

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

PREAMBLE

A	डी आई एन/DIN	20250371MN000000D3C8
B	फाइल संख्या / File No.	F. No. VIII/26-49/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-49/AIU/CUS/2023-24 dated 26.07.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	28/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	Shri Kalpesh Punabhai Thummar, S/o Shri Punabhai Kalyanbhai Thummar 70, Kevat Nagar Society, Punagam, Surat City, PIN-395010, 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.

2. इस आदेश से अपने को व्यक्ति अपील करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है । इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साथ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए । इस अपील पर नियमानुसार कोट 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.

3. 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 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:

1. Shri Kalpesh Punabhai Thummar (hereinafter referred to as the "Passenger/ Noticee"), Age 37 years, S/o Shri Punabhai Kalyanbhai Thummar residing at 70, Kevat Nagar Society, Punagam, Surat City, PIN-395010, Gujarat India, holding passport No. S3773515 arrived at International Airport, Surat, on 01.03.2024 from Dubai on Indigo Flight No. 6E1992.

2. Based on passenger profiling, Shri Kalpesh Punabhai Thummar, an international passenger who was suspected to be carrying some high-value dutiable/prohibited goods, was intercepted by the officers of the Air Intelligence Unit and Customs officers of Surat International Airport (hereinafter referred to as the "officers"), in the presence of panchas under Panchnama proceedings dated 01.03.2024, near the green channel of the Arrival Hall of International Terminal of International Airport, Surat. The passenger was found to be carrying two pieces of baggage viz, one blue colour trolley bag with a brown cover and one black colour backpack. 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 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. Thereafter, the Customs officer and the passenger entered the room meant for Baby Care located in the Arrival area, where the passenger was scanned with the hand-held metal detector. During scanning, a beep sound was heard when the hand-held metal detector was passed over the back side pockets of the henna colour pants worn by the passenger. Upon frisking and physical search of the passenger, a brown colour pouch bearing the name "Anjali" was recovered from his pant's pocket. The said pouch was found to contain two chains totally weighing 248 grams, which appeared to be made of gold.

3. Thereafter, the Customs officers passed both pieces of luggage carried by him through the XBIS Scanner machine and thoroughly checked the luggage after withdrawing its contents. However, nothing objectionable was observed in the baggage during scanning and thorough checking.

4. Subsequently, the Customs officers called Shri Vikasraj Juneja, the government-approved valuer, and informed him regarding the recovery of two chains, appearing to be gold, from a passenger and requested him to come to the Airport for testing and valuation of the chains recovered. The valuer arrived at the Surat International Airport on 01.03.2024. The customs officers introduced the panchas and the passenger to the valuer. Thereafter, the valuer examined the two chains and certified them as 24-carat gold weighing 248.000 grams and having a purity of 99.9%. The market value of two gold chains weighing 248.000 grams was Rs. 16,24,400/- (Rupees Sixteen Lakh Twenty-Four Thousand Four Hundred only) and its tariff value was Rs. 13,60,791/- (Rupees Thirteen Lakh Sixty Thousand Seven Hundred Ninety-One only) as per Notification No. 13/2024-Cus (NT) dated 15.02.2024 and Notification No. 16/2024-Cus (NT) dated 29.02.2024. Thereafter, the valuer issued a valuation certificate dated 01.03.2024. The Customs officers took custody of the said gold weighing 248.000 grams.

5. The aforesaid two gold chains of 24 Carat, totally weighing 248.000 grams, having a market value of Rs. 16,24,400/- and tariff value of Rs. 13,60,791/- recovered from the passenger, Shri Kalpesh Punabhai Thummar were placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure

order dated 01.03.2024 under Panchnama proceedings dated 01.03.2024, 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 brown colour pouch bearing the name "Anjali" used for the concealment of said gold chains also appeared liable for confiscation and hence was placed under seizure.

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

- Copy of Boarding Pass, from Dubai to Surat, of Indigo Flight No. 6E1992 dated 01.03.2024, Seat No. 13E, PNR No. WQQDNI.
- Copy of Passport No. S3773515 issued at Surat on 09.07.2018 and valid up to 08.07.2028. His address as per his passport is 70, Kevat Nagar Society, Punagam, Surat City, PIN-395010, Gujarat.

7. A statement of the passenger, namely Shri Kalpesh Punabhai Thummar, was recorded on 02.03.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was residing at 70, Kevat Nagar Society, Punagam, Surat City, PIN-395010, Gujarat with his parents, wife, and two children; that he worked as an artisan in a diamond company at Surat; that he had studied up to X Std.; that he could read, write and understand English and Hindi Languages;
- that he was shown and explained the panchnama dated 01.03.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English. After understanding the same, he put his dated signature on the panchnama as a token of acceptance of the facts stated therein;
- that this was his second visit to Dubai; that he had gone to Dubai for a meeting regarding the trading of diamonds; that the gold recovered from his possession belonged to him and he had purchased the same from Dubai; that for purchasing the said gold he had borrowed money from a common friend named Mr. Hareshbhai Vitthalbhai Gajera, who was a resident of Dubai; that he did not remember the address or mobile number of said Mr. Hareshbhai Vitthalbhai Gajera; that he had brought the said gold for use in a family function to be held in his family;
- that he was aware that import of gold without payment of Customs duty was an offence, but he tried to smuggle the same for some monetary benefit on account of such activity; that as he intended to smuggle the gold by concealing the same, he did not declare the same upon his arrival before any Customs officer; that after clearing the immigration procedures, he collected his baggage and during checkout, he was intercepted by the Customs officials and further procedures as stated in Panchnama dated 01.03.2024 was carried out.
- that he was aware that he had committed an offence by smuggling gold for which he would have to face the consequences as prescribed under the Customs Law.

8. 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 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, he 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 he 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."
- s)** As per DGFT Notification No. 36/2015 dated 18.12.2029, 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).

9. CONTRAVICTION AND VIOLATION OF LAWS

It therefore appeared that:

- a)** Shri Kalpesh Punabhai Thummar had actively involved himself in the instant case of smuggling of gold into India. Shri Kalpesh Punabhai Thummar had improperly imported two gold chains of 24 Kt, totally weighing 248.000 grams, having a market value of Rs. 16,24,400/- and tariff value of Rs. 13,60,791/-, as per Notification No. 13/2024-Cus (NT) dated 15.02.2024 and Notification No. 16/2024 – Cus (NT) dated 29.02.2024, without declaring it to the Customs, by way of concealment in a pouch kept in his pants pocket. He concealed the said gold with a deliberate and mala fide intention to smuggle the said gold 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 him with commercial considerations without declaration before the proper officer of Customs could not be treated as bona fide household goods or personnel effects. Shri Kalpesh Punabhai Thummar 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 18.12.2019.
- b)** By not declaring the value, quantity, and description of the goods imported by him, the said passenger violated the provisions of Baggage Rules, 2016, read with section 77 of the Customs Act, 1962 and Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- c)** The gold improperly imported by the passenger Shri Kalpesh Punabhai Thummar by concealing the same in person 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)** Shri Kalpesh Punabhai Thummar, 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 248.000 grams, having a market value of Rs. 16,24,400/- and tariff value of Rs. 13,60,791/- without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, Shri Kalpesh Punabhai Thummar.
- f)** The brown colour pouch bearing the name “Anjali” used for the concealment of said gold chains also appeared liable for confiscation under Section 119 of the Customs Act, 1962.

10. Accordingly, a Show Cause Notice bearing F. No. VIII/26-49/AIU/CUS/2023-24 dated 26.07.2024 was issued to Shri Kalpesh Punabhai Thummar calling upon him 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 Ward office, Althan-Bhimrad Road, Althan, Surat- 395007 within thirty days from the receipt of notice as to why:

- (i)** The recovered 02 gold chains of 24 carats totally weighing 248.000 grams having a market value of Rs. 16,24,400/- (Rupees Sixteen Lakh Twenty-Four Thousand Four Hundred only) and tariff value of Rs. 13,60,791/- (Rupees Thirteen Lakh Sixty Thousand Seven Hundred Ninety-One only), seized vide Seizure Order dated 01.03.2024 under panchnama proceeding dated 01.03.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii)** The brown colour pouch bearing the name “Anjali” seized vide Seizure Memo dated 01.03.2024 should not be confiscated under Section 119 of the Customs Act, 1962;
- (iii)** A penalty should not be imposed upon him under Section 112 of the Customs Act, 1962.

11. DEFENCE REPLY

In the Show Cause Notice dated 26.07.2024 issued to the noticee, he was asked to submit his written reply/defence submission within the stipulated time. However, no reply or defence submission to the Show Cause Notice was received from the noticee within the time specified or beyond.

12. 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, the opportunity to be heard in person was granted to the noticee to appear for a personal hearing on 07.01.2025, 28.02.2025, and 11.03.2025 vide office letters of even file No. dated 26.12.2024, 19.02.2025, and 03.03.2025, respectively. However, neither the noticee nor his authorized representative appeared for the personal hearing on any of the aforementioned personal hearing dates.

13. DISCUSSION AND FINDINGS

I have carefully reviewed the facts of the case, the relied-upon documents, the relevant legal provisions, and other materials on record. I find that the noticee has not submitted any written reply/defence submission to the notice issued to him. Further, three opportunities were granted to the noticee to present his case which have not been availed by the noticee. Therefore, I now proceed to decide the instant case based on evidence and documents available on record.

14. In the present case, I find that the main issues to be decided are whether:

- (i)** The recovered 02 gold chains of 24 carats totally weighing 248.000 grams having a market value of Rs. 16,24,400/- (Rupees Sixteen Lakh Twenty-Four Thousand Four Hundred only) and tariff value of Rs. 13,60,791/- (Rupees Thirteen Lakh Sixty Thousand Seven Hundred Ninety-One only), seized vide Seizure Order dated 01.03.2024 under panchnama dated 01.03.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962 or otherwise;
- (ii)** The brown colour pouch bearing the name “Anjali” seized vide Seizure Memo dated 01.03.2024 should be confiscated under Section 119 of the Customs Act, 1962 or otherwise;
- (iii)** A penalty should be imposed upon him under Section 112 of the Customs Act, 1962 or otherwise.

15. Further, I find that Panchnama has recorded that Shri Kalpesh Punabhai Thummar, holding passport No. S3773515 arrived at Surat International Airport on 01.03.2024 from Dubai on Indigo Flight No. 6E1992. Based on passenger profiling, he was suspected of carrying high-value, dutiable, or prohibited goods and was intercepted by Customs officers. He was carrying two bags, a blue trolley bag, and a black backpack. During a scan with a metal detector, a beep was heard near his pants, and upon frisking, a brown pouch labeled "Anjali" was found in his pocket containing two gold chains weighing 248 grams. His luggage was thoroughly checked, but no other objectionable items were found. The gold chains were valued by government-approved valuer Shri Vikasraj Juneja, who confirmed they were 24-carat gold with a purity of 99.9%, valued at Rs. 16,24,400/- (market value) and Rs. 13,60,791/- (tariff value). The gold was seized under Section 110 of the Customs Act, 1962, along with the pouch used for concealment, on the reasonable belief that the gold was attempted to smuggle into India.

17. Further, I have gone through the statement of the passenger, namely Shri Kalpesh Punabhai Thummar recorded on 02.03.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated he resided at 70, Kevat Nagar Society, Punagam, Surat with his family and worked as an artisan in a diamond company. He has further stated that he has completed his studies up to the 10th standard and he could read, write, and understand English and Hindi. On 01.03.2024, he was shown and explained the Panchnama drawn by Customs officers at Surat International Airport, which he had signed after understanding the contents. He further submitted that this was his second visit to Dubai, where he had went for a diamond trading meeting. He has further admitted that the gold recovered from his possession belonged to him, purchased in Dubai with money borrowed from a friend, Mr. Hareshbhai Vitthalbhai Gajera, of whom he couldn't recall the contact details. He had intended to use the gold for a family function but knowingly smuggled it into India, aware that importing gold without paying customs duties was illegal. He had concealed the gold to avoid detection and did not declare it upon arrival. After immigration clearance, Customs had intercepted him, and the procedures outlined in the Panchnama were carried out. He has acknowledged committing the offence of smuggling gold and was prepared to face the legal consequences under Customs law.

18. Further, I find that the noticee has never retracted his aforesaid statement dated 02.03.2024, and the offence committed by the passenger is voluntarily confessed by him in his statement. Therefore, I consider his 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.

19. Furthermore, I find that the noticee did not question the manner of the Panchnama proceedings at the material time, nor did he contest the facts detailed in the Panchnama while recording his statement. Every procedure executed during the Panchnama by the officers was thoroughly documented and conducted in the presence of the panchas and the passenger. Additionally, I ascertain that the passenger had knowingly attempted to smuggle the gold into India, violating the Customs Act, 1962. According to his admission in the statement dated 02.03.2024, he had confessed that he was fully aware of the nature of his actions and the legal consequences thereof. He has also stated that he had gone to Dubai for a meeting regarding the trading of diamonds, and this was his second visit to Dubai on 19.02.2024. He has further admitted that the gold recovered from his possession belonged to him and that he had purchased it from Dubai. To purchase the said gold, he had borrowed money from a friend named Mr. Hareshbhai Vitthalbhai Gajera, and he had brought the said gold for use in a family function to be held in his family. He further confessed that he was aware that the import of gold without payment of Customs duty was an offence. Still, he intended and attempted to smuggle gold chains by concealing them to get some monetary benefit caused by such activity. Further, he did not declare the same upon his arrival before any Customs officer; that after clearing the immigration procedures, he had collected his baggage, and during checkout, he was intercepted by the Customs officials, and further procedures as stated in Panchnama dated 01.03.2024 were carried out. After thoroughly considering the details above, I am satisfied to affirm that the noticee's intentional failure to declare the gold upon his arrival and his attempts to evade detection by Customs authorities demonstrate a clear intention to smuggle gold into India. Upon his arrival at Surat International Airport on 01.03.2024, he had advanced through baggage collection without declaring to any Customs officer. However, during the checkout process, he was intercepted by Customs officials, which led to the discovery of the smuggled gold and subsequent legal proceedings in accordance with the Panchnama dated 01.03.2024. By his own admission, he has confessed that he had intended to smuggle the gold to get some monetary benefit and he was fully cognizant that such an action constituted an offence under the Customs Law, for which he was liable to face the prescribed legal consequences. Upon a careful review of the foregoing, I am led to the conclusive determination that the passenger has violated the provisions of the 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.

20. Further, I find that the noticee has confessed that he had not declared the said two gold chains, 24 Kt, before the Customs authorities, which were concealed inside the pouch bearing the name "Anjali" kept in his pants pocket. Further, it can be deduced from the discussion in the foregoing paragraph that he had not declared the same with the sole intention of smuggling the gold to get some monetary benefit on account of such activity. Further, I find the modus used by the passenger for the concealment of the gold paste was ingenious, which further corroborates his 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 he arrived at Surat Airport on 01.03.2024, and he had failed to declare it before the Customs Authorities who had arrived 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 his possession was kept undeclared with the intent to smuggle and evade the payment of Customs duty. Thus, I find it irrefutably established that the passenger had violated Section 77, Section 79 of the Customs Act, 1962 for the import/smuggling of gold which was not for bona fide use, and hence he has also contravened Rule 11 of the Foreign Trade Regulation Rules 1993 and Para 2.26/2.27 of the Foreign Trade Policy 2015-20/2023. 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 his statement dated 02.03.2024, has clearly confessed that he wanted to evade customs duty, and, therefore, he had not declared the same with the sole intention to smuggle the gold into India to get some monetary benefit on account of such activity.

21. 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 Shri Kalpesh Punabhai Thummar had carried two gold chains totally weighing 248 grams, 24 Kt, concealed inside the pouch bearing the name “Anjali” in his pants pocket while arriving from Dubai to Surat with the deliberate intent to smuggle the same into India without payment of Customs duty. His actions have rendered the said gold liable for confiscation under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962. By concealing the gold on his person and failing to declare it before the Customs authorities, it is evident that he acted with a clandestine motive to evade customs duty to get some monetary benefit, thereby establishing his ‘**mens rea**’ (guilty intent). Upon reviewing the above, I am of the considered opinion that the deliberate act of concealment by the noticee, non-disclosure of the gold before Customs, and financial gain involved in this case categorically brings his offence within the definition of smuggling, making him liable for the confiscation of the impugned goods and penal consequences under the Customs Act, 1962.

22. 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 his 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 improperly imported gold by the passenger Shri Kalpesh Punabhai Thummar, without declaring to the Customs on his 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.

23. Further, I find that the noticee, in his statement, has confessed to carrying the two gold chains totally weighing 248 grams, 24 Kt, concealed inside the pouch bearing the name “Anjali” kept in his pants pocket, worn by him, at the time of arrival at the airport on 01.03.2024 and the said gold 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 the passenger 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. In view of 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 items liable for confiscation and the passenger subject to penal consequences under the provisions of the Customs Act, 1962.

24. 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, 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*'. Non-fulfillment 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, the passenger has confessed to carrying the said two chains of 24-carat gold totally weighing 248 grams, and the same was recovered from his possession, which was kept undeclared with an intention to evade payment of customs duty as he was attempting to smuggle the gold into India for monetary consideration. By using this modus, 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.

25. In view of the above discussions, I hold that the passenger, Shri Kalpesh Punabhai Thummar, was attempting to smuggle goods into India for monetary benefit and, therefore, had kept the said two gold chains totally weighing 248 grams, 24 Kt, concealed inside the pouch bearing the name "Anjali" kept in his pants' pocket worn by him, being carried by him undeclared with an intention to clear the same illicitly from Customs Airport and evade payment of Customs duty. Therefore, the said two gold chains, weighing 248 grams, 24 Kt, are liable for absolute confiscation. Therefore, in the instant case, I am not inclined to use my discretion to give the option to redeem the said gold on payment of the redemption fine, as envisaged under Section 125 of the Customs Act.

26. 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)]**, 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."

27. Further, I would like to gather support in favour of my position from the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]**, the High Court upheld 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.

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

29. Further, 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 -

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.

30. Further, in view of the discussion in the foregoing paras, it is evident that Shri Kalpesh Punabhai Thummar, in his statement dated 02.03.2024, has confessed that he was aware that import of gold without payment of Customs duty was an offence.

Still, as he wanted to evade customs duty, he did not declare the same to Customs Authorities with the sole intention of smuggling the gold into India for monetary benefit. He has stated that he had gone to Dubai for a meeting regarding the trading of diamonds, and this was his second visit to Dubai. He has further admitted that the gold recovered from his possession belonged to him and he had purchased the same from Dubai and for purchasing the said gold, he had borrowed money from a friend named Mr. Hareshbhai Vithalbhai Gajera, that he had brought the said gold for use in a family function to be held in his family. He has further confessed that he was aware that the import of gold without payment of Customs duty was an offence. Still, he intended and attempted to smuggle gold chains by concealing them to get some monetary benefit. Further, he did not declare the same upon his arrival before any Customs officer; that after clearing the immigration procedures, he had collected his baggage, and during checkout, he was intercepted by the Customs officials and further procedures as stated in Panchnama dated 01.03.2024 were carried out. Further, after examining and testing, the government-approved valuer certified two gold chains of 24-carat weighing a total of 248 grams. The market value of the said gold was determined by the valuer at Rs. 16,24,400/- (Rupees Sixteen Lakh Twenty-Four Thousand Four Hundred only), and its tariff value was Rs. 13,60,791/- (Rupees Thirteen Lakh Sixty Thousand Seven Hundred Ninety-One only). The said gold was seized vide Seizure Order/Memo under Panchnama dated 01.03.2024 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 led to the unequivocal conclusion that the said two gold chains of 24 carats, a total weighing 248 grams, are liable for absolute confiscation under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.

31. After a careful evaluation of the material on records, I find that in the present case, the noticee was found in possession of two gold chains of 24 carats totally weighing 248 grams, concealed inside a brown colour pouch bearing the name "Anjali" in pant's pocket worn by the passenger. It has been observed that he also failed to declare the said gold to Customs authorities upon his 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 his '**mens rea**' and demonstrates a wilful intent to evade Customs regulations, leaving no room for doubt regarding his knowledge and involvement in the attempted act of smuggling. I find it irrefutably established that his 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.

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

OIO No. 28/AB/ADC/SRT-AIRPT/2024-25
F. No. VIII/26-49/AIU/CUS/2023-24

ORDER

- (i) I order **absolute confiscation** of the recovered 02 gold chains of 24 carat totally weighing 248.000 grams having a market value of **Rs. 16,24,400/- (Rupees Sixteen Lakh Twenty-Four Thousand Four Hundred only)** under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii) I order **absolute confiscation** of the brown colour pouch bearing the name “Anjali” under Section 119 of the Customs Act, 1962;
- (iii) I impose a **penalty** of **Rs. 16,24,400/- (Rupees Sixteen Lakh Twenty-Four Thousand Four Hundred only)** on Shri Kalpesh Punabhai Thummar under Section 112 (b)(i) of the Customs Act, 1962.

33. 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

F.No.VIII/26-49/AIU/CUS/2023-24

Date: 18.03.2025

DIN: 20250371MN000000D3C8

To,

Shri Kalpesh Punabhai Thummar
S/o Shri Punabhai Kalyanbhai Thummar,
70, Kevat Nagar Society, Punagam,
Surat City, PIN-395010, 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