

	<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>          4th 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 एन/DIN	20250171MN000000CF5D
B	फ़ाइल संख्या / File No.	VIII/26-26/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-26/AIU/CUS/2023-24 Dated 26.02.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	<b>14/AB/ADC/SRT-AIRPT/2024-25</b>
E	आदेश तारीख/ Date of Order-In-Original	<b>27.12.2024</b>
F	जारी करने की तिथि/ Date of Issuance	02.01.2025
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>Smt. Sakina Asadali Noorani W/o Shri Asadali Altafbhai Noorani, Flat No. 302, Fazalbhai Manzil, Station Road, Matwa Chowk, Bhavnagar, Gujarat-364001</b>

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.

2. इस आदेश से अपने को व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है । इस तरह की अपील, पार्टी को इस आदेश के सौपे 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 कोट की स्टाम्प लगा होना चाहिए ।

2. Any person aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th 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 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.** On the basis of passenger profiling, officers of the Air Intelligence Unit and other Customs Officers (hereinafter referred to as the "Officers") of Surat International Airport, Surat, at the arrival hall of Surat International Airport, intercepted one international passenger named Smt. Sakina Asadali Noorani (hereinafter referred to as the "Passenger/ Noticee" for the sake of brevity), aged 23 years, D/o Shri Gulamabbas Jafarali Bhambhera and W/o Shri Asadali Altafbhai Noorani residing at Flat No. 302, Fazalbhai Manzil, Station Road, Matwa Chowk, Bhavnagar, Gujarat-364001 holding passport No. B6649448, who was suspected to be carrying some high value dutiable/prohibited goods and had arrived at Surat International Airport on 22.11.2023 from Sharjah via Air India Express Flight No. IX-172. When intercepted, the passenger was trying to move out from the Airport by opting Green Channel clearance without making any declaration to the Customs authorities and was carrying three pieces of baggage i.e. one blue colour trolley bag, one blue colour bag and one pink colour bagpack/backpack.

**2.** On being inquired by the officers, if she had anything to declare, in reply to which the passenger denied. The officers informed the passenger that a personal search and detailed examination of her baggage would be carried out. Then the Customs officers asked the passenger whether she wanted to be checked before an Executive Magistrate or Superintendent of Customs, in reply to which the passenger consented to be searched in front of the Superintendent of Customs. Upon frisking and physical search of the passenger, one mangalsutra with two earrings, two bangles and two rings, appeared to be made of gold, were recovered from her possession.

**3.** Thereafter, the Customs officers scanned the baggage of the passenger viz, one blue colour trolley bag, one blue colour bag and one pink colour bagpack/backpack through the XBIS Scanner machine installed in the arrival hall of the Surat Airport. When the pink colour bagpack/backpack was passed through the XBIS scanner machine, an image of electronic items was seen in the scanner machine. Thereafter, the said pink-coloured bagpack/backpack was opened and the following dutiable items were recovered therein:

S. N.	Details Of Articles Recovered	Quantity (Nos.)	Value (Rs.)
1.	HP elitebook core I5 8th gen Laptop	02	90,464 x 2 = 1,80,928/-
2.	Iphone 14 pro 128 GB mobile	01	1,29,900/-

**4.** On being asked, the passenger stated that the above electronic items (laptops and mobile) were given to her by a person at Sharjah airport with the instruction to hand over the same to a person who would contact her outside Surat International Airport. The passenger also informed that the said items were not for her personal use. The Customs officers then took the consent of the passenger for CT scan/ X-Ray and took her to the Sunshine Global Hospital, Surat to ascertain whether she had concealed any contraband item in her body. In the X-ray of Smt. Sakina Asadali Noorani, no contraband item was seen in her body.

**5.** Thereafter, the services of Shri Vikasraj Juneja, the Government Approved Valuer were requested for testing and valuation of the ornaments, appearing to be made of gold, recovered from the passenger. The valuer, after examination and weighment of the items, certified the same to be gold of 99% purity and detailed further as given below:

S. N.	Description of Gold Articles	Net Weight (Grams)	Purity	Market Value (Rs.)
1.	01 old mangalsutra with 02 earrings	123.00	99%	7,70,804/-
2.	02 gold rings	28.200	99%	1,76,721
3.	02 gold bangles	70.090	99%	4,39,233/-

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A valuation certificate No. 20/2023 dated 23.11.2023 issued by the Govt. approved valuer reads that the market value of the aforesaid gold jewellery totally weighing 221.290 grams is Rs. 13,86,758/- (Rupees Thirteen Lakh Eighty Six Thousand Seven Hundred Fifty Eight only) and its tariff value is Rs. 11,68,190/- (Rupees Eleven Lakh Sixty Eight Thousand One Hundred Ninety only) as per Notification No. 82/2023-Cus (NT) dated 15.11.2023 and 84/2023-Cus (NT) dated 16.11.2023.

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

- (i) Copy of Passport No. B6649448 issued at Ahmedabad on 16.10.2023 and valid upto 15.10.2033.
- (ii) Copy of Boarding Pass, from Sharjah to Surat, of Air India Express Flight No. IX-172 dated 22.11.2023, Seat No. 27B, PNR No. MU1H2L.
- (iii) Copy of Aadhar Card No. 568570670117

**7.** The aforesaid electronic items viz, 02 HP elitebook core 15 8th gen laptops having market value of Rs. 1,80,928/-, 01 Iphone 14 pro 128 GB mobile having market value of Rs. 1,29,900/-, and gold jewellery viz, 01 gold mangalsutra with 02 earrings weighing 123.00 grams, 02 gold rings weighing 28.200 grams and 02 gold bangles weighing 70.090 grams, totally weighing 221.290 grams having market value of Rs. 13,86,758/- and tariff value of Rs. 11,68,190/- were brought/ smuggled into India without declaring the same to the Customs authorities with an intent to evade payment of Customs duty in violation of the provisions of Customs Act, 1962. Therefore, the officers placed the above said goods under seizure under Section 110 of the Customs Act 1962 vide Seizure order dated 23.11.2023 under Panchnama dated 22/23.11.2023, on reasonable belief that the same were attempted to be smuggled into by the passenger and therefore were liable for confiscation under provisions of the Customs Act, 1962.

**8.** A statement of Smt. Sakina Asadali Noorani was recorded on 23.11.2023 under Section 108 of the Customs Act, 1962, wherein she inter alia stated:

- that this was her first visit to Dubai and she had gone there alongwith her husband for honeymoon;
- that one person named Mr. Shafin met her and her husband at Sharjah airport and asked them that if they could carry a bag and some gold ornaments to Surat in lieu of some money, to which they agreed;
- that Mr. Shafin handed over one bag containing above mentioned items and told that someone would call them at airport after reaching Surat and they had to hand over these items to that person;
- that Mr. Shafin made payment of Rs. 20,000/- in cash to her and her husband for supplying these items to India;
- that she wore the said ornaments and hid them under the clothes;
- that Mr. Shafin told her that the said bag contained laptop, mobile and other household articles;
- that she had boarded the Air India Express Flight No. IX 172 on 22.11.2023;
- that she did not know the address and mobile number of Mr. Shafin;
- that the laptop and mobile were also handed over by Mr. Shafin only and they were not for her personal use;
- that she was aware that import of gold and other items mentioned above without payment of Customs duty is an offence, but she had intention to smuggle these items without payment of duty;

- that as she intended to smuggle these items (gold jewellery) hence she hid the same under her clothes and did not declare the same before any Customs Officer;
- that she landed at Surat Airport on 22.11.2023 and after clearing the immigration procedures, she collected her baggage and thereafter during checkout, she was intercepted by the AIU officials and further procedures as stated in Panchnama dated 22/23.11.2023 was carried out;
- that she was aware that she had committed an offence by smuggling gold and other above mentioned items for which she had to face the consequences as prescribed under the Customs Law.

#### **9. LEGAL PROVISIONS RELEVANT TO THE CASE:**

- a)** As per para 2.26 of Foreign Trade Policy 2015-20- “Bonafide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules, 2016 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 mean 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 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 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).

### **CONTRAVICTION AND VIOLATION OF LAWS**

**10.** It therefore appeared that:

- (a)** Smt. Sakina Asadali Noorani, in the instant case had actively involved herself into smuggling of gold jewellery totally weighing i.e. 01 gold mangalsutra with 02 earrings weighing 123.00 grams, 02 gold rings weighing 28.200 grams and 02 gold bangles weighing 70.090 grams totally weighing 221.290 grams having market value of Rs. 13,86,758/- and tariff value of Rs. 11,68,190/- as well as electronic items viz, 02 HP elitebook core 15 8<sup>th</sup> gen laptops having market value of Rs. 1,80,928/- and 01 Iphone 14 pro 128 GB mobile having market value of Rs. 1,29,900/- into India. The passenger had improperly imported the said goods concealed in her baggage/in-person without declaring it to the Customs authorities, with a deliberate and mala fide intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The gold jewellery illicitly imported by her without declaration made before the proper officer of Customs with a view to smuggling the same in lieu of monetary consideration cannot be treated as bona fide household goods or personnel effects. The noticee had thus contravened the provisions of 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019. The electronic items so imported were also not for personal use but were smuggled for monetary consideration and hence the same also cannot be treated as bonafide household goods or personnel effects.
- (b)** The passenger had also contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013 in as much as she did not declare the contents of the baggage to the Customs authorities at Surat International Airport.
- (c)** The impugned goods improperly imported by the passenger by concealing in her baggage/in-person without declaring it to the Customs was thus liable for confiscation under Section 111(d), 111(i) and 111(j) read with Section 2(22), & 2(39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- (d)** As per Section 123 of the Customs Act 1962, the burden of proving that the said goods improperly imported without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee. Thus, the noticee, by the above-described acts of omission and commission on her part had rendered

herself liable to penalty under Section 112 of the Customs Act, 1962.

**11.** Therefore, Smt. Sakina Asadali Noorani was called to show cause in writing to the Additional Commissioner, 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 30 days from the receipt of this notice as to why:

- (i)** One gold mangalsutra with two earrings of purity 99% weighing 123.00 grams, two gold rings of purity 99% weighing 28.200 grams and two gold bangles of purity 99% weighing 70.090 grams, totally weighing 221.290 grams having in total market value of Rs. 13,86,758/- (Rupees Thirteen Lakh Eighty-Six Thousand Seven Hundred Fifty Eight only) and tariff value of Rs. 11,68,190/- (Rupees Eleven Lakh Sixty-Eight Thousand One Hundred Ninety only) recovered from her and seized vide Seizure order dated 23.11.2023 under Panchnama dated 22/23.11.2023 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii)** Two HP elitebook core 15 8<sup>th</sup> gen laptops having market value of Rs. 1,80,928/- (Rupees One Lakh Eighty Thousand Nine Hundred Twenty Eight only) and one Iphone 14 pro 128 GB mobile having Market value of Rs. 1,29,900/- (Rupees One Lakh Twenty Nine Thousand Nine Hundred only) recovered from her and seized vide Seizure order dated 23.11.2023 under Panchnama dated 22/23.11.2023 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 her under Section 112 of the Customs Act, 1962.

#### **DEFENCE REPLY**

**12.** The noticee submitted her defence reply through her authorized representative, Shri Rishikesh J. Mehra, Advocate vide letter dated 15.03.2024, wherein she inter alia submitted as under:

- that she had admitted the possession, carriage, transport and ownership of the goods under seizure, but denied the allegation that she had carried the gold for any monetary consideration.
- that the impugned show cause notice issued without a valid and verifiable digital DIN (Document Identification Number) was invalid and it was to be considered that it was never issued. Therefore, the seized goods were liable to be released unconditionally.
- that the impugned SCN was issued with DIN: 20240271MN000000E761. While verifying the said DIN, important columns such as communication sub-category, stream, identifier, party name and party address were left blank. This discrepancy raised concerns regarding the authenticity and validity of the notice in question. She relied upon the decision of the Hon'ble Supreme Court in the cases of Asstt. Collector of Customs and Ors. V Charan Das Malhotra AIR 1972 SC 689, J.K. Bardolia Mills V Dy. Collector and Ors. 1994(5)SCC 332, Krampe Hydraulik (India) v Union of India and Ors. 2003(71) DRJ 353 and Baru Ram V Parsanni AIR 1959 SC 93.
- that the proposal made in the SCN for imposition of penalty under section 112 is not sustainable, since it could not be made out from the SCN whether the charge was being made with reference to Section 112(a) or (b). In this context, she relied upon the judgment in B. Lakshimchand v. Govt. of India, 1983 (12) ELT 322 (Madras), Collector of Customs and Central Excise, Chandigarh v. Ajit Singh and Anr reported in 1987(32) ELT 769, Gianchand Vs State of Punjab-AIR 1962 SC 469 Thakur Amar Singh v. State of Rajasthan reported in AIR 1955 SC 504 and Balvir Singh vs Collector of Customs, 1991(56) ELT64 Tri Del.

- that gold is not a prohibited item and gold seized from the noticee is not liable for confiscation. She relied on the decisions in the cases of : Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009(241) ELT 182 (Cal.), Union of India v. Dhanak M. Ramji 2003(248) ELT 128 (Bom), Sapna Sanjiv Kohli v. Commissioner of Customs, Surat 2010(253) ELT A52(SC) and the case of Horizon Ferro Alloys Pvt. Ltd. in the Division Bench of Punjab and Haryana High Court.
- that in support of her contention for redemption of seized goods, she relied upon the following decisions/Orders: Suresh Kumar Agarwal V. Collector of Customs 1998(103) ELT 18 (AP), Bhargav B. Patel in Appeal No. C/381/10-Mum, GOI's order dated 05.03.14 in case of Sujahi V Commissioner of Customs, Meenambakkam Airport, Chennai, Commissioner of Customs V Alfred Menezes 2009(242) ELT 334 (Bom), Dhanak Madhusudan Ramii V Commissioner of Customs 2009(237) ELT 280, A. Rajkumari Vs Commissioner of Customs 2015(321) ELT 540, Mohd. Zia Ul Haque T2014/314/849, Yaqub Ibrahim Yusuf 2011(263) ELT 685, Shaikh Jamal Basha 1992(91) ELT 227(AP), Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai-2006 (205) ELT 383, (Tri-Chennai) Achiever International 2012(286) ELT 180 (Del), Shri Rama Sugar Industries Ltd. (1974) I SCC 534, Rajaram Bohra 2015(322) ELT 337 (Cal.), Ashok Kumar Verma 2019(369) ELT 1677, Mohammed Husain Ayyub Chilwan 2019(369) ELT 1784, Roshni Mathurdas 2019(369) ELT 184 (Tri Hyd).
- that the noticee is eligible for free import of one laptop and proposal for confiscation of two laptops is not sustainable in view of Notification No. 11/2004 dated 08.01.2004.
- that the valuation of seized goods was improper. Assessment of laptops and Apple mobile phone has been made on the basis of price available on the internet and thus market value is not sustainable. She relied upon the decision in the case of Aggarwal Distributors P Ltd. reported in 2000(117) ELT 49 (Tri) and affirmed by Supreme Court 2000(122) ELT A121(SC), Eastern Exports & Imports Co. 2007(209) ELT 459 (Tri), Venus Insulation Products Mfg. Co. 2001(138) ELT 577 (Tri), Sony Impex 2006(202) ELT 486 (Tri).
- that the noticee claims ownership of the gold and other goods and redemption of the goods on payment of reasonable fine and penalty. She relied upon the decision in the case of Peringatil Hamza 2014(309) ELT 259 (Tri Mumbai) and R. Mohandas 2016(336) ELT 399 (Ker).

#### **RECORD OF PERSONAL HEARING**

**13.1** “Audi alteram partem” is an important principle of natural justice which dictates to hear the other side before passing any order. Accordingly, 1<sup>st</sup> opportunity to be heard in person was granted to the noticee to appear on 18.09.2024.

**13.2** Shri Rishikesh J. Mehra, Advocate (authorized representative of the noticee) attended personal hearing held on 18.09.2024 in virtual mode on behalf of the noticee. He reiterated the contentions made in the defence reply dated 15.03.2024 and stated that the gold is not a prohibited item.

#### **DISCUSSION AND FINDINGS**

**14.** I have carefully gone through the facts of the instant case, including Panchnama, Statement of the notice, show cause notice, record of personal hearing and written submissions of the noticee and other documents/information on records.

**15.** I now proceed to frame the issues in the instant case before me. On a careful perusal of the case records, I find that following issues involved in this case required to be decided are as under, whether

- (i) One gold mangalsutra with 02 earrings weighing 123.00 grams, 02 gold rings weighing 28.200 grams and 02 gold bangles weighing 70.090 grams, totally weighing 221.290 (net weight) grams having market value of Rs. 13,86,758/- and tariff value of Rs. 11,68,190/- recovered from Smt. Sakina Asadali Noorani and seized vide Seizure order dated 23.11.2023 under Panchnama dated 22/23.11.2023 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962 or otherwise;
- (ii) Two HP elitebook core 15 8<sup>th</sup> gen laptops having market value of Rs. 1,80,928/- (Rupees One Lakh Eighty Thousand Nine Hundred Twenty Eight only) and one Iphone 14 pro 128 GB mobile having Market value of Rs. 1,29,900/- (Rupees One Lakh Fifty Four Thousand Nine Hundred Ninety Nine only) recovered from Smt. Sakina Asadali Noorani and seized vide Seizure order dated 23.11.2023 under Panchnama dated 22/23.11.2023 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962 or otherwise;
- (iii) Penalty should be imposed on the notice under Section 112 of the Customs Act, 1962 or otherwise.

**16.** I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling, Customs Officers intercepted one international passenger named Smt. Sakina Asadali Noorani, suspected to be carrying some high value dutiable/prohibited goods, arrived at Surat International Airport on 22.11.2023 from Sharjah via Air India Express Flight No. IX-172. On being inquired by the officers, if she had anything to declare, she replied in negative. Upon conducting a frisking and physical search of the passenger, one mangalsutra with two earrings, two gold rings, and two bangles, all of which appeared to be made of gold, were recovered from her possession. Further, electronic items viz, 02 HP elitebook core 15 8<sup>th</sup> gen laptops having Market value of Rs. 1,80,928/-, 01 Iphone 14 pro 128 GB mobile having market value of Rs. 1,29,900/-, were also recovered from baggage of the passenger.

**17.** Thereafter, the Govt. approved valuer certified the said jewellery to be of gold of 99% purity i.e. 01 gold mangalsutra with 02 earrings weighing 123.00 grams, 02 gold rings weighing 28.200 grams and 02 gold bangles weighing 70.090 grams, totally weighing 221.290 grams. The market value of the aforesaid gold jewellery totally weighing 221.290 Grams is Rs. 13,86,758/- and its tariff value is Rs. 11,68,190/-. Then, the officers seized the above said goods i.e. gold jewellery and electronic items, under Section 110 of the Customs Act 1962 vide Seizure order dated 23.11.2023 under Panchnama dated 22/23.11.2023, on the reasonable belief that the goods carried by passenger without making any declaration of the goods to the Customs officers, appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962 and therefore were liable for confiscation under the Act ibid. I find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor contested the facts detailed in the Panchnama in the course of recording her statement. Every procedure conducted during the recording of Panchnama by the officers was well documented and made in the presence of the panchas as well as the noticee.

**18.** I find that a statement dated 23.11.2023 of the passenger was recorded under Section 108 of the Customs Act, 1962, wherein she inter alia stated as under:

- that this was her first visit to Dubai and she had gone there along with her husband for honeymoon;

- that one person named Mr. Shafin had met her and her husband at Sharjah airport and asked them that if they could carry a bag and some gold ornaments to Surat in lieu of some money, to which they agreed;
- that Mr. Shafin handed over one bag containing above mentioned items and told that someone would call them at airport after reaching Surat and they had to hand over these items to that person;
- that Mr. Shafin made payment of Rs. 20,000/- in cash to her and her husband for supplying these items to India;
- that she wore the said ornaments and hid them under the clothes;
- that Mr. Shafin told her that the said bag contained laptop, mobile and other household articles;
- that she had boarded the Air India Express flight No. IX-172 on 22.11.2023;
- that she did not know the address and mobile number of Mr. Shafin;
- that the laptops and mobile were also handed over by Mr. Shafin only and they were not for her personal use.
- that she was aware that import of gold and other items mentioned above without payment of Customs duty is an offence, but she had intention to smuggle these items without payment of duty;
- that as she intended to smuggle these items (gold jewellery) hence she hid the same under her clothes and did not declare the same before any Customs Officers;
- that she landed at Surat Airport on 22.11.2023 and after clearing the immigration procedures, she collected her baggage and thereafter during checkout, she was intercepted by the AIU officials and further procedures as stated in Panchnama dated 22/23.11.2023 was carried out.
- that she was aware that she had committed an offence by smuggling gold and other above mentioned items for which she had to face the consequences as prescribed under the Customs Law.

**19.** I find that the noticee has never retracted her aforesaid statement dated 23.11.2023 recorded under Section 108 of the Customs Act, 1962 and the offence committed by the passenger is clearly admitted by her in her statement. Therefore, I consider her statement to be material evidence in this case and for that I place my reliance on the following judgements/case laws;

- 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 find that the noticee, in her defence submission, has challenged the impugned show cause notice with the contention that the DIN (Document Identification Number) is invalid and unverifiable. I find that the said DIN: 20240271MN000000E761 has been found to be verifiable on the CBIC website. The said DIN was generated after entering all the mandatory details and after uploading a pdf file of the first page of the impugned SCN which contained all the details of the noticee. A DIN number is generated electronically and omission of any mandatory detail would not allow the user to generate DIN. Hence, the contention of the noticee in this regard is baseless and a lame attempt to challenge the SCN on flimsy ground.

**21.** I find that it is on record that the noticee has illicitly imported the impugned goods into India without making any declaration to the Customs authorities. I find that Section 79 of the Customs Act read with Rule 3 of the Baggage Rules, 2016 allows a passenger to carry articles in his baggage provided that the articles are for personal use and their value do not exceed rupees fifty thousand. I find that the value of seized goods exceed the limit prescribed under the Baggage Rules. Further, the noticee had not intentionally declared the contents of baggage before the Customs officer, in violation of Section 77 of the Customs Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. The noticee, in her statement dated 23.11.2023 recorded under Section 108 of the Customs Act admitted that she had not declared the said items before the Customs authorities as she intended to clear the same illicitly without payment of Customs duty and in lieu of the smuggling of the same, she had accepted Rs. 20,000/- from one person named Shri Shafin at Sharjah airport. The noticee has thus contravened the 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 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**22.** I find that one gold mangalsutra with two earrings weighing 123.00 grams, two gold rings weighing 28.200 grams and two gold bangles weighing 70.090 grams, totally weighing 221.290 grams were concealed by the noticee in-person with an intent to smuggle the same without declaring to the Customs officers. In terms of DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold, import in any form, other than monetary gold and silver in any form, has been amended from 'Free' to 'Restricted' category. Further, as per Section 123 of the Customs Act, 1962, 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, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. Moreover, since the seized gold is of 99% purity, it is evident that the same was not for bona fide personal use by the noticee as an ornament but rather the same was meant for commercial purpose. It is a matter of common knowledge that gold of 99% purity is soft/easily breakable and is not suitable for use as jewellery/ornament. In the instant case, the noticee carried the gold items of 99% purity cleverly disguised in the form of a jewellery (bangles/ring) to deceive the Customs authorities with an intent to smuggle the same. Since the gold items are of 99% purity, it is evident that the same were not for bona fide personal use as a jewellery as stated by her in her statement dated 23.11.2023, rather was for commercial purpose as she had accepted Rs. 20,000/- from one named Shri Shafin at Sharjah airport for illegal clearance of the goods into India.

**23.** I further find that as per Section 2(33), "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The gold improperly imported by the noticee 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 in view of Section 2(33) of the Act. In this context, the view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** in very clear terms lay down the principle that if importation and exportation of

goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the noticee, trying to smuggle it, was not an eligible passenger to bring it in India or import gold into India in baggage/in-person. 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)."*

**24.** In view of the above, I hold that 01 gold mangalsutra with 02 earrings weighing 123.00 grams, 02 gold rings weighing 28.200 grams and 02 gold bangles weighing 70.090 grams, totally weighing 221.290 grams having market value of Rs. 13,86,758/- and tariff value of Rs. 11,68,190/-, carried by the noticee by way of concealment without declaration to the Customs authorities, are liable for confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. The case laws cited by the noticee do not hold, as the instant case is squarely covered by the Hon'ble Apex Court judgment in Om Prakash Bhatia's case (cited supra).

**25.** Further, I am not inclined to give an option for redemption of the seized gold items, as the said items though being of 99% purity, as certified by the Government valuer, were deceitfully disguised as jewellery, to evade the eyes of Customs. Further, in her statement dated 23.11.2023, the noticee admitted that she had carried the said gold items as a carrier for handing over to some other person at Surat for some monetary consideration and for that she had accepted Rs. 20,000/- from one named Shri Shafin at Sharjah airport for illegal clearance of the goods into India and thus the said gold items were not for personal use. I find that 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."*

**26.** In the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]** relating to smuggling of gold, the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. The High Court ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**27.** In view of above, the impugned gold items are liable for absolute confiscation and no option for redemption is available to the noticee. The case laws cited by the noticee do not hold, since the said gold items are of 99% purity, were disguised as gold ornaments and concealed in-person, and were brought by the noticee as carrier for some monetary consideration as stated by her in her statement dated 23.11.2023.

**28.** I find that besides the gold items, the noticee had also brought some electronic goods viz, 02 HP elitebook core 15 8th gen laptops having market value of Rs. 1,80,928/- and 01

Apple Iphone 14 pro 128 GB mobile having market value of Rs. 1,29,900/- . The said goods are clearly commercial goods brought by the noticee without making any declaration to the Customs in violation of Section 77 of the Customs Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013. Despite her knowledge and belief that the said goods carried undeclared by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder, the noticee attempted to clear the same without making any declaration. The noticee, in her statement dated 23.11.2023 confessed that she had not declared the said items as she intended to clear the same illicitly without payment of Customs duty. She had also confessed that these items i.e. gold jewellery and electronic items and mobile were also not for any personal or bona fide use rather for commercial purpose and she had accepted Rs. 20,000/- for clearance of the same with intent to evade customs duty without declaring to Customs authorities. Thus, it is proved that the noticee has violated Section 77 and Section 79 of the Customs Act for improper import/smuggling of goods which were not for bona fide use and thereby has also violated Rule 11 of the Foreign Trade Regulation Rules 1993 and para 2.26/2.27 of the Foreign Trade Policy 2015-20/2023.

**29.** I find that in terms of Notification No. 11/2004-Customs dated 08.01.2004, the noticee is eligible to carry one laptop and the same is exempted from the whole of Customs duty when carried by a passenger of the age of 18 years or above. Taking into consideration the above notification and the age of the noticee, I find that the noticee is entitled to carry one laptop duty free without declaration, and the same is not liable for confiscation/Customs duty payment. Hence, out of two seized HP elitebook core 15 8th gen laptops, one laptop is liable to be released unconditionally.

**30.** From the facts mentioned above, the said electronic goods viz, 01 HP elitebook core 15 8th gen laptop and 01 Apple Iphone 14 pro 128 GB mobile seized vide Seizure Memo/Order under the Panchnama proceedings dated 22/23.11.2023 are liable for confiscation, under Sections 111(i) and 111(j) of the Customs Act, 1962. However, I find that the noticee had placed the said items in her baggage, which cannot be termed as an ingenious concealment even though the charge of non-declaration of the seized goods is established. I also find that in a number of cases, the revisionary authority has granted the option for redemption and have set aside absolute confiscation, viz, (i) Order No. 12/2021-CUS(WZ)/ASAR dated 18.01.2021 by the Revision authority, GOI issued under F. No. :371/44/2015-RA/785 dated 29.01.2021 and (ii) Order No. 245 / 2021 - CUS(WZ) /ASAR dated 29.09.2021 issued under F. No 371/44/B/15-RA/2020 dated 06.10.2021. As such, I use my discretion to give an option to redeem the said seized electronic goods on payment of redemption fine and other charges, as provided under Section 125 of the Customs Act, 1962.

**31.** I find that in her defence reply, the noticee has disputed the valuation of the said electronic goods, and objected to the assessment of laptops and Apple mobile phone on the basis of price available on the internet and market value. However, I find that at the time of seizure of impugned goods, the noticee failed to produce any bills/invoices regarding the said items. Even at the time of submission of defence reply or personal hearing, the noticee has failed to submit any invoice in this regard. In the absence of the same, the value assessed by the Customs officers at the time of seizure of impugned goods attains finality and I am inclined to accept the said value. The redemption fine and Customs duty payable by the noticee for redemption of electronic goods is detailed as under:

**Table-1**

S. N.	Description of item	Quantity	Value as per Panchnama dtd 22/23.11.2023 (Rs.)	Payable @38.5% {BCD 35% + SWS 3.5% (10% of BCD)} (Rs.)	Redemption fine payable (Rs.)
1.	HP elitebook core I5 8th gen laptop	01	90,464/-	34,829/-	22,616/-
2.	Apple Iphone 14 pro 128 GB mobile	01	1,29,900/-	50,012/-	32,475/-
		<b>TOTAL</b>		<b>84,841/-</b>	<b>55,091/-</b>

**32.** The relevant portion of the Section 112 of the Customs Act,1962 for ease of reference, is reproduced as under:

**112. Penalty for improper importation of goods, etc.**

- 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 other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

**33.** I find that clause (a) of Section 112 of the Customs Act, 1962 provides for the penalty for the act of commission and/or omission in illegal import and/or abetment thereto. In the instant case, the noticee has illicitly imported the impugned goods into India without making any declaration to the Customs authorities. The noticee, in her statement dated 23.11.2023 has confessed that she had not declared the said items as she intended to clear the same illicitly without payment of Customs duty and in lieu of the smuggling of the same, she had accepted Rs. 20,000/- from shri Shafin and the seized goods recovered from her was not meant for personal use.

**34.** I, thus, find that the noticee has involved herself in the act of smuggling of the seized gold items and electronic goods, without making declaration to the Customs, despite her knowledge and belief that carrying prohibited/restricted as well as goods in commercial quantity is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. Further, the noticee in her defence submission dated 15.03.2024 stated that she had possessed, carried and transported the impugned goods. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping and dealing with the impugned goods which she knew very well and had reason to believe that the same were liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the noticee is liable for penal action under Section 112 (b) (i) and (ii) of the Customs Act, 1962 as per the category of the goods and I hold accordingly.

**35.** Accordingly, I pass the following order:

**ORDER**

- (i) I order absolute confiscation of one gold mangalsutra with two earrings of purity 99% weighing 123.00 grams, two gold rings of purity 99% weighing 28.200 grams and two gold bangles of purity 99% weighing 70.090 grams, totally weighing 221.290 grams having total market value of Rs. 13,86,758/- (Rupees Thirteen Lakh Eighty Six Thousand Seven Hundred Fifty Eight only) and tariff value of Rs. 11,68,190/- (Rupees Eleven Lakh Sixty Eight Thousand One Hundred Ninety only) under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii) I order unconditional release of one HP elitebook core 15 8th gen Laptop having market value of Rs. 90,464/- (Rupees Ninety Thousand Four Hundred Sixty Four only).

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(iii) I order confiscation of the one HP elitebook core 15 8th gen Laptop having market value of Rs. 90,464/- (Rupees Ninety Thousand Four Hundred Sixty Four only) and one Apple Iphone 14 pro 128 GB mobile having Market value of Rs. 1,29,900/- (Rupees One Lakh Twenty Nine Thousand Nine Hundred only), under Sections 111(i) and 111 (j) of the Customs Act 1962.

(iv) However, I give an option to Smt. Sakina Asadali Noorani to redeem the impugned goods mentioned in Para 35 (iii) above, viz, one HP elitebook core 15 8th gen Laptop having market value of Rs. 90,464/- and one Apple Iphone 14 pro 128 GB mobile having market value of Rs. 1,29,900/-, on payment of redemption fine of Rs. **55,091/-** (Rupees Fifty Five Thousand Ninety One only) under Section 125(1) of the Customs Act, 1962. In addition to redemption fine, the noticee would also be liable for payment of Customs duty of Rs. **84,841/-** (Rupees Eighty Four Thousand Eight Hundred Forty One only) alongwith **interest** 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.

(v) I impose a penalty of **Rs. 13,86,758/-** (Rupees Thirteen Lakh Eighty-Six Thousand Seven Hundred Fifty Eight Only) on Smt. Sakina Asadali Noorani under Section 112(b)(i) of the Customs Act 1962, in respect of goods mentioned at (i) above.

(vi) I impose a penalty of **Rs. 8,484/-** (Rupees Eight Thousand Four Hundred Eighty-Four only) on Smt. Sakina Asadali Noorani under Section 112(b)(ii) of the Customs Act 1962, in respect of goods mentioned at (iii) above.

**36.** 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/26-26/AIU/CUS/2023-24

Date: 27.12.2024

**DIN: 20250171MN000000CF5D**

To,  
Smt. Sakina Asadali Noorani  
W/o Shri Asadali Altafbhai Noorani  
Flat No. 302, Fazalbhai Manzil,  
Station Road, Matwa Chowk,  
Bhavnagar, Gujarat-364001

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