

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

	<p style="text-align: center;"><b>अपर आयुक्त, सीमा शुल्क कार्यालय</b> <b>OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS</b> <b>सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT</b> 4<sup>th</sup> Floor, CUSTOMS HOUSE, Beside SMC Ward Office,Althan-Bhimrad Road, Althan, Surat –395007 ; Tel. No.- 0261-2990051 Email: <a href="mailto:customs-suratairport@gov.in">customs-suratairport@gov.in</a></p>	
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### PREAMBLE

A	डी आई ऐन/DIN	<b>20250371MN0000608340</b>
B	फाइल संख्या / File No.	VIII/26-14/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F.No.VIII/26-14/AIU/CUS/2023-24 Dated 26.02.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	27/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	Anunay Bhati Additional Commissioner, Customs Surat International Airport, Surat
H	आयातक/यात्री का नाम और पता Name and address of Importer/ Passenger	<b>1.</b> Shri Mohammed Farooq Abdul Karim Kapadia, S/o Shri Abdul Karim Ahmed Kapadia, 191, Khwaja Mahal 3/303, Maulana Azad Road, Duncan Road, Mumbai, Maharashtra – 400008.  <b>2.</b> Shri Mokin Bagasritewala, 191, Khwaja Mahal 3/303, Maulana Azad Road, Duncan Road, Mumbai, Maharashtra – 400008.

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए यह 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 महसूस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4<sup>th</sup> मंजिल, हुडको बिल्डिंग, ईश्वर भवन 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 का 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), 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhavan 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 of receipt of this order by the post or 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 alongwith 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 कोर्ट फी स्टाम्प लगा हो।

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

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

### **BRIEF FACTS OF THE CASE:-**

1. Acting upon passenger profiling and intelligence received, the officers of the Air Intelligence Unit (AIU) and Customs Officers of Surat International Airport, along with the officers of the Department of Revenue Intelligence (DRI), Surat (hereinafter referred to as the "Officers") of Surat International Airport, Surat intercepted one passenger, at the arrival hall of Surat International Airport, named Shri Mohammed Farooq Abdul Karim Kapadia (hereinafter for the sake of brevity referred to as "Passenger/Noticee"), Age 31 years, S/o Abdul Karim Ahmed Kapadia residing at 191, Khwaja Mahal 3/303, Maulana Azad Road, Duncan Road, Mumbai, Maharashtra - 400008, holding passport No. X5240761 arrived at Surat International Airport on 09.09.2023 from Sharjah on Air India Express Flight No. IX-172.

2. On being inquired whether he was carrying any dutiable/restricted/ prohibited goods or gold items in his baggage or person, he replied in negative. The passenger was found to be carrying 02 bags, i.e., one white coloured Trolley bag and one corrugated box made of paper/paper board. The officers asked the passenger whether he had anything to declare in reply to which the Passenger denied. The officers informed the passenger that they would conduct his personal search and a detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger politely denied it. Thereafter, the officers asked the passenger whether he wanted to be searched in the presence of the Magistrate or the Superintendent (Gazetted Officer) of Customs, in reply to which the passenger gave his consent to be searched before the Superintendent of Customs. The Customs officers then asked the passenger to remove all the metallic objects from his body and scanned his body with the hand-held metal detector. However, no beep sound was heard, indicating the absence of any objectionable/metallic substance on his body or clothes. Thereafter, the officers scanned the baggage of the passenger through the XBIS Scanner machine located in the arrival hall of the Surat Airport. During scanning of the white-coloured trolley bag, one mobile phone was seen, which was withdrawn from the bag, and on verification, it was found to be a new iPhone 14 pro max 256GB. Then, the corrugated box was passed through the XBIS scanner machine, upon which an image indicating the presence of metal in the corrugated box was seen in the scanner machine. Thereafter, the corrugated box was opened, and all its contents were withdrawn and checked thoroughly, wherein no precious metal was found. The empty corrugated box was scanned in the XBIS scanner machine, whereupon an image of metal was seen again in the scanner machine. Thereafter, the officers asked the passenger about the concealment of gold in powder/paste form in the corrugated box, as the hand-held metal detector also indicated the presence of a metallic item in the corrugated box through a beep sound, to which the Passenger admitted that gold dust is mixed in the corrugated box.

3. Thereafter, the officers took the passenger to the Happy Bones Orthopaedic Centre for a CT scan/X-ray after obtaining his consent to ascertain whether he had concealed any contraband item in his body. In the X-ray of Shri Mohammed Farooq Abdul Karim Kapadia, no contraband item was seen in his body.

4. Thereafter, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery to burn the corrugated box for extraction of gold concealed therein. The corrugated box was burnt in the furnace, and ashes were collected and again melted in the furnace, upon which the gold in bar form was obtained. Some ashes also remained in the process. The gold bar and the remaining ashes so obtained were packed in a plastic pouch, put in a green envelope, and sealed in such a manner that it could not be tampered with.

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

**5.** Thereafter, the officers called Shri Vikasraj Juneja, Government Approved Valuer, and informed him regarding the recovery of gold from the corrugated box belonging to one passenger through melting of the corrugated box and requested him to come to the Airport for testing and valuation of the said material. In the presence of the Government Approved Valuer, the panchas, and the passenger, the sealed green envelope was cut open. After examining and weighing the substance, the valuer informed that a gold nugget weighing 260.040 grams with a purity of 99% was obtained from the extract recovered from the corrugated box belonging to the passenger. The market value of 260.040 grams gold nugget was Rs. 15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only), and its tariff value was Rs. 13,68,274/- (Rupees Thirteen Lakh Sixty Eight Thousand Two Hundred Seventy-Four only) as per Notification No. 64/2023-Cus (NT) dated 06.09.2023 and 63/2023-Cus(NT) dated 31.08.2023. Thereafter, the valuer issued a valuation certificate No. 15/2023 dated 09.09.2023. The Customs officers took custody of the gold nugget weighing 260.04 grams. The Customs officers also took custody of the new iPhone 14 pro max 256GB mobile phone recovered from the passenger.

**6.** The following documents were withdrawn from the passenger for further investigation:-

- (i) Copy of Boarding Pass, from Sharjah to Surat, of Air India Express Flight No. IX-172 dated 08.09.2023, Seat No.27C.
- (ii) Copy of Aadhar Card No. 246811624445.
- (iii) Copy of ticket bearing PNR No. FUZJHL from Sharjah to Surat by Flight No. IX-172 on 08.09.2023.
- (iv) Copy of Passport No. X5240761 issued at Mumbai on 16.02.2023 and valid up to 15.02.2033.

**7.** A statement of Shri Mohammed Farooq Abdul Karim Kapadia was recorded on 09.09.2023 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was residing at 191, Khwaja Mahal 3/303, Maulana Azad Road, Duncan Road, Mumbai, Maharashtra - 400008 with his mother and wife; that he was a trader and engaged in the manufacture and sale of customised products; that he has done B-Tech from Kalsekar Technical Campus, New Panvel in the year 2017; that he could read, write and understand English and Hindi Language.
- that he was shown and explained the panchnama dated 08/09.09.2023 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which is in English, and after understanding the same, he put his dated signature on the panchnama in token of acceptance of the facts stated therein.
- that he had earlier visited Dubai for business purpose; that he was in the business of manufacturing and selling of customised product like key chain, mobile cover, T-Shirt, Pillow cover etc. and for this he displayed his products in the exhibitions held in Dubai; that he took a stall on rent in the global village, Dubai with the help of one of his friends, Shri Mohammed Aashique Binwaleed, who was a resident of Dubai; that for his current trip he had gone to Dubai on 01.09.2023 from Chhatrapati Shivaji International Airport, Mumbai; that his friend Shri Mohammed Aashique Binwaleed informed him that he could carry gold to India by mixing gold dust in glue of the corrugated box; that his friend informed him that he would provide him a corrugated box in which he could carry miscellaneous goods like chocolates and clothes and on reaching Mumbai he had to hand over the corrugated box to one person, who would extract the hidden gold in the corrugated box and would hand over to him; that Shri

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

Mohammed Aashique Binwaleed informed him that gold extracted would be around 260 grams.; that he did not know the details of the person to whom the corrugated box was to be handed over in Mumbai as the details was to be given to him telephonically by Shri Mohammed Aashique Binwaleed upon his reaching Mumbai; that he did not remember the mobile number and residential address of Shri Mohammed Aashique Binwaleed; that he had already made payment of Rs 15 Lakh in cash to one person sent by Shri Mohammed Aashique Binwaleed in Mumbai; that since he was in Dubai the payment in cash was made by his cousin Shri Mokin Bagasritewala; that Shri Mohammed Aashique Binwaleed had told him that one person would come who would show a particular 10 rupee note and cash was to be handed over to him and accordingly payment was made; that he did not have the details of the person who collected the cash from his cousin; that the payment of Rs. 15 lakh was made in cash.

- that he was aware that import of Gold without payment of Customs duty was an offence, but he intended to evade Customs duty, and therefore, he tried to smuggle the gold into the country; that as he was to evade payment of Customs duty and smuggle the gold by concealing the same, he did not declare the goods brought by him before any Customs Officer; that after clearing the immigration procedures, he collected his check-in baggage and during checkout, he was intercepted by Customs officers, and further procedures as stated in Panchnama dated 08/09.09.2023 was carried out.
- that on being asked about the new mobile phone, viz., iPhone 14 pro max 256 GB found inside his trolley bag, he stated that it was a new iPhone purchased by him in Dubai, but he did not have the bill for the same, and also he did not remember the amount paid for the said mobile phone.
- that he was aware that he had committed an offence by evading payment of Customs duty for which he had to face the consequences prescribed under the Customs Law.

**8.** The above-mentioned 01 gold nugget weighing 260.040 grams of purity 99%, having a market value of Rs. 15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only) and tariff value of Rs. 13,68,274/- (Rupees Thirteen Lakh Sixty Eight Thousand Two Hundred Seventy-Four only), which was found concealed in dust form in the corrugated box recovered from the passenger, Shri Mohammed Farooq Abdul Karim Kapadia was placed under seizure under the provisions of section 110 of the Customs Act 1962 vide Seizure order dated 09.09.2023 under Panchnama proceedings dated 08/09.09.2023, on a reasonable belief that the said Gold was smuggled into India and was liable for confiscation under provisions of the Customs Act, 1962. The new iPhone 14 pro max 256GB mobile phone recovered from the passenger was also placed under seizure.

**9. Inquiry against Shri Mokin Bagasritewala**

**9.1** During the investigation, the summons was issued to Shri Mokin Bagasritewala, 191, Khwaja Mahal 3/303, Maulana Azad Road, Duncan Road, Mumbai-400008, to investigate his role in the present case. The details of the summons issued are as follows:

Sr. No.	Date of issue of Summons	Date whereon he was required to appear	Remarks
1.	07.12.2023	11.12.2023	Sent by post, but he did not appear.
2.	27.12.2023	04.01.2024	Sent by post, delivered on 04.01.2024, but

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

			he did not appear.
3.	20.01.2024	29.01.2024	Sent by post, delivered on 27.01.2024, but he did not appear.
4.	03.02.2024	13.02.2024	Sent by post, delivered on 09.02.2024, but he did not appear.

**9.2** From the details of the summonses issued above, it appeared that Shri Mokin Bagasritewala intentionally chose not to appear before the investigating officer and avoided joining the investigations. He had deliberately dishonoured the Summons with the ill intention not to join the investigation, indicating that he was actively involved in smuggling. Ample opportunities were given to Shri Mokin Bagasritewala to present facts and give evidence/further information about the case. Still, he intentionally abstained from appearing before the investigation without giving any reason or seeking any extension and thus refused to cooperate. Hence, a complaint under Section 174 of the Indian Penal Code, 1860, read with Section 108 of the Customs Act, 1962, was filed in the court of Chief Judicial Magistrate, Surat on 22.02.2024.

**9.3** From the statement of Shri Mohammed Farooq Abdul Karim Kapadia, it appeared that Shri Mokin Bagasritewala was also involved in smuggling gold from Sharjah to Surat. As per the statement dated 09.09.2023 of the passenger, recorded under Section 108 of the Customs Act, 1962, Shri Mokin Bagasritewala, on behalf of the passenger, had handed over Rupees Fifteen Lakh in cash to one person in Mumbai as payment for purchase of corrugated box containing gold in dust form mixed with glue from Shri Mohammed Aashique Binwaleed, who handed over the said corrugated box containing gold to the passenger, which was subsequently recovered from the passenger at Surat Airport. Moreover, the wilful intention to abet the smuggling of seized gold by Shri Mokin Bagasritewala also appeared to be established by his continuous defiance of the summonses issued and not cooperating with the investigation. Thus, Shri Mokin Bagasritewala had also aided, abetted and knowingly concerned himself in smuggling of gold from Sharjah to Surat.

**10. 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

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

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 proper officer.”
- k)** As per Section 79 of the Customs Act 1962- “(1) 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 the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.”
- l)** As per Rule 3 of the Baggage Rules, 2016- “An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, - (a) used personal effects and travel souvenirs; and (b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger”.
- m)** 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, he may seize such goods.”
- n)** 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.
- o)** 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

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

Section 111 (i) of the Customs Act 1962.

- p)** 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.
- q)** 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 he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”
- r)** As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- s)** 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.
- t)** 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.
- u)** 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).

### **CONTRAVENTION AND VIOLATION OF LAWS**

**11.** It therefore appeared that:

- (a)** Shri Mohammed Farooq Abdul Karim Kapadia had actively involved himself in the instant case of smuggling of gold into India. Shri Mohammed Farooq Abdul Karim Kapadia had improperly imported Gold concealed in dust/paste form in the corrugated box, weighing 260.04 grams, having a market value of Rs. 15,70,382/- and a tariff value of Rs. 13,68,274/-, as per Notification No. 64/2023-Cus (NT) dated 06.09.2023 and 63/2023-Cus(NT) dated 31.08.2023 without declaring it to the Customs. He concealed gold in the corrugated box with a deliberate and mala fide intention to evade the payment of customs duty and

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962, and other allied Acts, Rules, and Regulations. The gold improperly imported by him with commercial considerations without declaration before the proper officer of Customs cannot be treated as bona fide household goods or personnel effects. Shri Mohammed Farooq Abdul Karim Kapadia 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 him, the said passenger had violated the provision of Baggage Rules, 2016, read with 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 Shri Mohammed Farooq Abdul Karim Kapadia by concealing the same in dust/paste form in the corrugated box 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. Further, the new iPhone 14 pro max 256GB mobile phone improperly imported by the said passenger without declaring it to the Customs was also liable for confiscation under the aforesaid provisions.
- (d)** Shri Mohammed Farooq Abdul Karim Kapadia, by his above-described acts of omission and commission, on his part, had rendered himself 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 260.04 gms, having a market value of Rs.15,70,382/- and tariff value of Rs.13,68,274 as per Notification No. 64/2023-Cus (NT) dated 06.09.2023 and 63/2023-Cus(NT) dated 31.08.2023 without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, Shri Mohammed Farooq Abdul Karim Kapadia.
- (f)** Shri Mokin Bagasritewala had also involved himself in smuggling gold from Sharjah to Surat. He made the payment on behalf of Shri Mohammed Farooq Abdul Karim Kapadia for the purchase of impugned gold, which was smuggled by Shri Mohammed Farooq Abdul Karim Kapadia from Sharjah to Surat. He had 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. His wilful intention to abet the smuggling of seized gold also appeared to be established by his continuous defiance of the summons issued and not cooperating with the investigation. Thus, Shri Mokin Bagasritewala had also aided, abetted, and knowingly concerned himself in smuggling gold from Sharjah to Surat and had rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

**12.** Accordingly, a Show Cause Notice bearing F. No. VIII/26-14/AIU/CUS/2023-24 dated 26.02.2024 was issued to Shri Mohammed Farooq Abdul Karim Kapadia calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4<sup>th</sup> Floor, Customs House, beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:



OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

- (i) The recovered 01 gold nugget of purity 99% weighing 260.040 grams having a market value of Rs.15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only) and tariff value of Rs.13,68,274/- (Rupees Thirteen Lakh Sixty Eight Thousand Two Hundred Seventy-Four only) as per Notification No. 64/2023-Cus (NT) dated 06.09.2023 and 63/2023-Cus(NT) dated 31.08.2023, seized under Panchnama proceeding dated 08/09.09.2023 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii) The recovered one iPhone 14 pro max 256GB mobile phone seized under the panchnama proceeding dated 08/09.09.2023 should not be confiscated under Section 111(d), 111(i), and 111(j) of the Customs Act,1962;
- (iii) A penalty should not be imposed on him under Section 112 of the Customs Act, 1962.

**13.** Further, a Show Cause Notice bearing F. No. VIII/26-14/AIU/CUS/2023-24 dated 26.02.2024 was issued to Shri Mokin Bagasritewala calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4<sup>th</sup> Floor, Customs House, beside SMC Ward office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of this notice as to why:-

- (i) A penalty should not be imposed on him under Section 112 of the Customs Act, 1962.

### **DEFENCE REPLY**

**14.** In the Show Cause Notice, the two co-noticees were asked to submit their written reply/defence submission to the notice within the stipulated time. However, no reply to the Show Cause Notice was received from either co-noticees within the stipulated time or beyond.

### **RECORD OF PERSONAL HEARING**

**15.** ***“Audi alteram partem”*** is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, opportunities to be heard in person were granted to both the noticees to appear for personal hearing on 18.09.2024, 15.10.2024, and 10.12.2024 vide office letters F. No. VIII/26-14/AIU/CUS/2023-24 dated 28.08.2024, 01.10.2024 & 25.11.2024 respectively. The letters informing the noticees of the dates for personal hearings were sent via India Post's speed post service to the addresses mentioned on their Passport and Aadhaar. However, all the letters were returned undelivered, with the remark *"Door locked"* written on the envelopes. Consequently, personal hearing notices were affixed to the office notice board. Despite these efforts, neither the noticees nor their authorized representatives appeared for the personal hearings on scheduled dates.

### **DISCUSSION AND FINDINGS**

**16.** I have carefully reviewed the facts of this case, the relied-upon documents, and relevant legal provisions and find that both the noticees have not submitted any written reply to the notice. Further, I note that both the noticee have been granted three opportunities of personal hearing to present their case. However, they have not availed of the opportunities. I, therefore, proceed to decide the instant case based on evidence and documents available on record.

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

**Co-noticee No. 1 Shri Mohammed Farooq Abdul Karim Kapadia**

**17.** In the instant case, I find that the main issues to be decided against the Co-noticee No. 1 Shri Mohammed Farooq Abdul Karim Kapadia are:

- (i) Whether the gold nugget of purity 99% weighing 260.040 grams with a market value of Rs. 15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only) and a tariff value of Rs. 13,68,274/- (Rupees Thirteen Lakh Sixty-Eight Thousand Two Hundred Seventy-Four only), recovered and seized from Shri Mohammed Farooq Abdul Karim Kapadia vide Seizure Order under Panchnama proceedings dated 08/09.09.2023, is liable for confiscation under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962 or otherwise;
- (ii) The recovered one iPhone 14 pro max 256GB mobile phone seized under the Panchnama proceeding dated 08/09.09.2023 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 or otherwise;
- (iii) A penalty should be imposed on him under Section 112 of the Customs Act, 1962 or otherwise.

**18.** I find that Panchnama has recorded that based on the passenger profiling and intelligence received, on 09.09.2023, one passenger named Shri Mohammed Farooq Abdul Karim Kapadia, holding passport No. X5240761 arrived at Surat International Airport from Sharjah on Air India Express Flight No. IX-172 was intercepted by Customs officers of Surat International Airport, Surat, and DRI officers. On being inquired whether he was carrying any dutiable/restricted/ prohibited goods or gold items in his baggage or person, he replied in the negative. The Customs officers then asked the passenger to remove all the metallic objects from his body and scanned his body with the hand-held metal detector. However, no beep sound was heard, indicating the absence of any objectionable/metallic substance on his body or clothes. Thereafter, the officers scanned the passenger's baggage through the XBIS Scanner machine located in the arrival hall of the Surat Airport. While scanning the white-coloured trolley bag, one mobile phone was seen, which was withdrawn from the bag, and on verification, it was found to be a new iPhone 14 pro max 256GB. Then, the corrugated box was passed through the XBIS scanner machine, upon which an image indicating the presence of metal in the corrugated box was seen in the scanner machine. Thereafter, the corrugated box was opened, and all its contents were withdrawn and checked thoroughly, but no precious metal was found. The empty corrugated box was then scanned in the XBIS scanner machine, whereupon an image of metal was seen again in the scanner machine. The passenger confessed that the packets contained gold.

Subsequently, the Customs officers, the panchas, and the passenger proceeded to Shri Ambica Touch Refinery to burn the corrugated box and extract the gold concealed therein. The said gold dust was melted at Shri Ambica Touch Refinery, and upon melting, a gold nugget weighing 260.040 grams with 99% purity was yielded. A Government-approved valuer, after performing the examination and valuation of the said gold nugget, issued a Valuation Certificate No. 15/2023 dated 09.09.2023 and certified the market and tariff values of the said gold nugget as Rs. 15,70,382/- and Rs. 13,68,274/- respectively. The said gold nugget was subsequently seized vide Order/Memo under Panchnama dated 09.09.2023 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.

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

**19.** I find that a voluntary statement of Shri Mohammed Farooq Abdul Karim Kapadia was recorded on 09.09.2023 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- He was shown and explained the Panchnama dated 08/09.09.2023 drawn at the International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English. After understanding the contents, he signed the Panchnama with the date as a token of his acceptance of the facts stated therein.
- He had earlier visited Dubai for business purposes. He was involved in manufacturing and selling customized products like keychains, mobile covers, T-shirts, pillow covers, etc., and displayed these products at exhibitions held in Dubai. For this purpose, he rented a stall in the global village, Dubai, with the help of a friend, Shri Mohammed Aashique Binwaleed, a resident of Dubai. He travelled to Dubai on 01.09.2023 from Chhatrapati Shivaji International Airport, Mumbai during his current trip. His friend, Shri Mohammed Aashique Binwaleed, had informed him that he could carry gold to India by mixing gold dust into the glue of a corrugated box. His friend also told him that he would provide a corrugated box containing miscellaneous goods like chocolates and clothes. Upon reaching Mumbai, he was instructed to hand over the box to an individual who would extract the hidden gold and return it to him.
- Shri Mohammed Aashique Binwaleed further informed him that the extracted gold would weigh around 260 grams. However, he did not know the details of the person to whom the box was to be handed over in Mumbai, as these details were to be communicated to him telephonically upon his arrival in Mumbai. Additionally, he claimed not to remember the mobile number or residential address of Shri Mohammed Aashique Binwaleed. He had already paid Rs. 15 lakh in cash to a person sent by Shri Mohammed Aashique Binwaleed in Mumbai. While he was in Dubai, this payment was made in cash by his cousin, Shri Mokin Bagasritewala. As per instructions from Shri Mohammed Aashique Binwaleed, the cash was handed over to a person who presented a particular 10-rupee note as an identifier. He did not know the details of the person who collected the cash from his cousin.
- He was aware that importing gold without payment of customs duty was an offence. Despite this, he intended to evade customs duty and attempted to smuggle gold into the country. To this end, he concealed the gold and refrained from declaring it to the Customs Officer. After clearing immigration procedures, he collected his check-in baggage and was intercepted by Customs officers during checkout. Further procedures, as detailed in the Panchnama dated 08/09.09.2023, were then carried out.
- When questioned about the new mobile phone, an iPhone 14 Pro Max 256 GB was found inside his trolley bag, and he stated that it was a new iPhone purchased in Dubai. However, he did not have a bill for the phone and could not recall the amount paid for it.
- He was aware that he had committed an offence by evading payment of customs duty, for which he had to face the consequences prescribed by customs law.

I find that the noticee has never retracted his aforesaid statement dated 09.09.2023, and the offence committed by the passenger is confessed by him in his statement. Therefore, I consider his statement dated 09.09.2023 to be material evidence in this case, and for that, I place my reliance on the following judgments/case laws;

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that 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 are 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.

**20.** I also 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 in the course of recording his statement. Every procedure conducted during the Panchnama by the officers was well-documented and made in the presence of the panchas and the passenger. In fact, in his statement, the noticee had confessed that he was aware that the import of gold without payment of customs duty was an offence but as he wanted to evade customs duty, therefore he had concealed and not declared the same with an intention to smuggle the gold into country to evade Customs duty as confessed by him in his statement dated 09.09.2023 and thereby 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.

**21.** Further, the noticee has confessed that he had failed to declare the gold (gold nugget weighing 260.040 grams extracted from the gold dust mixed with glue concealed in the corrugated box) to the Customs authorities upon his arrival. It is a clear case of non-declaration intending to smuggle the gold into Indian territory. Accordingly, there is sufficient evidence to say that the passenger had kept the gold in his possession and had failed to declare the same before the Customs Authorities upon his arrival at Surat International Airport, Surat. The smuggling of gold recovered from his possession and kept undeclared with the intent of smuggling it and evading payment of Customs duty is conclusively proved. Thus, it is proved that the passenger had violated Section 77, Section 79 of the Customs Act for the import/smuggling of gold (gold nugget weighing 260.040 grams extracted from the gold dust mixed with glue concealed in the corrugated box), which was not for bona fide use and thereby violated 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. 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, and as per Section 123 of the Customs Act, 1962, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. In the instant case, the noticee confessed in his statement that they had kept gold undeclared with the intent of smuggling of the same.

**22.** From the facts discussed above, it is evident that Shri Mohammed Farooq Abdul Karim Kapadia had concealed gold (by mixing gold dust with glue and concealing it in the corrugated box) while arriving from Sharjah to Surat with the intention to smuggle

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

and remove the same without payment of Customs duty. The offence committed by him hereby renders the 01 Gold nugget (extracted post melting of the said gold dust in the corrugated box), having purity 99% and weighing 260.040 gram, liable for confiscation under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. By ingeniously concealing the said gold and not declaring it before customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention of evading payment of customs duty. The commission of the above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**23.** I note that the noticee had not filled out the baggage declaration form nor declared the said gold in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the import was also for non-bona fide purposes, as the same was carried out for commercial purposes. Therefore, the improperly imported gold nugget weighing 260.040 grams (extracted from the gold dust mixed with glue concealed in the corrugated box) by the passenger Shri Mohammed Farooq Abdul Karim Kapadia, without declaring to the Customs authorities his arrival in India, cannot be treated as bona fide household goods or personal effects. The passenger thus 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.

**24.** Further, I find that the noticee failed to declare the gold (gold nugget weighing 260.040 grams extracted from the gold dust mixed with glue concealed in the corrugated box) to the Customs authorities upon his arrival. Further, by ingeniously concealing the said gold and not declaring it before customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention of evading payment of customs duty. Notably, as per Section 2(33) of the Customs Act, 1962, "prohibited goods" is 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. In this instant case, the improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods given Section 2(33) of the Act.

**24.1** I further 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***, however, in unambiguous terms, lays 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-fulfillment of such conditions will make the goods fall within the ambit of 'prohibited goods.' This made the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible to bring it into India or import gold into India in baggage. Shri Mohammed Farooq Abdul Karim Kapadia confessed carrying the said gold (by mixing the gold dust with glue and cleverly concealing it in a corrugated box), and the same was recovered from his possession and was kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on their importation. Here, the conditions are not fulfilled by the passenger.

**25.** In view of the above discussions, I hold that the gold (by mixing the gold dust with glue and cleverly concealing it in a corrugated box) carried by the passenger Shri Mohammed Farooq Abdul Karim Kapadia without declaration before the Customs authorities with an intention to clear the same illicitly from Customs Airport and evade

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

payment of Customs duty are liable for absolute confiscation. In the instant case, I am, therefore, not inclined to use my discretion to give the option to redeem the 01 gold nugget (extracted from the said gold dust concealed ingeniously in a corrugated box) on payment of redemption fine, as envisaged under Section 125 of the Act.

**25.1** Further, before the Kerala High Court in the case of **Abdul Razak [2012(275) ELT 300 (Ker)]**, the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

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

**25.2** In the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]**, the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of 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.

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

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

**25.4** The Hon'ble High Court of Madras in the matter of **Commissioner Of Customs (Air), Chennai-I Versus P. Sinnasamy 2016 (344) E.L.T. 1154 (Mad.)** Held-

*The 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 -*

*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.*

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

**25.5** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

**26.** In view of the discussion in the foregoing paras, it is evident that Shri Mohammed Farooq Abdul Karim Kapadia had confessed that he was carrying the said gold (ingeniously concealing gold dust in a corrugated box) with the intent to smuggle it into India without declaring it before Customs Officers. Further, the government-approved valuer, after examining and testing, certified the weight and purity of the one gold nugget as 260.040 grams of 99% purity, respectively. The market value of the said gold nugget was determined by the valuer at Rs.15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only) and its tariff value at Rs.13,68,274/- (Rupees Thirteen Lakh Sixty-Eight Thousand Two Hundred Seventy-Four only). The said gold was seized vide Seizure Order/Memo under Panchnama dated 08/09.09.2023 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, the said Gold Nugget is liable to absolute confiscation under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.

**27.** I further find that by using the modus of concealing gold ingeniously inside the corrugated box that he carried as baggage, it is observed that the passenger was fully aware that the import of said goods was offending in nature. It is, therefore, very clear that he has knowingly carried the gold and intentionally not declared the same on his arrival at the Customs Airport, and hence mens-rea on the part of the passenger is established beyond doubt. I firmly believe that he had involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner in which he knew that the same was liable to confiscation under the Act. It is irrefutably proved that the noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962, making him liable for penalty under Section 112 (b)(i) of the Customs Act, 1962 as amended, and I hold accordingly.

Further, upon going through the SCN, I have observed that the market value of the one new mobile phone, viz. iPhone 14 pro max 256GB seized under Panchnama, was not mentioned. Therefore, a letter F. No. VIII/26-14/AIU/CUS/2023-24 dated 05.09.2025 was written to the Superintendent AIU, Surat Airport, requesting them to inform this office of the market value of the iPhone. Subsequently, this office has received a letter F. No. VIII/26-34/AIU/CUS/2024-25 dated 14.03.2025 from the Air Intelligence Unit, Surat International Airport, Surat, wherein the value of the aforesaid iPhone was ascertained at Rs. 90,000/- as per the valuation report No. 13.03.2025/1, issued by the Govt. approved valuer. Notably, the mobile phone is not on the list of ‘prohibited items’ or ‘restricted items’, and therefore, I deem it right to give an option to the noticee No. 1 to redeem the said mobile phone on payment of redemption fine along with applicable Customs duty, interest, penalty.

The Customs Duty and Redemption Fine payable by the noticee for the redemption of an item i.e. an iPhone, is detailed as follows:

**Table-1**

S. N.	Description of Item and Quantity	Value determined by the Govt. approved Valuer (Rs.)	Then Customs Duty payable @ 38.5% (Rs)	Redemption fine payable (Rs.)
1.	One iPhone 14 pro max 256GB Mobile	90,000/-	34,650/-	22,500/-
	<b>TOTAL</b>		<b>34,650/-</b>	<b>22,500/-</b>

**Co-noticee No. 2 Shri Mokin Bagasritewala**

**28.** Further, I find that the issue to be decided in the instant case against noticee No. 2 Shri Mokin Bagasritewala is whether:

- (i) A penalty should be imposed on him under Section 112 of the Customs Act, 1962 or otherwise.

**28.1** An inquiry was initiated against Shri Mokin Bagasritewala by the officers of the AIU, Surat International Airport, Surat. During the investigation, the summons was issued to Shri Mokin Bagasritewala and dispatched to his address, 191, Khwaja Mahal 3/303, Maulana Azad Road, Duncan Road, Mumbai-400008, to investigate his role in the present case. However, despite the successful delivery of four summons to Shri Mokin Bagasritewalaat, his address (as ascertained using the consignment tracking facility on the website of India Post) he did not turn up before the investigating officer. Therefore, it can be concluded that Shri Mokin Bagasritewala deliberately failed to appear before the investigating officer and evaded participation. By intentionally disregarding the summons, he demonstrated a clear intention to avoid the investigation, which strongly suggests his active involvement in the smuggling operation. Despite being given ample opportunities to present facts, provide evidence, and offer further information regarding the case, Shri Mokin Bagasritewala abstained from appearing without offering any justification or requesting an extension, thereby refusing to cooperate with the investigation. Consequently, a complaint under Section 174 of the Indian Penal Code, 1860, read with Section 108 of the Customs Act, 1962, was filed in the court of the Chief Judicial Magistrate, Surat, on 22.02.2024.

**28.2** From the statement of Shri Mohammed Farooq Abdul Karim Kapadia, it appears that Shri Mokin Bagasritewala was also involved in smuggling gold from Sharjah to Surat. As per the statement dated 09.09.2023 of the passenger, recorded under Section 108 of the Customs Act, 1962, Shri Mokin Bagasritewala, on behalf of the passenger, had handed over Rupees fifteen lakh in cash to one person in Mumbai as payment for the purchase of corrugated box containing gold in dust form mixed with glue from Shri Mohammed Aashique Binwaleed, who handed over the said corrugated box containing gold to the passenger, which was subsequently recovered from the passenger at Surat Airport. He has thus contravened the Foreign Trade Policy 2015-20/2023, 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. His wilful intention to abet the smuggling of seized gold also appears to be established by his continuous defiance of the summons issued and his inability to cooperate with the investigation. Thus, Shri Mokin Bagasritewala has also aided, abetted, and knowingly concerned himself in smuggling gold from Sharjah to Surat and has rendered himself liable to penalty under Section 112 (a)(i) of the Customs Act, 1962.

**29.** Accordingly, in the exercise of the powers conferred upon me as the Adjudicating Authority, I hereby pass the following order:



OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

**ORDER**

- (i) I order the **absolute confiscation** of the gold nugget weighing 260.040 grams of 99% purity having a market value of **Rs.15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only)** under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962.
- (ii) I order **confiscation** of one new iPhone 14 pro max 256GB mobile phone, having a market value of **Rs. 90,000/-**, seized under panchnama proceeding dated 08/09.09.2023 under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (iii) However, I give an option to Shri Mohammed Farooq Abdul Karim Kapadia **to redeem** the impugned goods mentioned in Para 29 (ii) above, viz, one iPhone 14 pro max 256GB mobile phone having market value of Rs. 90,000/-, on payment of **redemption fine** of **Rs. 22,500/- (Rupees Twenty-Two Thousand Five Hundred only)** under Section 125(1) of the Customs Act, 1962. In addition to the redemption fine, the noticee would also be liable for payment of **Customs Duty** of Rs. **34,650/- (Thirty-Four Thousand Six Hundred Fifty only)** along with interest as applicable and other charges in terms of Section 125(2) of the Customs Act, 1962. In terms of Section 125(3), in case the redemption fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of this order, such option for redemption shall become void unless an appeal against the order is pending.
- (iv) I impose a **penalty** of **Rs. 15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only)** on Shri Mohammed Farooq Abdul Karim Kapadia under Section 112(b)(i) of the Customs Act, 1962 in respect of goods mentioned at (i) above.
- (v) I impose a **penalty** of **Rs. 3,465/- (Rupees Three Thousand Four Hundred Sixty-Five only)** on Shri Mohammed Farooq Abdul Karim Kapadia under Section 112(b)(ii) of the Customs Act 1962, in respect of goods mentioned at (ii) above.
- (vi) I impose a **penalty** of **Rs. 15,70,382/- (Rupees Fifteen Lakh Seventy Thousand Three Hundred Eighty-Two only)** on Shri Mokin Bagasritewala under Section 112(a)(i) of the Customs Act, 1962.

**30.** This order is issued without prejudice to any other action that may be taken against the noticee(s) 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

OIO No. 27/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-14/AIU/CUS/2023-24

**BY SPEED POST AD/E.MAIL/WEBSITE**

F. No. VIII/26-14/AIU/CUS/2023-24

Date:18.03.2025

**DIN: 20250371MN0000608340**

To,

1. Shri Mohammed Farooq Abdul Karim Kapadia,  
S/o Shri Abdul Karim Ahmed Kapadia,  
191, Khwaja Mahal 3/303, Maulana Azad Road,  
Duncan Road, Mumbai, Maharashtra – 400008
2. Shri Mokin Bagasritewala,  
191, Khwaja Mahal 3/303,  
Maulana Azad Road, Duncan Road,  
Mumbai, Maharashtra – 400008

**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.
4. The Superintendent (Disposal), Customs, Surat International Airport
5. The System In-Charge, Customs, H.Q., Ahmedabad for uploading on the official website (via email)
6. Guard File.