



### प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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#### PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-24/SVPIA/O&A/HQ/2020-21
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-24/SVPIA/O&A/HQ/2020-21 dated 22.06.2020
C	मूलआदेशसंख्या/ Order-In-Original No.	:	<b>30/ADC/SRV/O&amp;A/2025-26</b>
D	आदेशतिथि/ Date of Order-In-Original	:	<b>16.05.2025</b>
E	जारीकरनेकीतारीख/ Date of Issue	:	<b>16.05.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<b>Shri Mohsin Gulammohmed Patel</b> 674, Ashiyana Nagar, Sherpura, Post-Kantharia, Bharuch, Gujarat-392015
(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: -**

On the basis of specific information that one passenger namely, Mohsin Gulammohmed Patel, aged 31 yrs, holder of Indian Passport no. T7583118 (hereinafter referred to as "the said passenger/said pax / said noticee") had been

stopped by the Air India Personnel at the X-ray Baggage scanner no 1, in the Departure terminal, Terminal -2, SVPI Airport by the Air India Personnel and was detected carrying Foreign Currency, who was flying to Dubai from Ahmedabad by Emirates EK 539 on 25.11.2019. Customs officers reached the spot with two panch witnesses at around 0225 hours on 25.11.2019. It was further informed by the Air India Personnel that the said passenger namely, Mohsin Gulammohmed Patel, had hidden lot of bundles in his two check in black color suitcases noticed during the X-ray screening of his two check in black color suitcases, one of 'Hipolo' brand and another 'Hank' brand.

**2.** The Customs officers gave their introduction to the above said passenger showing their identity card and informed him that they intend to carry out his personal search and search of his baggage. The said passenger was asked whether he wished to be searched before a Gazetted officer or Magistrate for which he agreed to being searched by a Gazetted officer. Before conducting the search, the Custom officers offered their personal search to which he denied and said that it is not necessary and he has full faith in the officers. Customs officers asked the said passenger if he was having anything to declare before Customs, in reply to which he denied. The Custom officer searched the two suitcases of Mohsin Gulammohmed Patel, and found he had hidden 24 bundles in in his two check in black color suitcases, one of 'Hipolo' brand and another 'Hank' brand and 1 bundle in his jeans pant. On opening the said total 25 bundles in presence of the Air India Personnel, panchas and the passenger himself, the counting of the notes started. The following currency in its denomination and number were found to be carried by the passenger in his person and two suitcases: -

Denomination of Foreign Currency seized under Panchnama dtd. 25.11.2019 while departing from India to Dubai via Flight No. EK-539 from Mr. Patel Mohsin GulamMohmed holding Indian P.P. No. T 7583118

Sr. No .	Foreign Currency	Foreign Currency Notes Denominatio n	Number of Notes	Exchange Rate of one unit of Foreign Currency equivalent to India Rupees as per Noti.No.85/2019-Cus (N.T.) dtd.21.11.2019 (taken as per exported Goods)	Value equivalent to Indian Currency taken as per Imported goods	Net Total
1	UK Pound	20	300	91.30	547800	2548680

	(Pound Sterling)					
		50	100	91.30	456500	
		10	274	91.30	250162	
		05	52	91.30	23738	
						<b>1278200</b>
2	US Dollar (US Dollar)	100	579	71.05	4113795	
		50	36	71.05	127890	
						<b>4241685</b>
3	Saudi Arabian Riyal	500	500	18.55	4637500	
						<b>4637500</b>
4	New Zealand Dollar	50	146	45.20	329960	
		100	87	45.20	393240	
						<b>723200</b>
5	EURO	200	2	78.15	31260	
		100	14	78.15	109410	
		50	71	78.15	2774325	
		20	7	78.15	10941	
		10	1	78.15	781.50	
						<b>2926718</b>
6	Singapore Dollar	100	30	51.85	155550	
		50	2	51.85	5185	
		10	1	51.85	518.50	
		5	1	51.85	259.25	
		2	2	51.85	207.4	
						<b>161720</b>
7	UAE Dirham	200	1	18.95	3790	
		100	1	18.95	1895	
		50	2	18.95	1895	
		20	2	18.95	758	
		10	4	18.95	758	
		5	2	18.95	189.5	
						<b>9286</b>
					<b>GRAND TOTAL</b>	<b>1,39,78,309/-</b>

The value of foreign currency in Indian rupees as per exchange rate on date 25.11.2019 was equivalent to Rs. 1,39,78,309/- . The Custom officers asked the said passenger whether he has any receipt of purchase of foreign currency to which he said he did not have any receipt of purchase of foreign currency. The custom officers further informed that the preparation of a detailed inventory at the current spot is not convenient and therefore, it was decided to conduct the same at the AIU office located at the Arrival Hall of Terminal 2 of the Airport and requested the said passenger to carry his baggage in as such condition.

**2.1** The passenger was further brought to custom office situated at Arrival Terminal, Terminal-2, SVPI airport, Ahmedabad for further investigation. The passenger was asked to pass through the Door Frame Metal Detector and his two check in black color suitcases, one of 'Hipolo' brand and another 'Hank' brand were scanned through the X-Ray Baggage Inspection machine. The Customs officers called Shri Mahesh Gomar, Sr. Executive, EBIX Cash Money at SVPI Airport and he certified that on examination of foreign currency it appears to be genuine. Thereafter, the above said total foreign currency equivalent to Indian Rs. 1,39,78,309/- (Rupees One Crore Thirty Nine Lacs Seventy Eight Thousand Three Hundred and Nine only) was placed under seizure by the officers of Customs under the reasonable belief that the said foreign currency was liable for confiscation under the Customs Act, 1962 and FEMA Regulations, 2016. The I-phone 7 of passenger bearing SIM 9328287638 and IMEI number 356557080253239 was taken into possession for investigation by officers of Customs.

**3.** The statement of Mr. Mohsin was recorded on 25.11.2019 wherein he, inter alia, stated that -

- that the said foreign currency belongs to him. He further stated that money to the tune of Rs. 50,000/ was taken as loan from his maternal Uncle Siraj who stays 674 Ashiyana Nagar, At- Sherpura, Post - Kantharia, Bharuch, Gujarat-392015 without telling the reason.
- he procured foreign currency during his stay in India but he is not able to recall from whom have he exchanged the money to convert it into foreign currency. He further stated that he did not have any contact details of the person from whom he have exchanged the currency.
- On being asked from where he purchased foreign exchange in India; he stated that he used to purchase foreign exchange from Panama Money Exchange, Panchbatti, Bharuch, Wakkas Money Exchange, Moti Doongri, Bharuch and Bharuch Forex, Mohammedpura, Bharuch.

**4.** Summons dated 25.11.2019 under Section 108 of Customs Act, 1962 was issued by Custom officer to the passenger Mr. Mohsin for appearance on 26.11.2019 to tender statement. Mr. Mohsin gave a hand written letter on 25.11.2019 stating that in connection with summons he wanted to state that he has no place to go and he wants to rest in Customs Office.

**5.** A letter dated 25.11.2019 was written by the Deputy Commissioner of Customs (AIU), Customs Ahmedabad to the Asstt. Commissioner of

Customs(Prev.), Customs Ahmedabad to conduct follow up searches at Panama Money Exchange, Panchbatti, Bharuch, Wakkas Money Exchange, Moti, Doongri, Bharuch and Bharuch Forex, Mohammedpura, Bharuch which the pax mentioned in his statement from where he used to purchase foreign exchange and also for conducting search at the residence of the passenger at Bharuch.

**6. In response to the summons, Mr. Mohsin appeared on 26.11.2019 and gave his statement, wherein he, inter alia, stated that –**

- On being asked how much money did he used earn per month abroad; he replied that he stayed in UK for ten years from 2009 to 2019 and used to earn 1400 Pound per month.
- On being asked how much money did he paid for his studies in England; he replied that he paid 3100 pounds from India and after 2-3 months, the College got closed and then he started job in News agent shop.
- On being asked to whom and where he was supposed to give the seized foreign currency in Dubai; he replied that this money was meant for him only and after selling off this foreign currency, he was suppose to start a business there in Dubai.
- On being asked what was his purpose of taking seized foreign currency; he replied that he took the foreign currency as he has heard that on selling foreign currency viz. USD, Pounds to UAE Dirham and then converting it to Indian Rupees gives a profit of Rs. 2 Rupees per US dollar.
- After perusing and understanding the provisions contained in Regulation 7 of Export of foreign exchange and currency notes, he stated that he was aware that carrying foreign currency not obtained from authorised dealer is an offence and the regulation is

**7.** Mr. Mohsin was placed under arrest on 26.11.2019 at 15:30 the pax was lodged in Sardarnagar Police station lock-up in the night of 26.11.2019. The pax was been taken out in the morning of 27.11.2019 at 11:00 hours from the lock-up of Sardarnagar Police station and after medical examination the passenger was produced before Ld. ACMM and the Ld. Court remanded the passenger to judicial custody.

**8.** A letter dated 28.11.2019 by Superintendent of Customs (AIU), SVPI Airport, Ahmedabad was written to Airport manager/Duty Manager, Air India SVPI Airport, Ahmedabad and Airport manager/ Duty Manager, Emirates Airlines, SVPI Airport, Ahmedabad requesting to give details about mode of purchase i.e. cash or card used and person who booked the ticket and any other details like contact number,

e-mail etc. and whether any refund has been taken. An email dated 28.11.2019 was received from Air India confirming the return ticket of pax on Air India Express IX 172 vide ticket number EBBEPX E3 class from Sharjah to Surat on 29.11.2019 and details of Travel agent who booked the ticket.

**9.** A letter dated 28.11.2019 was received from the Superintendent (Prev.), Customs Ahmedabad enclosing panchnama drawn at residence of pax Mohsin Gulammohmed Patel and searches at premises of M/s. Wakkas Money Exchange, M/s Bharuch Forex, and M/s Panama Money Exchange in Bharuch .The statements of Mr. Taushif Abdullah Patel, Proprietor, M/s Wakkas Money Exchange, Mr. Muhamedtalha Ibrahim Patel Director of M/s Bharuch Forex and Mr. Altaf Umarji Patel, Director of M/s Panama Money Exchange were also enclosed. Nothing incriminating was found in search of premises of M/s Wakkas Money Exchange, M/s Bharuch Forex, and M/s Panama Money Exchange in Bharuch and Mr. Taushif Abdullah Patel, Proprietor, M/s Wakkas Money Exchange, Mr. Muhamedtalha Ibrahim Patel Director of M/s Bharuch Forex and Mr. Altaf Umarji Patel, Director of M/s Panama Money Exchange denied in their statements that they have given foreign exchange to pax or dealt with the pax.

**10.** During the investigation, it came to notice that the passenger Mohsin Gulammohmed Patel had booked a ticket by coming back on Air India Express IX 172 vide ticket number EBBEPX E3 class from Sharjah to Surat on 29.11.2019 departing at 7:35 pm which has been confirmed by Air India on 28.11.2019 where as in his statement on being asked to whom he was supposed to give the seized currency in Dubai, the passenger replied that after selling off this foreign currency he was supposed to start a business in Dubai. The above new fact showed that the passenger lied in his statement u/s 108 of Customs Act dated 26.11.2019 and hence it was suspected that the accused maybe part of a larger gang or may be part of anti national economic activity. Further, report on follow up searches were conducted at passenger's residence and three places where the passenger has stated to have purchased the foreign currency has been received on 28.11.2019. From the search of passenger's residence, it was gathered that the family of accused is not so economically well off and hence it was suspected that the seized foreign currency does not belong to the passenger. The statements of Director/ Proprietor of all three places named by passenger from where he had stated to have purchased the foreign currency have denied selling foreign currency to the passenger. So, Customs custody of passenger was sought from the Hon'ble Court ACMM, Ahmedabad to confront the above said Director/ Proprietor with the passenger to know the actual facts and further interrogation of the pax in view of

these new facts revealed during the investigation. The Hon'ble court vide order dated 02.12.2019 granted customs custody of the passenger from evening of 02.12.2019 till 4 pm of 03.12.2019. Accordingly, custody of passenger Mr. Mohsin was taken from Central jail, Sabarmati, Ahmedabad in the evening of 02.12.2019.

**11.** Mr. Mohsin appeared in customs custody before custom officer on 02.12.2019 and gave his statement, wherein he, inter alia, stated that :-

- The printout of whatsApp chat between Mohsin and Saif where she asks on 03.11.2019 where she asks in Gujarati, How much pound you(Mohsin) have saved and Mohsin had replied- '17000' was shown to Mohsin and he sign on the same.
- On being asked who is saif; he replied that she is my sister and stays in Uganda.
- The printout of whatsApp chat between Mohsin and Safik where Safik has sent Mohsin by WhatsApp on 24.11.2019; UAE entry permit no.26.11.2019/Dubai valid till 22.01.2020, Hotel stay details at Marina Hotel, Al Sabkha Street, Dubai and Flight ticket to go Dubai by EK 539 on 25.11.2019 was shown to Mohsin and he sign on the same.
- On being asked who is Safik; he replied that Safik is the person from whom he purchased the ticket to go Dubai by EK 539 on 25.11.2019 and his Office is in 5 batti, Bhauruch and by the name of S.P.Travels.
- On being asked as per his phone contact details, number of Safik is +27 (72) 366-4015 and is South Africa countr5r code and asked to comment; he replied that he doesn't have anything to say.

**12.** Summons dated 02.12.2019 were issued and sent by Whatsapp to Mr. Taushif Abdullah Patel, proprietor, M/s Wakkas Money Exchange Mr. Muhamedtalha Ibrahim Patel Director of M/s Bharuch Forex and Mr. Altaf umarji Patel, Director of M/s Panama Money Exchange for appearance to give statement in presence of Mohsin on 03.12.2019. Mr. Taushif Abdullah Patel, Proprietor, M/s wakkas Money Exchange, Mr. Muhamedtalha Ibrahim Patel Director of M/s Bharuch Forex and Mr. Altaf Umarji Patel, Director of M/s Panama Money Exchange appear on 3.12.2019 and they interalia in their respective statements were shown one person who stated himself as Mohsin and Mohsin had put his signature in their respective statements and they all stated that they do not know this person and have never sold or purchased foreign currency to him.

**13.** Mr. Mohsin appeared in customs custody before customs officer on 03.12.2019 and gave his statement, wherein he, inter alia, stated that :-

- On being asked whether he concealed the seized currency in his check in suitcase and jeans pant before starting from his home or he concealed the seized foreign currency on the way from Bharuch to SVPI Airport, Ahmedabad; he replied that he concealed the seized currency in his check in suitcase and in his jeans pant in his home only before starting from his home in Bharuch.
- On being asked to explain that in his statement dated 2.12.2019; he stated that his sister Saif stays in Uganda but her WhatsApp number is 8128559134; he replied that his sister Saif stays in Uganda but uses her Indian mobile number for WhatsApp.
- On being asked to whom he was going to deliver the foreign currency in Dubai; he stated that he does not want to reply.
- On being asked that now he has accepted that he has not purchased foreign currency from Panama Money Exchange, Panchbatti, Bharuch, Wakkas Money Exchange, Moti Doongri, Bharuch and Bharuch Forex, Mohammedpura, Bharuch when he was been confronted with the Director/ Proprietor; he replied that he does not want to reply.

**14.** After the Customs custody of Mr. Mohsin, he was medically examined on 03.12.2019 and was produced before the Hon'ble Court of ACMM, Ahmedabad and was remanded to judicial Custody by the Hon'ble Court. Mr. Mohsin had filed for application for bail before Hon'ble Courts of ACMM and Addl. Session Judge which was rejected by the Hon'ble Courts. Mr. Mohsin had also filed application for bail before Hon'ble High Court of Gujarat but in the meantime noticee Mr. Mohsin was released on default conditional bail under 167 (21 of Cr.P.C. on 25.01.2020 by Hon'ble ACMM, Ahmedabad as no complaint has been filed till date sixty days from his arrest.

**15.** Summons were issued to Proprietor, M/s S.P. Travels, Bharuch for appearance on 21.12.2019 and to tender statement and documents. In response to the summons, Mr. Suhel Usmangani Patel, Proprietor, M/s S.P. Travels, Bharuch appeared on 21.12.2019 and tendered his statement dated 21.12.2019, wherein he interalia stated that:-

- On asking he stated that on 24<sup>th</sup> November 2019, he issued ticket to Dubai for journey date 25<sup>th</sup> of November 2019 by Emirates airlines and return ticket on 29<sup>th</sup> of November 2019 in the name of Mohsin Gulammohmed Patel

through one of his another agent namely Atlas World Travels, Mohammed Ali Road, Mumbai for which he was given of payment of Rs 24000 approx.

- On being asked he stated that on 24.11.2019, 2 persons named Mohsin Patel and another person came to his office but since he was in Mumbai, Mohsin Patel called him (Suhel) and asked him to make ticket to Dubai from Ahmedabad and also asked to make return ticket from Sharjah to Surat. He further stated that he replied that he will make the ticket but he (Mohsin) will have to make payment for the ticket but Mohsin Patel said he can't give the money on that day, so, he(Suhel) told him (Mohsin) to give him (Suhel) name of some guarantor. Mohsin gave the name of Safik as guarantor and Safik also called him (Suhel) from his mobile. Mohsin or someone sent him (Suhel) copy of Mohsin's passport on his office mobile no 9824340701 which he forwarded to Atlas World Travels and got the ticket made and sent the ticket to either Mohsin or Safik's no through Whatsapp.
- After that in the evening Safik again called him (Suhel) for booking hotel from goibibo in name of Mohsin. On reaching Mumbai central he (Suhel) called up Safik and asked about details to book for hotel. He further stated that Safik asked him (Suhel) to check whether booking is available in Mariana Hotel and told him(Safik) that approx. 5500-6000 rupees. He further stated that in between, one Ezazahmed Ayyub Patel from Bharuch known to him (Suhel) called him and told him (Suhel) to book flight and hotel with Mohsin Patel. He further stated that he booked flight ticket for Ezazahmed Ayyub Patel and also hotel in Mariana hotel in Dubai for Ezazahmed Patel for two persons. He further stated that he sent Mohsin Patel's ticket on whatsapp to either Safik or the number from which the passport of Mohsin was sent as he doesn't remember now, but he sent from his mobile 9824340701. He further stated that he had sent Ezazahmed's ticket and hotel reservation done by goibibo on Ezazahmed whatsapp number. He further stated that he will submit the mobile number of Ezazahmed later. He further stated that Safik paid him approx. 24000 INR in cash for Mohsin Patel's air ticket in the afternoon of 25 November 2019.
- From Dubai, Ezazahmed called him on 26.11.2019 and told him to change his (Ezazahmed) return ticket from 29.11.2019 to 26.11.2019. He further stated that he changed Ezazahmed's ticket from 29.11.2019 to 26.11.2019 by Air India Express IX252 from Sharjah to Mumbai and sent the ticket on Ezazahmed's mobile number through Whatsapp. Ezazahmed either on 27 or 28.11.2019 paid him 28000-29000 INR for air ticket and hotel in cash.
- He is submitting ticket copy of Mohsin Patel for 25.11.2019 and return ticket on 29.11.2019, goibibo hotel booking of Ezazahmed and one person in

Marina hotel from 25<sup>th</sup> November to 27<sup>th</sup> November 2019, passport no T633139O of Ezazahmed Patel sent to him for booking ticket, ticket of Ezazahmed Patel of EKS39 on 25 November 2019 and return ticket of 1X252 on 26<sup>th</sup> November 2019 under his dated signature.

- on being asked what does Safik do and how does he know him; he replied that Salik has got a shop by the name of Azam money exchange, at shop no 42, Golden Plaza, Opp BSNL Office Panchbatti Bharuch 392001 and he knows him since 2- years as his shop is near to his shop.
- On being asked what is his mobile no and whatsapp no from which no he had send whatsapp message regarding ticket and hotel booking to Safik and Ezazahmed; he replied that his mobile no is 849083425 and whatsapp no 9824340701 which is also his office number and he had sent from his whatsapp no 9824340701, ticket and hotel confirmation to Safik and Ezazahmed.

**16.** In reference to this office letter dated 28.11.2019, chief of Group Security, Emirates, vide letter dated 25.12.2019 intimated that pax Mohsin was booked to travel from Ahmedabad to Dubai on flight EK 539 on 25.11.2019 and ticket was issued by M/ s Travel Boutique and form of payment was cash of Rs. 10,591/-.

**17.** Summons were issued to Mr. Suhel Usmangani Patel, Proprietor, M/ s S.P. Travels, Bharuch for appearance on 06.01.2020 and to tender statement and documents. In response to the summons, Mr. Suhel Usmangani Patel, Proprietor, M/s S.P. Travels, Bharuch appeared and tendered his statement dated 06.01.2020, wherein he interalia stated that:-

- He is submitting 10 pages regarding hotel reservation done by him for Ezazahmed and one more person, all records of ticket and hotel reservation done by him for Mr. Ezazahmed and Mr. Mohsin Patel including bill raised by/payment done to Atlas world travels and Goibibo under his dated signature.
- on being asked he stated that he is not maintaining any record and not entered in any books of accounts, for booking the tickets which are to be booked by another company/firm as he is receiving only commission charges and in this case, the tickets have been booked by M/s. Atlas World Travels, Mumbai and therefore, he doesn,t have any record.
- mobile no. of Mr. Ezazahmed is 9265640239.
- on being asked he stated that he doesn't have the screenshot of his mobile from which he had sent the ticket to Mr. Ezazahmed and Mr. Mohsin Patel

as he had already deleted the same due to lack of space in the mobile phone. Further, the details of tickets booked for Safik and passport sent by Mohsin on his mobile is not available with him as he had already deleted the same due to lack of space in the mobile phone.

**18.** Summons were issued to Mr. Gulammohmed Patel father of the pax for appearance on 06.01.2020 and to tender statement. In response to the summons, Mr. Gulammohmed Patel appeared and tendered his statement dated 06.01.2020, wherein he interalia stated that:-

- On being asked how much does his son Mr. Mohsin Gulammohmed Patel earn per month in London; he replied that he (Mohsin) was earning 330 UK Pound per week, so, 1320 UK Pound per month.
- On being asked whether his son Mr. Mohsin Gulammohmed Patel sent him money, in India and to state about the mode of transfer of money; he replied yes, his son was sending 500 to 600 UK Pound each time and i.e five to six time in the year with their friends or our relatives who visits India.
- On being asked for what purpose was his son Mr. Mohsin Gulammohmed Patel travelling to Dubai on 25.11.2019 via Flight No. EK- 539; he replied that he didn't know the purpose of his(Mohsin) visit to Dubai but he(Mohsin) informed him that he wanted to visit Dubai to roam around.
- On being asked whether he knew that his son Mr. Mohsin Gulammohmed Patel was carrying huge amount of foreign Currency travelling from India to Dubai on 25.11.2019; he replied that he didn't know about this and further, he stated that he(Mohsin) is having his separate room in our house and he never interferes in his(Mohsin) work.
- On being asked whether he knew that his son Mr. Mohsin Gulammohmed Patel had placed huge Foreign currency in his suitcase while departing from the house to travel from India to Dubai on 25.11.2019; he replied that he didn't know about this.

**19.** Summons were issued to Mrs. Hajra Gulammohmed Patel, mother of the pax for appearance on 06.01.2020 and to tender statement. In response to the summons, Mrs. Hajra appeared and tendered her statement dated 06.01.2020, wherein she interalia stated that

- On being asked how much does her son Mr. Mohsin Gulammohmed Patel earn per month in London; he replied that he (Mohsin) was earning 330 UK Pound per week, so, 1320 UK Pound per month.

- On being asked whether her son Mr. Mohsin Gulammohmed Patel sent money, in India and to state about the mode of transfer of money; she replied that her son was sending 500 to 600 UK Pound each time and i.e five to six time in the year with their friends or our relatives who visits India.
- On being asked whether any one accompanying your son Mr. Mohsin Gulammohmed Patel while going to Dubai on 25.11.2019; she replied that she don't know about this.
- On being asked for what purpose was her son Mr. Mohsin Gulammohmed Patel travelling to Dubai on 25.11.2019 via Flight No. EK- 539; she replied that she didn't know the purpose of his visit to Dubai but he informed her that he wanted to visit Dubai to roam around.
- On being asked whether she knew that her son Mr. Mohsin Gulammohmed Patel was carrying huge amount of foreign Currency travelling from India to Dubai on 25.11.2019; she replied that she didn't know about this and further she state that he (Mohsin) is having his separate room in our house and she never interferes in his (Mohsin) work.
- On being asked whether she knew that her son Mr. Mohsin Gulammohmed Patel had placed huge Foreign currency in his suitcase while departing from the house to travel from India to Dubai on 25.11.2019; she replied that she didn't know about this.

**20.** Summons were issued to Mr. Ezazahmed Ayyub Patel for appearance on 10.01.2020 and to tender statement. In response to the summons, Mr. Ezazahmed Ayyub Patel appeared and tendered his statement dated 10.01.2020, wherein he interalia stated that-

- From 2012 he started working with his father and they supply small machines used in construction and earn Rs.40,000 per month.
- He knows Mohsin who has been booked in foreign currency case and they are childhood friends and studied in Bharuch Welfare school.
- Mohsin had gone to U.K. for 10 years and after coming back he and Mohsin are in touch for last 4 months.
- His ticket and Mohsin's ticket were obtained from one place M/s. S. P. Travels, whose proprietor is Suhel Patel. He further stated that his and Mohsin Patel's ticket was from Ahmedabad to Dubai in Emirates flight on 25.11.2019.
- On 24.11.2019, he had started from Bharuch at 10 p.m. alone in an Innova car whose fare was Rs. 2000/- and he further stated that he reached SVPI Airport at 1:00 a.m. He further stated that he did not know what happened to Mohsin Patel that day but when flight took off he did not see Mohsin Patel

and after reaching Dubai he came to know that Mohsin Patel had been detained at Ahmedabad Airport.

- On reaching Dubai he had called Suhel Patel who had booked our ticket then he came to know that Mohsin Patel had been caught in a foreign currency case.
- He had got Hotel booked in Dubai as per Mohsin Patel's say and the Hotel's name is Marina Hotel and he had got the hotel booking done from Suhel Patel who is proprietor of M/s. S. P. Tours and Travels.
- He had given Suhel Patel Rs. 30,000/- cash payment which included his hotel booking and Mohsin Patel was supposed to give this money to him after coming back from Dubai.
- Mohsin Patel had tried to induce him that if he (Ezaz) gets the hotel booking done then he will give him money and will bear his shopping expenses and Mohsin Patel told him that he would buy him perfumes, clothes and shoes for free. He had financial trouble so he came into Mohsin Patel's saying and booked the hotel.
- After reaching Dubai when he came to know that currency case has been booked against Mohsin Patel then he booked his return tickets to Mumbai on 26.11.2019.

**21.** Summons were issued to Mr. Safik Siraj Patel for appearance on 10.01.2020 and to tender statement. In response to the summons, Mr. Safik Siraj Patel appeared and tendered his statement dated 10.01.2020, wherein he interalia stated that-

- In 2013-14, he had opened a firm namely Azam Money Changer Pvt. Ltd. at 42, Golden Plaza, Panch Batti, Bharuch and the firms has two directors namely himself and Ikram Duniya.
- That he knew Mohsin Patel who had been booked in foreign currency case and the said Mohsin Patel had come to give him Rs. 20,000/- cash in the afternoon of 24.11.2019 and this money he was to give Suhel Patel who has got a firm S. P. Tours & Travels situated at Panch Batti, Bharuch.
- Mohsin Patel who has been booked in foreign currency case has not bought any foreign currency from him.
- He knows Suhel Patel since last 2 to 3 years and Suhel Patel had kept him (Safik) as guarantor for ticket of Mohsin Patel.

**22.** Summons were issued to Mr. Safik Siraj Patel and Mr. Ezazahmed Ayyub Patel for appearance on 22.01.2020 and to tender statement and give documents.

Both Mr. Safik Siraj Patel and Mr. Ezazahmed Ayyub Patel did not appear and sent some documents by post.

**23.** Summons were issued to Mr. Safik Siraj Patel for appearance on 07.02.2020 and to tender statement and identifying, examining and questioning of documents sent by him by post. In response to the summons, Mr. Safik Siraj Patel appeared and tendered his statement dated 07.02.2020, wherein he interalia stated that-

- On being asked about his company's last year turnover and foreign currency sale and purchase and money transfer; he replied that his company's turnover for year 2017-18 is Rs. 6,15,99,595/- which includes foreign currency sale, purchase and money transfer.
- On being shown printout of Mohsin Patel's mobile phone in which person named Safik had sent on the phone hotel booking in Dubai which was booked by the name of Ezazahmed and also ticket to go to Dubai and being asked about the same; he replied he has not sent any message of hotel booking or ticket to Mohsin.
- On being asked that Suhel Usmangani Patel, proprietor of M/s. S. P. Travels had stated in his statement dated 06.01.2020 that he (Suhel) had sent ticket of Mohsin to him (Safik) or Mohsin by whatsapp and the statement was shown to him; he replied that he has not sent the message and he also gave his apple I-phone which has idea SIM No. 9033209745 for further investigation.
- On being asked why in his statement dated 10.01.2020 he did not state that he had gone to South Africa; he replied that he had gone 3 years back so he forgot to state the same.

**24.** Summons were issued to Mr. Ezazahmed Ayyub Patel for appearance on 07.02.2020 and to tender statement and identifying, examining and questioning of documents sent by him by post. In response to the summons, Mr. Ezazahmed Ayyub Patel appeared and tendered his statement dated 07.02.2020, wherein he interalia stated that:-

- On asking in which in his bank account, two entries on date 12.11.2019 in which Rs. 1.50 lakh and Rs.1.5 lakh have been deposited; he replied that this amount of Rs. 3 lakh has been sent by his sister Farhani Imran Lahiri resident of Goregoan, Mumbai who is a housewife and was meant for his father and so on 13.11.2019 he withdrew Rs.2.80 lakh and gave it to his father.

**25.** It appears that Mr. Mohsin Patel had already checked in his baggage containing foreign currency and put it through the Airlines scanning machine where it was detected so he was intentionally smuggling foreign currency equivalent to Rs. 1,39,78,309/- which was concealed in his baggage and trouser. It was seen from his statements as well as his parent's statement; it appears that Mr. Mohsin Patel has not earned the seized foreign currency during his stay in U.K. He also stated falsely in his statement that he was taking the foreign currency for doing business whereas it was found that he was coming back in three days. He also lied about the places from where he bought the foreign currency and falsely stated that he had bought the foreign currency from Mr. Taushif Abdullah Patel, Proprietor, M/s. Wakkas Money Exchange, Mr. Muhamedtalha Ibrahim Patel Director of M/s Bharuch Forex and Mr. Altaf Umarji Patel, Director of M/s Panama Money Exchange. During Mohsin Patel's customs custody; Mr. Taushif Abdullah Patel, Proprietor, M/s. wakkas Money Exchange, Mr. Muhamedtalha Ibrahim Patel Director of M/s Bharuch Forex and Mr. Altaf Umarji Patel, Director of M/s Panama Money Exchange were confronted with him and he admitted that he had not bought the foreign currencies from these persons. He also did not reveal that Mr. Ezaz Ahmed Patel was travelling with him and was also going to stay with him in Dubai and were going to come back together. In his statement dated 02.12.2019 under customs custody; the printout of whatsApp chat between Mohsin and Safik where Safik has sent Mohsin by whatsApp on 24.11.2019 UAE entry permit to 26.11.2019/Dubai valid till 22.01.2020, Hotel stay details at Marina Hotel, Al sabkha Street, Dubai and Flight ticket to go Dubai by EK 539 on 25.11.2019 was shown to Mr. Mohsin and on being asked who is Safik; he replied that Safik is the person from whom he purchased the ticket to go Dubai by EK 539 on 25.11.2019 and his office is in 5 batti, Bhauruch and by the name of S.P. Travels. Whereas during the investigation it was revealed that proprietor of M/s. S.P Travels is Mr. Suhel Usmangani Patel and Mr. Safik Siraj Patel was the person who according to Mr. Suhel was the guarantor for Mr. Mohsin's ticket booking and Suhel had sent the ticket on whatsapp to either Safik or Mohsin. It is seen that Mr. Mohsin had not cooperated during the investigation, gave false misleading statement and it appears that he was smuggling the seized currency on behalf of some smuggler.

**26.** Therefore, a Show Cause Notice bearing F. No. VIII/10-24/SVPIA/O&A/HQ/2020-21 dated 22.06.2020 was issued to Mr. Mohsin Gulammohmed Patel to show cause in writing as to why:

i. **Rs. 1,39,78,309/- (Rs. One Crore Thirty Nine Lakhs Seventy Eight Thousand Three Hundred and Nine Only) attempted to be exported out**

**of India in contrary to the provisions of Foreign Exchange Management Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage rules read with Customs Act, 1962 should not be confiscated under section 113 (d) and (e) of the Customs Act, 1962 read with the FEM Regulations and Rule 7 of the Baggage Rules;**

- ii. Penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon him.
- iii. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon him.

**27.** The said Show Cause Notice was adjudicated by the Joint Commissioner of Customs, Ahmedabad, vide Order-in-Original No. 92/JC/SM/O&A/2020-21 dated 26.02.2021 wherein the Joint Commissioner passed order as under:-

- i I order absolute confiscation of foreign currency equivalent to Indian currency Rs. 1,39,78,309/- (Rs. One Crore Thirty Nine Lakhs Seventy Eight Thousand Three Hundred and Nine Only) attempted to be exported out of India in contrary to the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage rules and recovered from the possession of Mr. Mohsin Gulammohmed Patel and seized vide panchnama dated 25.11.2019, under Section 113 (d) and Section 113 (e) of the Customs Act, 1962 read with the provisions of Indian Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage Rules, 2016;
- ii I impose a penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) on Mr. Mohsin Gulammohmed Patel, under the provisions of Section 114(i) of the Customs Act 1962.

**28.** Being aggrieved by the said Order-in-Original No. 92/JC/SM/O&A/2020-21 dated 26.02.2021, the Noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. Also, against the said order, Department had also filed an appeal before Commissioner of Customs (Appeals) for imposing the penalty under Section 114AA of Customs Act, 1962. The said appeal was decided by the Commissioner (Appeals), Customs, Ahmedabad vide Order-in-Appeal No. AHD-CUSTM-000-APP-270 to 27 1 -22-23 dated 08.06.2022, wherein he ordered that –

*“6. I have carefully gone through the Order-In-Original, Grounds of appeal and other records available and placed before me. The appellant 1 has contended that the case of Om Prakash Bhatia reported at 2003 (155) ELT 423(SC) is not relevant in the instant case, as the case relates to over*

invoicing of export consignment and is thus distinguishable and further the adjudicating authority started on a wrong premise that the appellant in this case is a smuggler and that he has concealed the foreign currency in this case. I find that the adjudicating authority has properly discussed these issues in Para-41 and 42 of the impugned order that it is evident that the appellant 1 has carried foreign currency notes and attempted to export/smuggle the same out of India i.e Dubai. The appellant 1 had attempted to export/smuggled out the foreign currency notes outside India without having legitimate documents from authorized sources, as mandated in regulation 5 and 7 of FEM Regulations. Section 2(22) of the Act defines "goods" which also includes currencies among other things. By attempting to export foreign currency without legitimate documents, it is established that the appellant 1 had a clear intention to export/smuggled out the foreign currency undetected in contravention to the Regulations 5 and 7 of the FEM Regulation. His act of carrying the foreign currency notes without legitimate purchase documents amount to "illegal export", as per the provisions of Section 11H(a) of the Act. Further, Section 2(33) of the Act, defines 'Prohibited goods' means any goods for 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 subjects to which the goods are permitted to be imported or exported have been complied with. These acts of omission in relation to the subject currencies falls within the ambit of 'smuggling' as defined under Section 2(39) of Act. Thus, the foreign currency recovered from the appellant 1 is liable for absolute confiscation. Hon'ble Supreme Court in the case of Om Prakash Bhatia reported at 2003 (155) ELT 423(SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the foreign currencies were kept undeclared, concealed and were being carried by the passenger, are to be treated as 'prohibited goods' in nature. **I agree with the findings of the adjudicating authority and do not find merit in the contention raised by the appellant 1.**

7. The appellant 1 has further contended that since the goods in question were not prohibited, the penalty under Section 114(i) of the Customs Act, 1962 is not fair and just on the appellant. I find that the adjudicating authority has properly discussed this issue in the impugned order that it gets evident that appellant 1 in blatant violation of Baggage

Rules, 2016 framed under the Customs Act, 1962 and Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 attempted to smuggle out a huge amount of foreign currency. Further, the appellant 1 on being asked, stated that the said foreign currency recovered from his checked in baggage belongs to him though during investigation, from the statement of the appellant 1's parent and his whatsapp chat to his sister saif, it can be gathered that the seized currency does not belong to the appellant 1 as his earning and savings do not account for the seized currency. An act of smuggling out foreign currency results into serious repercussion on the Indian Economy. The appellant 1 showed his apparent and utter disregard to the law of land. Further, the appellant 1 had not cooperated during the investigation and gave false misleading statement and has not named the person from whom he has purchased/got the seized foreign currency or to whom he was delivering the foreign currency in Dubai or on whose behalf he was smuggling the foreign currency. In the present case "mens rea" on the part of the appellant 1 is very much evident. By the aforesaid acts the appellant 1 violated the proviso 113(d) and Section 113(e) of the Customs Act, 1962 read with the Rule 7 of Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 issued by RBI under Notification no. FEMA 6(R)/RB-2015 dated 29.12.2015 and Rule 7 of the Baggage Rules, 2016 (earlier Baggage Rules, 1998 as amended from time to time) and therefore, liable for penal action under Section 114(i) of the Customs Act, 1962. He is liable to penalty under Section 114(i) of the Customs Act, 1962. **I agree with the findings of the adjudicating authority and do not find merit in the contentions raised by the appellant 1.**

8. The appellant 1 has relied upon the order passed by the CESTAT, Ahmedabad for Appeal No. 10501 of 2019 Mr. Rajesh Kumar Ishwar Parikh and Customs Appeal No. 10508 of 2019 Mr. AshishKumar Dahyabhai Patel. I find that as per Para 2 of this cited CESTAT Order, both appellants have stated that they were taking foreign currency notes out of India as their partnership firms has incurred losses in their business dealing in Dubai, therefore, I find that in these relied upon cases, the ownership of the currency was not in dispute and the appellant are the owner of the currency, as they are partners of the firm. However, I find that in the present case, the adjudicating authority in Para 34 of the impugned order observed that it can be gathered that the seized currency does not belong to the appellant as his earnings and savings do not

account for the seized currency. Therefore, facts of the present case and the case laws cited by the appellant are different and therefore, the case laws cited by the appellant are not applicable in the present case. **In view of the above, I reject the appeal filed by the appellant 1.**

**9.** The appellant 2 (department) has contended that the appellant 1 showed his apparent and utter disregard to the law of land and also not cooperated during the investigation and gave false misleading statement and has not named the person from whom he has purchased/got the seized foreign currency or to whom he was delivering the foreign currency in Dubai or on whose behalf he was smuggling the foreign currency. The Department has contended that it is fit case for penalty under Section 114AA as appellant 1 has deliberately given false statement and lied before the customs and tried to mislead the investigation. I find that the matter regarding imposition of penalty under Section 114AA is covered in the SCN dated 22.06.2020 and therefore, was required to be examined and covered in the OIO. But I find that in the instant case, the Adjudicating Authority has not given any ground/reason or not discussed for dropping penalty under Section 114AA of the Act. Therefore, this issue regarding imposition of penalty under Section 114AA needs to be examined by the Adjudicating Authority. **In view of the above, I remand this matter regarding imposing penalty under Section 114AA of the Act to the concerned adjudicating authority, who shall examine submissions and pass speaking order following principle of natural justice and the legal provisions.**

**10.** The appeal no. 325/21-22 and 02/CA-2/21-22 are disposed of in the above terms.”

**29.** In view of the above referred OIA dated 08.06.2022, the case has been taken up for adjudication proceedings. Before, proceeding further, I would like to mention that against the OIO dated 26.02.2021, both the noticee as well as the Department has approached the Commissioner of Customs (Appeals) and filed the appeals for set aside the Order and for imposing the penalty under Section 114AA of Customs Act, 1962 respectively. It is pertinent to mention that the Appellate Authority has rejected the appeal filed by the noticee by stating the findings of Adjudicating Authority are correct and found no merits in the contentions raised by the noticee. Further, the Appellate Authority has remanded back the matter for examination of the issue regarding imposition of penalty under Section 114AA of Customs Act, 1962 and pass the speaking order after following the principle of natural Justice. As the order regarding absolute confiscation of seized foreign currency valued to

Rs. 1,39,78,390/- under section 113 (d) and Section 113(e) of Customs Act, 1962 read with the provisions of Indian Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage Rules, 2016 and imposition of penalty to the tune of Rs. 30,00,000/- under Section 114(i) of Customs Act, 1962 on Shri Mohsin Patel is affirmed by the Hon'ble Appellate Authority vide its order OIA No. AHD-CUSTM-000-APP-270 to 271-22-23 dated 08.06.2022. Accordingly, I take up the matter for examination, whether penalty should be imposed on Shri Mohsin Patel under Section 114AA of Customs Act, 1962 or otherwise.

**Defense reply and record of personal hearing:**

**30.** Personal Hearing in this case was fixed on 10.03.2025 & 07.04.2025. Shri Rishikesh Mehra, Authorized representative/Advocate has appeared in personal hearing on behalf of noticee in person on 08.04.2025. He produced copy of Vakalatnama to represent the case. Shri Rishikesh Mehra submitted written submissions dated 08.04.2025 and reiterated the same. He submitted that foreign currency neither restricted nor prohibited. He submitted that the said currency was not ingenious concealed. He submitted that his client has retracted his statement which was recorded under Section 108 of Customs Act, 1962. He submitted that his client has fully cooperated in the investigation and relied on master circular 06/2015 dated 01.07.2015 issued by RBI. The said case was remand back by the Hon'ble Commissioner (Appeals) vide OIA dated 08.06.2022 to impose additional penalty under Section 114AA of Customs Act, 1962. He relied on 27th report of standing committee on Finance on the taxation laws (amendment) Bill 2005 and also relied on Revision Authority orders in which penalty under Section 114AA was set aside. He submitted that the physically foreign currency was available at that time so that Section 114(i) is applicable and Section 114AA of the Act applicable when goods are not available for seizure/confiscation so that in present case penalty under Section 114(i) is applicable and not Section 114AA of the Act, is applicable. He requested to take lenient view in the matter and allow to release the currency on payment of reasonable fine and penalty. He submitted case laws in his defense wherein foreign currency was released on redemption fine. He has nothing more to add.

**Written Submission: -**

**31.** Shri Rishikesh Mehra, Advocate has filed the written submission dated 08.04.2025 to the show cause notice on behalf of Mr. Mohsin Patel wherein he mainly repeats/ re-iterated his earlier submission dated 26.12.2020. Further,

regarding penalty under Section 114AA, he submitted that section 114AA was introduced primarily to cover the cases of bogus/ fraudulent exports without any documents and where the goods were not available for seizure/confiscation. In this connection a copy of the 27th Report of the Standing Committee on Finance on the Taxation Laws (Amendment) Bill 2005, (later on s/27 of Act 29 of 2006), (Copy Enclosed Herewith) which incorporated this section in the Statute is enclosed for perusal please. The Finance Ministry has, before this committee specifically gave assurances that the said legislation was intended only for bogus/fraudulent exports and to cover the cases of misuse of export promotion schemes. In all such cases the goods are not available for seizure/confiscation. Hence the need for a specific section covering those cases were proposed and added to the statue. Thus, using this section in addition to the penal action already undertaken under section 114(i) of Customs Act 1962 is bad in law. He further stated that imposition of penalty u/s 114AA ibid after imposing penalty under s/114(i) ibid amounts to double jeopardy since non declaration or misdeclaration ibid is already punished under s/114 (i) ibid and is therefore violative of Article 20(2) of the Constitution of India. It is not out of place to mention that in most of the Airports, penalty u/s 114AA is not resorted to. Incidentally, the same Ld. Higher Adjudicating Authority has, in such similar cases decided around the same time, not resorted to penalty under s/114AA ibid and submitted case laws in his support which are as

1. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Pr. Commissioner, Customs, Ahmedabad v/s Shri Basheer Mohammed Mansuri (There is no necessary of imposed penalty under section 114(AA), penalty Imposed under section 114(A) of the Customs Act, 1962 is setaside)
2. Order No: 282/2022-CUS(WZ)/ASRA/MUMBAI DT. 29.09.2022 in c/a PR. Commissioner, Customs, Ahmedabad v/s Shri Dipesh Kumar Panchal (There is no necessary of imposed penalty under section 114(AA), penalty Imposed under section 114(A) of the Customs Act, 1962 is set Aside)
3. Order No: 140/2021-CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Pr. Commissioner, Customs, Ahmedabad v/s Shri Mohammed Gulfam (There is no necessary of imposed penalty under section 114(AA), penalty Imposed under section 114(A) of the Customs Act, 1962 is set Aside)
4. Order No: 214/2021-CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021 in c/a Pr. Commissioner, Customs, Ahmedabad v/s Shri Ramesh Kumar (There is no necessary of imposed penalty under section 114(AA), penalty Imposed under section 114(A) of the Customs Act, 1962 is set Aside)
5. Order No: 314/2022-CUS(WZ)/ASRA/MUMBAI DT. 31.10.2022 in c/a Pr. Commissioner, Customs, Ahmedabad v/s Shri Sanjay Kumar Bhavsar (There is no necessary of imposed penalty under section 114(AA), penalty Imposed under section 114(A) of the Customs Act, 1962 is set Aside)

He again mentioned that no penalty should be imposable on the noticee under Section 114 of Customs Act, 1962 as there was a genuine mistake and the noticee was not a smuggler and his case is covered under Rule 7(3) (b) as well as under RBI master Circular 06/2015-16 dated 01.07.2015 wherein the passenger can carry unspent foreign currency brought from last foreign visits. He further submitted that the goods in the case should be released on payment of redemption fine as the same were not under "prohibited" category. He submitted various case laws in their support which are as:-

1. Shri Vijakumar Holaram Chawla V/s Commissioner of customs Ahmedabad Order No. 300/2022-CUS(WZ)/ASRA/MUMBAI Dated 20.10.2022
2. Shri Ramesh Assandas Lalchandani & Shri Shankar Manikamal Bhatia V/s Commissioner of customs house marmagoa, goa Order No. 262-263/2022-CUS(WZ)/ASRA/ Dated 13.09.2022
3. Shri Rajkumar Nandlal Sukhwani V/s Pr. Commissioner of customs (Airport) Mumbai Order No. 152/2023-CUS(WZ)/ASRA/MUMBAI Dated 31.01.2023 (Rectum Concealment Case Released on RF PP)
4. Shri Asgar Ali Abdul Kader Girnari V/s Pr. Commissioner of customs C.S.I Airport Mumbai Order No. 403/2022-CUS(WZ)/ASRA/MUMBAI Dated 16.12.2022
5. Mr. Bahar Ahmad V/s Commissioner of customs Appeal Mumbai Order in Appeal No. JC/AS/ADJN/382/2021-2022 Dated 31.03.2022
6. Shri Janak Bharatkumar Dave V/s Commissioner of customs, Marmagoa, Goa, Order No. 357/2022-CUS(WZ)/ASRA/MUMBAI Dated 07.12.2022
7. Shri Naina Mohamed V/s Commissioner of customs Anna International Airport Chennai. Order No. 142/2018-CUS(WZ)/ASRA/MUMBAI Dated 27.03.2018
8. Smt. Latha V/s Commissioner of customs Chennai Order No. 110/2018-CUS(WZ)/ASRA/MUMBAI Dated 16.03.2018
9. Commissioner of Customs (Appeals)Mumbai Vs Kailash Jethanand Makhija vide Order No:633/2018-CUS(WZ)/ASRA/Mumbai dated 21.08.2018.
10. Mr. Sudhirkumar, New Delhi V/s Commissioner of Customs, IGI Airport, New Delhi, Order No. 40/2017-Cus. Principal Commissioner & Additional Secretary, Government of India. dated 02-11-2017.
11. 1)Commissioner of Customs, New Delhi 2) Mobeen Khan V/s. 1) Mobeen Khan Commissioner of Customs, New Delhi, Order No. 45-46/2018-Cus. Additional Secretary, Government of India. dated 23-03-2018.
12. Shri Lalchand Hemandas Vaswani and Pushpa Lalchand Vaswani & Choith Nanikram Harichandani, V/s Additional Commissioner of Customs, CSI Airport, MUMBAI, Order No. 3199-320/2011-Cus. Joint Secretary, Government of India. dated 21-10-2011.

13. Shri Omwughalu Elochukwu Henry and Shri Ndulue Obieuna Celestine Alias Puku V/s CSI Commissioner of Customs, (Appeal) Order No. 390-291/2008-Cus. Joint Secretary, Government of India. dated 05-08-2008.
14. Shri Saranala Appa Rao V/s Additional Commissioner of Customs, Meenabakkam Airport, Chennai, Order No. 166/2012-Cus. Joint Secretary, Government of India. dated 12-04-2012.
15. Arun Ramlal Sura, Shashikant Munshilal Katiyar, Rajesh Narendra Mewawala V/s Commissioner of Customs, CSI Airport, Mumbai, Order No. A/1607-1609/13/CSTB/CI/2013-Cus. CESATribunal West Zonal Bench at Mumbai Court No. II, Appeal No. C/241, 240, 374/2009 MUM. dated 01-08-2013.
16. Mr. Rizwan Ahmed Mhd. ORDER NO. ADC/AK/ADJN/333/2018-19 dated 29-10-2018.
17. Mr. Naseer Ahmed Abdul Sattar Shaikh ORDER NO. ADC/AK/ADJN/314/2018-19 CSI Airport Mumbai dated 12-10-2018.
18. Mr. Mohammed Umar Sayyed ORDER NO. ADC/AK/ADJN/245/2018-19 CSI Airport Mumbai dated 17-09-2018.
19. Mr. Liyakat Ali Hussian Patel ORDER NO. ADC/AK/ADJN/79/2019-20 CSI Airport Mumbai dated 25-06-2019.
20. Mr. Darryl Leo Dias ORDER NO. ADC/AK/ADJN/86/2019-20 CSI Airport Mumbai dated 17-07-2019.
21. Mr. RAJAT ADESH GAMBHIR ORDER-IN-ORIGINAL NO. AC/REFUND/43-R/2018-19 CSI Airport Mumbai dated 15-11-2018.
22. CUSTOMS, EXCISE & SERVICE TAX APPELLANT TRIBUNAL, WEST ZONAL AT. AHMEDABAD.
  - 1) Customs Appeal No. 10501/2019. Mr. Rajesh Kumar Ishwarlal Parikh V/s. C.C-Ahmedabad.
  - 2) Customs Appeal No. 10508/2019. Mr. Ashish Kumar Dahyabhai Patel V/s. C.C-Ahmedabad.
23. OGULJEREN HAJYYEVA Order in The High Court of Delhi AT New Delhi at New Delhi. Dated 15.01.2024
24. Manish Kumar Dhirajlal Pala V/s Commissioner of customs (Appeals) Ahmedabad Order IN Appeal No. AHD-CUSTM-000-APP-165-23-24 ON DATED 14.09.2023
25. Meena Arunkumar Dhanak V/s Commissioner of customs (Appeals) Ahmedabad Order IN Appeal No. AHD-CUSTM-000-APP-450-23-24 ON DATED 20.02.2024

And prayed to set aside the proceedings and to release the goods

## **DISCUSSION & FINDINGS**

**32.** I have carefully gone through the facts of the case, the written submission made by the said noticee during the course of personal hearing as well as the documents available on records viz. OIO No. 92/JC/SM/O&A/2020-21 dated 26.02.2021, OIA No. AHD-CUSTM-000-APP-270 to 271-22-23 dated 08.06.2022. I proceed to decide the case on the basis of facts and evidences available on record.

**33.** The Hon'ble Commissioner of Customs (Appeal) i.e The Appellate Authority at Para 6 of said OIA finds that goods i.e foreign currency in the instant case, were of "Prohibited goods" in nature and accordingly liable for absolute confiscation under Section 113 of Customs Act, 1962 and dismissed the plea of noticee that the goods are not fall under the category of Prohibited goods and agreed with the findings of Original Adjudicating Authority. Further at Para 7 of said OIA, the appellate authority finds that the penalty under Section 114(i) was correctly imposed by the Adjudicating Authority and do not find any merit in the plea of noticee and accordingly reject the appeal filed by the noticee. Further, at Para 9 of said OIA, the Appellate Authority has remand back the matter for examining and passing the speaking order after following the principle of natural justice, regarding imposition of penalty under Section 114AA of Customs Act, 1962. Therefore, I find that the appellate authority has discussed the contentions taken by the noticee in their appeal, on merits and found no infirmity and upheld the Adjudication Order passed by the Adjudication Authority regarding absolute confiscation of foreign currency amounting to Rs. 1,39,78,309/- under Section 113 (d) and Section 113(e) of Customs Act, 1962 read with read with the provisions of Indian Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage Rules, 2016 and penalty imposed on Mr. Mohsin Patel to the tune of Rs. 30,00,000/- under Section 114(i) of Customs Act, 1962.

**34.** The directions of Hon'ble Commissioner (Appeals) in the remand order are very limited to the effect that, the adjudicating authority had not given any ground/reason or not discussed for dropping penalty under Section 114AA of the Act, as the matter regarding imposition of penalty under Section 114AA is covered in the SCN dated 22.06.2020 and remand the matter regarding imposing penalty under Section 114AA of the Act to the concerned adjudicating authority, for examine the submission and pass speaking order following principle of natural justice and legal provisions. Thus, I had to restrict myself to take a decision on the issue of whether penalty the noticee is liable for penal action under Section 114AA of Customs Act, 1962.

**35.** Before discussion, it is imperative to mention that the Noticee have contested that his statement were not voluntary and against the truth and should not be relied upon. I find that the said noticee has admitted in his statement that he has given statements voluntarily and without any inducement, threat and coercion or by any improper means. Further, in every instance of recording the statement, I find that he gave his statement voluntarily under Section 108 of Customs Act, 1962 and as per his say without any threat, pressure and inducement and after going through the correctness of the facts recorded in his statement, he put his signature with full presence of mind. The statement under section 108 of the Customs Act, 1962 is voluntary and he was at liberty to not endorse the typed statements as per his say, if the same had not voluntary. Therefore, I donot find any force in the contention of the said noticee in this regard. The submission of the said noticee that the statement(s) were not voluntary and against the truth is obviously an afterthought and startgey to mislead or detrail the entire process. Further, during the investigation, statements of connected or related persons were also recorded and none of them have filed any retraction, which states that all the persons have tendered their statement voluntary and to the facts. It is on the record that the noticee has tendered his statement(s) voluntarily under Section 108 of the Customs Act, 1962. Further, I noticed that the noticee has filed a compliant before ACMM for forcefully recording the statement. In this regard, I find that the statement recorded by the DRI is not considered as statement recorded by the police and the same is admissible in the eyes of law. The same view has been upheld by the Hon'ble Supreme Court as well as other courts in various judicial pronouncements. In support of my contentions, I rely on the following judgements:

- (i) 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.
- (ii) 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 a valid evidences"
- (iii) 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"

- (iv) 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.
- (v) 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."
- (vi) 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 inculpating portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."
- (vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323( SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "
- (viii) **In case of Raj Kumar Karwal v. Union of India (1990) 2 SCC 409:** The Hon'ble Supereme Court held that:  
*"the officers of the Department of Revenue Intelligence who have been vested with powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him".*
- (ix) **In case of Ramesh Chandra Mehta vs The State of West Bengal [(1969) AIR 381, 1969 SCR (2) 461]:** The Hon'ble Supereme Court held that:  
*For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in Badku Joti Savant's case (1), we are of the view that*

*a Customs Officer is under the Act of 1962 not a police officer within the meaning of s. 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by s. 25 of the Indian Evidence Act.*

(x) In ***Illias v. Collector of Customs, Madras - 1983 (13) E.L.T. 1487 (S.C.) = 1969 (2) SCR 613*** the Hon'ble Supreme Court had held that Customs authorities have been invested under the Act with many powers of a police officer in matters relating to arrest, investigation and search, which the Customs Officers did not have under the Sea Customs Act. Even though the Customs Officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognisable offence, *they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials would be admissible in evidence against them.*

(xi) In ***State of Punjab v. Barkat Ram - (1962) 3 SCR 338*** a three-Judge Bench of the Hon'ble Supreme Court as per majority held that the confession made to the Customs Officer and conviction on the basis of such confession under the Land Customs Act, 1924 was held valid.

**36.** I find that the Panchnama dated 25.11.2019 clearly draws out the fact that the noticee was intercepted by the officers of Customs on specific information after the noticee was stopped by the Air India Personnel at the X-ray Baggage scanner no 1, in the Departure terminal, Terminal -2, SVPI Airport by the Air India Personnel and was detected carrying Foreign Currency who was flying to Dubai from Ahmedabad by Emirates EK 539 on 25.11.2019. As per the Panchnama, it was further informed by the Air India Personnel that the said passenger had hidden lot of bundles of foreign currency in his two check-in black color suitcases. Customs officers asked the noticee, if he is having anything to declare before Customs, in reply to which he denied. The Custom officer searched the two suitcases of Mr. Mohsin Gulammohmed Patel, and found he had hidden 24 bundles in his two check-in black color suitcases, one of 'Hipolo' brand and another 'Hank' brand and 1 bundle in his jeans pant. On opening the said total 25 bundles in presence of the Air India Personnel, panchas and the noticee himself, it was found that the noticee had foreign currency of different countries. Thereafter, the counting of the notes started and on completion of counting, the value of foreign currency in Indian rupees comes to Rs.1,39,78,309/- as per exchange rate on date 25/11/2019. I find that on being asked by the Custom officers regarding any receipt/details of purchase of foreign currency, the noticee replied in negative. It is on the record that the above said total foreign currency equivalent to Indian.

Rs1,39,78,309/- (Rupees One Crore Thirty-Nine Lacs Seventy-Eight Thousand Three Hundred and Nine only) was placed under seizure by the officers of Customs under the reasonable belief that the said foreign currency was liable for confiscation under the Customs Act, 1962 and FEMA Regulations, 2016. I find that the noticee had accepted the correctness of the panchnama in his deposition dated 25.11.2019. Further, every procedure conducted during the panchnama by the officers is well documented and is made in the presence of the panchas/ witnesses. Further, I find that the noticee had neither voluntarily come forward to declare to the Customs about possession of the said foreign currency nor had any document evidencing a legitimate procurement of the said foreign currency and it came to light only after Air India Personnel intercepted the passenger during X-ray screening of his checked-in baggage. This act of the passenger establishes his *mens rea* beyond doubt that he tried to smuggled out the said foreign currency out of India illegally with a malafide intention.

**37.** On the basis of investigation, statements recorded, documents available on the records, Written Submission made by the noticee as well Oral submission made at the time of Personal Hearing and case laws relied upon and applying the ratio of judgment in case of Hon'ble Supreme Court in the case of *Om Prakash Bhatia* reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the foreign currencies were kept undeclared, concealed and were being carried by the noticee, are to be treated as "goods" prohibited in nature and therefore, then Adjudicating Authority had correctly held that the impugned goods were liable for absolute confiscation under Section 113(d) and 113(e), of the Customs Act, 1962 read with the provisions of Indian Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage Rules, 2016. The Then, Adjudicating Authority correctly confiscated foreign currency of Rs. 1,39,78,309/- absolutely, which were seized by the DRI on 25.11.2019 and correctly imposed a penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs Only) on Mr. Mohsin Patel under Section 114(i) of Customs Act, 1962.

**38.** To examine the issue of imposing penalty for violation, I reproduce the provision of Section 114 AA of the Customs Act, 1962 as under:-

*SECTION 114AA:- Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is*

*false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

**39.** Under his statement dated 25.11.2019 tendered before DRI officers, the noticee mentioned that the seized foreign currency belonged to him and procured by him during his stay at India, however he was unable to recall from whom he exchanged the money and converted into foreign currency. Further, in his Statement, he mentioned that he used to purchase foreign exchange from M/s. Panama Money exchange, Panchbatti, Bharuch, M/s. Wakkas Money Exchange, Moti Doongri, Bharuch and M/s. Bharuch Forex, Mohammedpura, Bharuch. I find from the Statements tendered by Owners/authorized persons of M/s. Panama Money exchange, Panchbatti, Bharuch, M/s. Wakkas Money Exchange, Moti Doongri, Bharuch and M/s. Bharuch Forex, Mohammedpura, Bharuch during the investigation, that all of them have denied to have any exchange of currency with Shri Mohsin Patel. Further, in their respective statements, all of them have confirmed that they did not know any person named Shri Mohsin Gulmohmed Patel. I further, find from the records/documents on file that statements of Mr. Altaf Umarji Patel, Director of M/s. Panama Travel Service and Money exchange Pvt Ltd, Mr. Muhamedtalha Ibrahim Patel, Director of Bharuch Forex Pvt Ltd and Mr. Taushif Abdullah Patel Director of M/s. Wakkas Money Exchange, were recorded on 03.12.2019 in presence of Shri Mohsin Patel, to ascertain the truthfulness of his claim that he used to purchase foreign exchange from these exchange house/shop, wherein, all mentioned in their respective statement that they do not know the person named Shri Mohsin Patel and never sold or purchased any foreign currency from him. The Statements tendered by all the persons were voluntarily under Section 108 of Customs Act, 1962. From the statements deposited by Mr. Altaf Umarji Patel, Director of M/s. Panama Travel Service and Money exchange Pvt Ltd, Mr. Muhamedtalha Ibrahim Patel, Director of Bharuch Forex Pvt Ltd and Mr. Taushif Abdullah Patel Director of M/s. Wakkas Money Exchange, in presence of Noticee, it is clearly evident that the noticee had lied to the officers regarding purchase of foreign currency and falsely stated that he used to purchase the foreign currency from the above mentioned firms. I find it a calculated attempt to delay the investigation by not co-operating in the investigation with a sole intention to save himself from the clutches of law.

**40.** Further, in the Statement tendered by Shri Mohsin Patel, before officers of DRI on 03.12.2019, he was asked to whom he was going to deliver the foreign currency in Dubai, to which he mentioned that "he do not want to reply". Also for

the question asked from him that "now you have accepted that you have not purchased foreign currency from Panama Money exchange, Wakkas Money Exchange and Bharuch Forex, when you have been confronted with the directors/proprietor of these firms, in response to that he mentioned that "he donot want to reply". From the above, it is evidently clear that he did not want to participate in the investigation and showed his reluctant behaviour and just tried to delay the procedure. It highly improbable that the noticee, possess any documentary evidence or proof whatsoever to support his claim. I find that his vague responses during the statements and failure to produce even a single piece of relevant documentation raises serious doubts about the veracity of his submissions and it is a deliberate, coordinated effort to mislead the authorities.

Even during the adjudication process, the noticee was failed to produce a single piece of documents which establish his claim that the currency belongs to him and procured in a legitimate way. In view of the above, I hold that the noticee is merely engaging in delaying tactics to derail the investigation by not providing the documents and accordingly, I hold that the findings of the investigation that the noticee was knowingly involved in to smuggle out the foreign currency out of India in violation of Customs laws.

**41.** In his statement dated 02.12.2019 tendered under Customs custody, the printout of WhatsApp chat between Mohsin and Safik (where Safik has sent Mohsin by WhatsApp on 24.11.2019 UAE entry permit no.26.11.2019/Dubai which was valid till 22.1.2020, Hotel stay details at Marina Hotel, Al Sabkha Street, Dubai and Flight ticket to go Dubai by EK 539 on 25.11.2019) was shown to Mr. Mohsin and on being asked who is Safik; he replied that Safik was the person from whom he purchased the ticket for Dubai by EK 539 on 25.11.2019 and his Office is in 5 batti, Bhauruch and by the name of S.P.Travels. Whereas during the investigation, it was revealed that proprietor of M/s. S.P. Travels is Mr. Suhel Usmangani Patel and Mr. Safik Siraj Patel was the person who according to Mr. Suhel was the guarantor for Mr. Mohsin's ticket booking and Suhel had sent the ticket on whatsapp to either Safik or Mohsin. Further, the noticee has mentioned that due to ignorance of law, he had not taken special or general permission for export of foreign currency. The explanation given by the noticee cannot be held to be genuine and creditworthy, as in his voluntary statement dated 25.11.2019, he himself admitted that he stayed in UK for ten years from 2009 to 2019. He cannot take an alibi that he was not aware of provisions of taking permission for export of foreign currency. 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 upon the 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) ELT23(Del.)]*". I find that Mr. Mohsin had not cooperated during the investigation and gave false misleading statements and hence his statement dated 25.11.2019 is not fit to be relied upon. I find that the noticee has not named the person from whom he has purchased/got the seized foreign currency or to whom he was delivering the foreign currency in Dubai or on whose behalf he was smuggling the foreign currency.

**42.** Regulation 5 of the Foreign Exchange Management (Export or Import Currency) Regulations, 2015(as amended) specifies that "Except as otherwise provided in these regulations, no person shall, without the general or special permission of RBI, export or send out of India, or import or bring into India, any foreign currency." Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulation, 2015 (as amended) any person resident in India, could retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by him by way of payment for services outside India or as honorarium, gift, etc. I find that the legal provision for taking foreign currency out of India is very clear and does not leave any scope for any ambiguity. The noticee was went to Dubai from Ahmedabad by Emirates EK 539 on 25.11.2019 and was intercepted with his check in luggage from which foreign currency amounting to Indian Rupees to the tune of Rs. 1,39,78,309/- was recovered. Thus, the noticee was bound by the Baggage Rules, 2016 framed under the Customs Act, 1962. Further, I find that the noticee was failed to declare the same and also not able to produce any legal documents which shows the legitimate purchase or exchange of currency. In the instant case, the noticee has not shown compliance with any of the regulations ibid. Thus, it is clear that the conditions in respect of possession and export of foreign currency seized from noticee are not fulfilled.

**43.** Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding setting aside the imposition of penalty under Section 114AA and 114(i). I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to

that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. 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 fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi* [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar* [2007(2013) ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Therefore, the case law submitted by the noticee are different and not squarely applicable in the instant case. In view of the above discussions, I find that the noticee intentionally not declared the seized foreign currency to smuggle out from India and failed to produce any legit documents for procurement of the foreign currency. Section 123 of Customs Act, 1962 explicitly states that the burden to prove the seized goods are not meant for smuggle shall be on the person from whose possession the goods were seized. Section 123 of Customs Act, 1962 read as:-

### **Section 123. Burden of proof in certain cases. -**

<sup>1</sup> [(1) *Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*

*(a) in a case where such seizure is made from the possession of any person, -*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

*(2) This section shall apply to gold, <sup>2</sup> [and manufactures thereof],*

*watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

As per Section 123 of Customs Act, 1962, the burden of proof is on the noticee from whom the impugned foreign currency is recovered to substantiate the claim the seized currency belongs to him and procured in legitimate way and not for smuggling. **I find that the noticee has retracted from his statements dated 25.11.2019 & 26.11.2019 on 27.11.2019 and stated that the same was recorded under fear of arrest.** I find that statement recorded under Section 108 of Customs Act, 1962 is admissible even when it is retracted as per the Judgment of Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. UOI [ 1997(89) ELT 646 (S.C)]. I further, find from the investigation that the noticee has falsely tendered his statement dated 25.11.2019 and lied in the statement that he used to purchase the foreign currency from Mr. Altaf Umarji Patel, Director of M/s. Panama Travel Service and Money exchange Pvt Ltd, Mr. Muhamedtalha Ibrahim Patel, Director of Bharuch Forex Pvt Ltd and Mr. Taushif Abdulla Patel Director of M/s. Wakkas Money Exchange, which was later proved by their respective statements given by the Directors/Proprietor of the firms and statements recorded before Shri Mohsin Patel on 03.12.2019 wherein they have stated that they do not the Shri Mohsin Patel and never sold or purchase any currency from him.

From the above, I find that on one hand he stated that the statement was given under threat, however on other hand, the noticee himself tendered false statement, which proves that the noticee has nothing to submit in defense and just attempted a calculated step to derail the investigation and tried to save himself from the clutches of law. Further, he replied mostly questions which were asked in statements like:- from whom he purchased the currency, to whom he delivers the same in Dubai, as "he did not want to reply", which evidently proves that the currency does not belong to him and he did not have any legitimate documents regarding possession of the currency. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. The noticee has not cooperated in the investigation and tendered false statements, **Therefore, I hold that the noticee is liable to penal action under Section 114AA of Customs Act, 1962. Further, under Section 114AA, a maximum penalty of five times of the value of goods can be imposed. I observe that the penalty imposable on the person concerned in the conspiracy of smuggling out the foreign currency in this case is to be commensurate with the gravity of the offence. His act of omission and commission on part for smuggling out the foreign currency without any documents needs to be dealt with severely and sternly and any leniency would not act as a deterrent on the person concerned. Moreover,**

**Mr. Mohsin Patel is the main and active conspirators who tried to smuggle out the foreign currency which were found in his possession; the penalty should be imposed on him to deter him from violating the law of the land.**

**44.** I rely in the case of **M/s KUNAL TRAVEL (CARGO) Vs COMMISSIONER OF CUSTOMS & CENTRAL EXCISE (Customs Appeal No. 314 of 2015 dated November 28, 2016), wherein the Hon'ble High Court of Allahabad - Cus - Mens rea - Penalty u/s 114AA of Customs Act, 1962** - has held that upon examination on the material available on record, it becomes abundantly clear that in fact, the assessee was found guilty of mens rea of tempering with the goods that he was seeking to export. In the garb of exporting basmati rice, the assessee was trying to take out non-basmati rice which was clearly prohibited. There is a clear finding of fact recorded by the tribunal that not only was the assessee attempting to play fraud but also upon re-examination of the sample reports, it was found that the assessee had actually tried to export consignments of non-basmati rice which were prohibited to be exported by a Notification No.: 39 (RE-2008)/2004-09 dated 19.9.2008 and in fact, it was found that every container was loaded with 55 bags of basmati rice and 430 bags of non basmati rice and, therefore, the plea as made by learned counsel for the assessee that it was a case of mishandling of goods during loading, cannot be taken to be true. It was a deliberate strategy to keep the basmati rice in the front of container in order to avoid the detection of the non-basmati rice which was sought to be taken out surreptitiously. Hence, the imposition of penalty, therefore, is justified.

The Appellant was aggrieved with the above said Hon'ble High Court of Allahabad order dated 28.11.2016 and preferred an appeal before the Hon'ble Apex Court vide Special Leave to Appeal (C) No(s).10391/2017, Dated: April 13, 2017 and **the Apex Court has found no legal and valid ground for interference. The Special Leave Petition is dismissed. Imposition of penalty, therefore, is justified under Section 114AA of Customs Act, 1962.**

Thus, it is a case where mens-rea is established as the noticee has deliberately tendered false statement and lied before Customs. Therefore, imposing penalty under Section 114AA would be deterrent against the deliberate attempt of smuggling out the foreign currency by way of concealment, which was contrary to the law of the land.

**45.** In the instant case, as per the Hon'ble Commissioner of Customs (Appeals), Ahmedabad Order, have to restrict myself to take a decision on the issue of imposition of penalty under Section 114AA of the Customs Act, 1962 upon Mr. Mohsin Gulmmohmed Patel. Accordingly, I pass the following order:

**46.** Accordingly, I pass the following order;

**ORDER**

**i I impose a penalty of Rs. 25,00,000/- (Rupees Twenty-Five Lakh only) on Mr. Mohsin Gulmmohmed Patel, under section 114AA of the Customs Act, 1962.**

**47.** Accordingly, the Show Cause Notice No. VIII/10-24/SVPIA/O&A/HQ/2020-21 dated 22.06.2020 stands disposed of.

**(Shree Ram Vishnoi)**

Additional Commissioner  
Customs, Ahmedabad

F. No: VIII/10-24/SVPIA/O&A/HQ/2020-21

Date:16.05.2025

**DIN: 20250571MN000000CB2D**

**BY SPEED POST AD / ANY OTHER PERMISSIBLE MODE OF COMMUNICATION**

**To,**

**Mr. Mohsin Gulmmohmed Patel,**

674, Ashiyana Nagar,  
At-Sherpura, Post Kantharia,  
Bharuch, Gujarat-392015

**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 Assistant/Deputy Director, DRI, AZU, Ahmedabad
- (vi) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (vii) Guard File.