

OIO No: 15/ADC/SRV/SRT-AIRPT/2025-26
F. No: VIII/26-24/AIU/CUS/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क , अहमदाबाद

सीमा शुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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DIN: 20250771MN0000318093

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/26-24/AIU/CUS/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/26-24/AIU/CUS/2024-25 dated 10.12.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	15/ADC/SRV/SRT-AIRPT/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	18.07.2025
E	जारी करने की तारीख/ Date of Issue	:	18.07.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi Additional Commissioner
G	यात्री का नाम और पता / Name and Address of Passenger	:	Mr. Deniz Dede, Istanbul, Turkey, Basaksehir Botanik, Park Evlesi B30 1D 15
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

Acting upon the information gathered through passenger profiling, a passenger who had arrived at Surat International Airport on 18.06.2024 from Sharjah in Air India Express Flight No. IX-172, Mr. Deniz Dede (hereinafter referred to as the "Passenger/Noticee"), was intercepted by the officers of the Air Intelligence Unit (AIU) (hereinafter referred to as the "officers"), near the green channel located in the Arrival Hall of the International Terminal of the International Airport, Surat. Mr. Deniz Dede, aged 30 years and a resident of Istanbul, Turkey, Basaksehir Botanik, Park Evlesi B30 1D 15, possessed a passport No. U25275975, issued by the Republic of Turkey.

2. Whereas, the passenger was found to be carrying two pieces of baggage, viz, one black colour trolley bag and one brown colour handbag. The officers asked the passenger whether he had anything to declare, to which the passenger replied negatively. The officers then informed the passenger that they would conduct a personal search and a detailed examination of his baggage. The officers offered their search to the passenger, but the passenger politely denied it. Thereafter, the officers asked the passenger whether he wanted to be searched in the presence of the Executive Magistrate or the Superintendent (Gazetted Officer) of Customs. In reply, the passenger consented to be searched before the Superintendent of Customs. Thereafter, upon frisking and physical search, the passenger was found to be wearing a metallic chain, appearing to be gold, around his neck. The passenger was asked to remove the said metallic chain from his body. The metallic chain was found to weigh 174.97 grams and appeared to be made of 24-carat gold.

3. Whereas, thereafter, the officers passed the luggage carried by the passenger through the XBIS Scanner machine and thoroughly checked the luggage after withdrawing its contents. However, nothing objectionable/prohibited goods were found.

4. Whereas, the Customs officer called Shri Vikasraj Juneja, Government Approved Valuer, in the Customs office at Surat International Airport to test the purity, weighing and valuation of recovered metallic chain, which appeared to be gold, from the passenger. Shri Vikasraj Juneja, after examination and weighment of the said metallic chain, certified the same to be of gold of 24 carat weighing 175.000 grams, having Market value of Rs. 12,95,175/- and Tariff Value of Rs. 10,97,600/- as per 40/2024-Cus (NT) dated 06.06.2024 and Notification No. 43/2024-Cus (NT) dated 14.06.2024. Thereafter, Shri Vikasraj Juneja issued a valuation certificate dated 19.06.2024. The Customs officers then took custody of the metallic chain, weighing 175.000 grams.

5. Whereas, the above mentioned 24 kt gold chain weighing 175.000 grams which was attempted to be smuggled and recovered from the passenger Mr. Deniz Dede was placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 19.06.2024 under *Panchnama* proceedings dated 18/19.06.2024, on a reasonable belief that the said gold was smuggled into India and was liable for confiscation under provisions of the Customs Act, 1962.

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

- i) Copy of Boarding Pass, from Sharjah to Surat, of Air India Express Flight No. IX-172 dated 18.06.2024, seat No. 28A, PNR No. D6G7ND.
- ii) Copy of Passport No. U25275975 of the Republic of Turkey issued at Beyoglu on 04.11.2021 and valid up to 04.11.2031.

7. Whereas, a statement of Mr. Deniz Dede was recorded on 19.06.2024 under the provision of Section 108 of the Customs Act, 1962, wherein, he inter alia stated:

- that he was residing at Istanbul, Turkey, Basaksehir Botanik, Park Evlesi B30 1D 15; that he was in the business of diamonds and his present visit was for business purposes; that he could read, write and understand English Language;
- that he was shown and explained the panchnama dated 18/19.06.2024, 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 the chain recovered from his possession was a 24 carat gold chain weighing 174.97 grams which he had purchased from Turkey; that he purchased the chain by paying in cash and its price was approximate 14500/- US Dollars; that he intended to sell the gold chain to some prospective buyer and thereby gain some profit by selling the chain; that there was no specific person to whom the chain was meant to be sold, however, during his several visits to India, he learnt that he could sell the gold chain easily and earned some profits; that this was the first time, he had brought the gold chain to India; that bringing 24 carat gold without declaration to the Customs was an offence in Indian Customs Law, but he had intention to get some monetary benefit on account of such activity; that he tried to smuggle the gold into the country; that he had not declared the goods brought by him before any Customs officers and he was aware that import of Gold without declaration to the Customs is an offence and he was not aware of Customs law;
- 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 18/19.06.2024 was carried out.

8. **LEGAL PROVISIONS RELEVANT TO THE CASE**

- a) As per para 2.27 of Foreign Trade Policy 2023, “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 the Customs Act, 1962, the 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 the 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 the Customs Act 1962, any goods used for concealing smuggled goods shall also be liable for confiscation.
- q)** As per Section 123 of the Customs Act 1962 (Burden of proof in certain cases)
 - (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-
 - (a) in a case where such seizure is made from the possession of any person -
 - (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
 - (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.
 - (2) This section shall apply to gold, [and manufactures thereof,] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.
- r)** As per Customs Baggage Declaration Regulations, 2013- “all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.”
- s)** As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold in any form, other than monetary gold and silver in any form, is amended from ‘Free’ to ‘Restricted’; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

9. CONTRAVENTION AND VIOLATION OF LAWS:

Whereas, from the above, it appeared that:

- (a)** Mr. Deniz Dede had actively involved himself in the instant case of smuggling of gold into India. The said passenger had improperly imported gold of 24 kt in the form of a gold chain, totally weighing 175.000 grams, having a Tariff value of Rs. 10,97,600/- and a Market Value of Rs. 12,95,175/-, without declaring it to the Customs, by way of concealment in person. He concealed the gold chain around his neck with a deliberate and mala fide intention to smuggle the said gold into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The gold improperly imported by him with commercial considerations without declaration before the proper officer of Customs could not be treated as bona fide household goods or personal effects. Mr. Deniz Dede had thus contravened the Foreign Trade Policy 2023, Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
 - (b)** By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
 - (c)** The gold improperly imported by the passenger, Mr. Deniz Dede by concealing the same in-person without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
 - (d)** Mr. Deniz Dede, by his above-described acts of omission and commission, had rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
 - (e)** As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold, weighing 175 grams, having Tariff value of Rs. 10,97,600/- and Market Value of Rs. 12,95,175/-, without declaring it to the Customs was not smuggled goods, was upon the noticee, Mr. Deniz Dede.
- 10.** Therefore, a Show Cause Notice bearing F. No. VIII/26-24/AIU/CUS/2024-25 dated 10.12.2024 was issued to Mr. Deniz Dede calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat -395017 within thirty days from the receipt of notice as to why:
- (i) The recovered 24 carat gold chain weighing 175.000 grams., having market value of Rs. 12,95,175/- (Rupees Twelve Lakh Ninety-Five Thousand One Hundred Seventy-Five Only) and tariff value of Rs. 10,97,600/- (Rupees Ten Lakh Ninety-Seven Thousand Six Hundred only), seized vide Seizure Order dated 19.06.2024 under *panchnama* proceeding dated 18/19.06.2024 should not be confiscated under

Section 111(d), 111(i) and 111(j) of the Customs Act, 1962; (A corrigendum of even file No. dated 08.07.2025 to the Show Cause Notice was issued to the noticee, amending the market value of the gold chain, which was mistakenly typed as “Rupees Twelve Lakh Ninety Thousand One Hundred Seventy Five only” to “Rupees Twelve Lakh Ninety-Five Thousand One Hundred Seventy-Five only”).

- (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 10.12.2024 issued to the noticee, he was asked to submit a written reply/defence submission within the stipulated time. However, no reply or defence submission was received from the noticee within the specified time or thereafter.

12.1 RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates that one should 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 10.06.2025, 24.06.2025, 03.07.2025 and 16.07.2025, but he failed to appear and represent his case. The letters for personal hearing were served to the noticee via email at the email address provided by the noticee in his statement dated 19.06.2024. Further, no one appeared for the personal hearing on any of the scheduled dates. In light of the foregoing, it is evident that the noticee has exhibited an apparent disregard for the ongoing adjudication proceedings and has failed to submit any representation or defence in response thereto. I consider that adequate and reasonable opportunities have been afforded to the noticee in accordance with the principles of natural justice. Therefore, keeping the matter pending indefinitely would not be judicious or warranted. Consequently, I proceed to adjudicate this case **ex parte** based on the merits of the available records.

12.2 Before proceeding further, it should be brought to attention that the Hon’ble Supreme Court, High Courts and Tribunals have held, in several judgments/decisions, that an *ex parte* decision will not violate the principles of Natural Justice. To fortify my stand, I rely upon the following case laws/observations made by the Hon’ble Courts and other legal fora:

- a) The Hon’ble Supreme Court in the matter of **Jethmal Versus Union Of India Reported In 1999 (110) E.L.T. 379 (S.C.)**, the Hon’ble Court observed as under;

“Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be

justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him based on the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

- b) Hon’ble High Court of Kerala in the case of **United Oil Mills Vs. Collector Of Customs & C. Ex., Cochin Reported In 2000 (124) E.L.T. 53 (Ker.)**, the Hon’ble Court has observed that:

“Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated”

- c) Hon’ble High Court of Calcutta in the case of **Kumar Jagdish Ch. Sinha Vs. Collector Of Central Excise, Calcutta Reported In 2000 (124) E.L.T. 118 (Cal.) In Civil Rule No. 128 (W) Of 1961**, decided on 13-9-1963, the Hon’ble Court has observed that:

“ Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must ‘act in good faith and fairly listen to both sides’ [Board of Education v. Rice, (1911) A.C. 179] and, “deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case” [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]”

- d) Hon’ble High Court of Delhi in the case of **Saketh India Limited Vs. Union Of India Reported In 2002 (143) E.L.T. 274 (Del.)**. The Hon’ble Court has observed that:

“Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.”

- e) The Hon’ble CESTAT, Mumbai, in the case of **Gopinath Chem Tech. Ltd Vs. Commissioner Of Central Excise, Ahmedabad-II Reported In 2004 (171) E.L.T. 412 (Tri. - Mumbai)**, the Hon’ble CESTAT has observed that;

“Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]”

- f) The Hon’ble High Court of Jharkhand in **W.P.(T) No. 1617 of 2023 in the case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi** pronounced on 12.09.2023 wherein the Hon’ble Court held that-

“ Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed.”

13. DISCUSSION AND FINDINGS

I have carefully examined the facts and circumstances of the case. Despite being afforded sufficient opportunities to submit a written reply and to appear for a personal hearing, the noticee has failed to avail of the same and has neither filed any written submissions nor appeared for the personal hearing. It is not permissible for the adjudication proceedings to remain in abeyance indefinitely, awaiting the convenience of the noticee to participate. Accordingly, I proceed to adjudicate the matter **ex parte**, based on the evidence and material available on record.

- 14.** In the instant case, I find that the main issue to be decided is whether:

- (i) The recovered 24 carat gold chain weighing 175.000 grams, having market value of Rs. 12,95,175/- (Rupees Twelve Lakh Ninety-Five Thousand One Hundred Seventy-Five Only) and tariff value of Rs. 10,97,600/- (Rupees Ten Lakh Ninety-Seven Thousand Six Hundred only), seized vide Seizure Order dated 19.06.2024 under *panchnama* proceeding dated 18/19.06.2024 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 the *panchnama* dated 18/19.06.2024 has recorded that the noticee named Mr. Deniz Dede arrived from Sharjah by Air India Express Flight

No. IX 172 on 18.06.2024 and was intercepted by officers of the Air Intelligence Unit (AIU), Customs, Surat, near the green channel of the Arrival Hall at Surat International Airport, based on passenger profiling. Upon frisking and physical search of the passenger, the passenger was found wearing a metallic chain around his neck, which appeared to be gold. The passenger was asked to remove the metallic chain from his body, which was found to be weighing 174.97 grams, and appeared to be made of 24 carat gold. Thereafter, Government-approved valuer Shri Vikasraj Juneja was called, Shri Vikasraj Juneja, after examination and weighment of the said metallic chain, certified the same to be of gold of 24 carat weighing 175.000 grams, having market value of Rs. 12,95,175/- and Tariff Value of Rs. 10,97,600/- as per 40/2024-Cus (NT) dated 06.06.2024 and Notification No. 43/2024-Cus (NT) dated 14.06.2024. Thereafter, Shri Vikasraj Juneja issued a valuation certificate dated 19.06.2024. The Customs officers then took custody of the said metallic chain weighing 175.000 grams.

16. Further, I find that a statement of the noticee named Mr. Deniz Dede was recorded on 19.06.2024 under Section 108 of the Customs Act, 1962, wherein he stated that he was residing at Basaksehir Botanik, Park Evlesi B30 1D 15, Istanbul, Turkey, and was engaged in the business of diamonds. He also stated that he had come to India for business purposes and was proficient in reading, writing, and understanding English. He confirmed that he had been shown and explained the contents of the *panchnama* dated 18/19.06.2024, drawn at Surat International Airport by the officers of Customs AIU, and that after understanding the same, he signed it as a token of acceptance. He also admitted that a 24-carat gold chain weighing 174.97 grams was recovered from his possession, which he had purchased from Turkey for approximately 14,500 USD in cash. He also confessed that he intended to sell the chain in India for profit, though he had no specific buyer in mind. He further stated that he had learned during his previous visits to India that gold could be sold profitably. He further admitted that this was his first attempt to bring such gold into India and did not declare the said goods to the Customs authorities. He acknowledged that he had knowingly attempted to smuggle the gold into India, being aware that bringing gold without a declaration was an offence under Indian Customs law. After clearing immigration and collecting his baggage, he was intercepted by Customs officials during the checkout process, and the procedures detailed in the *panchnama* dated 18/19.06.2024 were followed.

17. Further, I find that the noticee has never retracted his aforesaid statement dated 19.06.2024, and the offence committed by the passenger is admitted by him in his statement. Therefore, I consider his statement material evidence in this case and I rely on the following rulings of various courts, which have underscored the evidentiary value of a statement recorded under Section 108 of the Customs Act, 1962:

- The Hon'ble Apex Court in the case of ***Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)*** has held that the statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner, inculcating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962, can be used as substantive evidence in connecting the applicant with the act of contravention.

- In the Collector of Customs, Madras, and Ors vs. D. Bhoormull- 1983 (13) ELT 1546(S.C.) case, ***the Hon'ble Supreme Court has held that the*** Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records, as well as other documents, are to be evaluated, and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- In the case of ***Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.*** Hon'ble Supreme Court held that the statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

Given the judgments cited above, I regard the noticee's statement as material evidence. The statement has sufficient evidentiary value to demonstrate that the passenger, intercepted by the Customs officers on 19.06.2024, had attempted to smuggle the gold into India.

18. Further, upon going through the SCN, I also find that the noticee had neither questioned the manner of the *panchnama* proceedings at the material time nor controverted the facts detailed in the *panchnama* while recording his statement. Every procedure conducted during the *panchnama* by the officers was well-documented and made in the presence of the *panchas* and the noticee. Upon going through his statement dated 19.06.2024, I find that the culpability of the noticee is established beyond doubt from his categorical admission that he had purchased the chain by paying in cash and its price was approximate 14,500/- US Dollars and he intended to sell the gold chain to some prospective buyer and thereby gain some profit by selling the chain. It can be reasonably inferred based on the facts above, that the noticee's deliberate act of concealing the said gold on person and his failure to declare the same before the Customs authorities upon arrival, and his acknowledgment of the legal requirement to declare dutiable goods along with his awareness that non-declaration constitutes an offence under the customs law reflects his conscious and willful involvement in the act of smuggling. I find it pertinent to note here that the noticee, in his voluntary statement, categorically admitted that he had intentionally refrained from declaring the said gold before the Customs authorities with the deliberate intention of clearing the same illicitly and evading payment of applicable Customs duty. He acknowledged his awareness that smuggling gold without payment of customs duty constituted an offence under the Customs law. I am of the view that such willful non-declaration and conscious attempt to evade duty on the part of the noticee amounts to a clear contravention of the provisions of the Customs Act, 1962, as well as the Baggage Rules, 2016, and thereby conclusively establishes his culpability in the commission of an act of smuggling.

19. Further, I find that the noticee confessed in his voluntary statement dated 19.06.2024 that he had not declared the said gold concealed on his person to the Customs authorities. Based on the foregoing discussion, I am satisfied to affirm that it is a clear case of non-declaration with an intent to smuggle the gold into India. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the gold before the Customs Authorities on his arrival at Surat International Airport, Surat. Further, I find that the noticee had given his statement voluntarily under Section 108 of the Customs Act, 1962. Therefore, given the

foregoing, it is sufficiently proven that this is a case of smuggling of gold along with non-declaration of the carried goods before Customs authorities with an intent to evade payment of Customs duty. Furthermore, I find that it is also proved beyond doubt that the passenger has violated Section 77 for non-declaration of gold at the arrival on India and Section 79 of the Customs Act for import/smuggling of gold, which was not for bona fide use, and has thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and Para 2.27 of the Foreign Trade Policy 2023. Further, it is pertinent to highlight that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, lies on the person from whose possession the goods have been seized which the noticee has failed to establish.

20. From the facts discussed above, it is evident that the noticee had brought gold of 24 kt gold chain weighing 175 grams wearing around his neck, while arriving from Sharjah to Surat, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold chain weighing 175 grams, seized under *panchnama* dated 18/19.06.2024 liable for confiscation, under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. By concealing the gold on his person by Mr. Dede and not declaring the same before the Customs, I believe that it is proved beyond doubt that the noticee had a clear intention to smuggle the gold clandestinely to evade payment of customs duty. The commission of the above act has thus made the impugned goods fall within the ambit of '**smuggling**' as defined under Section 2(39) of the Act.

21. I find it pertinent to note that, for Customs clearance of arriving international passengers, a two-channel system is in place, namely, the Green Channel for passengers not carrying dutiable or prohibited goods, and the Red Channel for those carrying such goods. All arriving passengers are mandatorily required to make a truthful and accurate declaration of the contents of their baggage under the applicable Customs regulations. **I find that the noticee had not filed 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 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013, as amended.** He tried to exit through the Green Channel, which shows that the noticee was attempting to evade the payment of applicable customs duty. Further, I would also like to draw attention to the definition of "**eligible passenger**" provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned that - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. It is appropriate to point out that in the instant case, the noticee had not declared the gold before Customs authorities, and the said import of gold was also for non-bona fide purposes. Therefore, the improperly imported gold weighing 175 grams concealed by the passenger, without declaring it to the Customs authorities on arrival in India, cannot be treated as bona fide household goods or personal effects. Thus, I unequivocally conclude that the noticee has thus contravened the provisions governing the lawful import of gold, as stipulated under the Foreign Trade Policy, 2023, and has thereby violated the provisions of Section 11(1) of the

Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the said Act."

22. After reviewing the foregoing, I find it conclusively proved that by the above acts of contravention, the noticee has rendered gold of 24 kt gold chain weighing 175 grams, having a market value of Rs. 12,95,175/-, seized vide Seizure order dated 19.06.2024 under *Panchnama* proceedings dated 18/19.06.2024 liable to confiscation under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. By adopting the modus of concealing the gold on the person by the noticee and without declaring it to the Customs upon arrival in India, it is evident that the noticee was fully aware that the import of said goods was in violation of the law. It is therefore very clear that he has knowingly carried the gold and failed to declare it to the Customs on his arrival at the airport with the intention of clearing it illicitly without payment of Customs duty. It also stands established that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner in which he knew or had reasons to believe that they were liable to confiscation under the Customs Act. It is therefore proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962, making him liable for a penalty under Section 112 of the Customs Act, 1962.

23. Further, I find that the noticee has confessed to carrying gold chain of 24 kt weighing 175 grams which he had attempted to clear illicitly from Surat International Airport by concealing it in person and without declaring it to the Customs Authorities and thereby violating the Para 2.27 of the 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 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "***prohibited goods***" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import has thus acquired the nature of being **prohibited goods** in view of Section 2(33) of the Act.

24. After a detailed analysis of the foregoing, I find it irrefutably established that the gold was concealed and not declared to the Customs authorities with the sole intention of evading payment of Customs duty. The records on file indicate that the noticee, upon arrival from a foreign destination, willfully opted for clearance through the Green Channel without declaring the prohibited/dutiable goods in his possession and thereby deliberately circumvented the mandatory disclosure requirements with the willful intent to smuggle the impugned goods. The 24 kt gold chain weighing 175 grams, having a market value of Rs. 12,95,175/- and a tariff value of Rs. 10,97,600/-, was placed under seizure vide *panchnama* dated 18/19.06.2024. The noticee confessed in his statement that despite knowing that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by concealing it on his person and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I observe that the statement was signed after due verification and bears no material

contradiction, thus holding its evidentiary value. It is, therefore, apparent that the passenger was knowingly concerned in the commission of smuggling and has rendered herself liable for penal action under Section 112(b) of the Customs Act, 1962.

25. 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** however in unambiguous terms lay down the principle *that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfillment of such conditions would make the goods fall within the ambit of 'prohibited goods'.* This makes the gold seized in the present case "prohibited goods" as the passenger, who was trying to smuggle the same, was not eligible to bring or import gold into India in his baggage. The gold recovered was found concealed on the person of the passenger in the form of a gold chain and was kept undeclared with the intention of smuggling the same and evading payment of customs duty. Adopting this modus proves beyond doubt that the goods are offensive and therefore prohibited from their importation. Here, the passenger has not fulfilled the conditions for legally importing gold.

26. In view of the foregoing discussions and evidentiary material on record, I hold that the 24-karat gold chain weighing 175 grams, recovered on the person of the noticee and deliberately not declared before the Customs authorities with the intent to illicitly clear the same and evade payment of lawful Customs duty, is liable for **absolute confiscation** under the provisions of the Customs Act, 1962. Furthermore, the manner of concealment and the circumstances surrounding its importation unequivocally establish that the said gold was brought into India by the noticee in a clandestine manner, for extraneous consideration, in furtherance of a smuggling operation. Therefore, in the instant case, **I am not inclined to use my discretion to give an option to redeem the gold on payment of the redemption fine, as envisaged under Section 125 of the Act.** In this context, I would like to reinforce my standing by placing reliance on the cases as follows:

- In the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]**, the **Hon'ble 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.
- In the case of **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*).

- In this case, 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 that -

“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.”

- In the case of **Abdul Kalam Ammangod Kunhamu [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA** stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.
- The **Hon’ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.)** has been held that-

“23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets, which were kept inside a Multi coloured zipper jute bag, further kept in the Black coloured zipper handbag that was carried by the Petitioner. The manner of concealing the gold establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/ mens-rea.”

24.....

25.....

“26. The Supreme Court of India in *State of Maharashtra v. Natwarlal Damodardas Soni* [\[1980\] 4 SCC 669/1983 \(13\) E.L.T. 1620 \(SC\)/1979 taxmann.com 58 \(SC\)](#) has held that smuggling, particularly of gold, into

India affects the public economy and financial stability of the country.”

27. Given the facts of the present case before me and the judgments and rulings cited above, I find that the manner of concealment and non-declaration of the gold chain, in this case, clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove the licit import of the seized gold chain. I find that the noticee has purchased the gold chain to earn some monetary benefit by selling it in India, and the same has been admitted in his voluntary statement recorded before the Customs Officers. Further, the noticee failed to discharge the burden placed on him in Section 123. Upon a careful examination of the SCN, the *Panchnama* and the statement of the noticee and other documents on record, I am satisfied to affirm that the manner the manner adopted for concealment of gold is ‘**ingenious**’ in nature, as the noticee concealed the gold on person intending to smuggle the same into India and evade payment of customs duty. Therefore, the 24 Kt. gold chain weighing 175 grams concealed on the person by the noticee is liable to be **confiscated absolutely. I hold in unequivocal terms that the gold chain weighing 175 grams, placed under seizure vide *Panchnama* proceedings dated 18/19.06.2024, would be liable to absolute confiscation under Section 111(d), 111(i) and 111(j) of the Act.**

28. Further, I find that the passenger had involved himself in smuggling a gold chain weighing 175 grams of 24Kt purity. Further, it is a fact that the noticee has travelled from Sharjah to Surat with the impugned gold concealed on his person despite knowing that the quantity of gold carried by him without declaration to the customs is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of ‘***mens-rea***’ on behalf of noticee is established as the noticee concealed the gold on person, which shows his mala fide intention to evade the detection from the Authority and removing it illicitly from Surat Airport without payment of duty. Accordingly, while determining the quantum of penalty in the present case, I deem it appropriate to consider the *ratio decidendi* laid down by the ***Hon’ble Supreme Court in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa***; wherein the Hon’ble Apex Court observed that “The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.” In the instant case, the noticee attempted to evade the customs duty by not declaring the 24kt gold chain weighing 175 grams, and the non-declaration of the said gold at the time of import is considered an act of omission on his part. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the noticee is liable for penal action under Section 112(b) of the Customs Act, 1962, and I hold accordingly.

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

OIO No: 15/ADC/SRV/SRT-AIRPT/2025-26
F. No: VIII/26-24/AIU/CUS/2024-25

ORDER

- (i) I order **absolute confiscation** of the one Gold Chain of 24 Karat weighing **175 grams** having a market value of **Rs. 12,95,175/-** (Rupees Twelve Lakh Ninety-Five Thousand One Hundred Seventy-Five only) under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii) I impose a penalty of **Rs. 2,50,000/-** (Rupees Two Lakh Fifty Thousand only) on Mr. Deniz Dede under the provisions of Section 112(b)(i) of the Customs Act 1962.

30. Accordingly, the Show Cause Notice No. VIII/26-24/AIU/CUS/2024-25 dated 10.12.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs Ahmedabad

BY SPEED POST A.D./EMAIL

F. No. VIII/26-24/AIU/CUS/2024-25

Date: 18.07.2025

DIN: 20250771MN0000318093

To,
Mr. Deniz Dede Istanbul, Turkey,
Basaksehir Botanik,
Park Evlesi B30 1D 15

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