

OIO No.16/AB/ADC/SRT-AIRPT/2024-25  
F. No. VIII/26-36/AIU/CUS/2023-24

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

A	डी आई ऐन/DIN	20250171MN0000888A76
B	फ़ाइल संख्या / File No.	F. No. VIII/26-36/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F.No.VIII/26-36/AIU/CUS/2023-24 dated 02.05.2024
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	16/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	08.01.2025
F	जारी करने की तिथि/ Date of Issuance	09.01.2025
G	द्वारा पारित / Passed by	Anunay Bhati Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and address of Passenger	Shri Jigneshkumar Vinubhai Nasit, S/o Shri Vinubhai Savjibhai Nasit, B1-503, Sumeru Residency, Nr Shreenidhi Residency, Mota Varachha, Surat City, Pin-394101, Gujarat.

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

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. इस आदेश से अपने को व्यथित महसुस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4<sup>th</sup> 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 कोट की स्टाम्प लगा होना चाहिए ।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4<sup>th</sup> 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.

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**BRIEF FACTS OF THE CASE:**

Based on suspicion, Shri Jigneshkumar Vinubhai Nasit (hereinafter referred to as "passenger or noticee" for the sake of brevity), S/o Shri Vinubhai Savjibhai Nasit, holder of Passport No. U8322013 valid up to 14.01.2031, resident of B1-503, Sumeru Residency, Near Shreenidhi Residency, Mota Varachha, Surat City, PIN-394101, Gujarat, who arrived at International Airport, Surat for boarding Air India Express Flight No. IX-171 departing to Sharjah on 19.01.2024, was intercepted by Customs Officers (hereinafter referred to as "officers" for the sake of brevity) at the departure hall of Surat International Airport at around 22:10 Hrs. on 18.01.2024.

2. The passenger suspected to be carrying some suspicious items in the baggage, was stopped during the security check of his baggage at the security checkpoint of Air India Express. The passenger was carrying three pieces of baggage, viz. one green colour trolley bag, one sea green-black colour duffel bag of Aristocrat brand and one blue colour polythene bag. The officers asked the passenger whether he had anything to declare, and in reply the passenger denied. Thereafter, the officers informed the passenger that they would conduct his search and a detailed examination of his baggage. The officers then asked the passenger whether he wanted to be searched in the presence of a Magistrate or Superintendent (Gazetted officer) of Customs. The passenger consented to be searched before the Superintendent of Customs. Thereafter, the officers carried out a search of the passenger in the presence of Panchas, however, nothing objectionable was found.

3. Thereafter, the baggage carried by the passenger was scanned one by one through the scanner machine, and during the scanning of the sea green-black colour duffel bag of Aristocrat brand, an image showing crystal-like items was seen in the monitor attached to the scanner machine. Thereafter, the contents of the said bag were withdrawn and checked thoroughly and it was found that it contained food packets. Among the food packets, two black plastic pouches in sealed condition were also found. Then, the officers, in the presence of panchas, opened the said two sealed pouches and each of these sealed pouches was found to contain one transparent plastic pouch concealing crystal-like items therein. The small crystal-like items of various shapes/sizes appeared to be diamonds. On being asked, the passenger informed that the said crystal-like items were diamonds.

4. Thereafter, the government-approved valuer, Shri Vikasraj Tilakraj Juneja was called to examine the goods that appeared to be diamonds recovered from the said passenger. The valuer arrived at Surat International Airport and examined the goods to determine their exact nature and value. The valuer, after examining the crystal-like items identified the same as rough diamonds having a total weight of 5007.40 Carats. The valuer further confirmed and authenticated that the said goods are weak quality rough rejection diamonds which can be valued at a maximum of 5-7 dollars per carat. The valuer, accordingly, certified the market value of the said 5007.40 carats of rough diamonds to be at Rs. 25,03,700/- (Rupees Twenty Five Lakh Three Thousand Seven Hundred Only) based on manual observation under the absence of any certificate or proof of origin. Accordingly, the valuer issued a valuation certificate No. 01/2024 dated 18.01.2024 to the effect.

5. Thereafter, on the identification of the crystal-like items as diamonds, the officers in the presence of the panchas asked the passenger about the ownership and purchase/export documents of the above diamonds, to which the passenger, Shri Jigneshkumar Vinubhai Nasit informed the officers that no documents related to the above diamonds were with him.

6. On being asked by the officers, the passenger, Shri Jigneshkumar Vinubhai Nasit produced the documents which are as under:

- i) Copy of ticket bearing PNR No. V2TH9P from Surat to Sharjah by flight No. IX-0171 dated 19.01.2024.
- ii) Passport No. U8322013 issued at Surat on 15.01.2021 and valid up to 14.01.2031.

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**7.** The aforesaid diamonds, total weighing 5007.40 Carats having a market value of Rs. 25,03,700/- (Rupees Twenty Five Lakh Three Thousand Seven Hundred Only) as per valuation certificate No. 01/2024 dated 18.01.2024, appeared attempted to be smuggled out of India in passenger baggage by way of concealment by the passenger. The said goods appeared to be commercial goods meant for commercial purposes and hence did not constitute bona fide goods or personal effects under section 79 of the Customs Act, 1962. Neither were the said goods declared to the Customs by the passenger and therefore the same appeared liable for confiscation for improper export in violation of the provisions of the Customs Act, 1962. The said diamonds were therefore seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 19.01.2024 by the officer on a reasonable belief that the mentioned goods were liable to confiscation. The sea green-black colour duffel bag of Aristocrat brand carried by the passenger, inside which the seized diamonds were concealed was also seized on a reasonable belief that the same was used for concealment of the above-mentioned diamonds attempted to be smuggled out of India.

**8.** A statement of Shri Jigneshkumar Vinubhai Nasit was recorded on 19.01.2024 under the provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated that as under:

- he was staying in his own house located at B1-503, Sumeru Residency, Nr Shreenidhi Residency, Mota Varachha, Surat City, Pin-394101, Gujarat with his parents, wife and children;
- he worked as a diamond broker in Surat and Dubai;
- he had studied up to Class X and could read, write and understand Hindi, English and Gujarati languages;
- he was shown and explained the Panchnama dated 18/19.01.2024 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat and after understanding the same he put his dated signature on the Panchnama in token of acceptance of the facts stated therein;
- in the past he had travelled to several countries regarding his brokerage work; he was going to Dubai via Sharjah on 19.01.2024 on Air India Express Flight No. IX-171 from Surat International Airport;
- he was stopped by the officers after clearing the security check of Airlines near airline counters in the departure hall of Surat International Airport;
- he was carrying one green colour trolley bag, one sea green-black colour duffel bag of Aristocrat brand and one blue colour polythene bag;
- on being asked by the Customs officers whether he had anything to declare to Customs, he stated that he had nothing to declare;
- on examination of the sea green-black colour duffel bag of Aristocrat brand, the officers found crystal-like items of various sizes/shapes that appeared to be diamonds inside two black colour plastic pouches in sealed condition;
- the sea green-black colour duffel bag of Aristocrat brand was handed over to him by one person Mr. Goverdhanbhai Sakreliya at Prasang Farm, Varachha Jakat Naka, Surat;
- Mr. Goverdhanbhai Sakreliya was known to him, however, he did not know the address or contact number of Mr. Goverdhanbhai Sakreliya;
- Mr. Goverdhanbhai Sakreliya had asked him to hand over the bag to a person who would call him in Dubai;
- for carrying rough diamonds, the contact of Mr. Goverdhanbhai Sakreliya would have given him accommodation and some money in Dubai;
- as he was in dire need of money, he agreed to the proposal;
- he did not have any purchase vouchers/ legal documents / Kimberley Process (KP) Certificate as specified by Gem and Jewellery EPC (GJEPC) of the said Diamonds recovered from his possession and subsequently placed under seizure under panchnama dated 18/19.01.2024;
- he had perused the valuation certificate No. 01/2024 dated 18.01.2024 issued by the Govt. approved valuer wherein the valuer had certified the weight of rough diamonds as 5007.40 carats;
- he had carried rough diamonds weighing 5007.40 Carats without declaring the same to Customs Authorities and thus attempted to smuggle the same out of India;

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- he was aware that carrying diamonds concealed in baggage or on a person without declaring the same was an offence under the Customs Act but he took a chance to gain some money;
- he had intentionally not declared the said rough diamonds concealed in his baggage before the Customs authorities at the time of departure from Surat International Airport as he wanted to smuggle the same;
- he was aware that he had committed an offence by not declaring the same to Customs for which he would have to face the consequences as prescribed under the Customs law.

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

### **THE CUSTOMS ACT, 1962:**

**Section 2(3)-** “baggage” includes unaccompanied baggage but does not include motor vehicles.

**Section 2(18)-** "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

**Section 2(19)-** “export goods” means any goods which are to be taken out of India to a place outside India

**Section 2(20)-** “exporter”, in relation to any goods at any time between their entry for export and the time when they are exported, includes [any owner, beneficial owner] or any person holding himself out to be the exporter;

**Section 2(22) -** “goods” includes-

- a. vessels, aircrafts and vehicles;
- b. stores;
- c. baggage;
- d. currency and negotiable instruments; and
- e. any other kind of movable property;

**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;

**Section 2(37)-** “shipping bill” means a shipping bill referred to in section 50;

**Section 2(39)-** "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;

**Section 11-**Power to prohibit importation or exportation of goods. — (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following: —

- (c) the prevention of smuggling;
- (e) the conservation of foreign exchange and the safeguarding of balance of payments
- (u) the prevention of the contravention of any law for the time being in force

(3) 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.

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**Section 11H (a)-** “illegal export” means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force.

**Section 50. Entry of goods for exportation.** — (1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as may be prescribed

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely: —

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**Section 77. Declaration by owner of baggage:**

The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

**Section 79. Bona fide baggage exempted from duty. -**

(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.

**Section 110. Seizure of goods, documents and things-** (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

**Section 113. Confiscation of goods attempted to be improperly exported, etc.-** The following export goods shall be liable to confiscation: -

- (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

**Section 114. Penalty for attempt to export goods improperly, etc.-**

Any person 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 113, or abets the doing or omission of such an act, 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 three times the value of the goods as declared by, the exporter or the value as determined under this Act, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher;

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Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

**Section 118. Confiscation of packages and their contents. –**

(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

**Section 119. Confiscation of goods used for concealing smuggled goods.** -Any goods used for concealing smuggled goods shall also be liable for confiscation.

Explanation- In this section, “goods” does not include a conveyance used as a means of transport.

**THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999:**

**Section 7. Export of goods and services.** — (1) Every exporter of goods shall—

(a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

**FOREIGN TRADE POLICY 2015-20:**

**Para 1.11- Issue of e-IEC (Electronic-Importer Exporter Code)**

(a) Importer Exporter Code (IEC) is mandatory for export/import from/to India as detailed in paragraph 2.05 of this Policy. DGFT issues Importer Exporter Code in electronic form (e-IEC). For issuance of e-IEC an application can be made on DGFT ([http:// dgft.gov.in](http://dgft.gov.in)). Applicant can upload the documents and pay the requisite fee through Net banking. Applicant shall, however, submit the application duly signed digitally.

**Para 2.05- Importer-Exporter Code (IEC)/ (e-IEC)**

(I) An IEC is a 10-character alpha-numeric number allotted to a person that is mandatory for undertaking any export/import activities. With a view to maintain the unique identity of an entity (firm/company/LLP etc.), consequent upon introduction / implementation of GST, IEC will be equal to PAN and will be separately issued by DGFT based on an application.

(a) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted. For services exports, IEC shall be necessary as

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per the provisions in Chapter 3 only when the service provider is taking benefits under the Foreign Trade Policy.

**Para 2.06 Mandatory documents for export/import of goods from/into India:**

(a) Mandatory documents required for export of goods from India:

1. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List\*
3. Shipping Bill/Bill of Export/ Postal Bill of Export

**Para 2.08- Export/Import of Restricted Goods/Services**

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard.

**Para 2.26- Passenger Baggage**

(a) 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.

**Para 2.45- Export of Passenger Baggage**

(a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.

**THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992:**

**Section 3. Powers to make provisions relating to imports and exports.** — (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, 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:

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.

(3) 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.

(4) Without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder.

**Section 7. Importer-exporter Code Number.** —No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General:

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**Section 11. Contravention of provisions of this Act, rules, orders and foreign trade policy-** (1) 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.

**THE FOREIGN TRADE (REGULATION) RULES, 1993:**

**Rule 11. Declaration as to value and quality of imported goods or services or technology.** —On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act 1962, state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods or services or technology, certify that the quality and specification of the goods as stated in those documents are in accordance with the terms of the export contract entered into, With the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

**Rule 12. Declaration as to Importer-exporter Code Number.** —On the importation into or exportation out of any Customs port of any goods the importer or exporter shall in the Bill of Entry or Shipping Bill or, as the case may be, in any other documents prescribed by rules made under the Act or the Customs Act, 1962 (52 of 1962), state the Importer-exporter Code Number allotted to him by the competent authority.

**DGFT-FTP Notification No. 43/2015-20 dated 22.11.2021 stipulates that:**

“Export of rough diamonds **shall not be permitted** unless the concerned exporter is registered with Gems & Jewellery EPC, which is the designated importing and exporting authority of India for Kimberley Process Certification Scheme (KPCS).”

**Schedule 2 of Export Policy; General Notes to Export Policy; 3. Classes of Export Trade Control, C. Prohibited Goods: -**

“The prohibited items are not permitted to be exported. An export license will not be given in the normal course for goods in the prohibited category. No export of rough diamond shall be permitted unless accompanied by Kimberley Process (KP) Certificate as specified by Gems and Jewellery EPC (GJEPC).”

**Circular No. 17/95-Cus., dated 01.03.1995 in F. No. 520/118/93-Cus. VI**

**Export of commercial goods as baggage-Instructions regarding-** Such exports through passengers' baggage may be allowed so long as proper proof of the goods having been procured against payment in foreign exchange is provided by the passengers.

**10. CONTRAVENTION OF LEGAL PROVISIONS:**

It, therefore, appeared that: -

**10.1** Shri Jigneshkumar Vinubhai Nasit was actively involved in the attempted smuggling of 5007.40 carats of rough diamonds, valued at Rs. 25,03,700/- (Rupees Twenty Five Lakh Three Thousand Seven Hundred Only). The said diamonds were kept in his baggage and clandestinely carried by him by way of concealment in black colour sealed plastic pouches, without making declaration before the customs authorities. The diamonds concealed in the baggage did not belong to him and were given to him by another person for delivery in Dubai for monetary consideration. The said goods were meant for commercial purposes and hence did not constitute bona fide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, Shri Jigneshkumar Vinubhai Nasit had also contravened the provisions of Section 77 of the Customs Act, 1962 in as much as he did not declare the contents of the baggage to the Customs at Surat International Airport. He also could not produce any valid documents and evidence to prove that the goods carried by him and concealed in his baggage were legitimately procured. Further, the seized goods attempted to be improperly exported by the passenger were commercial goods which should have been properly exported by filing a shipping bill and by complying with the relevant provisions of the



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Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993, Foreign Trade Policy 2015-20, Notifications issued by Directorate General of Foreign Trade and other laws in force governing the export trade. He, thus, had contravened various legal provisions as given below:

- i. Section 11, 50, 77 and 79 of Customs Act, 1962.
- ii. Section 3, 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992.
- iii. Rules 11 and 12 of the Foreign Trade (Regulation) Rules, 1993.
- iv. DGFT-FTP Notification No.43/2015-20 dated 22.11.2021.
- v. Para 1.11, 2.05, 2.06, 2.08, 2.26 and 2.45 of Foreign Trade Policy 2015-2020.

**11.** Thus, the impugned diamonds attempted to be improperly exported/smuggled by the passenger by way of concealment in baggage appeared to have assumed the characteristics of prohibited goods due to contravention of the above-mentioned legal provisions. The passenger had failed to fulfill the conditions as required under various laws governing the export of goods out of India, before the clearance of export goods and thus had rendered the goods liable to confiscation under the provisions of Section 113 (d) and (e) of the Customs Act, 1962 read with the provisions of Section 11 of the Customs Act, 1962 and Section 3 of the Foreign Trade (Development and Regulation) Act, 1992. By his above-discussed acts of omission and commission, the noticee had rendered the impugned goods, viz. rough diamonds having a total weight of 5007.40 carats with a market value of Rs. 25,03,700/- (Rupees Twenty-Five Lakh Three Thousand Seven Hundred Only) attempted to be improperly exported, liable to confiscation under Section 113(d) and (e) of the Customs Act, 1962. Further, by his above-described acts of omission and commission on his part, Shri Jigneshkumar Vinubhai Nasit had knowingly and willingly involved himself in the smuggling of rough diamonds, and hence, rendered himself liable to penalty under Section 114 of the Customs Act, 1962.

**12.** The baggage i.e. sea green-black colour duffel bag of Aristocrat brand, carried by Shri Jigneshkumar Vinubhai Nasit used for concealing the seized diamonds also appeared liable to confiscation under Section 119 of the Customs Act, 1962.

**13.** Therefore, a Show Cause Notice bearing F. No. VIII/26-36/AIU/CUS/2023-24 dated 02.05.2024 was issued to Shri Jigneshkumar Vinubhai Nasit, B1-503, Sumeru Residency, near Shreenidhi Residency, Mota Varachha, Surat, PIN-394101, Gujarat calling upon to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated at 4<sup>th</sup> Floor, Customs House, beside SMC ward office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:

- (i) The **5007.40** Carats of rough diamonds, valued at **Rs. 25,03,700/- (Rupees Twenty Five Lakh Three Thousand Seven Hundred Only)** recovered from him and seized vide Seizure order dated 19.01.2024 under Panchnama proceedings dated 18/19.01.2024 should not be confiscated under Section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) The baggage i.e., sea green-black colour duffel bag of Aristocrat brand, carried by him and used for concealing the diamonds attempted to be smuggled, and seized vide Seizure Memo dated 19.01.2024 should not be confiscated under Section 119 of the Customs Act, 1962;
- (iii) Penalty should not be imposed on him under Section 114 of the Customs Act, 1962;

#### **14. DEFENCE REPLY**

The noticee, Shri Jigneshkumar Vinubhai Nasit submitted his defence reply through his authorised representative, Shri M.B. Bhansali, Advocate vide letter dated 15.10.2024, wherein he has submitted that, as under:

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- (i) he has acknowledged the receipt of the show cause notice issued to him;
- (ii) the conclusion made in the Show Cause Notice is not correct; he is a boy of 39 years of age; he has studied at Gujarati Medium School; he has also submitted that he can read, write and understand Gujarati, little Hindi; he does not read, write and understand English;
- (iii) the statement dated 19.01.2024 is false and wrong; he has not read that; he has not been explained the same; the officers have typed the statement and taken his signature on it; he has requested to the adjudication authority to retract the statement;
- (iv) the officers misguided him and roped in this false case for reasons best known to them and maybe for getting applauses and medals from the department.
- (v) he is not the owner of the seized goods and is not involved in the said offence and he is not the purchaser, seller or supplier of the said goods; he was not in the knowledge about the said goods as the said bag was given by Mr. Goverdhanbhai Sakreliya was the original owner of the goods; he is innocent and not involved in the said offence; he will not demand the goods in future; he was not involved in smuggling activities in the past; neither any case is registered against him;
- (vi) since he does not know how to read, write, understand and speak English, he had requested his advocate to prepare this reply for him after explaining to him all the facts in the Gujarati language;
- (vii) in order to substantiate his submissions, cross-examination of the panch witnesses and departmental witnesses is required, more particularly to show that the Panchnama/seizure memo is false and concocted documents; the said statement alleged to have been recorded under section 108 of the act is involuntary and incorrect;
- (viii) at the end, he has made the following prayers before the adjudicating authority:
  - a) The show cause notice may be quashed and set aside;
  - b) No penalty may be imposed on him under Section 114 of the Customs Act, 1962;
  - c) He may be afforded an opportunity of hearing before passing any order in the matter.

## **15. RECORD OF PERSONAL HEARING:**

**15.1** "Audi alteram partem" is an important principle of natural justice which dictates to hear the other side before passing any order. Therefore, vide office letter F. No. VIII/26-36/AIU/CUS/2023-24 dated 01.10.2024, an opportunity to be heard in person was granted to the noticee, to appear on 15.10.2024 and present his case.

**15.2** Shri M.B. Bhansali, Advocate Authorized representative on behalf of his client Shri Jigneshkumar Vinubhai Nasit, attended the personal hearing on the scheduled date wherein, he filed a defence submission and reiterated the same during the course of personal hearing.

## **16. DISCUSSION AND FINDINGS**

I have carefully gone through the facts of this case, the relied-upon documents, the defence submission of the noticee and the relevant legal provisions pertaining to this case. I, therefore, proceed to decide the case on the basis of evidence and documents available on record.

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

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- (i) The 5007.40 carats of rough diamonds, valued at Rs. 25,03,700/- (Rupees Twenty-Five Lakh Three Thousand Seven Hundred Only) recovered from the passenger and seized vide Seizure Order dated 19.01.2024 under Panchnama proceedings dated 18/19.01.2024 are liable to confiscation under Section 113 (d) and 113 (e) of the Customs Act, 1962 or not;
- (ii) The baggage i.e. sea green-black colour duffel bag of Aristocrat brand, carried by the passenger and used for concealing the diamonds attempted to smuggle and seized vide Seizure Memo dated 19.01.2024 is liable to confiscation under Section 119 of the Customs Act, 1962 or not;
- (iii) The noticee is liable for penal action under Section 114 of the Customs Act, 1962 or not.

**17.** I find that Panchnama has drawn out the fact that based on suspicion, a passenger suspected to be carrying some suspicious items in his baggage, was stopped during a security check while he was proceeding to board a Sharjah-bound flight on 18.01.2024. The officers asked the passenger whether he had anything to declare in reply to which the passenger replied in negative. Then, on scanning one Sea Green-Black colour duffel bag of Aristocrat brand, part of the baggage, the monitor attached to the scanner machine showed an image indicating the presence of crystal-like items in the bag. Then, the bag was emptied and its contents were checked thoroughly and it was found that it contained few food packets. Among the food packets, two black colour plastic pouches in sealed condition were also found. Then, the officers, in the presence of panchas, opened the said two sealed pouches, each sealed pouch was found to be containing a transparent plastic bag with small, crystal-like items inside it. The small crystal-like items of various shapes/sizes appeared to be diamonds. On being asked, the passenger informed that the said crystal-like items were diamonds. Thereafter, the government-approved valuer, Shri Vikasraj Juneja examined the goods and identified the same as rough diamonds weighing 5007.40 carats. The valuer further confirmed and authenticated that the said goods were weak quality rough rejection diamonds which could be valued at a maximum of 5-7 dollars per carat. The valuer, accordingly, certified the market value of the said 5007.40 carats of rough diamonds to be Rs. 25,03,700/- (Rupees Twenty-Five Lakh Three Thousand Seven Hundred only). Thereafter, he issued a valuation certificate No. 01/2024 dated 18.01.2024. As, the said goods appeared to be commercial goods meant for commercial purposes and therefore did not constitute bona fide personal effects under Section 79 of the Customs Act, 1962 and neither were they declared to the customs authorities by the passenger, consequently, the said diamonds were seized under Section 110(1) and Section 110(3) of the Customs Act, 1962 vide seizure order dated 19.01.2024 by the officers under a reasonable belief that the mentioned goods were liable to confiscation. The sea green-black colour duffel bag of Aristocrat brand carried by the passenger, inside which the seized diamonds were concealed was also seized on a reasonable belief that the same was used for concealment of the above-mentioned diamonds which were attempted to be exported/smuggled out of India.

**18.** The statement of the passenger was recorded on January 19, 2024, under the provisions of Section 108 of the Customs Act, 1962, in which he, inter alia stated as follows:

- He worked as a diamond broker in Surat and Dubai;
- He had studied up to Class X and could read, write and understand Hindi, English and Gujarati languages;
- He was stopped by the officers during a security check at the departure hall of Surat International Airport;
- He was carrying one green colour trolley bag, one sea green-black colour duffel bag of Aristocrat brand and one blue colour polythene bag;
- On being asked by the officers whether he had anything to declare to Customs, he stated that he had nothing to declare;
- On examination of the sea green-black colour duffel bag of Aristocrat brand, the officers found crystal-like items of various sizes/shapes that appeared to be diamonds inside two black colour plastic pouches in sealed condition;

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- The sea green-black colour duffel bag of Aristocrat brand was handed over to him by one person Mr. Goverdhanbhai Sakreliya at Prasang Farm, Varachha Jakat Naka, Surat;
- Mr. Goverdhanbhai Sakreliya was known to him, however, he did not know the address or contact number of Mr. Goverdhanbhai Sakreliya;
- Mr. Goverdhanbhai Sakreliya had asked him to hand over the bag to a person who would call him in Dubai;
- For carrying rough diamonds, the contact of Mr. Goverdhanbhai Sakreliya would have given him accommodation and some money in Dubai;
- As he was in dire need of money, he agreed to the proposal;
- He did not have any purchase vouchers/ legal documents / Kimberley Process (KP) Certificate as specified by Gem and Jewellery EPC (GJEPC) of the said Diamonds recovered from his possession and subsequently placed under seizure under panchnama dated 18/19.01.2024;
- He had perused the valuation certificate No. 01/2024 dated 18.01.2024 issued by the Govt. approved valuer wherein the valuer had certified the weight of rough diamonds as 5007.40 carats;
- He had carried rough Diamonds weighing 5007.40 carats without declaring the same to the Customs Authorities and thus attempted to smuggle the same out of India;
- He was aware that carrying diamonds concealed in baggage or on a person without declaring the same is an offence under the Customs Act but he took a chance so as to gain some money;
- He had intentionally not declared the said rough diamonds concealed in his baggage before the Customs authorities at the time of departure from Surat International Airport as he wanted to smuggle the same;
- He was aware that he had committed an offence by not declaring the same to Customs for which he would have to face the consequences as prescribed under the Customs law.

**19.1** I find that the noticee in his defence submission, has requested the adjudicating authority to retract his statement dated 19.01.2024. I find that it is vital to peruse the aforesaid statement dated 19.01.2024 of the noticee, recorded under Section 108 of the Customs Act, 1962, wherein he had confessed to committing the offence by not declaring the aforesaid diamonds to customs officers and by attempting to smuggle the same out of India by way of concealment of diamonds, in commercial quantity, in the baggage carried by him. The noticee further confessed that he was in dire need of money, therefore he agreed to smuggle the goods out of India for some monetary consideration which he was to receive on handing over the bag containing the seized diamonds in Dubai to contact person of Shri Goverdhanbhai Sakreliya who had handed over the bag containing Diamonds to be smuggled, to the passenger at Surat. Now, I also peruse the defence submission dated 15.10.2024 of the noticee made through his authorized representative Shri M. B. Bhansali, Advocate. On examining it, I find that the noticee has submitted that Shri Goverdhanbhai Sakreliya is the original owner of the goods (seized Diamonds) and the bag (containing diamonds) was handed over to him by Shri Goverdhanbhai Sakreliya. The noticee has also stated the same in his statement dated 19.01.2024 that the bag containing diamonds was handed over to him Shri Goverdhanbhai Sakreliya. After going through the said statement and defence submission, it can be figured out that nowhere in the defence submission has any evidence/document/information been put before me which proves that the statement is false and inaccurate. Rather, I find that noticee has explicitly mentioned that the bag containing the impugned diamonds was handed over to him by Mr. Goverdhanbhai Sakreliya and this detail aligns with both the noticee's statement and his defense submission. Therefore, it establishes the noticee's involvement in the present case of smuggling.

**19.2** I further find that the case against the noticee is not solely dependent upon the confessional statement of the noticee, but also on the recovery of impugned diamonds from his possession which has been well documented in the Panchnama dated 19.01.2024 and also confessed by the noticee in his statement as well as a written submission. The written

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submission also does not elaborate as to why the impugned diamonds were concealed neither does it reveal the purpose for carrying such highly valued diamonds to a foreign destination. Regardless of the accused's request for retraction, the statement made by the accused is corroborated by substantial evidence and a retraction cannot alter the objective facts established by the evidence. It is thus evident that the retraction of the statement by noticee at such a belated stage is an afterthought based on legal advice just to save himself from the consequences of the law. Further, the request for retraction of the statement lacks sufficient legal or factual grounds and does not alter the overwhelming evidence against the accused. Allowing the retraction at this stage would only serve to undermine the integrity of the judicial process and the pursuit of justice. Hence under the given circumstances, I find that the statement of noticee tendered on 19.01.2024 under section 108 of the Customs Act, 1962 is true and correct and thus the retraction of statement cannot be acceded to.

**19.3** I find that here, it would be relevant to examine the provisions of Section 108 of the Customs Act, 1962-

**Section 108. Power to summon persons to give evidence and produce documents**

*[(1) Any Gazetted Officer of customs 2 [\*\*\*] shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]*

...

...

*(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).*

From the perusal of the provisions of section 108, it is evident that the inquiry under Section 108 of the Customs Act is deemed to be a judicial proceeding by virtue of sub-section (4) and the person who is summoned under this section is bound to appear and state the truth while giving evidence. Thus, the statement recorded under this section is an admissible piece of evidence and also admitted by Court of law. Therefore, I consider the noticee's statement dated 19.01.2024 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.

**20.1** I find that the allegation of the noticee that he had neither read the statement dated 19.01.2024 nor it was explained to him and the officers only typed it and got it signed from him, is indigestible and illogical. On going through the said statement dated 19.01.2024, it is forthcoming that the statement has considerable details therein such as his personal details, address, education, qualification, business, travelling history, submission of

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documents and his meeting and handing over of bag (containing diamonds) from Shri Goverdhanbhai Sakreliya, which is not possible without the co-operation of the noticee. Further, the noticee has stated in the statement that he has given his statement voluntarily and willingly without any threat, coercion or duress. Confirming the truth and correctness of the statement, the noticee has put a dated signature on each page of the statement. Further, the statement recorded reads: *before recording my statement, I have been explained the provisions of the Customs Act, 1962, according to which I have to give a true and correct statement. In case my statement is found to be untrue or misleading action under the provisions of the Indian Penal Code can be initiated against me.* In addition, the noticee has put his signature in English on the statement. Given the above discussion, it can be inferred that the noticee knows working-level English. If the noticee had not known the English language at all, he could have refused to sign the said statement, however, the noticee did not do so.

**20.2** I find that the statement was recorded voluntarily by the noticee and there was no coercion or undue influence on him during the recording of the statement as noticee at the time of recording of a statement or in defence submission has never stated that any threat, coercion or duress was employed in doing so. I further find that the noticee was allowed to review, confirm, or clarify the recorded statement before signing or agreeing to its contents. I also find that the recorded statement aligns with other evidence or facts in the case, reducing the likelihood of misunderstanding due to language issues. Thus, I find that the department has followed all legal and procedural requirements during the recording of the statement, ensuring its validity. It is thus evident that the allegation discussed is an afterthought based on legal advice just to save himself from the consequences of the law and to delay the time-bound adjudication process.

**21.** I find that in his defence submission, the noticee has requested for cross-examination of the panch witnesses and the departmental witnesses. I find that the Panchnama dated 18/19.01.2024 has well documented all the procedures carried out at the time of the search and seizure of the impugned diamonds. The crux of the case i.e. (i) recovery of diamonds from the noticee, which were kept intentionally concealed and (ii) non-declaration of diamonds before the Customs is not only conclusively proved, but also confessed by the noticee in his statement dated 19.01.2024. The noticee has also not mentioned as to which fact of the Panchnama is being disputed. While the noticee has disputed the statement, he has not contested any fact mentioned in the Panchnama. Hence the request for cross-examination of panch witnesses and departmental witnesses seems unnecessary and without any basis. Further, the right of cross-examination cannot be considered as a mandate in a quasi-judicial proceeding and depends upon the facts and circumstances of each case. Hence, the request for cross-examination of the panch witnesses and the departmental witnesses in this case appears to be an attempt to delay and vitiate the proceedings and hence cannot be acceded to.

In the above context, reliance is placed on the following decisions:

(a) In the case of **Surjeet Singh Chhabra vs. the Union of India** & Others reported in 1997 (89) E.L.T. 646 (S.C.)], the Hon'ble Supreme Court has held that the Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross-examination by the petitioner.

(b) In the case of **Commissioner of Customs, Hyderabad V. Tallaja Impex** reported in 2012(279) ELT 433 (Tri.), it was held that-

*"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."*

(c) In the case of **Patel Engg. Ltd. vs UOI** reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;

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***“Adjudication – Cross-examination – Denial of- held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances – Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors – Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated.” [para 23].***

(d) In the case of **Union of India Vs. Rajendra Bajaj** [2010(253) E.L.T.165 (Bom.)], Hon’ble Bombay High Court stated in Para 6, which is reproduced herein below –

*“the Supreme Court held in K.L. Tripathi v. State Bank of India (1984) 1 SCC 43 that where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, **absence of opportunity to cross-examination does not create any prejudice in such cases and does not vitiate the decision.**”*

(e) Hon’ble **Punjab High Court in the case Ranchodbhai M. Patel vs. Central Board of Revenue, New Delhi** reported as 2000 (125) ELT 281 (Punj.) has held that:

*“Natural justice – Petitioner himself having signed the panchnama made in his presence, production of panchas before him for cross-examination not necessary – Principles of natural justice not violated – Section 122 of the Customs Act, 1962.”*

(f) Hon’ble CESTAT, Delhi in its decision in the case of **Om International vs CC, New Delhi** reported in 2007 (217) ELT 88 (Tri. Del.) held that

*“.....appellants have not been prejudiced in any manner by denial of Cross-examination of seizing officer, panch witnesses and officers, who recorded statement. contents of these statements fully reproduced in show cause notice itself and appellants have been granted ample opportunities to reply the same.”*

**22.** I find that the noticee in his defence submission dated 15.10.2024, has submitted that he is not the owner of the said goods and he was not involved in the said offence as he was not the purchaser, seller or supplier of the goods. He has further submitted that he was not aware of the said goods (diamonds) as the same was given to him by Mr. Goverdhanbhai Sakreliya. He has further stated that the noticee was not involved in any smuggling activities in the past nor has any case been registered against him. I find that the evidence presented before me indicates that the goods in question were found in the noticee's possession, and there is no sufficient explanation as to how they came to be there. The noticee's claim of not being the owner is contradicted by the fact that the goods were seized from his possession. The assertion that the noticee was unaware of the goods being in his possession is unsubstantiated. The evidence and facts suggest that the goods were stored or transported in circumstances where the noticee must have been aware of them. In addition, no documentation or statement was presented to corroborate the claim that Mr. Goverdhanbhai Sakreliya provided the goods to the noticee, raising doubts about the veracity of the claim made by the noticee. Further, while it is noted that the noticee does not have a prior history of smuggling offences, this fact does not absolve him from responsibility in this instance. The absence of prior criminal activity cannot be used as a defence in cases where substantial evidence points to his involvement in the illegal possession of smuggled goods. It is therefore not plausible that the noticee was entirely unaware or uninvolved in the transaction related to these goods, as submitted by him in his defence submission." Given the above discussion, the further allegation made by the noticee, that the officer roped him in a false case to get applause and medals from the department in the presence of such substantive evidence, sounds absurd and ill-considered and the same is dismissed.

**23.** I find that in his defence submission, the noticee has pleaded that he is innocent and hence the SCN issued against him may be set aside and no penalty should be imposed upon

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him. In this regard, 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 during the recording of his statement. Every procedure conducted during the Panchnama by the officers was well documented and made in the presence of the panchas as well as the noticee. In fact, in his statement, the noticee had confessed that the bag containing the concealed diamonds was handed over to him by one Mr. Goverdhanbhai Sakreliya at Prasang Farm, Varachha Jakat Naka, Surat. He has confessed to having attempted to smuggle the impugned diamonds without making a declaration before the customs to gain some money.

**24.** I find that the noticee has confessed in his statement dated 19.01.2024 that he was aware that carrying diamonds concealed in baggage or person without declaring the same is an offence under the Customs Act, but he took a chance to gain some money. It is a clear case of non-declaration with an intent to smuggle the diamonds outside Indian territory. Accordingly, there is sufficient evidence to say that the passenger had kept the diamonds which was in his possession and had failed to declare the same before the Customs Authorities during his departure at Surat International Airport, Surat. The case of smuggling of diamonds recovered from his possession and which was kept undeclared with an intent of smuggling the same, is conclusively proved. Thus, it is proved that the passenger has violated Section 77, Section 79 of the Customs Act for the export/smuggling of diamonds which was not for bona fide use and thereby has violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26/2.27 of the Foreign Trade Policy 2015-20/2023.

**25.** I, further, find that as per the DGFT Notification No. 43/2015-2020 dated 22.11.2021, export of rough diamonds is not permitted unless the concerned exporter is registered with Gems & Jewellery EPC, which is the designated importing and exporting authority of India for Kimberley Process Certification Scheme (KPCS). In this case, when the noticee was asked to produce legal proof/document and KPC Certificate about the possession of rough diamonds by him, he failed to produce any proof before the authorities. Therefore, it demonstrates that the diamonds recovered from the noticee were not legitimately sourced and were meant to be used for commercial purposes to earn some money. Further, the noticee has admitted in his statement that he had kept diamonds undeclared with the intent of smuggling the same for monetary consideration.

**26.** From the facts discussed above, I find that it is evident that Shri Jigneshkumar Vinubhai Nasit had carried clandestinely the Rough Diamonds weighing 5007.40 carats concealed in a black pouch, while departing from Surat International Airport, with an intention to smuggle the same without declaration before the Customs authorities, thereby rendering the said diamonds liable for confiscation, under the provisions of Sections 113 (d), and 113 (e) of the Customs Act, 1962. By concealing the said diamonds in a pouch and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the diamonds clandestinely without declaring them before the Customs Authorities. The commission of the above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**27.** I further find that the noticee had not declared the said diamonds, in commercial quantity, which was in his possession, as envisaged under Section 77 of the Customs Act, 1962. It is also observed that the export was also for mala fide purposes, as the diamonds were clandestinely carried for the sake of receiving a monetary benefit. Therefore, the said diamonds weighing 5007.40 Carats, attempted to be exported improperly valued at Rs. 25,03,700/- by the passenger Shri Jigneshkumar Vinubhai Nasit without declaring to the Customs on his departure from India cannot be treated as bona fide household goods or personal effects. The passenger thus has contravened the provisions of the following Act/Policy/Notification/Rules:

- **Section 11, 50, 77 and 79 of Customs Act, 1962;**
- **Section 3, 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992;**



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- **Rules 11 and 12 of the Foreign Trade (Regulation) Rules, 1993;**
- **DGFT-FTP Notification No.43/2015-20 dated 22.11.2021;**
- **Para 1.11/1.13, 2.05, 2.06, 2.08, 2.26/2.27 and 2.45 of Foreign Trade Policy 2015-2020/2023.**

**28.** As per Section 2(33) of the Customs Act, 1962, “prohibited goods” is defined as any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. I find that in the instant case, the noticee had attempted to illicitly export the impugned diamonds by way of concealment in his baggage without declaration to the Customs and without complying with the relevant provisions of the Customs Act, 1962; Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993 Foreign Trade Policy 2015-20/2023 and other relevant notifications. The diamonds attempted to export improperly by the passenger without following the due process of law and without adhering to the conditions and procedures of export, have thus acquired the nature of being prohibited goods given Section 2(33) of the Act.

**29.** I further find that the diamond is not on the list of prohibited items but export of the same is controlled. The view taken by the *Hon’ble Supreme Court in the case of Om Prakash Bhatia* however in very clear terms lays down the principle that if the importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of ‘prohibited goods’. Non-fulfillment of prescribed conditions has made the diamonds seized in the present case “prohibited goods” as the passenger, trying to smuggle them, out of India or export diamonds outside India in baggage. I find that Shri Jigneshkumar Vinubhai Nasit confessed to carrying the said rough diamonds clandestinely and the same was recovered from his possession and was kept undeclared with an intention to smuggle the same. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on their exportation. Here, the mandatory conditions required to export diamonds in baggage are not fulfilled by the passenger.

**30.** I find that given the discussion in the foregoing paras, it is evident that Shri Jigneshkumar Vinubhai Nasit had admitted that he was carrying the said Diamonds with the intent to smuggle them outside India without declaring them before customs officers. Further, the Government approved valuer after examining the crystal-like items recovered from Shri Jigneshkumar Vinubhai Nasit, identified the same as rough diamonds having a total weight of 5007.40 carats and certified their market value to be Rs. 25,03,700/- (Rupees Twenty-Five Lakh Three Thousand Seven Hundred Only) and issued a valuation certificate No. 01/2024 dated 18.01.2024. The said goods were then placed under seizure vide Seizure Order/Memo under Panchnama dated 18/19.01.2024 under the reasonable belief that the goods clandestinely 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 judgements and rulings cited above, the rough diamonds weighing 5007.40 carats recovered from the passenger, are liable to absolute confiscation under Section 113 (d) and 113 (e) of the Customs Act, 1962. Further, the baggage i.e., Sea Green-Black colour duffel bag of Aristocrat brand, carried by him and used for concealing the diamonds attempted to smuggle, and seized vide Seizure Memo dated 19.01.2024 is also liable to confiscation under Section 119 of the Customs Act, 1962.

**31.** I find that by the above acts of contravention, the passenger i.e. Shri Jigneshkumar Vinubhai Nasit had rendered the impugned goods to confiscation under the provisions of Sections 113 (d) and 113 (e) of the Customs Act, 1962. By using the modus of concealing the rough diamond pieces in a black pouch, it is observed that the passenger was fully aware that the export of said goods was offending in nature. It has also been admitted by the noticee in his statement that the Sea Green colour duffel bag of Aristocrat brand was handed over to him by one Mr. Goverdhanbhai Sakreliya who was known to him. He further confessed in his statement that Mr. Goverdhanbhai Sakreliya had told him that someone would call him in Dubai and he had to hand over the bag to him. In lieu of performing this

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delivery, Mr. Sakeriya told noticee that his contact in Dubai would give him some money and provide accommodation to him. As the noticee was in dire need of money, he accepted the proposal. Further, upon questioning the noticee could not produce any legal documentary proof/evidence of the acquisition of the said diamond. Further, on being asked about any Kimberley Process Certificate (KPC) as specified by Gem and Jewellery Export Promotion Council (GJEPC) for the possession of rough diamonds, the noticee replied that he did not have any such certificate with him. The noticee had also stated in his statement that he would produce Mr. Goverdhanbhai Sakreliya before the Customs Authorities within 2-3 days but it never materialized. It is therefore very clear that he has knowingly carried the diamonds and intentionally not declared the same during his departure at the Customs, Surat Airport. It is seen that he had involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which he knew that the same was liable to confiscation under the Customs Act, 1962. It is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 114 of the Customs Act, 1962 making him liable for penalty under Section 114 (i) of the Customs Act, 1962 as amended.

**32.** I find that the noticee had attempted to illicitly export the impugned diamonds by way of concealment in his baggage without declaration to the Customs and without complying the relevant provisions of the Customs Act, 1962; Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993 Foreign Trade Policy 2015-20/2023 and thereby the impugned diamonds have assumed the characteristics of prohibited goods due to contravention of various legal provisions viz, Section 11, 50, 77 and 79 of Customs Act, 1962; Section 3, 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992; Rule 11 and 12 of the Foreign Trade (Regulation) Rules, 1993; DGFT-FTP Notification No.43/2015-20 dated 22.11.2021 and Para 1.11/1.13, 2.05, 2.06, 2.08, 2.26/2.27 and 2.45 of Foreign Trade Policy 2015-2020/2023. I find that the DGFT-FTP Notification No.43/2015-20 dated 22.11.2021 stipulates that *“Export of rough diamonds shall **not be permitted** unless the concerned exporter is registered with Gems & Jewellery EPC, which is the designated importing and exporting authority of India for Kimberley Process Certification Scheme (KPCS).”* The noticee could not produce any document evidencing registration with the Gems & Jewellery EPC. Further, the Foreign Trade Policy has mandated documents viz, Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt; Commercial Invoice cum Packing List; Shipping Bill/Bill of Export/ Postal Bill of Export for export of goods. The noticee could not produce any of the requisite documents in this regard. Neither did he have an IEC (Importer Exporter Code) which is mandatory for export/import from/to India as detailed in paragraph 2.05 of the Foreign Trade Policy. Given the contraventions of the various provisions of law as detailed supra, the impugned diamonds have assumed the characteristics of ‘prohibited goods’ keeping in view the various judicial pronouncements on the issue.

**33.** I find that as already discussed in the foregoing paras, the Hon'ble Supreme Court in the case of Om Prakash Bhatia reported in 2003 (155) ELT 423 (SC) has held that if the importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, the goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the diamonds were kept undeclared, concealed and were being carried by the said noticee without fulfilment of prescribed conditions. Further, when the noticee was asked to produce legal proof/document and KPC Certificate about the possession of rough diamonds by him, he failed to produce any proof before the authorities. Therefore, it demonstrates that the diamonds recovered from the noticee were not legitimately sourced and were meant to be used for commercial purposes to earn some money. Further, the noticee has admitted in his statement that he had kept diamonds undeclared with the intent of smuggling the same for monetary consideration and therefore, the impugned goods, are to be treated as goods prohibited in nature. Thus, "mens rea" on the passenger's part is established as he did not declare to the Customs Authorities in any manner about the Rough Diamonds and also did not possess the documents evidencing the legitimate acquisition of the said diamonds and was smuggling the goods for monetary consideration.

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**34.** The impugned 5007.40 carats of rough diamonds, valued at Rs. 25,03,700/- attempted to be improperly exported without declaration to the Customs are therefore, liable for absolute confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. The noticee in his statement dated 19.01.2024 has confessed that he was carrying the impugned diamonds concealed in his baggage but had not declared the same before Customs Authorities at Surat International Airport as he wanted to smuggle the said goods. Given the discussions in the foregoing paragraphs, I hold that the Rough Diamonds weighing 5007.40 Carats, clandestinely carried by the passenger Shri Jigneshkumar Vinubhai Nasit with an intention to export the same illicitly from Customs Airport without declaration are liable for absolute confiscation. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the diamonds on payment of redemption fine, as envisaged under Section 125 of the Act. In this context, I find that 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 grams 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.”*

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

**36.** I, further, 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).*

**37.** Given the facts of the present case before me and the judgements and rulings cited above, the diamonds clandestinely carried by the passenger are liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the rough diamonds having a total weight of **5007.40** carats and valued at **Rs. 25,03,700/-** carried by the noticee and placed under seizure, are liable for absolute confiscation under Section 113(d) and 113(e) of the Customs Act, 1962.

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**38.** I find that the Sea Green-Black colour duffel bag of Aristocrat brand, carried by him and used for concealing the impugned diamonds in an attempt to smuggle the same is liable for confiscation under Section 119 of the Customs Act, 1962.

**39.** Based on the above findings, it is evident that the noticee, Shri Jigneshkumar Vinubhai Nasit in blatant violation of the provisions of the Customs Act, 1962, Baggage Rules, 2016; Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993; Foreign Trade Policy 2015-20/2023 attempted to improperly export/smuggle Rough Diamonds weighing 5007.40 carats valued at Rs. 25,03,700/- which were concealed and were not declared before the Customs. Thus, the noticee has thereby rendered the said goods liable for confiscation under Section 113 (d) & 113 (e) of the Customs Act, 1962. I also find Shri Jigneshkumar Vinubhai Nasit liable for penalty under Section 114 (i) of the Customs Act, 1962 for his abovementioned acts of commission and omission.

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

### **ORDER**

- (i) I order absolute confiscation of the **5007.40** Carats of Rough diamonds valued at Rs. **25,03,700/- (Rupees Twenty-Five Lakh Three Thousand Seven Hundred Only)** under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) I order confiscation of the sea green-black colour duffel bag of Aristocrat brand used by Shri Jigneshkumar Vinubhai Nasit for concealing the diamonds under Section 119 of the Customs Act, 1962;
- (iii) I impose a penalty of Rs. **25,03,700/- (Rupees Twenty-Five Lakh Three Thousand Seven Hundred Only)** upon Shri Jigneshkumar Vinubhai Nasit under Section 114(i) of the Customs Act, 1962.

**41.** 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/NOTICE BOARD /WEBSITE/ OTHER LEGALLY  
PERMISSIBLE MODE**

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**DIN: 20250171MN0000888A76**

Dated: 08.01.2025

To  
Shri Jigneshkumar Vinubhai Nasit,  
S/o Shri Vinubhai Savjibhai Nasit,  
B1-503, Sumeru Residency, Nr Shreenidhi Residency,  
Mota Varachha, Surat City,  
Pin-394101, Gujarat.

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**Copy to:**

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy Commissioner of Customs (TRC), Ahmedabad.
3. The Superintendent (Disposal), Customs, Surat International Airport.
4. The Superintendent (Recovery), Customs, Surat International Airport.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official website. (Soft copy to be mailed via email)
6. Guard File.