



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
सीमाशुल्कभवन ,”पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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PREAMBLE

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|------|---|---|---|
| A | फाइलसंख्या/ File No. | : | VIII/10-199/SVPI/O&A/HQ/2022-23 |
| B | कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date | : | VIII/10-199/SVPI/O&A/HQ/2022-23 Dated: 16.03.2023 |
| C | मूलआदेशसंख्या/ Order-In-Original No. | : | 45/ADC/SRV/O&A/2025-26 |
| D | आदेशतिथि/ Date of Order-In-Original | : | 10.06.2025 |
| E | जारीकरनेकीतारीख/ Date of Issue | : | 10.06.2025 |
| F | द्वारापारित/ Passed By | : | Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad. |
| G | आयातककानामऔरपता / Name and Address of Importer / Passenger | : | Mr. Jitendra Shankarbhai Patel Love Kush Bungalow, New Swaminarayan Temple, Anand, Gujarat-388130 |
| (1) | यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे 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 मंजिल, 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: -

Mr. Jitendra Shankarbhai Patel (hereinafter referred to as “passenger”/ 'noticee”) aged 58 years holding USA passport bearing No. 534426984 residing in India at Love Kush Bungalow, New Swaminarayan Temple, Anand, Gujarat-388130 had arrived at Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad from Doha, Qatar. On the basis of APIS profiling and suspicious movement of the said passenger, he was intercepted at Arrival Hall of Customs at AIU (Air Intelligence Unit) gate Section at Terminal-2, SVPIA, Ahmedabad.

2. The AIU officer asked the passenger whether he was carrying any contraband/dutiable/prohibited/restricted goods in person or in baggage to which he denied. The AIU officers informed the passenger that, they would conducting his personal search and detailed examination of his baggage. The AIU officers offered their personal search to the passenger, but the passenger denied the same politely. Then AIU officer asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger gave his consent to be searched in presence of the Superintendent of Customs.

3. After that the AIU officers examined checked in baggage and hand bag of the passenger. During the examination/checking of the bags, it was found that the passenger was carrying foreign currency 32049 US Dollars in different denomination in his hand bag and trolley bag by concealing in different ways i. e. in covers, in clothes, pockets etc. Inventory of the Foreign Currency US dollar recovered from the passenger was prepared and as per the said Inventory the details of the Foreign Currency recovered from the Passenger is as under:

| Sr. No. | Foreign Currency | Foreign Currency Notes Denomination | Number of Notes | Amount in USD | Exchange Rate of one unit of Foreign Currency equivalent to India Rupees as per Noti. No. 78/2022-Customs (N.T.) dated15.09.2022 taken as per imported goods | Value equivalent to Indian Currency taken as per Imported goods |
|---------|------------------|-------------------------------------|-----------------|---------------|--|---|
| 1 | US Dollar | 100 | 317 | 31700 | 80.4 | 2548680 |
| 2 | US Dollar | 50 | 1 | 50 | 80.4 | 4020 |
| 3 | US Dollar | 20 | 13 | 260 | 80.4 | 20904 |
| 4 | US Dollar | 10 | 2 | 20 | 80.4 | 1608 |
| 5 | US Dollar | 5 | 2 | 10 | 80.4 | 804 |
| 6 | US Dollar | 1 | 9 | 9 | 80.4 | 724 |
| | TOTAL | 186 | 344 | 32049 | | 2576740 |

4. The value of foreign currency in Indian rupees as per exchange rate Notification No. 78/2022-Customs (N.T.) dated 15.09.2022 (taken as per imported goods) was equivalent to Rs. 25,76,740/-. The AIU officers asked the passenger whether he was having any documents for purchase/acquisition of the Foreign Currency which was recovered from him, to which he replied in negative.

5. Following documents were withdrawn and recovered from the passenger Mr. Jitendra Shankarbhai Patel during the search conducted by the AIU officers:

- E-Ticket No. 15721010099305 of Qatar Airways Digital Office, New York.
- Boarding pass of Qatar Airways Flight No. QR 534 (Seat No. 17A) from Doha to Ahmedabad dated 06.10.2022;
- Copy of Passport No. 534426984 issued on 13.10.2015 valid upto 12.10.2025;
- Copy of Aadhar Card No. 444661847358 of Mr. Jitendra Shankarbhai Patel.

6. The said foreign currency equivalent to Indian Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) was placed under seizure vide Seizure Memo/Order under Panchnama proceedings both dated 06.10.2022 by the AIU officers on a reasonable belief that the said Foreign Currency was attempted to be smuggled into India and hence it was liable for confiscation for violation of the provisions of the Customs Act, 1962 and FEMA (Export and Import of Currency) Regulations, 2015.

6.1. In view of the above facts, Foreign Currency, i.e. 32049 US Dollar, equivalent to Indian Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) carried by the passenger Mr. Jitendra Shankarbhai Patel appeared to be “smuggled goods” as defined under Section 2(39) of Customs Act, 1962.

7. A statement dated 06.10.2022 of Mr. Jitendra Shankarbhai Patel was recorded under Section 108 of the Customs Act, 1962 after issuing summons to him, wherein he inter alia stated that

- he is residing in India at Love Kush Bungalow, New Swaminarayan Temple, Anand, Gujarat-388130 and lives at USA 747, Ear Long Bay Drive, Spartenburg No. 29349 and is permanent resident of USA;

- he is working as cashier at Ruchi Food Marts in USA; his duty is to collect money from Gas Station and credit it into Bank account of the concerned Gas Station;
- he is a Civil Engineering and his salary was US\$ 6000 per month. He used to visit India for social functions for 5 to 6 times every year; this is first time carry foreign currency in excess of permissible limit;
- he further stated that carrying foreign currency exceeding the limit is an offence under the Customs Act, 1962, therefore, he had concealed the US\$ in his trolley bag in different manner so that the same could not be detected by the Customs Officers; he also knew if the concealed foreign currency is detected by the Customs Officers is liable for seizure and confiscation under the Customs Act, 1962.

8. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOM ACT, 1962:

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 the 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(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 11H(a): "illegal export" means the export of any goods in contravention of the provisions of the Act or any other law for the time being in force;

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 the Act or any other law for the time being in force;

SECTION 119: Any goods used for concealing smuggled goods shall also be liable to confiscation.

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 the 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 the Act, whichever is greater;*

B. THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999;

SECTION 2. Definitions. -*In the Act, unless the context otherwise requires, -*

(m) "foreign currency" means any currency other than Indian currency;

SECTION 3. Dealing in foreign exchange, etc.—*Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—*
deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

C. Notification No. FEMA – 6 (R)/RB-2015 dated 29/12/2015 {Foreign Exchange Management (Export and import of currency) Regulations, 2015} [Earlier Notification No. FEMA 6 /RB-2000 dated 3rd May 2000 {Foreign Exchange Management (Export and Import of Currency) Regulations, 2000}]: -

REGULATION 5: Prohibition on export and import of foreign currency: -

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

REGULATION 7: *A person may -*

- a. send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques;*
- b. bring into India from any place outside India without limit foreign exchange (other than unissued notes),*

provided that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations;

provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousands) or its equivalent.

REGULATION 9: *Notwithstanding anything contained in these regulations, the Reserve Bank may, on an application made to it and on being satisfied that it is*

necessary to do so, allow any person to take or send out of India to any country or bring into India from any country currency notes of Government of India and /or of Reserve Bank of India subject to such terms and conditions as the Reserve Bank may stipulate.

D. The Baggage Rules, 2016 (Earlier Baggage Rules, 1998 as amended from time to time):

RULE 7. Currency. - The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

9. From the records and evidences discussed in the foregoing paras, it appears that in the instant case Foreign Currency 32049 US Dollar, equivalent to Indian Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) was carried by the passenger in his baggage (Trolley bag and hand bag) with an intent to smuggle it into India. Further, the passenger was unable to produce any legal documents showing legitimate procurement of the said seized foreign currency from any legal source during search, seizure and investigation of the case.

10. During the search of baggage and personal search of the passenger, no such declaration was found from the passenger with respect to Foreign Currency. On the contrary, the passenger in his statement dated 06.10.2022 recorded under Section 108 has admitted that he has not declared the foreign currency brought with him to the Customs as required under the regulation 6 *ibid.* were found which could prove the legal purchase of foreign currency recovered from him from any authorized person as per Regulation 7 *ibid.* Further, the passenger also failed to produce any documents issued by the RBI in terms of Regulation 9 of Foreign Exchange Management (Export and import of currency) Regulations, 2015 which are allowing him to bring the foreign exchange into India legally.

11. Further, Mr. Jitendra Shankarbhai Patel was unable to produce any document evidencing a legitimate import of the said seized Foreign Currency. On the basis of the above it appears that Mr. Jitendra Shankarbhai Patel carried the foreign currencies illegally and with intention to smuggle the same into India in violation of the said Act/Rules/Regulations in force. Regulation 6 and 9 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 would come into force only when a proper declaration before the Customs Officer had been made.

12. In view of the discussions in forgoing paras, it appears that the foreign currency seized from the passenger cannot be imported without having proper legal and legitimate documents. Therefore, the attempt to carry the said foreign currency in the baggage or any other manner for import by the passenger is a clear violation of the restrictions imposed under Foreign Exchange Management (Export and import of currency) Regulations, 2015 and hence the same appears to fall under the ambit of “prohibited goods” as defined under Section 2(33) of the Customs Act, 1962. Further, in terms of Section 11 of the Customs Act, 1962; the commission of the said act again amounts to “Illegal import” of foreign currencies by Mr. Jitendra Shankarbhai Patel in as much as the passenger failed to produce any legitimate/legal document in support of foreign currency brought into India at the time of interdiction, seizure and during the course of investigation. He had also admitted in his statement recorded under Section 108 of the Customs Act, 1962 that he had attempted to smuggle the seized Foreign Currency into India. The foreign currencies totally equivalent to Indian Rupees 25,76,740/- seized from the passenger therefore, appears liable to confiscation under section 111(f), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

13. The passenger concealed the said foreign currency in his baggage (Trolley bag and hand bag) and attempted to smuggle /import the same illegally. As such the Trolley bag and hand bag used to conceal the said foreign currency is also liable for confiscation as per the provisions of section 119 of the Customs Act, 1962.

14. Mr. Jitendra Shankarbhai Patel had carried the foreign currency and proceeded to clear the security check at Ahmedabad Airport to smuggle the same into India illegally. The foreign currency worth 32049 US Dollar totally valued at Rs.25,76,740/- was recovered from his possession in Trolley bag and hand bag during the search under Panchnama dated 06.10.2022 drawn at SVPI Airport, Ahmedabad. He appears to have actively and knowingly indulged in the smuggling of the foreign currency totally valued at Rs.25,76,740/- which are liable to confiscation under Section 111(f), 111(j), 111(l) & 111(m) of the Customs Act, 1962. Therefore, it also appears that Mr. Jitendra Shankarbhai Patel by committing the said act has rendered himself liable for penalty under the provisions of section 112 of the Customs Act, 1962.

15. Accordingly, a Show Cause Notice was issued to Mr. Jitendra Shankarbhai Patel holding USA passport bearing No. 534426984 residing in India at Love

Kush Bungalow, New Swaminarayan Temple, Anand, Gujarat-388130, as to why:

- i. The Foreign Currencies, i.e. 32049 USD, equivalent to Indian Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) attempted to be smuggled/improperly imported into India in contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 read with Rule 7 of the Baggage Rules, 2016, seized under Panchnama proceedings dated 06.10.2022 should not be confiscated under section 111(f), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii. The goods used for concealing the Foreign Currencies seized under Panchnama proceedings dated 06.10.2022 should not be confiscated under Section 119 of the Customs Act, 1962;
- iii. Penalty should not be imposed under the provisions of Section 112 of the Customs Act, 1962 on Mr. Jitendra Shankarbhai Patel.

16. The said Show Cause Notice was adjudicated by the then Additional Commissioner of Customs, Ahmedabad, vide Order-in-Original No. 44/ADC/VM/O&A/2023-24 dated 24.05.2023 wherein the Joint Commissioner passed order as under: -

- i I order absolute confiscation of the impugned foreign currencies 32049 USD having value equivalent to Indian currency at Rs.25,76,740/- (Rupees Twenty-Five Lakh Seventy-Six Thousand Seven Hundred Forty only) attempted to be improperly imported and seized under panchnama dated 06.10.2022 vide Seizure Order dated 06.10.2022, under Section 111(f), 111(j), 111(l) & 111(m) of the Customs Act,1962.
- ii I order absolute confiscation of the goods i.e. black colour trolley handbag etc. used for carrying and concealing the impugned foreign currency, recovered /seized under Panchnama dated 06.10.2022, under Section 119 of the Customs Act, 1962.
- iii I impose a penalty of **Rs.10,00,000/-** (Rupees Ten Lakh Only) on Mr. Jitendra Shankarbhai Patel, under Section 112(a)(i) of the Customs Act 1962.

17. Being aggrieved by the said Order-in-Original No. 44/ADC/VM/O&A/2023-24 dated 24.05.2023, the Noticee had filed a Special

Civil Application No. 20637 of 2023 before Hon'ble High Court of Gujarat. Hon'ble High Court of Gujarat vide Oral Order dated 20.03.2025 uploaded on website on 28.03.2025 remand back the matter to original adjudicating authority. The Hon'ble High Court of Gujarat ordered that:-

"8. Respondent No. 2 has therefore, committed a gross violation of the principles of natural justice by not serving copy of the Show Cause Notice upon the petitioner at the USA address disclosed by the him in the Statement as well as in the passport.

9. In that view of the matter, without entering into the merits of the matter, the petition is disposed of by remanding the matter to respondent no. 2 for fresh consideration.

10. In the result, the petition succeeds in part. Impugned Order-In-Original is hereby quashed and set aside as the same is passed in breach of principles of natural justice by not providing an opportunity of hearing to the petitioner. The matter is remanded to respondent no. 2 to pass a fresh de novo order after providing an opportunity of hearing to the petitioner in accordance with law. Learned advocate for the petitioner submitted that the petitioner shall cooperate in the adjudication proceedings either by remaining present or through its authorized representative. Such exercise shall be completed within a period of Twelve week from the date of receipt of copy of this order.

11. The petition is disposed of accordingly. Notice is discharged. Direct service is permitted.

18. In view of the above referred Hon'ble High Court Order dated 20.03.2025 (uploaded on 28.03.2025), the case has been taken up for adjudication proceedings.

Defence Reply and Personal Hearing:

19. The Noticee vide letter dated 05.06.2023 submitted his written submission wherein he did not admit any of the allegation and contentions made in the present Show Cause Notice No.-VIII/10-199/SVPI/O&A/HQ/2022-23 dated 16.03.2023 issued by the Additional Commissioner of Customs, Ahmedabad. He submitted that he has an ancestral residential property in India at Love Kush Bungalow, Near New Swaminarayan Temple, Anand, Gujarat-388130 and also has strong roots in the state of Gujarat, India which require him to visit Gujarat frequently for attending various social and family commitments. He further submitted that he had visited India for renovation of his ancestral properties and therefore, undertook the journey with an amount of USD 22,449/- as personal

saving and USD 960/- as borrowed from his employer. He submitted that due to depreciating trajectory of Indian currency against the US Currency at the material time, he preferred to carry cash in form of dollars. He submitted that if the money was transferred through regular banking channel, it will cost him bank commission charges as well as taxes on commission, therefore, he decided to bypass the regular banking channel and carried the cash during the journey along with him. He submitted that import of foreign currency into India was sanctioned under Regulation No. 6 of Foreign Exchange Management (Export & Import of Currency Regulation) 2015 and therefore, no reason is required to be given to any authority for carrying foreign currency and no license or permission is required for bringing such foreign currency.

He submitted that he was ready to declare the currency with him. Since the Currency Declaration Form (CDF) was in the controlled custody of Customs, such declaration was possible only after contacting the help desk at the airport. The only scope left out for him was to make a declaration in Form-I which is Indian Customs Declaration Form (ICDF) prescribed under Baggage Declaration Regulations, 2013. However, with the delinking of 'customs declaration' with 'emigration declaration' by the Ministry of Home Affairs government of India, no such customs declaration forms were supplied to international passengers in the aircraft which used to be a regular practice earlier.

He further, submitted that at the SVPI Airport Ahmedabad, there existed no specific demarcation of green channel and red channel. It had an x-ray screening system, a help desk at the middle unmanned and at another corner podium type mobile counters were placed where the duty had been charged on excess baggage.

He submitted that he was intercepted on the basis of APIS profiling with a pre-meditated mind to search him out without allowing him to approach the proper officer. Suspicious movement as stated in Para No. 1 of SCN is a false statement. He was intercepted at the Customs Arrival Gate soon after Emigration Exit Gate without giving an opportunity to declare the cash in regular course by approaching the declaration counter. He submitted that he was intercepted in a pre-planned manner without allowing him to make appropriate declaration by approaching the officers posted at the respective counters.

He submitted that Foreign Currency was not a contraband /dutiabale/prohibited or restricted good for import as stated in the show cause notice. He further submitted that Currency is classified under CTI 49070020 and is exempted under Sr.No.304A of Notification No.50/2017- Cus dated 30.06.2017. Even otherwise, all dutiable articles imported by a passenger in his baggage are classified under CTI 98030000 of the Customs Tariff Act. However, according to

the item description, duty can be charged only if the goods are otherwise dutiable. Since goods are exempted vide aforementioned notification, the currency notes as goods imported through baggage are exempted from payment of duty. Further, the show cause notice has not demanded any duty. However, this point of dutiability is discussed to highlight the point that the investigating officers of Customs acted on the basis of mistaken notion of dutiability and therefore the seizure is improper. He submitted that currency import through baggage is regulated under Rule 7 of Baggage Rules, 2016 and accordingly, the currency goes out of the purview of Baggage Rules and squarely fall within the ambit of Foreign Exchange Management (Export and Import Currency) Regulations, 2015. Section 3(4) of Foreign Trade (Development and Regulation Act), 1992 provides enough legal support to regulate import and export by an Act other than Foreign Trade (D&R Act), 1992. According to Regulation No. 6 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, there is no restriction in bringing of Foreign Exchange into India without any limit. The only condition attached is a procedural requirement of making a declaration form (CDF) annexed to these regulations. He submitted that he was not carrying any dutiable or restricted or prohibited goods. There was no reason not to declare the Foreign Currency in Currency Declaration Form which was in secured custody of the Customs Authority provided it is allowed to the passengers. He submitted that the Department in Prem Kumar Vs. Customs-2016 (334) E.L.T 498 (Del) filed a counter affidavit under oath, in the Hon'ble High Court of Delhi, that foreign currency is not prohibited goods under Customs Act, 1962. He submitted that the currency notes were kept in the bag with ordinary care such in wrappers and covers only and visible to anyone on opening the bag. The authorities concerned at the time of seizure, failed to understand the law in correct perspective and carried out an unwarranted seizure instead of facilitating by giving Currency Declaration Form. The act of Customs Officers at the Airport was poor knowledge on the law procedures. He submitted that foreign currency is freely importable and not subjected to any kind of duty. Foreign currency therefore, could not be treated as to have been smuggled into country in terms of Customs Act, 1962. Regulation No. 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 however provides a prohibition on import and export if it is not carried out without the permission of RBI.

Further, according to Regulation No. 9, the RBI is empowered to regulate Export and Import of foreign currency and Regulation No. 5 is a supporting provision to Regulation No. 9 by declaring any Import and Export without sanction of the authority empowered under Regulation No. 9 as prohibited.

Regulation No. 6 expressly permit the noticee to bring any amount of foreign currency as his free will without any liability to declare its source or even the denomination of the foreign currency. Therefore, the foreign currency brought under Regulation No. 6 cannot attract an import restriction imposed under Regulation No.5. Since no prohibition or restriction existed on bringing foreign currency into India, it cannot be treated as prohibited goods under Section 2(33) of Customs Act, 1962.

He further submitted that Section 11(3) of the Customs Act, provides that any prohibition or restriction or obligation relating to import or export under any other law shall be executed under the provisions of that Act only even if such prohibition or restriction or obligation is notified under the provisions of Customs Act. Hence, Section 11 and for that matter Customs Act, 1962 cannot be invoked in a case pertaining to bringing foreign currency regulated under a Regulation made under different law i.e Foreign Exchange Management Act.

He submitted that he was confused about his right under Regulation No. 6 of Foreign Exchange Management (Import and Export) Regulation, 2015. Without allowing to complete the procedures under Regulation No. 6, he was made to believe that bringing in foreign currency per se amounted to smuggling and thus making him wrongly ascribe to the belief that bringing foreign currency amounts to smuggling and such a statement was elicited from him. Hence, the statement of admission is false, unwarranted and illegal.

He submitted that Section 111 (f) of Customs Act, 1962 is applicable in respect of dutiable or prohibited goods. The foreign currency brought was neither dutiable nor prohibited without any limit under Regulation No. 6. The Regulations mentioned in the section is referring to only 'arrival manifest' and 'import manifest' prescribed under the regulations issued under the provisions of Customs Act. A regulation has been defined under Section 2(35) of the Customs Act, 1962. Therefore, the aforementioned section cannot be applied for an alleged violation under Foreign Exchange Management (Export and Import) Regulations, 2015. The SCN had improperly applied the section 111(f) of the Customs Act. There is no violation alleged as to have been made under a regulation made under Customs Act, 1962. Further, Section 111(j), 111(l) and Section 111(m) cannot be applied as foreign currency brought was neither dutiable or prohibited under the law.

Since none of the above provisions of Section 111 is applicable in the case, Section 112 of the Customs Act also naturally cannot be applied. Section 112 is applicable only where the goods become liable for confiscation under Section 111 of Customs Act, 1962. The foreign currency in question was neither dutiable or restricted or prohibited rather it was covered under a positive law in the form of

Regulation No. 6 of empowering and encouraging a passenger to bring foreign currency. He submitted that superintendent is not competent to investigate and seize foreign currency as per Notification S.O No. 1156 (E) dated 26.12.2000.

He submitted that the foreign currency brought into India was legally permitted vide Regulation No. 6 of Foreign Exchange Management (E&I) Regulations and no duty of Customs was payable on them. He submitted that there was no restriction or prohibition in bringing the currency under the said Regulations. Customs Act is not applicable in this case as baggage rules keep foreign currency out of customs law and placed it under Foreign Exchange Management (E&I) Regulations. He submitted that with a premeditated mind he was intercepted just outside the immigration gate and he was not allowed to make appropriate declaration before 'proper officer' nor was given copies of declaration format. There was no green channel system in SVPI Airport Ahmedabad but all baggage were invariably subjected to X-Ray examination thus making a Red Channel procedure the routine and therefore, any separate declaration if even not made is irrelevant. The seizure and investigation are made by an officer who is not notified and competent under FEMA and therefore, the seizure was illegal, no penalty imposable and the currency notes cannot be confiscated. Further, he asked for Cross Examination of Panch Witnesses and Customs Officers involved in the case. He prayed to drop the proceeding and request to return the seized foreign currency. He submitted a certificate/undertaking regarding taking personal loan from his employer.

19.1 Further, vide letter dated 26.05.2025 submitted on 26.05.2025, authorized representative of noticee submitted written submission in continuation of submission dated 05.06.2023. In his submission he submitted that vide communication dated 03.04.2025, they have requested for cross examination of witnesses and seeks clarification regarding the erection of the said barricade opposite the baggage carousels and also asked for the CCTV video footage. He submitted that by not providing the CCTV footage is a deliberate suppression of objective evidences. He submitted that the so called "green channel system" was a notional and fictitious construct, lacking any statutory or procedural basis. He submitted that prior to erection of these barricades, carousels no. 1,2 and 3 were placed in an open area which was without any legal or administrative backing, treated as the "green channel area". In such circumstances, any passenger collecting baggage from these carousels could arbitrarily be accused of having bypassed customs declaration procedures, despite the absence of clear physical or administrative demarcation. He submitted that repeated requests were made to the department to disclose the

date on which the barricades were erected. However, no such information has been provided to date, thereby denying an opportunity to establish that, at the time of the alleged offence, no barricades existed and no formal segregation between the red and green channel areas had been made. He further through his representative vide RTI application dated 08.08.2023 sought a copy of the office order or administrative instruction, if any, delineating specific areas as the "green channel" and "red channel." However, no such document has been furnished, leading to the inference that no such order exists. The absence of a duly notified administrative arrangement further substantiates the contention that the so-called green channel area was an informal or arbitrary categorization.

He submitted that he was intercepted and apprehended immediately after crossing the immigration counter and prior to his entry into the customs clearance hall. Consequently, he was denied the opportunity to declare the foreign currency in his possession, which he was otherwise willing and prepared to declare.

Further, vide RTI application dated 08.08.2023, filed by Shri Ravi Iyer on his behalf, asked the question as:-

“What further action is carried out at the airport Customs once the currency declaration is filed by the passenger?”

And they have received the reply of said RTI vide letter No. VIII/12-31/Misc/RTI/2023-24 dated 05.09.2023 as:-

“The declaration is kept for record purpose.”

He submitted that the response clearly demonstrates that even when such declarations are made, the same are not forwarded to the Reserve Bank of India (RBI) or any other regulatory authority. No consequential action or verification is undertaken, and the declaration is merely archived for record-keeping. This unequivocally establishes that the purpose of such declaration is administrative and facilitative, aimed at regularizing possession — not at enforcing any substantive foreign exchange control.

He further submitted that as per the RTI reply dated 05.09.2023 (para 2(7), (8), and (9)), the currency declaration form is a printed and serialized document maintained in a bound book format, the custody and issuance of which rests solely with the designated Customs officers. The passenger cannot independently access this form, nor is it available publicly or online. The declaration, therefore, is not an open or self-actuating obligation but a Customs-controlled process which can only be initiated with the cooperation of the department.

Further, he submitted that it is a matter of practice and procedure that international passengers are expected to make a declaration of dutiable goods

and restricted items—including foreign currency—in the Customs Baggage Declaration Form (Form-1) prescribed under the Baggage Rules. This form is customarily distributed onboard the aircraft or provided at the entry to the Customs area. However, in the present case and also it is a regular practice for Ahmedabad bound flights that no such form was distributed during the flight or provided upon arrival, thus denying the passenger a basic procedural avenue for voluntary declaration.

In the present case, he was intercepted immediately upon crossing immigration and before entering the Customs hall, at a point where no opportunity was provided to make any declaration, either orally or in writing. This interception, carried out before access of any declaration counter or obtain the necessary forms, vitiates the allegation of non-declaration and renders the proceedings procedurally flawed.

Through multiple written submissions dated 05.06.2023, 03.04.2025, and 17.04.2025, as well as during the course of the personal hearing held on 21.04.2025, he formally requested the cross-examination of the departmental officers and panch witnesses involved in the interception, search, seizure, and investigation in the present matter. Further, additional documents were also requested including date of erection of barricade and non-supply of CCTV footage. These requests have thus far remained unaddressed.

He submitted that he was not allow for cross-examination of departmental officers who are directly responsible for the alleged detection and investigation. He submitted that the he has repeatedly sought access to CCTV video footage recorded at the airport at the relevant time.

He submitted that there was no concealment whatsoever, as the currency was in cabin baggage and was naturally subject to the standard screening that Customs has acknowledged to be universally applied. In the absence of concealment and where the currency was discoverable through routine checks, no presumption of mala fide intent can be sustained. This position is supported by judicial precedents which hold that mere non-declaration, absent suppression or concealment, does not ipso facto invite penal consequences, particularly where the procedural mechanism for declaration was not facilitated by the department.

He further submitted that he has no past or pending proceedings under the Customs Act, 1962 or any other fiscal legislation. His record has remained untainted by any allegation of impropriety or misconduct. This clean record is a relevant and material consideration in assessing both the credibility and the absence of any mala fide intent in the present case.

20. Noticee was given opportunity to appear for personal hearing on 21.04.2025. Shri Gervasis Thomas, Advocate and Authorized representative of Shri Jitendra Shankarbhai Patel appeared for personal hearing on 21.04.2025 through video conferencing. He re-iterated his written submission dated 05.06.2023. He asked for the cross-examination of witnesses as mentioned in Para 13 of their written submission dated 05.06.2023 and also requested for CCTV footage for the relevant time.

Discussion and Findings:

21. I have carefully gone through the facts of this case, written submission and the record of Personal Hearing.

22. The sole issue for consideration is the proposal for confiscation of foreign currency 32049 USD equivalent to Rs.25,76,740/- (Rupees Twenty-Five Lakh Seventy-Six Thousand Seven Hundred Forty only) attempted to be imported into India in contrary to the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage rules, 2016 read with Customs Act, 1962 placed under seizure vide panchnama drawn on 06.10.2022. The seizure was made under Section 110 of Customs Act, 1962 on the reasonable belief that the said foreign currency is liable for confiscation under Section 111 of the Customs Act, 1962 and Foreign Exchange Management (Export and import of currency) Regulations, 2015; goods used for packing and concealing the seized foreign currency is liable for confiscation under Section 119 of the Customs Act, 1962 and passenger is liable for penal action under the provision of Section 112 of the Customs Act, 1962.

23. Before proceeding further, I find that the noticee has alleged in his submission that seizure and investigation made by an officer who were not notified and competent under FEMA and for this the seizure is illegal. He also mentioned that Customs Act, is not applicable in this case as Baggage Rules Keep foreign currency out of Customs Law and placed it under Foreign Exchange Management (E&I) Regulations. In this regard, I find that Section 2(22) of Customs Act, 1962 defines Goods as:-

“goods” includes:-

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;

From the above, it is very evident the definition of goods includes “currency” as well. Further, Section 11(2)(c) of Customs Act, 1962 prohibits **import or export of goods** for purpose of prevention of smuggling.

Section 100 of Customs Act, 1962 prescribes the power to search suspected persons entering or leaving India, etc. The relevant portion of the Section is as:-

Section 100. Power to search suspected persons entering or leaving India, etc. -

(1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

(2) This section applies to the following persons, namely: -

(a) any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

From the above, it is very crystal clear that Section 100 of Customs Act, 1962 empowers the Customs officers to Search the person and his accompanied goods at the Customs Area on his arrival or departure. Therefore, the allegation of the noticee that the customs officers are not proper officers is baseless and merits no credence.

24. Further, the noticee in his written submission, at the time of personal hearing and vide letters dated 03.04.2025, 17.04.2025 asked for cross examination of panchas and officers of AIU and also mentioned to issue a speaking order in case of denial of the same. In response to that, the Adjudicating Authority vide letter dated 28.04.2025 informed the noticee about denial of his request for cross examination of panchas and officers of AIU along with reason of denial. In response to that the authorized representative vide letter dated 13.05.2025 alleged that the same was not served to them either on mail or their correspondence address as requested in their earlier response and they came to know only after the noticee received the letter on 10.05.2025 at his USA address.

Further, they have alleged that the cross-examination request is denied outrightly without giving any reason. He also alleged that their preliminary submission has not been considered and denial of cross examination constitutes a serious violation of the principles of natural justice. In this regard, I find from the records, the noticee has asked for the cross examination of the officers by mentioning the reason as “to disprove the investigation and its findings and their authority under FEMA” and asked the cross examination of panchas by mentioning the reason as “to disprove the veracity of panchnama as its veracity disputed”. The request for cross examination of the mentioned persons was not accorded by stating the specific reason for denial letter dated 28.04.2025 and same was communicated to the noticee to the available addresses in India as well as the address of USA. Also, the same was communicated to the mail of his authorized person as per their request on the same day i.e 28.04.2025. The allegation of not communicating the letter on any communication channel as requested in their written submission is baseless, far from the truth and merits no credence. Further, I find that vide letter dated 13.05.2025, they have requested another 3 week time apart from a week time given to them vide letter dated 28.04.2025, to file their written submission. In this regard, I would like to refer the direction issued by Hon’ble High Court of Gujarat vide order dated 20.03.2025 uploaded on 28.03.2025, wherein the Hon’ble High Court has specifically mentioned to complete the adjudication process, after follow the principle of natural justice, in a time period of twelve weeks from the date of order. The personal hearing in the matter was fixed on 21.04.2025 which was attended by the authorized representative of the noticee through video conferencing, wherein the authorized representative re-iterated the written submission dated 05.06.2023 and also request for cross examination. He also mentioned that after cross examination they will file their detailed written submission. Keeping in the mind, the timeline prescribed by the Hon’ble High Court of Gujarat for completion of the proceeding, the noticee has been requested to file their submission till 26.05.2025.

After completion of personal hearing in the matter on 21.04.2025, the noticee has been requested to submit their written submission vide letter dated 28.04.2025 wherein a week time was given to submit their response after receipt of the letter. In response, the noticee has asked for 3 week more time to submit their response by taking plea of not receiving the communication letter dated 28.04.2025. Again, in reply to their letter dated 13.05.2025, the noticee was requested to file their defense reply, if any till 26.05.2025. The noticee submitted his written submission on 26.05.2025 but again asked for the personal hearing which was already availed by the noticee on 21.04.2025. From this act, it shows

that the noticee is not serious about the timeline given by the Hon'ble High Court of Gujarat and just playing the delaying tactics. Keeping in the mind the timeline fixed by the Hon'ble High Court of Gujarat, I am of the opinion that sufficient opportunity for personal hearing as well as for submission of written submission has been given to the noticee. The noticee has submitted his response vide letter dated 05.06.2023 and 26.05.2025 and same has been taken on the record and accordingly take up the matter for decision.

25. I find that the said noticee has admitted in his statement that he has given statement voluntarily and without any inducement, threat and coercion or by any improper means and after going through the correctness of the facts recorded in his statement, he put his signature with full presence of mind. The statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter is as:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is valid evidence"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- The Hon'ble Supreme Court in another case of Gulam Hussain Shaik Chougule Vs. S.Reynolds, Supdt of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC) categorially held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."

- Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.

26. Further, I find that the noticee has asked for cross examination of panch witnesses and officers of AIU. The request for cross examination was not accorded and intimated with the reason of denial vide letter dated 28.04.2025. I find that it is not mandatroy to allow cross examination in adjudication proceedings under Section 138B(2) of the Customs Act, 1962. It is on the prniciples of natural justice that both sides should be heard fairly and reasonably, that if any reliance is placed on evidence or record against a person, then the evidence or record must be placed before him for his information, to comment and criticism. No natural justice requires that there should be a kind of formal cross examination. So long as the party charged has a fair and reasonable opportunity, to see, comment and criticise the evidence, statement or record on which the charge has been made against him, the demand and test of the natural justice statisfied. Cross examination in that sense is not the technical cross examination in a court of Law in the witness box, as held in judgment of Kishanlal Agarwal vs. Collector of Land Customs, AIR 1967. Further, it is held that denial of cross examination does not lead to violation of principles of natural justice. The following case laws are relevant and support of the above view:-

- (i) Poddar Tyres (Pvt) Ltd vs. Commissioner-2000 (126) E.L.T 737:- wherein it has been held that cross examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'.
- (ii) Kumar jagdish Ch. Sinha Vs. Collector-2000 (124) E.L.T 118 (Cal H.C)- in this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- (iii) A.K Hanbeen Motarred Vs. Collector-2000(125) E.L.T 173 (Mad H.C):- wherein it has been held that the strict rule of the burden of proof applicable to criminal prosecution may not be applicable to proceedings before customs authorities.
- (iv) Shivom Ply N-wood Pvt Ltd Vs. Commissioner of Customs & Central Excise, Aurangabad-2004 (177) E.L.T 1150 (Tri. Mumbai):- wherein it has been held that cross examination not to be claimed as a matter of right.

It is a settled position that proceedings before the quasi judicial authority is not at the same footing proceedings before a court of law and it is the discretion of the authority whether request of cross examination to be allowed in the interest of natural justice. Denial of request for cross examination has been held as not violating the principle of natural justice during quasi judicial proceeding in the following case laws:-

- a. In the case of *Kanungo & Co. Vs. Collector of Customs, Calcutta and others* [1993 (13) E.L.T 1486 (S.C)] wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principle of natural justice does not cover the right to cross examination witnesses. Relevant para is reproduced wherein the Hon'ble Supreme Court observed as follows:-

"in our opinion, the principles of natural justice do not require that in matters like this the person who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, I hold that there is no force in the third contention of the appellant."

- b. In the case of *Suman Silk Mills Pvt Ltd vs. Commissioner of Customs & C.ex, Baroda* [2002 (142) E.L.T 640 (Tri. Mumbai)] Tribunal observed that- *"Natural Justice- Cross Examination-Confessional Statements- No Infraction of Principle of Natural Justice where witnesses not crossed examined when statement admitting evasion were confessional."*
- c. In the case of *Commissioner of Customs, Hyderabad V. Tallaja Impex* reported in 2012(279) E.L.T 433 (Tri.) it was held- *"In a quasi judicial proceeding, strict rules of evidences need not to be followed. Cross examination cannot be claimed as a matter of right."*
- d. In the case of *Patel Engg. Ltd Vs. UOI* reported in 2014 (307) E.L.T 862 (Bom), Hon'ble Bombay High Court has held that :- *"Adjudication-Cross Examination- Denial of -held does not amount to violation of principle 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 inquires 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."*
- e. Hon'ble Punjab and Haryana High Court in its decision in case of *Azad Engg Works vs. Commissioner of Customs and Central Excise*, reported as 2006 (2002) ELT 423 held that :- *".....it is well settled that no rigid rule can be laid as to when principles of natural justice apply and what is their*

scope and extent. The said rule contains principles of fair play. Interferences with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble Supreme Court in K.L Tripathi Vs State Bank of India and others, AIR 1984 SC 273."

- f. Hon'ble Tribunal in case of P Pratap Rao Sait Vs. Commissioner of Customs reported as 1988 (33) ELT (Tri) has held that ".....the plea of the learnt counsel that the appellant was not permitted to cross examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable".*
- g. Similarly in A.L Jalauddin Vs. Enforcement Director reported as 2010 (261) ELT 84 (Mad HC) the Hon'ble High Court held that:- ".....therefore, we do not agree that the principle of natural justice have been violated by not allowing the appellant to cross examine these two persons. We may refer to the paragraph in AIR 1972(SC) 2136=1983 (13)ELT 1486(SC) (Kanungo & Co.Vs Collector of Customs, Calcutta)"*
- h. In the case of Liyakat Shah Vs. CCE [2000(120) ELT 556], the CESTAT held that Cross examination can be denied if it just delaying tactics to avoid justice.*
- i. In case of GTC industries Ltd Vs. Commissioner of Customs New Delhi [2011 (264) ELT 433 (Tri-Del.) it has been held that:- "Evidence in adjudication proceeding need not be like the one in criminal cases- Findings in the adjudication based on preponderance of probability- witnesses found to be not innocent but well conversant with the appellants' trade-Statement of witnesses voluntary and not retracted-Reply to SCN not filed and merely rasied filmsy plea for cross examination prematurely-Right to Cross Examination not required when circumstantial evidence provide reliable basis corroborating statements-witnesses not having enmity with appellant and such witnessess not required to put to cross examination- No right to seek cross examination on filmsy plea when burden of proof discharged by revenue- Natural Justice not violated."*

I also observed that statement recorded under Section 108 of the Customs Act is voluntary and confessional in nature, therefore denial of cross examination does not violate principles of natural justice. Request for cross examination of noticee who has made voluntary statement during the investigation is not acceptatble in view of following case law:-

- a) In the case of Jagdish Shanker trivedi vs. Commissioner of Customs, Kanpur [2006 (194) E.L.T 290 (Tri.Delhi)] tribunal*

Observed that – “ *Confessional statements of noticee- retraction thereof, which was otherwise unacceptable would not entitle them to claim cross examination of witnesses on aspect which were confessed by them- there is no violation of natural justice principles in such a course....*”

- b) In the case of Surjeet Singh Chhabra Vs. UOI reported in 1997 (89) ELT 646(S.C)] it was held that- “ *Customs officials are not police officers and admission made before them though retracted binds the deponent. In view of voluntary statements recorded and such statements not retracted did not warrant cross examination when other circumstantial provided reliable basis corroborating the statement. When nothing surfaced that the witnesses had any enmity with appellant, those were not liable to be discarded nor required to be put to cross examination*”

26.1 I also hold that the officers of Customs were not called for cross-examination as their statements were not relied upon in the said Show-Cause Notice, as held in the case of *N.S. Mahesh Versus Commissioner of Customs, Cochin [2016 (331) E.L.T. 402 (Ker.)]* and they were doing their statutory duties and their statements are not relied in the SCN.

26.2 I also find that Cross Examiantion sought without indicating specific reasons, is not admissible in view of following case laws:-

- 1) In the case of Fortune Impex vs. Commissioner of Customs, Calcutta [2001(138) ELT 556 (Tri. Kolkata)] Hon’ble Tribunal observed that:- “.....it is not required that in each and every case, cross examination should necessarily be allowed. There is no absolute right of cross examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross examination without indicating the specific reason for cross examination. Theit cannot be said that there was violation of principles of natural justice by not allowing the cross examination of the person sought.”. This view taken by the tribunal has been affirmed by the Hon’ble Supreme Court-2004 (164) ELT 4 (S.C) & 2004 (167) ELTA 134 (S.C).
- 2) Hon’ble CESTAT, Kolkata in its decision in Dipu Das Vs. Commissioner of Customs, Kolkata reported in 2010 (261) ELT 408 (Tri.Del) has held that:- “.....in adjudication proceedings, cross examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same.”

I find that the Noticee in his written submission asked for the cross examination of the officers as well as panchas by merely mentioning that “ **to disprove the investigation and its findings and their authority under FEMA**” and “ **to disprove the veracity of panchnama as its veracity disputed**” respectively. Merely mentioning that cross examination of any witness proves his innocence does not amount that the cross examination should be allowed. By mentioning that their cross will prove his innocence shows the delay tactics followed by the noticee to derail the proceeding.

Finally, Section 138B(2) or in any other provision of the Customs Act/Law has not such explicit arrangement for examination in chief, cross examination and re-examination. The instant case is not merely based on the statement of any other persons but also statement of noticee himself, who have sought cross examination of the other person. Thus, I find that cross examination sought by noticee, is without any merit and a ploy to delay the adjudication proceedings. In these circumstances, I am not inclined to allow cross examination sought by noticee and considering the fact and circumstances of the case, such denial cannot lead to violation of principles of natural justice. In the instant case, I find that sufficient evidences exists and also noticee has not retracted from his statement tendered by him at relevant time. In view of above judicial pronouncement, I hold that cross examination cannot be demanded as a matter of right by the noticee. I also find that no cogent reason(s) have been adduced to demand and justify cross examination and that not affording cross examination to the noticee does not vitiate the proceeding on ground of denial of natural justice.

27. I also observe that the noticee have mentioned in their written submission as well as during the personal hearing that final defense reply will be submitted only after cross examination of witnesses and officers. Further, as far as the existence of legal provisions are concerned, it is observed that as per Section 124(b) of the Customs Act, which deals with the issue of SCN before confiscation of goods etc., noticee is required to submit his reply as he is bound by the said provision. Bare perusal of Section 124 indicates that it has ingredients of principle of natural justice, but it has no such condition which says that only after cross examination written reply would be filed. Neither Section 122 of the Customs Act, which deals with the adjudication nor Section 122A of the Customs Act, which deals with the adjudication procedure thereof says anything that reply would be filed only after grant of opportunity of cross examination during adjudication proceedings. Following case laws support the aforesaid view: -

- I. Hon'ble High Court of Allahabad in case of Kanpur Cigarettes Ltd Vs. UOI as reported in 2016 (344) ELT 82 (All.) [Civil Misc Writ Petition Tax No. 6 of 2013 decided on 15.01.2013 has held that: -*"there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statement were recorded, for cross examination before reply to the SCN is filed."*
It is also held that *"the petitioner cannot insist that the petitioner be first permitted to cross-examine the witnesses and thereafter it would submit its reply."*
- II. Tribunal of Delhi in case of Miraj Products Pvt Ltd Vs. Commissioner of C.Ex and Service tax, Udaipur reported in 2019 (369) ELT 1147 (Tri. Del.) [Final Order No. A/52948/2018-EX(DB), dated 13.09.2018 in application No. E/MISC/50757/2018 in Appeal No. E/51867/2018-DB held as under:-
"We follow the adjudication of Allahabad Tribunal in Kanpur Cigarettes (supra) case that the question of cross examination of witnesses would arise only when the adjudication proceedings commence after the stage of filing reply to Show Cause Notice. Neither Statutory nor any principle of natural justice requirement exists for allowing cross examination at a stage of receiving the mere SCN."
- III. In another case, Hon'ble High Court of Madras in case of KIBS Hosiery Mills Pvt Ltd Vs. SPL, DIR DTE of Enforcement, New Delhi [W.P No. 18857 of 2010 decided on 09.12.2014] reported in 2016 (344) ELT 24 (Mad) has held that *"Noticee were bound to submit their reply to SCN, follow procedure contemplated under ACT/Rules and could not device their own procedure as per their whims and fancies."*

28. Further, I find the noticee has alleged that CCTV footage was not provided to them and also not relied upon in the Show Cause Notice. As regards the CCTV footage, I find that the CCTV footage has not been relied upon by the department in the Show Cause Notice and also, I find no formal request letter of noticee for providing the CCTV footage any stage of investigation and it was only asked in their written submission dated 05.06.2023, after a lapse of almost six months from the date of seizure i.e 06.10.2022. The Hon'ble Madras High Court has in case of S. Vardharajan Vs. Commissioner of Customs, Tuticorin {2019(370) ELT 194(Mad.)} held that " 11. Right to seek certain documents from the department during the enquiry can be considered as vested right, if those documents are relied upon by the department in the Show Cause Notice..... At the same time, if department has not relied upon on certain documents, which are sought to be

furnished by the other side, certainly, there is no vested right on person to seek such documents, in the domestic enquiry/ adjudicatory proceeding.” thus, is clear that the noticee has no vested right to seek the subject CCTV footage (which has not been relied in the Show Cause Notice) and correspondingly the department has no obligation to furnish the same. As such, there is no merit in the subject contention as well.

29. I find that the noticee in his written submissions time and again alleged that the adjudication authority is prejudice and undermines the very foundation of a fair adjudication process by denying the cross examination and not providing the CCTV footage. The issue regarding cross examination and CCTV footage is already discussed in preceding paras in length. Further, it is observed that the Hon’ble High Court of Delhi has in the case Court in its own motion Vs. State and ors.[Judgment dated 21.08.2008 in WP (Crl.) No. 796/2007] shown the path the adjudicators faced with such unfortunate situations by observing “that the path of recusal often is convenient and soft option and that where unfounded and motivated allegations of bias are made with a view of forum hunting or bench preference, succumbing to its pressure would amount to not adhering to judicial oath”. Guided by this observation of Hon’ble High Court of Delhi, I reject the allegation of prejudice.

30. I find that the panchnama dated 06.10.2022 clearly draws out the fact that, on the basis of passenger profiling and suspicious movement, the passenger namely, Mr. Jitendra Shankarbhai Patel, arriving from Doha, Qatar to Ahmedabad Airport by Qatar Airways Flight No. QR 534 on 06.10.2022, was intercepted by the Air Intelligence Unit (AIU) Officers of Customs, Sardar Vallabhbhai Patel International Airport (SVPIA). The AIU officers asked the said passenger if he was having anything to declare before Customs, in reply to which he denied. The checked -in luggage of the passenger was examined and personal search of said passenger was carried out. It was found that he had hiding foreign currency in his baggage. In the presence of panchas and the AIU Officers, the noticee took out the same. The said search/examination resulted into recovery of 32049 USD of different denomination concealed in Cover, cloths, pockets of jeans and placed them in hand bag and trolley bag. The value of the foreign currency in Indian Rupees comes to Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) based on the exchange rate Notification No. 78/2022-Customs (N.T.) dated 15.09.2022. On being enquired the noticee was unable to produce any legitimate document in support of carrying the said foreign currency, further he has not file currency declaration

form also, which is required to be submitted to Customs. The said foreign Currency i.e. 32049 USD, totally amounting equivalent to Indian Rs.25,76,740/- was placed under seizure under the reasonable belief that the said foreign currency was liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 as they were attempted to be imported in to India in contravention of Notification No. FEMA – 6 (R)/RB-2015 dated 29/12/2015 {Foreign Exchange Management (Export and import of currency) Regulations, 2015}. Every procedure conducted during the panchnama by the officers is well documented and is made in the presence of the panchas/witnesses and the noticee.

31. In his submission, he submitted that due to urgent renovation work of their ancestral property at Anand, Gujarat which required an estimate cost of Rs. 28 to 30 Lakh, he visited India with an amount of USD 32049, (out of which USD 22,449 was as personal saving and USD 9600 was borrowed as personal loan from his employer) which was equivalent to Rs. 25,76,740/-. Further, regarding non declaration of said amount before customs, he submitted that at the relevant time, Indian Currency was on a depreciating trajectory against the USD and therefore, while incurring expenditure for repair and renovation, he thought of encashing the USD on a need to spend basis through any of approved channels. Further, he submitted that when money was transmitted through regular banking channels, there occurred loss in from of banking charge commissions and taxes on commission etc. Carrying Cash on hand, therefore, made sense and therefore, it was decided to bypass the regular banking channels during the visit. He submitted that foreign currency into India was sanctioned under Regulation No. 6 of Foreign Exchange Management (Export & Import of Currency Regulation) 2015 wherein no reason to be given to any authority for carrying foreign currency and no license or permission is required for bringing such foreign currency and only declaration is required for that. He was ready to make necessary declaration in the prescribed Currency Declaration Form prescribed as per regulation; however, he was apprehended before reaching to the counter and resulting into a case was booked against him. In this regard, I find from the records that the noticee has a frequent flier and visited India 5 to 6 times in a year and has acquired ample and minute knowledge of procedure followed at the SVPIA Airport, kind of forms prescribed for passenger except the knowledge regarding declaration of foreign currency which was found in his possession, as required under Section 77 of Customs Act, 1962 as Baggage Declaration followed by the Currecny Declaration Form. The plea of noticee that no customs declaration form was made available to him neither by the airline nor by

the customs and he would declare the foreign currency by approaching the counter after immigration process but before that he was apprehended and resulted into seizure of currency seems not credit worthy as if his intention was to declare the same, he may approach the airline at the time of journey and asked for the baggage declaration form, also he could use the app "Athithi App" which is available for the passenger for declaration of goods in the public domain. In the era of information and technology wherein the such things are handy and available on public domain which is also supported by policy of Government for facilitating the passengers and being a frequent flier and having ample knowledge of procedure followed at Airport as per his submission, making excuse of not providing declaration form, merits no consideration and by choosing to carry the USD in cash instead of the transferring the same through banking channel for merely saving banking commission as per his submission also raises doubt regarding his intention for declaration of foreign currency at Airport. Also, the panchnama narrates the fact that the impugned foreign currency was not declared by the noticee on his own and also not declared even on asking by the officers and it was recovered only after checking of the baggage of the noticee. Also, in his voluntary statement he admitted that he did not make any declaration in this regard.

In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments. To support my view, I relied on judgment of Hon'ble High Court of Calcutta in case of Provash Kumar Dey Vs. Inspector of Central Excise and others wherein it was held that ignorance of law is no excuse and accordingly the petitioner was rightly found guilty for contravention of Rule 32(2) [1993(64) ELT 23(Del.)]

32. I find that the legal provision for bringing foreign currency into India is very clear and does not leave any scope for any ambiguity. If the whole set of incidents is examined, first it is seen that the noticee was international passenger in a sense that he was arrived from Doha, Qatar to SVPIA, by Qatar Airways Flight No. QR 534. The noticee was intercepted by the Customs officials when he was about to exit airport by opting green channel without making any declaration to Customs. Thus, being an international passenger, the noticee was bound by the Baggage Rules, 2016 framed under the Customs Act, 1962. There cannot be any denial for the applicability of Baggage Rules, 2016 in respect of the passenger. Rule 7 of the Baggage Rules, 2016 Stipulates as under: -

Rule 7. Currency. -

The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, ¹ [2015], and the notifications issued thereunder.

I find that Rule 7 of the Baggage Rules, 2016 is about import and export of currency and it lays down that the import or export of currency is governed by the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and notifications issued there under. Thus, I find that there cannot be any denial in respect of the fact that regulations and notifications framed under the said Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 were applicable to the noticee as he was primarily bound to follow Baggage Rules, 2016.

33. Regulation 3, 5 and 6 of the Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 states that no foreign currency can be sent out of Indian and brought into India without permission of RBI. The relevant provisions read as follow: -

3. Export and Import of Indian currency and currency notes: -

(1) Save as otherwise provided in these regulations, any person resident in India,

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000/- (Rupees Twenty-Five Thousand Only) per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;

(b) may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation: 'Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.

(c) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000/- per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time.

Without prejudice to the provisions of sub-regulation (1), Reserve Bank may, on application made to it and on being satisfied that it is necessary to do so, allow a person to take or send out of India or bring into India currency notes of Government of India and/or of Reserve Bank of India subject to such terms and conditions as the Bank may stipulate.

(2) *Save as otherwise provided in these regulations, any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India,*

(a) may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty-Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

(b) may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty-Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time

5. Prohibition on export and import of foreign currency: -

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

6. Import of foreign exchange into India:

A person may:-

(a) send into India without limit foreign exchange in any form other than currency notes, bank notes and travelers cheques;

(b) bring into India from any place outside India without limit foreign exchange (other than unissued notes)

provided *that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations*

provided *further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousands) or its equivalent.*

It is observed that the noticee did not make the statutory declaration on his arrival to the Customs authorities since the Forex (USD 32049) carried by the him was much higher than the prescribed limit under the FEMA 1999 as amended read with the Foreign Exchange Management (Export and Import of Currency) Regulation, 2015.

34. The Regulation 5 read with Regulation 6 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 in very clear terms “prohibits” export and import of “any” foreign currency without general or special permission

of the Reserve Bank of India. I find that the noticee has not come forward with any document issued by any authorized authority which can establish that the noticee was granted special permission by the Reserve Bank of India to carry foreign currencies he was carrying with him to take into India. Further, Regulation 6 (b) stipulates that a person can bring into India from any place outside India without limit foreign exchange (other than unissued notes) with subject to condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations. In the case before me, the noticee has failed to declare the foreign currency in the prescribed format and file declaration which can establish that the foreign currencies found and recovered from him was not carried illegally. These acts of omission or commission of offence on his part was clear violation of Rules 7 of Baggage Rules, 2016 read with regulations 5 and 6 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

35. Further, I find that Section 2(22) of Customs Act, 1962 defines the term “goods” and include at Section 2(22)(d) of the Customs Act, 1962 the “currency and negotiable instruments”. In terms of Section 2(33) of the 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 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 effect of interpretation of the words prohibited goods considered in Om Prakash Bhatia Vs. Commissioner of Customs, New Delhi (2003(6) SSC 161) and in the said judgment the supreme court held as follows:-

“From the aforesaid definition, it can be stated that (a) if there is any prohibition on import or export of the goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods”

Relying on the proportion of the judgment and regulation stated above, I find that the currency brought in India by the noticee is “prohibited goods” under the definition of Section 2(33) of the Customs Act, 1962.

35.1 I observe that the seized currency was not declared to Customs in contravention to the provision Section 77 of the Customs Act, 1962. It is

evident that the condition in respect of import of seized foreign currency was not fulfilled. The noticee was therefore not eligible to import the currency and that too undeclared in substantial quantity, the same cannot be treated as “bonafide baggage” in terms of Section 79 of the Customs Act, 1962 read with Section 11 *ibid*. The said foreign currency was attempted to be illegally imported in India in contravention to the provisions of Customs Act, 1962 read with the FEMA, 1999 and the Foreign Exchange Management (Export or Import Currency) Regulations 2015. The same would appropriately constitute “prohibited goods” liable for confiscation under Section 111 of Customs Act, 1962. Thus, the act of noticee would be termed as an act of smuggling under the definition of Section 2(39) of the Customs Act, 1962.

36. The legal provisions of FEMA, 1999, the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, Section 2(33) of the Customs Act, 1962 read with Section 11 clearly stipulate that an attempt to smuggle foreign currency is ‘prohibited’ and merits confiscation under provisions of Section 111 of Customs Act, 1962. I also find that there is a plethora of judgments in favour of release as well as against release of goods on payment of duty, redemption fine and penalty, once it is established that the goods in question comes under the ambit of “prohibited goods” as defined under Section 2(33) of Customs Act, 1962 and the act of malafide intention in relation to subject items fall within the meaning of “smuggling”, as defined under Section 2(39) of Customs Act, 1962. I find that it is a settled legal position that ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon’ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori tobacco products [2004 (170) ELT 135 (SC)] has stressed the need to discuss how the facts of decision relied upon first factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated in judgment in the case of Escort Ltd. Vs. CCE, Delhi [2004 (173) ELT 113 (SC)] and in case of CC (Port), Chennai Vs Toyota Kirloskar [2007 (213) ELT 4 (SC)]. In the instant case it has been established beyond doubt that the foreign currency was kept undeclared and concealed in hand bag and trolley bag in different ways i. e. in covers, in clothes, pockets etc., falls within the meaning of “prohibited goods” and the act of malafide intention in relation to attempting to import foreign currency by concealing in hand bag and trolley bag in different ways i. e. in covers, in clothes, pockets etc. and not declared before the Customs, falls within the meaning of “smuggling”. Hon’ble Supreme Court in case of Dropti Devi & Anr reported in [(2012)6S.C. R. 307] has observed and taken a serious view of smuggling activities.

37. It is true that rules and regulations often involve restrictions, they also serve as vital tools for maintaining order, safety, and the functioning of society. They are not just limitations but frameworks that define acceptable behavior and create a predictable environment for everyone. Following rules and regulations is crucial for a society to function smoothly and protect its members. The rules and regulations governing import and export of goods are indeed restrictions, and it is mandatory for all involved parties to adhere to them. These regulations are in place to ensure compliance with various legal frameworks and protect national interests. From the above, I have confiscated the seized currency holding that the same are prohibited goods. I also observe that Section 125 of Customs Act, 1962 allows providing the option of redemption of such goods. Section 125 of Customs Act, 1962 is reproduced as below: -

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods ¹ [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

*² [**Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of [section 28](#) or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed]:*

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of [section 115](#), such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending

against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

A plain reading of Section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of goods and the nature of prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food does not meet the food safety standards etc. are harmful to the society if allowed to find their way in domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society. I have gone through the facts of case and the submission. I find that there is no dispute that the seized foreign currency was not declared by the noticee before customs authority. Further, in his statement the noticee had admitted the possession, carriage, concealment, non-declaration and recovery of foreign currency. Thus, I hold that, in absence of any valid documents for the possession of the foreign currency, the same had been procured by noticee other than authorized persons as specified under FEMA, which makes the goods liable for confiscation in the view of prohibition imposed in Foreign Exchange Management (Export and Import of Currency) Regulation, 2015, which prohibits export and import of the foreign currency without the general or special permission of Reserve Bank of India.

37.1 I find that Section 125 of the Customs Act, 1962 allow providing option of redemption of goods. In case of non-prohibited goods such offer of redemption is mandatory while in prohibited goods the discretion is vested upon the Adjudicating Authority. Hon'ble Supreme Court in case of M/s. Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The relevant portion of the judgment is as under:-

“71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute,

has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken."

In a case of confiscation of currency, Delhi High Court in case of *Raju Sharma Vs. Union of India* [2020(372) ELT 249 (Del.)] while allowing release of currency observed that:-

18., the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was "prohibited", redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of ₹50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motives¹. No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of ₹50,000/-. The Commissioner (Appeals) rightly refused to interfere with the said decision, and the Revisionary Authority, in an order which reflects total non-application of mind, chose to reverse the said decision.

19. We are unable to sustain the order of the Revisionary Authority. We uphold the decision of the Commissioner (Appeals) as well as the order of the AC, which stands affirmed thereby. The seized currency shall, therefore, forthwith be returned to Petitioner No. 2.

37.2 Further, I also refer the following judgments:

- a.** 2009 (242) E.L.T. 334 (Bom.) COMMISSIONER OF CUSTOMS (AP), MUMBAI Versus ALFRED MENEZES it was ruled that -

Discretion of officer to release prohibited goods under redemption fine - Section 125(1) of Customs Act, 1962 deals with two situations i.e. import & export of prohibited goods and import & export of any other goods - Expression used in case of prohibited goods is "may" and for any other goods it is "shall" -Discretion on officer to release confiscated prohibited goods - Officer however bound to release "other goods" - Officer in pmt case exercised discretion which was upheld by Tribunal - No merit in question whether discretion vests with adjudicating authority to give option to redeem goods absolutely confiscated as prohibited for import - Section 125(l) ibid. [Para(s) 4, 5]

- b.** *2003 (151) E.L.T. 265 (Mad.) NINE STAR EXPORTS Versus COMMISSIONER OF CUSTOMS (PORTS), CHENNAI- In case of prohibited goods, adjudicating authority has discretion whether or not to give option to pay fine in lieu of confiscation, but in case of other goods, such option has necessarily to be given - Section 125 of Customs Act 1962. [Para(s) 13, 16]*
- b.** *Omprakash Jhunjhunwala Vs. Commissioner-2017 (353) E.L.T. A95 (Tri-Mum); ii) Order No. 43/2018 dated 23.03.2018 of Mohd. Arif reported in 2018 (361) E.L.T.959 (G.O.I.) and Hon'ble High Court of Bombay judgment dated 27.10.2016 in case of CC, Mumbai Vs Rajinder Nirula (Customs Appeal No 60/2006) has summarized at para 14 of his order as under,*
" 14. The above decisions of higher appellate forums suggest that redemption of foreign currency can be allowed based on facts and merit of each case and there cannot be any straight jacket formula to decide such cases. I find that the statements recorded under section 108 of the Customs Act, 1962 of the passenger revealed that the foreign currency belonged to him and he had claimed ownership of the seized currency; that he was carrying the said currency for purchasing mobile phones from Kuala Lumpur; that this was the first time he had carried such huge amount of foreign currency. Besides, the appellant explained how he had arranged the foreign currency from forex exchange agent Mr. Chetan, though illegally and there is nothing on record to suggest that he was working as carrier for somebody else or was member of organized smuggling racket. "

I find that the noticee in his statement claimed the ownership of the said foreign currency and submitted a certificate regarding borrowing of 9600USD from his employer M/s. Ruchi Food Mart having address 8047, Asheville Hwy, Spartanburg, S.C -29303 where the noticee was working at the relevant time and claimed the remaining amount as his savings, but he failed to submit any documents regarding this. I find that the noticee is a permanent resident of USA. From the above, it can be termed as a case of mis-declaration rather than smuggling, as bringing in foreign currency does not impact the duty as no duty is leviable on the importation of foreign currency in India rather, it just needs the declaration which the noticee failed to do so. Since, the subject goods are

high in value, penalty and fine is substantial to discourage any attempt to engage in the nefarious activity in future. Therefore, I am inclined to offer redemption of seized goods on payment of redemption fine, subject to payment of applicable charges, if any and also compliance with any procedural and regulatory requirements.

38. Given the above findings, it is evident that Mr. Jitendra Shankarbhai Patel has violated the procedure prescribed under Baggage Rules, 2016 framed under the Customs Act, 1962 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 framed under the Foreign Exchange Management Act, 1999 and attempted to improperly import into a huge amount of foreign currency by not declaring the same and adhering the proper compliance as required by the noticee. By the aforesaid acts of Commission and omission Mr. Jitendra Shankarbhai Patel (passenger) has rendered the impugned (seized) foreign currencies liable for confiscation under Section 111(f), 111(j), 111(l) & 111(m) of Customs Act, 1962, read with Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued under Foreign Exchange Management Act, 1999, and Rule 7 of the Baggage Rules, 2016 issued under Customs Act, 1962. The act of carrying foreign currency by concealing and without declaring before proper authority, the noticee rendered himself liable for penal action. I therefore find that Mr. Jitendra Shankarbhai Patel is also liable for penalty under Section 112 of the Customs Act, 1962.

39. Accordingly, I pass the following order;

ORDER

- i I order confiscation of the impugned foreign currencies 32049 USD having value equivalent to Indian currency at Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) attempted to be improperly imported and seized under panchnama dated 06.10.2022 vide Seizure Order dated 06.10.2022, under Section 111(f), 111(j), 111(l) & 111(m) of the Customs Act, 1962.
- ii I give an option to Shri Jitendra Shankarbhai Patel to redeem the impugned goods i.e foreign currencies 32049 USD having value equivalent to Indian currency at Rs.25,76,740/- (Rupees Twenty Five Lakh Seventy Six Thousand Seven Hundred Forty only) on payment **Rs. 3,50,000/-** (Rupees Three Lakh Fifty Thousand Only) under Section 125(1) of the

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Customs Act, 1962 alongwith black colour trolley handbag. In addition to redemption fine, the noticee would be liable for payment of applicable duties and other levies/ charges in terms of Section 125(2) of the Customs Act, 1962, if any;

- iii I impose a penalty of **Rs.3,00,000/-** (Rupees Three Lakh Only) on Mr. Jitendra Shankarbhai Patel, under Section 112(a)(i) of the Customs Act 1962.

40. Accordingly, the Show Cause Notice No. VIII/10-199/SVPIA/O&A/HQ/2022-23 dated 16.03.2022 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-199/SVPI/O&A/HQ/2022-23
DIN: 20250671MN00002252C0

Date:10.06.2025

BY SPEED POST AD / ANY OTHER PERMISSIBLE MODE OF COMMUNICATION

To,

Mr. Jitendra Shankarbhai Patel

Love Kush Bunglow,
New Swaminarayan Temple, Anand,
Gujarat-388130

Alternate Address

Mr. Jitendra Shankarbhai Patel

747, Ear Long Bay Drive,
Spartenburg No. 29349
USA

Copy to:

- (i) The Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
- (ii) The Dy.Commr. of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy. Commr. of Customs, SVPIA, Ahmedabad.
- (iv) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (v) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e.<http://www.ahmedabadcustoms.gov.in>
- (vi) Guard File.