



अपर आयुक्त, सीमा शुल्क कार्यालय

**OFFICE OF THE ADDITIONAL COMMISSIONER
OF CUSTOMS**

सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT

4th Floor, CUSTOMS HOUSE, Beside SMC Ward
Office,Althan-Bhimrad Road, Althan, Surat –
395007 ; Tel. No.- 0261-2990051
Email: customs-suratairport@gov.in



PREAMBLE

A	डी आई ऐन/DIN	20250371MN0000333CE0
B	फ़ाइल संख्या / File No.	F. No. VIII/26-45/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-45/AIU/CUS/2023-24 dated 09.07.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	23/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 Abdul Rahim Mohammad Aalim Intwala S/o Shri Mohammad Aalim Idrish Intwala, 1/2700. Room No. 2, Gr Floor, Opp. Rang Upvan, Nanpura Main Road, Surat City, PIN-395001, Gujarat

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है |
1. This copy is granted free of charge for the private use of the person to whom it is issued.
२. इस आदेश से अपने को व्यथित महसूस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है | इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट की स्टाम्प लगा होना चाहिए |
2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.
३. अपील के साथ निम्नलिखित चीजे संलग्न की जाए |
3. The following documents must be enclosed 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. Based on passenger profiling as well as information received from DRI, Surat, the officers of the Air Intelligence Unit (AIU) and Customs officers of Surat International Airport (hereinafter referred to as the "Officers"), Surat on 06/07.02.2024 intercepted one passenger, at the arrival hall of Surat International Airport, namely Shri Abdul Rahim Mohammad Aalim Intwala (hereinafter referred to as the "Passenger/Noticee"), Age 26 years, S/o Shri Mohammad Aalim Idrish Intwala, residing at 1/2700. Room No. 2, Gr Floor, Opp. Rang Upvan, Nanpura Main Road, Surat City, PIN-395001, Gujarat, India, holding passport No. V6227171, who had arrived at Surat International Airport on 06.02.2024 from Sharjah on Air India Express Flight No. IX172.

2. When asked whether he was carrying any dutiable/restricted/prohibited goods or gold items in his baggage or person, he replied in negative. The officers then informed the passenger that they would conduct his personal search and a detailed examination of his baggage. Before proceeding with the search of the passenger in compliance with Section 102 of the Customs Act, 1962, he was asked whether he would like to be searched in the presence of the nearest Magistrate or Gazetted Officer of Customs, to which he consented to be searched before the Gazetted officers of Customs. The Customs officers then scanned his body with the hand-held metal detector. Also, they passed the clothes worn by him through the XBIS scanner machine located in the arrival hall of Surat International Airport. During scanning, a dark image was seen in the scanner machine, indicating the presence of some metallic object in the button of the black jeans pants worn by the passenger. The said black color jeans pant were found to weigh 708 grams, and the button was found to weigh 60.00 grams. Thereafter, the officers took the passenger to the Sunshine Global Hospital, Surat, for a CT scan/X-Ray after obtaining his consent to ascertain whether he had concealed any contraband item in his body. In the X-ray of the passenger, no contraband item was seen in his body.

3. Thereafter, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery to burn/melt the button of black color jeans pant for extraction of metal contained therein. After melting the button in the furnace, a gold nugget was obtained and some ashes remained in the process. The gold nugget and the remaining ashes obtained were packed in a plastic pouch, put in a green envelope, and sealed so that it could not be tampered with and brought back to the Surat International Airport. Thereafter, the Customs officers, along with the panchas and the passenger, proceeded to Shri Ambica Touch Refinery for burning/melting the button of black colour jeans pants for extraction of metal contained therein. A gold nugget was obtained upon melting the said button in the furnace, and some ashes remained in the process. The gold nugget and the remaining ashes obtained were packed in a plastic pouch, put in a green envelope, and sealed so that it could not be tampered with and brought back to the Surat International Airport.

4. Thereafter, the Customs officers called Shri Vikasraj Juneja, the Government Approved Valuer, informed him about recovering gold items from a passenger, and requested him to come to the Airport for testing and valuation of the gold items so recovered. Shri Vikasraj Juneja, the Govt. approved valuer, arrived at the Surat International Airport on 07.02.2024. The customs officers introduced the panchas and the passenger to Shri Vikasraj Juneja, the government-approved valuer. Thereafter, the sealed green envelope at Shri Ambica Touch Refinery was cut open and examined by the valuer. He also examined the other items, viz, the plate in the shape of a bank credit/debit card and a bar recovered from the trolley. The valuer, after examination and valuation, recorded his observations as under:-

Sr. No.	Description of item	Weight (grams)	Purity	Market value (Rs.)
1	01 Gold nugget	60.00	24 carat	3,88,500
2	01 Gold plate in credit/debit card shape	50.00	24 carat	3,23,750
3	01 Gold square rod shape silver plated	90.00	24 carat	5,82,750
	TOTAL	200.00		12,95,000

5. The valuer informed that the aforesaid gold items of 24 carats totally weighing 200.00 grams had a total market value of Rs. 12,95,000/- (Rupees Twelve Lakh Ninety-Five Thousand only) and a total tariff value of Rs. 11,04,780/- (Rupees Eleven Lakh Four Thousand Seven Hundred Eighty only) as per Notification No. 09/2024-Cus (NT) dated 31.01.2024 and Notification No. 10/2024-Cus (NT) dated 01.02.2024. Thereafter, the valuer issued a valuation certificate dated 07.02.2024. The Customs officers took custody of the said gold items totally, weighing 200.000 grams.

6. The above-mentioned gold items of 24 carat weighing 200.000 grams having a market value Rs. 12,95,000/- and tariff value of Rs. 11,04,780/- recovered from the passenger, Shri Abdul Rahim Mohammad Aalim Intwala were placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 07.02.2024 under Panchnama proceedings dated 06/07.02.2024, on a reasonable belief that the said gold items were smuggled into India and were liable for confiscation under the provisions of the Customs Act, 1962. The Boarding pass of the passenger, a copy of his passport, and a copy of his Aadhar Card were withdrawn from him for further investigation by the officers.

7. Further, a statement of Shri Abdul Rahim Mohammad Aalim Intwala was recorded on 07.02.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he *inter alia* stated as under:

- that he was residing at 1/2700, Room No. 2, Gr. Gloor, Opp. Rang Upvan, Nanpura Main Road, Surat City Pin-395001, Gujarat with his parents, wife, and one daughter; he worked in his father’s cloth shop, “Hyat Fashion” situated at Salabatpura, Surat-395004; he had studied up to 10th Std.; he could read, write and understand English and Hindi Languages;
- that he was shown and explained the panchnama dated 06/07.02.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, he put his dated signature on the Panchnama in token of acceptance of the facts stated therein;
- that this was his first visit to Dubai as a tourist; he had gone to Dubai on 02.02.2024 from Surat International Airport, Surat; in Dubai, an unknown person approached him and informed him that if he could carry gold items to India; the “unknown person” informed him that he would provide him the abovementioned gold items and on reaching Surat, he would have to hand over the same to one person, who would call him on his number; he would give him Rs. 5000/- for this work; he did not have the detail of the person to whom the gold items were to be handed over, and the said details was to be given by that “Unknown Person” telephonically on his reaching Surat; he did not remember the mobile number of that “Unknown Person”; the said person lived in Dubai but his exact address and mobile No. was not known to him;

- that he tried to smuggle the gold for some monetary benefit; as he intended to smuggle the gold by concealing the same, that 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, the Customs officials intercepted him and further procedures as stated in Panchnama dated 06/07.02.2024 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.”

9. CONTRAVENTION AND VIOLATION OF LAWS

It therefore appeared that:

- a) Shri Abdul Rahim Mohammad Aalim Intwala had actively involved himself in the instant case of smuggling of gold into India. The passenger had improperly imported Gold items totally weighing 200.000 grams (net weight), having a market value of Rs. 12,95,000/- and tariff value of Rs. 11,04,780, without declaring it to the Customs, by way of concealment in his clothes/baggage. He concealed the said gold items 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 cannot be treated as bona fide household goods or personnel effects. The passenger has thus contravened the Foreign Trade Policy 2015-20, Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
- b) By not declaring the value, quantity, and description of the goods imported by him, the said passenger violated the provisions of the Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- c) The gold improperly imported by the passenger, Shri Abdul Rahim Mohammad Aalim Intwala by concealing the same in his clothes/baggage 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 Abdul Rahim Mohammad Aalim Intwala, 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, totally weighing 200.000 grams (net weight), having market value of Rs. 12,95,000/- and tariff value of Rs. 11,04,780/- without declaring it to the Customs, were not smuggled goods, was upon the passenger/Noticee, namely Shri Abdul Rahim Mohammad Aalim Intwala.

10. Therefore, a Show Cause Notice bearing F. No VIII/26-45/AIU/CUS/2023-24 dated 09.07.2024 was issued to Shri Abdul Rahim Mohammad Aalim Intwala 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 01 gold nugget of 24 carat weighing 60.000 grams, 01 gold plate in credit/debit card shape of 24 carat weighing 50.00 grams and 01 gold square rod shape silver plated of 24 carat weighing 90.000 grams, in total three gold items of 24 carat totally weighing 200.00 grams having a market value of Rs. 12,95,000/- (Rupees Twelve Lakh Ninety-Five Thousand only) and tariff value of Rs. 11,04,780/- (Rupees Eleven Lakh Four Thousand Seven Hundred Eighty only), seized vide Seizure Order dated 07.02.2024 under panchnama proceeding dated 06/07.02.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii) 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 09.07.2024 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 stipulated time or thereafter.

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 no. F. No VIII/26-45/AIU/CUS/2023-24 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 dates.

13. DISCUSSION AND FINDINGS

I have carefully reviewed this case's facts, the relied upon documents and the relevant legal provisions. I find that the noticee has not submitted any written reply/defence submission to the notice issued to him. Further, three opportunities granted to the noticee to present his case 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 instant case, I find that the main points to be decided in the present case are whether:

- (i) The recovered 01 gold nugget of 24 carat weighing 60.000 grams, 01 gold plate in credit/debit card shape of 24 carat weighing 50.00 grams and 01 gold square rod shape silver plated of 24 carat weighing 90.000 grams, in total three gold items of 24 carat totally weighing 200.00 grams having a market value of Rs. 12,95,000/- (Rupees Twelve Lakh Ninety-Five Thousand only) and tariff value of Rs. 11,04,780/- (Rupees Eleven Lakh Four Thousand Seven Hundred Eighty only), seized vide Seizure Order dated 07.02.2024 under

panchnama proceeding dated 06/07.02.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962 or otherwise;

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

15. Further, I find that Panchnama has accounted for the fact that based on passenger profiling and information from the Directorate of Revenue Intelligence (DRI), Mr. Abdul Rahim Mohammad Aalim Intwala, an international passenger suspected of carrying dutiable or prohibited goods, was intercepted on 06-07.02.2024. He had three baggage items: a light coffee trolley bag, a black trolley bag, and a white color backpack. When asked if he had items to declare, he denied it. Officers then conducted a personal search and examined his baggage using a handheld metal detector and X-ray scanner. A dark image revealed a metallic object in the button of his black jeans, which weighed 708 grams, with the button alone weighed 60 grams. The officers, witnesses, and passenger then went to Shri Ambica Touch Refinery to melt the button which yielded a gold nugget upon extraction and residual ashes. These were packed in a plastic pouch, sealed in a green envelope, and transported back to the airport. Customs called Shri Vikasraj Juneja, the Government Approved Valuer, to test and evaluate the gold items recovered. He arrived on 07.02.2024, where he met the panchas and the passenger. The sealed envelope from Shri Ambica Touch Refinery was opened and examined, along with other items like a plate resembling a bank card and a bar from the trolley. After his examination, Shri Juneja recorded his observations as under:

Sr. No.	Description of item	Weight (gms)	Purity	Market value (Rs.)
1	01 gold nugget	60.00	24 carat	3,88,500
2	01 gold plate in credit/debit card shape	50.00	24 carat	3,23,750
3	01 gold square rod shape silver plated	90.00	24 carat	5,82,750
	TOTAL	200.00		12,95,000

16. The valuer informed that the aforesaid gold items of 24 carat totally weighing 200.00 gms had a total market value of Rs. 12,95,000/- (Rupees Twelve Lakh Ninety-Five Thousand only) and total tariff value of Rs. 11,04,780/- (Rupees Eleven Lakh Four Thousand Seven Hundred Eighty only) as per Notification No. 09/2024-Cus (NT) dated 31.01.2024 and Notification No. 10/2024-Cus (NT) dated 01.02.2024. Thereafter, the valuer issued a valuation certificate dated 07.02.2024. Subsequently, the above-mentioned gold items of 24 carat recovered from the passenger, Shri Abdul Rahim Mohammad Aalim Intwala were placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 07.02.2024 under Panchnama proceedings dated 06/07.02.2024, on the reasonable belief that the said gold items were smuggled into India and were liable for confiscation under the provisions of the Customs Act, 1962.

17. Further, I have gone through the statement of Shri Abdul Rahim Mohammad Aalim Intwala, which was recorded on 07.02.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he has *inter alia* stated:

- that he was residing at 1/2700, Room No.2, Gr. Gloor, Opp. Rang Upvan, Nanpura Main Road, Surat City PIN-395001, Gujarat with his parents, wife, and one daughter; he worked in his father’s cloth shop “Hyat Fashion” situated

at Salabatpura, Surat-395004; that he had studied up to 10th Std.; that he could read, write and understand English and Hindi Languages.

- that he was shown and explained the panchnama dated 06/07.02.2024 drawn at International Airport, Surat, by the officers of Customs AIU, International Airport, Surat, which was in English, and after understanding the same, he put his dated signature on the Panchnama in token of acceptance of the facts stated therein.
- that this was his first visit to Dubai as a tourist; that he had gone to Dubai on 02.02.2024 from Surat International Airport, Surat; that in Dubai, an unknown person approached him and informed him that he could carry gold items to India; that the “unknown person” informed him that he would provide him the abovementioned gold items and on reaching Surat, he would have to hand over the same to one person, who would call him on his number; that he would give him Rs. 5000/- for this work; that he did not the detail of person to whom the gold items was to be handed over and the said details was to be given by that “Unknown Person” telephonically on his reaching Surat; that he did not remember the mobile number of that “Unknown Person”; that the said person lived in Dubai but his exact address and mobile no. was not known to him.
- that he tried to smuggle the gold for some monetary benefit; that as he intended to smuggle the gold by concealing the same, therefore, 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, the Customs officials intercepted him and further procedures as stated in Panchnama dated 06/07.02.2024 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.

18. Further, I find that the noticee has never retracted his aforesaid statement dated 07.02.2024, 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 during the recording of 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 knowingly attempted to smuggle gold into India, violating the Customs Act, 1962. According to his own admission in his statement dated 07.02.2024, he confessed that he was fully aware of the nature of his actions and the legal repercussions thereof. He has stated that he undertook his initial visit to Dubai on 02.02.2024, during which an unidentified individual approached him and presented the opportunity to transport gold items to India, informing him that the gold would be supplied to him and, upon arrival in Surat, he would be required to hand it over to a designated recipient who would communicate with him via phone. I find that the passenger has confessed that he was promised a monetary compensation of ₹5,000/- by the unidentified individual for this task. 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 06.02.2024, he advanced through baggage collection without declaring the said gold items 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 06/07.02.2024 were carried out to seize the gold items which were attempted to be smuggled by him. By his own admission, he has confessed that he intended to smuggle the gold for financial gain 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 repercussions. Upon a meticulous 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 confessed that he had not declared the said gold items before the Customs authorities, which was ingeniously concealed inside the button of the black colour jeans pants worn by him. Additionally, one gold plate in credit/debit card shape weighing 50 grams and one gold square rod shape silver plated weighing 90 grams were also recovered from his baggage. Further, it can be deduced from the discussion in the foregoing paragraph that he had not declared the same with the sole intention to smuggle the gold into India as he was working as a carrier to facilitate the smuggling of goods into India in exchange for monetary compensation of Rs. 5,000/-. Further, I find the modus used by the passenger for the concealment of the gold paste 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 intending 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 06.02.2024, and he failed to declare it before the Customs Authorities 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 of the Foreign Trade Policy 2015-20/Para 2.27 of Foreign Trade Policy 2023. It is pertinent to mention here that since gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods then as per Section 123 of the Customs Act, 1962, the burden to prove that they are not smuggled goods shall be on the person from whose possession the goods have been seized. In the instant case, noticee in his statement dated 07.02.2024, 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 as he was working as a carrier for clearance of smuggled goods into India for monetary gains.

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** of the Act. From the facts discussed above, it is evident that Shri Abdul Rahim Mohammad Aalim Intwala had carried 24-carat gold items totally weighing 200 grams, concealed inside his jeans and his luggage while arriving from Sharjah 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 in his baggage and failing to declare it before the Customs authorities, it is evident that he has acted with a clandestine motive to evade customs duty. Moreover, he has confessed to acting as a carrier for contraband goods into India in exchange for monetary compensation, 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 Abdul Rahim Mohammad Aalim Intwala, 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/ Foreign Trade Policy 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 gold items (inclusive of extracted gold) weighing 200 grams, which was cleverly concealed inside his luggage and in the button of the jeans worn by him at the time of arrival at the airport on 06.02.2024 and was being attempted to be removed from the Surat Airport without declaration before the Customs Authorities. I find it manifestly clear from the facts that 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 three items of 24-carat gold totally weighing 200 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 working as a carrier for smuggling 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 Abdul Rahim Mohammad Aalim Intwala, was working as a carrier to facilitate the smuggling of goods into India in exchange for monetary compensation and, therefore, had kept the said Gold weighing 200 grams 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 three items of 24-carat gold weighing 200 grams are liable for absolute confiscation. In the instant case, I am, thus, not inclined to use my discretion to give the option to redeem the said gold on payment of redemption fine, as envisaged under Section 125 of the Act. To fortify my stand, I rely upon the following case laws/observations made by the Hon'ble Courts and other forums.

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

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

27. Further, in 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 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).*

29. Further, 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 Abdul Rahim Mohammad Aalim Intwala, in his statement dated 07.02.2024, 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. He has further confessed that he was working as a carrier for the clearance of smuggled goods into India for monetary consideration. He has also stated that he undertook his first visit to Dubai on 02.02.2024, during which an unknown person approached him in Dubai and offered him the opportunity to carry gold items to India, informing him that the gold would be provided to him and, upon reaching Surat, he would have to hand it over to a designated recipient who would contact him on his phone. I find that Shri Intwala has confessed that he was promised a monetary consideration of ₹5,000/- by the unknown man for this work, thereby

establishing his monetary motive in the smuggling operation. Further, the government-approved valuer, after examining and testing, certified the three items of 24-carat gold weighing a total of 200 grams. The market value of the said gold items was determined by the valuer at **Rs. 12,95,000/-** (Rupees Twelve Lakh Ninety-Five Thousand only) and its Tariff value at **Rs. 11,04,780/-** (Rupees Eleven Lakh Four Thousand Seven Hundred Eighty only). The said gold was seized vide Seizure Order/Memo under Panchnama dated 06/07.02.2024 under the reasonable belief that the goods carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of the Customs Act, 1962. Given the facts of the present case before me and the judgments and rulings cited above, I am led to the unequivocal conclusion that the said three gold items of 24 carats, totally weighing 200 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 three gold items, viz. one 24-carat gold nugget weighing 60 grams concealed inside the button of the jeans pants worn by the passenger; one 24 carat gold plate in credit/debit card shape weighing 50 grams and one 24 carat gold square rod shape silver plated weighing 90 grams. The three gold items combined weighed 200 grams and were ingeniously concealed by the passenger in the button of his jeans pants and the trolley carried by him. 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 in me as the Adjudicating Authority, I hereby issue the following order:

ORDER

(i) I order **absolute confiscation** of three gold items viz. **one** 24 carat **gold nugget** weighing 60 grams, **one** 24 carat **gold plate** in credit/debit card shape weighing 50 grams and **one** 24 carat **gold square rod** shape silver plated weighing 90 grams, in a total of 24 carat totalling 200 grams with a market value of **Rs. 12,95,000/- (Rupees Twelve Lakh Ninety-Five Thousand only)**, under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.

(ii) I impose a **penalty** of **Rs. 12,95,000/- (Rupees Twelve Lakh Ninety-Five Thousand only)** on Shri Abdul Rahim Mohammad Aalim Intwala under Section 112 (b)(i) of the Customs Act, 1962.

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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/26-45/AIU/CUS/2024-25

Date: 18.03.2025

DIN: 20250371MN0000333CE0

To,
Shri Abdul Rahim Mohammad Aalim Intwala
S/o Shri Mohammad Aalim Idrish Intwala,
1/2700. Room No. 2, Gr Floor, Opp. Rang Upvan,
Nanpura Main Road, Surat City,
PIN-395001, 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