual mode, and reiterated her statement dated 22.02.2024.

12. DISCUSSION AND FINDINGS

I have carefully gone through the facts of this case, the relied upon documents, the relevant legal provisions and materials on record. I find that the noticee has not submitted any written reply/defence submission to the notice issued to him. Further, I have observed that the opportunity of a personal hearing granted to the noticee to present her case, has been availed by the noticee. Therefore, I now proceed to decide the instant case based on evidence and documents available on record.

13. In the instant case, I find that the main issues to be decided are:

- (i) Whether the recovered one gold nugget of 24 carat (purity 99%) weighing 382.090 grams having market value of Rs. 24,24,743/- (Rupees Twenty-Four Lakh Twenty-Four Thousand Seven Hundred Forty-Three only) and tariff value of Rs. 20,27,981/- (Rupees Twenty Lakh Twenty-Seven Thousand Nine Hundred Eighty-One only), seized vide Seizure Order dated 22.02.2024 under panchnama proceeding dated 21/22.02.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 or otherwise;

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(ii) Whether the blue colour jeans pant seized vide Seizure Memo dated 22.02.2024 should be confiscated under Section 119 of the Customs Act, 1962 or otherwise;

(iii) Whether a penalty should be imposed upon her under Section 112 of the Customs Act, 1962 or otherwise.

14. Further, I find that Panchnama has clearly accounted for the fact that, based on passenger profiling, Ms. Rubinaben Rasulbhai Pinjara was intercepted on 21/22.02.2024 at Surat International Airport under Panchnama proceedings. The passenger, carrying two pieces of baggage, was asked if she had anything to declare, which she denied. A hand-held metal detector alerted on the waist portion of her jeans. Upon scanning, a dark image was detected, indicating a metallic object. The jeans were cut open, revealing three paper strips containing a paste-like material weighing 450 grams. The material was melted at Shri Ambica Touch Refinery, yielding a gold nugget. The nugget was weighed at 382.090 grams, with a purity of 99%. The market value was determined as Rs. 24,24,743/- and the tariff value was ascertained to be Rs. 20,27,981/- as per the government-approved valuer's certificate. The gold nugget along with the jeans used for concealment were seized under Section 110 of the Customs Act, 1962, on the reasonable belief that the gold was attempted to be smuggled into India.

15. Further, I have gone through the statement of Ms. Rubinaben Rasulbhai Pinjara recorded on 22.02.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she has inter alia stated as under:

- that this was her first visit to Dubai as a tourist; that she had gone to Abu Dhabi from Surat Airport via Chennai Airport on 12.02.2024; that the gold recovered from her possession did not belong to her and she did not know the owner of the said gold; that she had met an unknown person outside Sharjah Airport, who gave her one blue colour jeans pant and asked her to hand over the same to a person who would call her at her mobile number after she arrived at Surat; that the said unknown person informed her that the said jeans pant contains gold in paste form and she was required to wear the said pant while travelling from Sharjah to Surat; that the unknown person at Sharjah informed her that the person who would collect the jeans pant from her at Surat would give her Rs. 10,000/- for carrying the said jeans pant containing gold paste to Surat.
- that she tried to smuggle the gold for some monetary benefit; that as she intended to smuggle the gold by concealing it, she did not declare it upon her arrival before any Customs officer; that after clearing the immigration procedures, she collected her baggage; that during checkout, she was intercepted by the Customs officials, and further procedures as stated in Panchnama dated 20/21.02.2024 were carried out.
- that she was aware that she had committed an offence by smuggling gold for which she would have to face the consequences as prescribed under the Customs Law.

16. Further, I find that the noticee has never retracted her aforesaid statement dated 22.02.2024, and the offence committed by the passenger is voluntarily confessed by her in her statement. Therefore, I consider her statement to be material evidence in the instant case, and I place my reliance on the following judgments/case laws to further fortify my stand:

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that the statement made before the Customs Officers though retracted within 6 days is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act, 1962;
- The confessional statement given before the Customs officers is admissible evidence as they are not the police officers. This view has been upheld by the Hon'ble Supreme Court in the case of **Badaku Joti Savant vs. State of Mysore** [1978 (2) ELT J 323 (SC)];
- The decision of the Hon'ble Madras High Court in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Raghupathy** 1998 (98) ELT 50 (Mad), in which the court held that the confessional statement under Section 108, even though later retracted is a voluntary statement and was not influenced by duress and is a true one.
- The Hon'ble Apex Court in **Naresh J Sukhawani vs UOI** held that the Statement before the Customs Officer is a material piece of evidence.

17. Further, I find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama while recording her statement. Every procedure conducted during the Panchnama by the officers was well documented and made in the presence of the panchas and the passenger. Further, I find that the passenger had knowingly attempted to smuggle gold into India, violating the Customs Act, 1962. As per her own admission in the statement dated 22.02.2024, she has confessed that she was fully aware of the nature of her actions and the legal consequences thereof. She has also stated that she undertook her first visit to Dubai on 02.02.2024, during which an unknown person approached her in Dubai and offered her the opportunity to carry gold items to India, informing her that the gold would be provided to her and, upon reaching Surat, she would have to hand it over to a designated recipient who would then contact her on her phone. I find that Ms. Rubinaben has confessed that she was promised a monetary consideration of ₹10,000/- by the unknown man for this work. After going through the foregoing, I am satisfied to affirm that Ms. Rubinaben's deliberate failure to declare the gold upon arrival and her attempt to evade detection by Customs authorities indicate a clear intention to smuggle the gold into India. Upon reaching Surat International Airport on 21.02.2024, she proceeded through baggage collection without making any declaration before any Customs officer. However, during the checkout process, she was intercepted by Customs officials, leading to the discovery of the smuggled gold and subsequent legal proceedings as per the Panchnama dated 20/21.02.2024. By her acknowledgment, she has confessed that she had intended to smuggle the gold for financial gain and was fully aware that such an act constituted an offence under the Customs Law, for which she was liable to face the prescribed legal consequences. Further, I find that on 11.03.2025, during the personal hearing in virtual mode, Shri Rubinaben Rasulbhai Pinjara reiterated her statement dated 22.02.2024. Thus, upon a careful review of the preceding, I am conclusively led to the determination that the passenger has violated provisions of Customs Act, 1962; the Baggage Rules, 2016; the Foreign Trade (Development & Regulations) Act, 1992; the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020/2023.

18. Further, I find that the noticee has confessed that she had not declared the said gold before the Customs authorities, which was ingeniously concealed inside

blue colour jeans pants worn by her. Further, it can be deduced from the discussion in the foregoing paragraph that she had not declared the same with the sole intention to smuggle the gold into India as she was working as a carrier to facilitate the smuggling of goods into India in exchange for monetary compensation. Further, I find the modus used by the passenger for concealment of the gold paste to be ingenious which further corroborates her mala fide intent to circumvent the provisions of the Customs Act. I strongly opine that this is a clear case of non-declaration with an intent to smuggle the gold into Indian territory. Accordingly, there is sufficient evidence to affirm that the passenger was in possession of gold when she arrived at Surat Airport on 21.02.2024 and she failed to declare the same before the Customs Authorities upon her arrival at Surat International Airport, Surat. Therefore, it can be reasonably concluded that the case of gold smuggling against the passenger is conclusively established, as the gold recovered from her possession was kept undeclared with the intent to smuggle and to evade the payment of Customs duty. Thus, I find it irrefutably established that the passenger has violated Section 77, Section 79 of the Customs Act, 1962 for import/smuggling of gold which was not for bona fide use and hence she has also contravened the Rule 11 of the Foreign Trade Regulation Rules 1993, and Para 2.26 of the Foreign Trade Policy 2015-20/Para 2.27 of Foreign Trade Policy 2023. It is pertinent to mention here that since, 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 then as per Section 123 of the Customs Act, 1962, the burden to prove that they are not smuggled goods, shall be on the person from whose possession the goods have been seized. In the instant case, noticee in her statement dated 22.02.2024, has clearly confessed that she wanted to evade customs duty, and, therefore, she had not declared the same with sole intention to smuggle the gold into India as she was working as carrier for clearance of smuggled goods into India for monetary consideration.

19. Further, I think it would be relevant at this juncture to allude to **Section 2(39) of the Customs Act, 1962**, wherein, **“smuggling”** is defined as any act or omission that renders goods liable to confiscation under **Section 111 or Section 113** of the Act. From the facts discussed above, it is evident that Ms. Rubinaben Rasulbhai Pinjara had carried gold weighing 382.090 grams having 99% purity, concealed inside her jeans in paste form, while arriving from Sharjah to Surat, with the deliberate intent to smuggle the same into India without payment of Customs duty and her actions have rendered the said gold liable for confiscation under Sections 111(d), 111(i), and 111(j) of the Act. By concealing the gold in her baggage and failing to declare it before the Customs authorities, it is evident that she had acted with an ulterior motive to evade customs duty. Moreover, she has confessed to acting as a carrier for smuggling goods into India in exchange for monetary compensation, thereby establishing her **‘mens rea’** (guilty intent). Upon reviewing the above, I am of the considered opinion that the deliberate act of concealment by Ms. Rubinaben, non-disclosure of the gold before Customs, and financial gain involved in this case categorically brings her offence within the definition of smuggling, making her liable for the confiscation of the impugned goods and penal consequences under the Customs Act, 1962.

20. Further, I have observed that the noticee had not filled out the baggage declaration form and had not declared the said gold which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It has also been observed that the import was also for non-bona fide purposes, as the same was carried out for monetary benefit with the sole intent of smuggling into India. Therefore, the said improperly imported gold by the passenger, Ms. Rubinaben

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Rasulbhai Pinjara, without declaring to the Customs on her arrival in India, cannot be treated as bona fide household goods or personal effects. Therefore, it is undeniably established that the passenger has contravened the Foreign Trade Policy 2015-20/2023 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.

21. Further, I find that the noticee in her statement, has confessed to carrying the gold nugget weighing 382.090 grams which was cleverly concealed inside her jeans worn by her at the time of arrival at the airport on 06.02.2024 and was being attempted to be removed from the Surat Airport without declaration before the Customs Authorities. I find it manifestly clear from the facts that Ms. Rubinaben Rasulbhai Pinjara has violated para 2.26/2.27 of Foreign Trade Policy 2015-20/2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. At this juncture, it would be relevant to refer to **Section 2(33)** of the Customs Act, 1962, wherein **“prohibited goods”** are defined as 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. Given the foregoing, I am of the considered opinion that in the present case, the gold improperly imported by the passenger, without following the due process of law and without adhering to the requisite conditions and procedures for import, has thereby acquired the status of "prohibited goods" under *Section 2(33)* of the Act. The deliberate concealment of gold and the failure to declare it before the Customs authorities indicate an intent to circumvent the legal framework governing the importation of gold, making the said gold liable for confiscation and the passenger subject to penal consequences under the provisions of the Customs Act, 1962.

22. Further, I find that gold is not on the list of prohibited items, but the import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** 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 goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. Non fulfilment of the conditions has made the gold seized in the present case **“prohibited goods”** as the passenger who attempted to smuggle it was not an eligible passenger to bring it into India or import gold into India in baggage. Additionally, Ms. Rubinaben has confessed to carrying the said gold 24 Kt weighing 382.090 grams (extracted from the three paper strips containing gold paste retrieved from Jeans Pants), and the same was recovered from her possession, which was kept undeclared with an intention to evade payment of customs duty as she was working as a carrier for smuggling the gold into India for monetary consideration. By analyzing the modus operandi employed by the passenger, it is proved beyond doubt that the goods are offending in nature and therefore prohibited on their importation into India. Here, it is apparent that conditions necessary for the legitimate import of gold are not fulfilled by the passenger.

23. Given the above discussions, I hold that the passenger, Ms. Rubinaben Rasulbhai Pinjara was working as a carrier to facilitate the smuggling of goods into India in exchange for monetary compensation and, therefore, had kept the said Gold weighing 382.090 grams being carried by her undeclared with an intention to clear the same illicitly from Customs Airport and evade payment of Customs duty. Therefore, the gold nugget (extracted from the three paper strips containing gold paste retrieved from Jeans Pants) weighing 382.090 grams is liable for absolute confiscation. In the instant case, I am, therefore, not inclined to use my discretion to

give an option to redeem the said gold, on payment of redemption fine, as envisaged under Section 125 of the Act.

24. Further, I would like to derive support in favour of my stand from the views expressed by the Hon'ble High Court in the case of **Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)]**, wherein the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

25. Further, I would like to gather support in favor of my position from 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 Samyanathan 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.

26. Further, I seek to strengthen support for my argument from the case of **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).*

27. Furthermore, I would like to reinforce my stand by placing my reliance on the case of **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 gram of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

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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.

28. Further, given the discussion in the foregoing paras, it is evident that Ms. Rubinaben Rasulbhai Pinjara, in her statement dated 22.02.2024, has confessed that she was aware that import of gold without payment of Customs duty was an offence but as she wanted to evade customs duty, therefore, she had not declared the same to Customs Authorities with the sole intention to smuggle the gold into India. She has further confessed that she was working as a carrier to clear smuggled goods into India for monetary consideration. She has also stated that she had gone to Abu Dhabi from Surat Airport via Chennai Airport on 12.02.2024 and that she had met an unknown person outside Sharjah Airport who gave her one blue colour jeans pant and asked her to hand over the same to a person who would call her at her mobile number upon her arrival at Surat. Further, she has also confessed that the said unknown person informed her that the said jeans pant contained gold in paste form and she was required to wear the said pant while travelling from Sharjah to Surat for which she was promised a monetary consideration of ₹10,000/- by the unknown man for the assigned work thereby establishing her monetary motive in the smuggling operation. Further, the government-approved valuer, after examining and testing, certified the gold nugget as 99% purity, weighing 382.090 grams. The market value of the said gold nugget was determined by the valuer at **Rs. 24,24,743/-** (Rupees Twenty-Four Lakh Twenty-Four Thousand Seven Hundred Forty-Three only), and its Tariff value was determined as **Rs. 20,27,981/-** (Rupees Twenty Lakh Twenty-Seven Thousand Nine Hundred Eighty-One only). The said gold was seized vide Seizure Order/Memo under Panchnama dated 22.02.2024 under the reasonable belief that the goods carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of the Customs Act, 1962. Given the facts of the present case before me and the judgments and rulings cited above, I am of the firm opinion that the said gold nugget (extracted from the three paper strips containing gold paste retrieved from Jeans Pants) weighing 382.090 grams is liable for absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. Further, the blue colour jeans pants worn by the passenger, which was used for concealment of the said gold paste is also liable for absolute confiscation under Section 119 of the Customs Act, 1962

29. After carefully evaluating the material on record, I find that in the present case, the noticee was in possession of a gold nugget weighing 382.090 grams, which was concealed inside the Jeans pants worn by the passenger. I have observed that the passenger in her Jeans pants was ingeniously concealing the gold nugget. It has also been observed that she failed to declare the said gold to Customs authorities upon her arrival at the Customs area in the Arrival hall of Surat Airport, thereby violating the statutory requirements envisaged under the Customs Act and other relevant provisions related to legal importation of gold into India by a passenger. After a comprehensive and detailed review of the aforementioned, I am decisively led to the conclusion that such an act on the part of the passenger has rendered the goods liable for confiscation under Section 111 of the Act. It would be relevant to refer to Section 112(b)(i) of the Customs Act, 1962, which imposes penalties on any person who acquires, possesses, stores, sells, or transports goods that they know or have reason to believe are liable for confiscation under Section 111 of the Customs Act. In the instant case, I find that the deliberate act of concealing the gold by the noticee unequivocally establishes her ‘***mens rea***’ and demonstrates a wilful intent to

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evade Customs regulations, leaving no room for doubt regarding her knowledge and involvement in the attempted act of smuggling. I find it irrefutably established that her actions fall squarely within the ambit of Section 112(b)(i), attracting penal liability and confiscating the smuggled goods. Accordingly, I hold the noticee liable for a penalty under the said provision.

30. Accordingly, in the exercise of the powers vested in me as the Adjudicating Authority, I hereby pass the following order:

ORDER

- (i) I order **absolute confiscation** of one gold nugget of 24 carat (purity 99%) weighing **382.090 grams** having a market value of **Rs. 24,24,743/- (Rupees Twenty-Four Lakh Twenty-Four Thousand Seven Hundred Forty-Three only)**, under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.
- (ii) I order **absolute confiscation** of the blue colour jeans pants worn by the passenger, which was used for concealment of the said gold paste under Section 119 of the Customs Act, 1962.
- (iii) I impose a **penalty** of **Rs. 24,24,743/- (Rupees Twenty Four Lakh Twenty-Four Thousand Seven Hundred Forty-Three only)** on Ms. Rubinaben Rasulbhai Pinjara under Section 112 (b)(i) of the Customs Act, 1962.

31. This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962 as amended or rules made thereunder or under any law for the time being in force.

(Anunay Bhati)
Additional Commissioner,
Surat International Airport,
Customs, Surat

BY SPEED POST AD/E.MAIL/WEBSITE

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Date: 18.03.2025

DIN: 20250371MN0000111FF6

To,
Ms. Rubinaben Rasulbhai Pinjara,
D/o Shri Rasulbhai Pinjara,
Akbari Vadi, Kholvad, Kamrej,
Surat Rural, PIN-394190, Gujarat

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy/Assistant Commissioner of Customs (TRC), Ahmedabad.
3. The Superintendent (Recovery), Customs, Surat International Airport, Surat.
4. The System In-Charge, Customs, H.Q., Ahmedabad for uploading on the official website (via email)
5. Guard File