OIO No:91/ADC/SRV/O&A/HQ/2026-27
F. No: VIII/10-17/SVPIA-C/O&A/HQ/2026-27

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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DIN: 20261071MN00006BF899

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10- 17/SVPIA-C/O&A/HQ/2026-27
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10- 17/SVPIA-C/O&A/HQ/2026-27 dated 07.07.2026
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**91/ADC/SRV/O&A/HQ/2026-27**
D	आदेशतिथि/ Date of Order-In-Original	:	**14.10.2026**
E	जारीकरनेकीतारीख/ Date of Issue	:	**14.10.2026**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	01) **Shri Ajaykumar Dineshkumar Jansari**, B/37/ F.F, Paramsukh Society, Nr. Kamdhenu Society, B/H Bobbin Factory, Ranip, Ahmedabad, Pin – 382480, Gujarat, India. 02) **Shri Jignesh Pawar,** S/o Shri Sureshbhai Nathubhai Pawar, 14, Sarabhai Block, Pitaliya Bamba, Ahmedabad, PIN 380001
(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 मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		

(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case:

On the basis of the intelligence developed by the officers of AIU, SVPI Airport, Customs Ahmedabad regarding a suspected passenger who was planning to depart for Bangkok via VietJet Flight No. VZ751 on 13.01.2026, officers intercepted a male passenger identified as Shri Ajaykumar Dineshkumar Jansari, S/o Dineshkumar Lalhi Das Jansari, Address –B/37/ F.F, Paramsukh Society Nr. Kamdhenu Society, B/H Bobbin Factory, Ranip, Ahmedabad, Pin – 382480, Gujarat, India, aged 28 years (DOB: 25/01/1998) (hereinafter referred to as the said "passenger/Noticee"), holding an Indian Passport No. B7863870, who was about to fly to Bangkok (BKK) from Ahmedabad (AMD). Consequently, a personal search of the passenger and an examination of his baggage were conducted in the presence of two independent witnesses. The proceedings of the search and seizure were duly recorded under the Panchnama dated 13/14.01.2026**.**

2. The Customs officers gave their introduction to the passenger and shown their identity card and asked him whether he was carrying any foreign currency or any restricted or prohibited or contravened goods under Customs Act, 1962 for which he denied. After that, the officers requested the passenger to come along with them at their Customs office situated at Departure Hall, Ground Floor of Terminal-2 of the Airport 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. Prior to conducting the search, the AIU officers offered themselves for personal search, which the passenger declined, stating that it was not necessary and that he had full faith in the officers. The Customs officers further enquired whether the passenger had anything to declare before Customs, to which he again replied in the negative.

2.1 Thereafter, the AIU Officers thoroughly check baggage of Shri Ajaykumar Dineshkumar Jansari, resulting in to recovery of foreign currency from his Blue Bag Marked as "Aristocrat". The details of the recovered currency is as:-

S.No	**Denomination**	**No. of Notes**	**Amount**	**Remarks**
1	100	100	10000	USD
2	50	214	10700	Pound
3	20	858	17160	Pound
Total		**1172**		

The photos of the foreign currency recovered from Ajaykumar Dineshkumar Jansari is as under:


Simpolo
Tiles & Bathware
Live Lavish


Simpolo
Tiles & Bathware
Live Lavish

2.2 Whereas, the Customs officers further informed that the search and preparation of a detailed inventory was required to be done and same was conducted at AIU Office located at the Arrival Hall of Terminal 2 of the SVPI Airport and requested the said passenger to carry his baggage/luggage in as such condition. On reaching the AIU Office at the Terminal -2 building, the officers, then in presence of the passenger and the panchas started counting the foreign currency notes recovered from the passenger and prepared a detailed inventory of the same which was recovered from the baggages of Ajaykumar Dineshkumar Jansari. Thereafter, in presence of the panchas and the passengers, a detailed inventory of foreign currency showing the serial no. of currency, denomination and value of currency in INR recovered from Ajaykumar Dineshkumar Jansari was prepared which was enclosed with the Panchnama as Annexure-A**.** The value of foreign currency comes to **Rs.42,06,340 (Rupees Forty Two Lakhs Six Thousand Three Hundred Forty only)** in Indian rupees as per Exchange rate vide CBIC Notification No. 01/2026 w.e.f. 02.01.2026 issued by the CBIC. 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.

2.3 Thereafter, the passenger Shri Ajaykumar Dineshkumar Jansari was asked to pass through the Door Frame Metal Detector (DFMD) Machine installed near the AIU office, after removing all metallic objects from his body/clothes. However, no beep sound was generated/emitted by the DFMD machine indicating nothing objectionable/ metallic substance present on his body/cloths. The AIU Officers inform the Panchas as well as Shri Ajaykumar Dineshkumar Jansari that the value of foreign currency in Indian rupees is derived as per Exchange rate vide CBIC Notification No. 01/2026 w.e.f. 02.01.2026 issued by the CBIC.

2.4 Whereas, below mentioned documents were withdrawn from the passenger Shri Ajaykumar Dineshkumar Jansari for further investigation which were as:-

1. Copy of Passport no. B7863870 of Shri Ajaykumar Dineshkumar Jansari.
2. Boarding pass of Vietjet Air.Com dated 13.01.2026 having Seat No.29-E for Shri Ajaykumar Dineshkumar Jansari.

2.5. Thereafter, the above said total Foreign currency which is equivalent to Indian rupees to the tune of Rs.42,06,340 (Rupees Forty-Two Lakhs Six Thousand Three Hundred Forty only) as per Annexure–A of Panchnama 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 Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2016. The detailed list of serial number of currencies was also prepared (Annexure – A of Panchnama). The said foreign currency equivalent to Rs.42,06,340 (Rupees Forty-Two Lakhs Six Thousand Three Hundred Forty only) were seized under Seizure Memo/Packing List dated 14.01.2026 in respect of case of smuggling of foreign currency booked against Shri Ajaykumar Dineshkumar Jansari.

2.6. Thereafter, the officers informed that the foreign currencies recovered and seized from Shri Ajaykumar Dineshkumar Jansari, marked as bundles A1 to A13, were packed in a transparent plastic box and sealed with a Customs lac seal in presence of the panch witnesses, as well as in the presence of Shri Ajaykumar Dineshkumar Jansari. Thereafter, a packing list bearing the name of Shri Ajaykumar Dineshkumar Jansari was affixed to the plastic box, which was subsequently sealed with a lac seal using the Customs brass seal in such a manner that the box could not be opened without breaking the seal. The panch witnesses, the AIU officer, and Shri Ajaykumar Dineshkumar Jansari put their dated signatures on the packing list as a token of having witnessed the packing and sealing proceedings. Thereafter, the sealed package was handed over to the Warehouse In-

charge, SVPI Airport, Ahmedabad, for safe custody and was deposited vide Warehouse Entry No. 7867 dated 14.01.2026.

2.7. Further, one Blue Trolley Bag marked 'Aristocrat', containing the personal belongings of Shri Ajaykumar Dineshkumar Jansari and was used for concealment of recovered foreign currency, was also liable to seizure under Section 110 of the Customs Act, 1962. Accordingly, a packing list was prepared and affixed to the said trolley bag. Thereafter, the bag was secured with thread and sealed with a lac seal using the Customs brass seal in such a manner that it could not be opened without breaking the seal. The panch witnesses, the AIU officer, and Shri Ajaykumar Dineshkumar Jansari affixed their dated signatures on the packing list as a token of having witnessed the packing and sealing proceedings. Thereafter, the sealed trolley bag was handed over to the Warehouse In-charge, SVPI Airport, Ahmedabad, for safe custody and was deposited vide Warehouse Entry No. 7867A dated 14.01.2026.

STATEMENT OF SHRI AJAYKUMAR DINESHKUMAR JANSARI:

3. A statement dated 14.01.2026 of Shri Ajaykumar Dineshkumar Jansari was recorded under Section 108 of the Customs Act, 1962, wherein he inter alia stated his personal details like name, address, family details, mobile number and Aadhar Number and PAN number as mentioned in the statement.

3.1. On being enquired, Shri Ajaykumar Dineshkumar Jansari stated that he is engaged in the business of photography and undertakes photography assignments such as family functions, event coverage, and other shooting-related activities. He further stated that he works as a freelance photographer and undertakes assignments as and when required. He stated that his Permanent Account Number (PAN) is GZQPD6519A, his mobile number is 8140580890, and his e-mail ID is ajayjansari21@gmail.com. He further stated that he maintains a bank account bearing No. 50100349413791 with

HDFC Bank, Vejalpur Branch, Ahmedabad, and that he does not hold any other bank account.

3.2. On being further questioned, Shri Ajaykumar Dineshkumar Jansari stated that he has a friend, namely Shri Jignesh Pawar, residing at Gheekanta Road, Sarabhai Block, Ahmedabad. He stated that Shri Jignesh Pawar approached him and requested him to come to New Ranip with a trolley bag. He further stated that, upon reaching New Ranip, Shri Jignesh Pawar took the trolley bag from him, concealed the foreign currency therein, and thereafter handed over the same trolley bag back to him. Shri Ajaykumar Dineshkumar Jansari further stated that Shri Jignesh Pawar instructed him to deliver the said foreign currency to a person at Bangkok. However, the identity and contact details of the recipient were not disclosed to him prior to his departure. He stated that he was informed that the contact details of the intended recipient would be provided to him only upon his arrival at Bangkok Airport.

3.3. On being enquired about the procurement of the foreign currency recovered from his baggage, Shri Ajaykumar Dineshkumar Jansari stated that he had acted solely on the instructions of Shri Jignesh Pawar (Mobile No. 8200574431). Shri Ajaykumar Dineshkumar Jansari reiterated that the recovered foreign currency belonged to Shri Jignesh Pawar and that he had no knowledge regarding its procurement, ownership, or payment details. He further deposed that only Shri Jignesh Pawar would be in a position to provide complete details regarding the procurement, ownership, and source of payment of the said foreign currency.

3.4. On being enquired about his association with Shri Jignesh Pawar and the purpose of carrying the foreign currency to Bangkok, Shri Ajaykumar Dineshkumar Jansari stated that he had known Shri Jignesh Pawar for the last six years and, owing to their long-standing acquaintance, had acted on his instructions on a trust basis. He further stated that he was not aware of the purpose for which Shri Jignesh Pawar had arranged to send the said

foreign currency to Bangkok through him. Shri Ajaykumar Dineshkumar Jansari further deposed that his primary purpose of travelling to Bangkok was to transport the aforesaid foreign currency from India to Bangkok as per the directions of Shri Jignesh Pawar. He stated that he had no knowledge regarding the ultimate purpose or intended use of the said foreign currency and that Shri Jignesh Pawar would be in a position to explain the purpose and circumstances behind such transportation.

3.5. On being further enquired about the arrangements made for his travel to Bangkok, Shri Ajaykumar Dineshkumar Jansari stated that Shri Jignesh Pawar had arranged and booked his air ticket for Flight No. VZ-751 dated 13.01.2026, had also made arrangements for his return journey, and had booked his accommodation at Gazebo Resort Pattaya, 148/232, Moo 9, Pattaya Taj, Pattaya 20150, Thailand.

3.6. On being asked whether he had declared the foreign currency recovered from his baggage before the Customs authorities at the Departure Hall of SVPI Airport, Ahmedabad, on 13/14.01.2026, Shri Ajaykumar Dineshkumar Jansari admitted that he had not made any such declaration. He further stated that he was aware that he was carrying foreign currency in excess of the permissible limit of USD 5,000 prescribed under the applicable regulations and, in order to avoid the consequences arising from carrying foreign currency beyond the permissible limit, he had intentionally refrained from declaring the same before the Customs authorities.

3.7. On being further questioned regarding the lawful possession and procurement of the said foreign currency, Shri Ajaykumar Dineshkumar Jansari admitted that he had neither filed any declaration with the Customs authorities in respect of the foreign currency carried by him nor possessed any documentary evidence, such as purchase receipts, encashment certificates, invoices, or any other relevant documents, evidencing its lawful procurement from an authorised dealer or any other permissible source. He further admitted that the foreign currency had been concealed in his

baggage and acknowledged that, upon detection by Customs officers, the same would be liable to seizure and confiscation under the provisions of the Customs Act, 1962 and the applicable Foreign Exchange regulations.

4. Further, in his subsequent statement dated 19.03.2026**,** Shri Ajaykumar Dineshkumar Jansari reiterated that the seized foreign currency belonged to Shri Jignesh Pawar and that all arrangements relating to his travel, including booking of air tickets and accommodation in Thailand, had been made by Shri Jignesh Pawar. He further reiterated that his primary purpose of travelling to Bangkok was to carry the aforesaid foreign currency from India to Bangkok as per the directions of Shri Jignesh Pawar. Shri Ajaykumar Dineshkumar Jansari also stated that he had no knowledge regarding the source of the foreign currency, the documents relating to its procurement, the details of any authorised dealer or authorised person from whom the foreign currency had been obtained, or the transactions connected therewith. He maintained that Shri Jignesh Pawar alone was aware of such particulars.

4.1. He further reiterated that he was carrying foreign currency in excess of the permissible limit of USD 5,000 prescribed under the applicable Baggage Rules and that, in order to avoid the consequences of carrying foreign currency in excess of the permissible limit, he had deliberately not declared the same before the Customs authorities at the time of his departure from SVPI Airport, Ahmedabad.

STATEMENTS OF JIGNESH PAWAR

5. Statement dated 14.02.2026 of Shri Jignesh Pawar was recorder under Section 108 of Customs Act, 1962 wherein he interalia mentioned his personal details viz. address, job, details of family, Aadhar number, Mobile Number and Email id. He perused the Panchnama dated 13/14.01.2026 drawn in respect of seizure of foreign currency which was recovered from Shri Ajaykumar Dineshkumar Jansari amounting in Indian Rs. 42,06,340/- and

in token of seen and agreeing with the facts of Panchnama put his dated signature.

5.1 He perused the statement dated 14.01.2026 in respect of Shri Ajaykumar Dineshkumar Jansari and in token of seen and agreeing with the facts of Panchnama put his dated signature.

5.2 On being enquired regarding his foreign trips, he stated that he visited outside India only once to Thailand in the year 2025 for official tour of ICICI Bank and the expenditure of the trip was borne by Bank itself.

5.3 He stated that he knew Shri Ajaykumar Dineshkumar Jansari from last six years and he is his friend. On being enquired about the booking of flights and accommodation at Bangkok of Shri Ajaykumar Dineshkumar Jansari, he stated that he had not booked any flight tickets and accommodations.

5.4 He stated that Shri Ajaykumar Dineshkumar Jansari met to him on 15.01.2026 and therefore came to know about his case regarding illegal smuggling of foreign currency booked by Customs Officers at SVPIA, Ahmedabad on 13/14.01.2026. He added that the seized foreign currency did not belong to him.

5.5 that he did not state the exact purpose of his (Shri Ajaykumar Dineshkumar Jansari) trip to Bangkok and as per his say he (Shri Ajaykumar Dineshkumar Jansari) mentioned that he was going for some photography shooting. Shri Jignesh Pawar further stated as a friend he visited his home on 13.01.2026 and dropped him at SVPIA, Airport, Ahmedabad. He further stated that he did not about the source of procurement of foreign currency seized from Shri Ajaykumar Dineshkumar Jansari and same was not belong to him.

5.6 He stated that he holds a saving account in ICICI Bank, Nehru Nagar, Ahmedabad bearing account no. 403101501609 and another account in Axis

Bank, Bopal, Ahmedabad bearing no. 916010028685572 and will submit the bank statement within a week.

6. Further, a statement dated 06.05.2026 of Shri Jignesh Pawar was recorded under Section 108 of the Customs Act, 1962. On being enquired about his earlier statement dated 14.02.2026**,** wherein he had stated that the foreign currency valued at Rs. 42,06,340/- recovered from the baggage of Shri Ajaykumar Dineshkumar Jansari during the Panchnama proceedings dated 13/14.01.2026 at SVPI Airport, Ahmedabad, did not belong to him, Shri Jignesh Pawar stated that the said statement was incorrect. He categorically stated that the foreign currency recovered from the baggage of Shri Ajaykumar Dineshkumar Jansari belonged to him and that he had handed over a trolley bag containing the said foreign currency to Shri Ajaykumar Dineshkumar Jansari for carrying the same to Bangkok.

6.2. On being further questioned regarding the source and procurement of the said foreign currency, Shri Jignesh Pawar stated that he had received the foreign currency from an unknown person whom he had met at SVPI Airport, Ahmedabad. He stated that the said person had sought his residential address and informed him that he would contact him after a few days in connection with some foreign currency-related work for which he would be paid an amount of Rs. 35,000/-. Shri Jignesh Pawar further stated that, thereafter, the said unknown person visited his residence and handed over foreign currency equivalent to Rs.42,06,340/- with the understanding that the same was to be sent to Thailand as per their discussion.

6.3. On being asked to disclose the identity, contact details, and whereabouts of the said person, Shri Jignesh Pawar stated that he did not know the said person's name, address, or current place of stay and did not possess any contact details; he further stated that, despite his request for the said person's mobile number and address, the latter refused to furnish the same. He admitted that he had physically received the foreign currency

from the said unknown person at Ahmedabad and that he is presently not in contact with him.

6.4. On being further questioned regarding the arrangement for transportation of the said foreign currency to Thailand, Shri Jignesh Pawar stated that, as per the plan discussed with the said unknown person, he had arranged the travel of his friend, Shri Ajaykumar Dineshkumar Jansari, to Bangkok. He stated that Shri Ajaykumar Dineshkumar Jansari had agreed to carry the foreign currency to Thailand for a consideration of Rs. 15,000/-. He further stated that the cost of the air ticket was borne by the said unknown person.

6.5. On being asked whether he was aware that the foreign currency being carried by Shri Ajaykumar Dineshkumar Jansari exceeded the permissible limit prescribed under the applicable Baggage Rules, Shri Jignesh Pawar stated that Shri Ajaykumar Dineshkumar Jansari was carrying foreign currency in excess of the permissible limit of USD 5,000/- and that, in order to avoid the consequences arising from carrying foreign currency beyond the permissible limit, Shri Ajaykumar Dineshkumar Jansari had not declared the same before the Customs authorities at the time of departure.

SUMMATION:

7. The aforementioned investigation indicate that Shri Ajaykumar Dineshkumar Jansari attempted to clear the aforesaid foreign currency out of India which was equivalent to Indian Rs. 42,06,340 (Rupees Forty-Two Lakhs Six Thousand Three Hundred Forty only) liable for confiscation under the provisions of Section 113 of the Customs Act, 1962 and therefore the same was placed under seizure vide Seizure Order dated 14.01.2026 issued under the Provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Foreign Currency is liable for confiscation under Section 113 of the Customs Act, 1962.

7.1. During the recording of the statement of Shri Ajaykumar Dineshkumar Jansari, it appeared that the export of foreign currency was planned by Shri Jignesh Pawar, his known and friend, who handed over the seized currencies of different denominations to him and directed to carry the same to Bangkok for handing them over to a person in Bangkok. The above facts were admitted by Shri Ajaykumar Dineshkumar Jansari and Shri Jignesh Pawar in their respective statements recorded under Section 108 of the Customs Act, 1962.

7.2. During the recording of statement of Shri Ajaykumar Dineshkumar Jansari, admitted that he was carrying foreign currency of amounting Rs. 42,06,340/- along with him and failed to make a proper declaration to the Customs in this regard. Their respective statements further confirm that the seized currency was handed over to Shri Ajaykumar Dineshkumar Jansari by Shri Jignesh Pawar.

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 this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

SECTION 2(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 this Act or any other law for the time being in force;*

Section 11(3): *As per Section 11(3) of the Customs Act, 1962 any*

prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

Section 77. Declaration by owner of baggage. -
The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

Section 110:- *As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.*

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;*
(e) *any goods found concealed in a package which is brought within the limits of a Customs area for the purpose of exportation;*
(h) *any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

SECTION 114: *Penalty for attempt to export goods improperly, etc.*
.–Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act] whichever is the greater;;

Section 117: *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere*

provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

Section 118. Confiscation of packages and their contents.—
(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

Section 119: *Confiscation of goods used for concealing smuggled goods— Any goods used for concealing smuggled goods shall also be liable to confiscation. Explanation: In this section, "goods" do not include a conveyance used as a means of transport.*

Further, in terms of provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold / silver or the person claiming ownership of the same, to prove that the same were not smuggled gold. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

Section 123: Burden of proof in certain cases. –

(1) Where any goods to which this section applies are seized under this act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be –

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

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

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

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

(2) This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

B. THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999;

SECTION 2. Definitions. -*In this 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—*
(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person.

Section 4:- Holding of foreign exchange, etc.—*Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.*

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: ***Export of foreign exchange and currency notes: -***

(1) An authorized person may send out of India foreign currency acquired in normal course of business,

(2) Any person may take or send out of India, -

a. *Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;*

b. *foreign exchange obtained by him by drawl from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder ;*

c. *currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank;*

(3) Any person may take out of India, -

a. *foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;*

b. *unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;*

(4) Any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

D. <u>The Baggage Rules, 2016:</u>

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, 2000, and the notifications issued thereunder.*

9. From the records and evidences discussed in the foregoing paragraphs, it appeared that in the instant case, foreign currency equivalent to Indian Rupees 42,06,340/- (Rupees Forty Two Lakhs Six Thousand Three Hundred Forty only) was concealed by the passenger, Shri Ajaykumar Dineshkumar Jansari, in his Blue Trolley Bag marked "Aristocrat," with an intent to illegally export the same out of India without any legal procurement documents and without making a declaration to the Customs authorities. Further, Shri Ajaykumar Dineshkumar Jansari failed to produce any legal documents evidencing legitimate procurement of the said seized foreign currency from any authorized source during the search, seizure, and subsequent investigation of the case. The said passenger acted upon the instructions of Shri Jignesh Pawar and, during the course of investigation, Shri Jignesh Pawar admitted that he is the principal culprit and having arranged for the illegal export of the foreign currency.

9.1. The passenger was required to declare the Foreign Currency before the Proper Officers of Customs at the time of his departure but he failed to do so. Hence, he had attempted to take the recovered Foreign Currency out of India clandestinely in violation of the provisions of the Customs Act, 1962.

9.2. The passenger was not entitled to take out the Foreign Currency from India beyond the prescribed limit and without any valid documents showing his licit possession. While attempting to export the Foreign Currency i.e. Rs. 42,06,340 (Rupees Forty-Two Lakhs Six Thousand Three Hundred Forty only) he violated provisions of Section 3 & Section 4 of the FEMA, 1999.

9.3. The passenger knew that he was carrying Foreign Currency in such a large quantity which is beyond permissible limit as per provisions of FEMA, 1999 read with the RBI guidelines referred to above supra.

9.4. The passenger attempted to smuggle the Foreign Currency out of India clandestinely by concealing it in trolley bag, which was non-bonafide baggage and was not supported by any valid documents.

9.5. The passenger thus contravened the provisions of Section 77 of the Customs Act, 1962 read with the Section 3 & Section 4 of FEMA, 1999 and Foreign Exchange Management (Export and import of currency) Regulations, 2015.

9.6. The passenger failed to produce any documentary evidence in support of legal possession and exportation of the said seized Foreign Currency i.e., Rs. 42,06,340/- (Rupees Forty-Two Lakhs Six Thousand Three Hundred Forty only) and thus rendered the said seized Foreign Currency liable for confiscation under the provisions of Section 113 of the Customs Act, 1962 read with Foreign Exchange Management Act, 1999 and Foreign Exchange Management (Export and Import of currency) Regulations, 2015. Further, he has failed to discharge the burden of proof cast upon him in terms of the provisions of Section 123 of the Customs Act, 1962.

9.7. The passenger indulged himself in illegal transaction of the Foreign Currency in contravention of regulations made under Foreign Exchange Management Act, 1999 and in contravention of provisions of Customs Act, 1962

9.8. By the above acts of omission and commission in relation to the seized Foreign Currency, the passenger rendered the seized Foreign Currency liable to confiscation under Section 113 of the Customs Act, 1962 and has rendered himself liable to penal action under Section 114 of the Customs Act 1962; further the one (01) blue color trolley Bag marked as "Aristocrat" used for concealing the seized currency also appeared to be liable for confiscation under Section 118 read with Section 119 of the Customs Act, 1962.

9.9. The recovered currency was not covered under any legal documents and hence were liable for confiscation under Section 113 of the Customs Act, 1962 read with provisions of Circular No. 45/2015-16[(1)/6(R)] dated 04.02.2016 of Reserve Bank of India which provide synopsis of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 (notified vide Notification No. FEMA.6(R)/2015-RB dated December 29, 2015, vide G.S.R. No.1004 (E) dated December 29, 2015).

9.10 Whereas, during the recording of his statement, Shri Ajaykumar Dineshkumar Jansari inter-alia stated that the said foreign currency was provided to him by Shri Jignesh Pawar, who instructed him to hand over the same to an unspecified person in Bangkok and had also arranged his travel. However, Shri Jignesh Pawar, in his initial statement dated 14.02.2026, denied the allegations and claimed to have no nexus with the seized foreign currency. Later on, in his subsequent statement dated 06.05.2026, Shri Jignesh Pawar retracted his earlier denial and explicitly claimed that the said seized foreign currency was handed over by him to Shri Ajaykumar Dineshkumar Jansari with instructions to deliver it to a contact in Bangkok, and further admitted to financing and arranging the entire trip of Shri Ajaykumar Dineshkumar Jansari. It is further observed that during the course of the investigation, Shri Jignesh Pawar failed to provide any documentary evidence to support the legitimate procurement of the said

seized currency. Instead, he stated that the foreign currency had been handed over to him by an unknown person for delivery to Bangkok, for which he was to receive a financial consideration of ₹35,000/-. From the submissions of Shri Ajaykumar Dineshkumar Jansari and Shri Jignesh Pawar and investigation carried out, it appeared that Shri Jignesh Pawar was the mastermind behind the smuggling of foreign currency and he had abetted the present attempt of illegal and improper export made by the Shri Ajaykumar Dineshkumar Jansari.

9.11 In view of the above, it appeared that Shri Jignesh Pawar abetted and facilitated the smuggling/illegal export of foreign currency amounting to 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) which was then equivalent to Indian Rs.42,06,340 (Rupees Forty Two Lakhs Six Thousand Three Hundred Forty only) by providing the said foreign currency to Shri Ajaykumar Dineshkumar Jansari, concealing the same in his baggage, arranging the air tickets and hotel accommodation at Bangkok, and instructing him to deliver the bags containing the foreign currency to an unknown person at Bangkok without declaring the same before the Customs Authorities. Shri Jignesh Pawar failed to produce any credible evidence, bank statements, or documents in support of legitimate purchase of said seized currency. By the acts of Shri Jignesh Pawar, the said foreign currency, found concealed inside the baggage of Shri Ajaykumar Dineshkumar Jansari for the purpose of smuggling/illegal export without declaring it to the Customs, had been rendered liable for confiscation under Sections 113 of the Customs Act, 1962, read with Regulation 5 and Regulation 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued by the Reserve Bank of India under Notification No. FEMA 6(R)/RB 2015 dated 29.12.2015, and Rule 7 of the Customs Baggage Rules, 2016. Further, he has failed to discharge the burden of proof cast upon him in terms of the provisions of Section 123 of the Customs Act, 1962. By abetting the commission of the above offences, Shri Jignesh Pawar has rendered the said foreign currency liable for confiscation under Section 113 of Customs Act, 1962 and subsequently also

rendered the goods/bags used for concealment of the aforesaid foreign currency liable for confiscation under Section 119 of the Customs Act, 1962. By above mentioned omission and commission on the part of Shri Jignesh Pawar, he has rendered himself liable to penalty under Section 114 of the Customs Act, 1962.

10. During the recording of statement of Shri Ajaykumar Dineshkumar Jansari, he stated that the seized foreign currency was handed over to him at the instructions of Shri Jignesh Pawar one of his friends and known to him, who directed to him to carry the same to Bangkok to hand over the same to an unknown person in Bangkok. Hence, Shri Jignesh Pawar was required to provide the details of the source from where he possessed the foreign currency in legal manner. During the course of investigation, Shri Jignesh Pawar has not produced any documentary proof in support of his claim viz. their internal documents about receipt/income of foreign currency, expenses and resultant savings of such foreign currency, Bank Account Statements etc. Further, he admitted that he or his colleagues did not declare about the foreign currency before Customs. It appeared that the source of the seized foreign currency stated by him is vague, concocted, and fabricated, seemingly with the intent to escape the legal consequences of the offence committed by Shri Ajaykumar Dineshkumar Jansari and Shri Jignesh Pawar.

11. In terms of Foreign Exchange Management (Export and import of currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 6 (R)/RB-2015 dated 29/12/2015, it appeared that in terms of Regulation 3 "*any person resident in India, 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.*" Further, in terms of Regulation 5 no person shall, without the general or special permission of the Reserve Bank, export or send out of India, any foreign currency. Similarly, Regulation 7 *ibid deals with export of foreign*

exchange and currency notes. Regulation 7 inter alia states that ***"Any person may take or send out of India, - foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder.*** On the basis of Regulation 7 ibid, a person is entitled to take or send out foreign exchange drawn from an Authorised Person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder. Also, on the basis of Regulation 3 ibid a person is entitled to take or send out currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000/-. Whereas, during the search in person and of the baggage of Shri Ajaykumar Dineshkumar Jansari, no documents whatsoever were found which could prove the legal purchase of Foreign Currency from any authorized person in terms of Regulation 7 ibid. Further, he was unable to produce any document evidencing a legitimate procurement of the said seized foreign currency. On the basis of the above it emerges that Shri Ajaykumar Dineshkumar Jansari carried the foreign currency seized from him vide Panchnama 13/14.01.2026 and attempted to export the same illegally in violation of the extant rules/regulations in force. Regulation 7 (3) and (4) would come into force only when a proper declaration before the Customs Officer had been made. Therefore, it appeared that the foreign currency was acquired by Shri Ajaykumar Dineshkumar Jansari through Shri Jignesh Pawar and attempted to export in violation of Regulation 7(2) of Foreign Exchange Management (Export and import of currency) Regulations, 2015.

12. In view of the discussions in forgoing paras, it appeared that the seized foreign currency cannot be cleared as a part of personal baggage without having proper legal and legitimate documents. Therefore, the attempt to carry foreign currency in the baggage is considered as violation of the restrictions imposed under Foreign Exchange Management (Export and import of currency) Regulations, 2015, appeared to fall under the ambit of "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962. Further, in terms of Section 11H (a) of the Customs Act, *1962;* the act again

amounts to "Illegal export" of foreign currencies by Shri Ajaykumar Dineshkumar Jansari as much as he failed to produce any legitimate/legal document in support of purchase of foreign currency from an authorized person at the time of interception, seizure and during the course of investigation. He had admitted in his statement recorded under Section 108 of the Customs Act, *1962* that he had knowingly attempted to export the seized foreign currencies. The acts of Shri Ajaykumar Dineshkumar Jansari & Shri Jignesh Pawar as discussed above has rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

13. Accordingly, a Show Cause Notice No. VIII/10-17/SVPIA-C/O&A/HQ/2026-27 dated- 07.07.2026 was issued to **i) Shri Ajaykumar Dineshkumar Jansari and ii) Shri Jignesh Pawar**, as to why:

i. The aforementioned foreign currency amounting to 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) which was then equivalent to Indian **Rs.42,06,340 (Rupees Forty Two Lakhs Six Thousand Three Hundred Forty only)**, attempted to smuggle out of India by way of concealment, contrary to the prohibition imposed in terms of Notification No. FEMA-6-(R)/RB-2015 dated 29/12/2015 [Foreign Exchange Management (Export and Import Currency) Regulations, 2015 read with Customs Act, 1962 and Baggage Rules, 2016 which were seized during Panchnama dated 13/14.01.2026 vide Seizure Memo dated 14.01.2026, should not be confiscated under Section 113 of the Customs Act, 1962 read with the FEMA Regulations and Rule 7 of the Baggage Rules, 2016;

ii. 01 Blue Trolley Bag Marked as "Aristocrat" seized vide Panchnama dated 13/14.01.2026 and Seizure Memo dated 14.01.2026 used for concealment of the foreign currency attempted to be illegally exported/ smuggled, should not be confiscated under Section 118 read with Section 119 of the Customs Act, 1962;

iii. Penalty under Section 114 of the Customs Act, 1962 should not be imposed upon both of them for the omissions and commissions mentioned hereinabove.

iv. Penalty under Section 117 of the Customs Act, 1962 should not be imposed upon both of them for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

14. Defense Reply of Noticee No. 1 i.e **Shri Ajaykumar Dineshkumar Jansari** - The noticee vide letter dated 25.08.2026 received on 31.08.2026 submitted his written submission wherein he denies the allegations, averments, inferences and proposals contained in the SCN, except to the extent expressly admitted herein. He submitted that the SCN rests upon statement tendered by him as well as on statement tendered by Shri Jignesh Pawar. He submitted that he is freelancer photographer with limited formal education. The seized foreign currency represents amount received in connection with photography assignments and financial assistance/loans from foreign acquaintances for purchasing and upgrading professional photographic equipment. He further submitted that he categorically denies that he acted as a carrier for Shri Jignesh Pawar or participated in any hawala, clandestine money-transfer or organized foreign-exchange activity. He further disputes the voluntariness, comprehension and accuracy of the English statements attributed to him. The version attributed to Shri Jignesh Pawar is materially inconsistent on important facts. In the absence of reliable independent corroboration, the serious allegations of deliberate smuggling, conspiracy and conscious participation require strict proof.

He further pointed out that the Panchnama record “2,050 POUND” against 848 notes of GBP 20, whereas the correct arithmetic is GBP 16,960. This material numerical error warrants due consideration while assessing the care and accuracy with which the proceedings were recorded. The SCN proposes confiscation of USD 10,000, GBP 10,700 and GBP 17,160 (the latter figure also appears to be erroneous) valued by the Department at Rs.42,06,340/-, under Section 113 of the Customs Act, 1962, along with confiscation of the trolley bag under Sections 118/119 and penalties under Sections 114 and 117.

He further submitted that mere no declaration had been made before interception cannot, by itself, establish an intentional or deliberate bypass of the declaration procedure. The SCN relies upon an alleged answer given after interception that he had nothing to declare. Such a post-interception answer cannot, without further evidence, establish that he had previously been given and consciously rejected an opportunity to make a declaration. If the Department alleges deliberate bypass of the declaration facility, the relevant objective evidence such as CCTV footage, the airport layout showing the location of the declaration counter, records of officers posted there, any declaration facility/form allegedly offered, electronic declaration records, or a contemporaneous record of deliberate bypass would be material. No such evidence is identified in the SCN.

He further submitted that he is a young freelance photographer undertaking assignments such as wedding photography, event coverage and tourism-related photography. In the course of accompanying tourists and foreign acquaintances for photography assignments, he occasionally received professional photography/assignment fees in foreign currency and In addition, certain foreign friends/acquaintances provided financial assistance/loans in foreign currency for purchasing, repairing, maintaining and upgrading photographic equipment required for his profession. He intended to use the currency in Bangkok for purchasing camera equipment and accessories, which he understood to be comparatively cheaper there. The possession of currency was therefore connected, according to his explanation, with his professional requirements and not with any clandestine money-transfer operation.

He submitted that he has studied only up to the 8th Standard. The statements dated 14.01.2026 and 19.03.2026 were recorded in English. The Noticee states that he was not sufficiently conversant with English or with the legal and statutory terminology used in the statements. The statements were recorded after sudden interception, seizure of his belongings and detention at the Customs office. He was under considerable mental stress and distress and disputes that the statements accurately reflected his

voluntary and informed version. In particular, he disputes the portions attributing to him conscious participation in an organized illegal export of foreign currency or knowingly acting as a carrier for Shri Jignesh Pawar. He received copies of the statements only with the SCN. After the contents were read and explained to him by his legal counsel, he immediately retracted the alleged admissions concerning deliberate smuggling, conspiracy and acting as a carrier for consideration. He relied on following case law as :-

- Vinod Solanki v. Union of India [2008 (233) E.L.T. 157 (S.C.) / (2008) 16 SCC 537]
- Mohtesham Mohd. Ismail v. Spl. Director, Enforcement Directorate [(2007) 8 SCC 254 (SC)],
- K.I. Pavunny v. Assistant Collector (HQ), C.Ex., Cochin [1997 (90) E.L.T. 241 (S.C.)]

He requested the adjudicating authority to scrutinize the circumstances, voluntariness and reliability of the statements rather than treating disputed statements as conclusive in the absence of material corroboration.

He further submitted that there is contradiction between the statements tendered by Shri Jignesh Pawar. In his first statement dated 14.02.2026 (RUD-06), wherein he denied ownership of the seized foreign currency, denied booking his (Shri Ajay jansari) flight ticket or accommodation, and knowledge about his travelling for a photography assignment, however in his subsequent statement dated 06.05.2026 wherein he claimed ownership on the seized currency and involvement in handing over the bag. The second version is further weakened by the assertion that the alleged source of the currency was an unknown and untraceable person, while the alleged recipient in Bangkok is also unidentified. The SCN does not identify an independent financial transaction, payment or other objective evidence connecting him with the alleged arrangement and relied upon the case in matter of Kashmira Singh v. State of Madhya Pradesh [AIR 1952 SC 159] and Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence [(2018) 8 SCC 271] and accordingly, he requested not to rely on contradictory statements of Shri Jignesh Pawar, to establish the allegations against him. The SCN does not identify independent documentary evidence

establishing that he received the currency from Shri Jignesh Pawar for consideration or that he was promised any monetary benefit for carrying it to Bangkok viz. any payment or consideration made to him, any bank transfer concerning the seized currency, any communication evidencing a prior agreement to smuggle currency, the identity of the alleged recipient in Bangkok, evidence establishing that he knew the alleged recipient; or evidence establishing that he was a member of any hawala or organized foreign-exchange operation.

He further submitted that the Department relies upon the Panchnama dated 13/14.01.2026 and the presence of two Panch witnesses. He requested an opportunity to cross-examine both Panch witnesses because their evidence is material to the manner in which the search and inventory proceedings were conducted. He further submitted that One Panch witness was from Surat City and the other from Vadodara City, whereas the Panchnama was drawn at the Airport. The Panchnama does not explain why persons from those distant locations were selected, how they came to be present at the Airport, whether local independent witnesses were available, or whether the Panch witnesses had any prior association with the Customs officers. He submitted that he did not contend that a Panch witness can never be from a distant place. His submission is that, in the circumstances of the present case, the unexplained selection of distant witnesses makes their independence and actual participation matters requiring examination. He stressed that Cross-examination is particularly necessary to test whether the Panchnama accurately records the sequence of events, the actual presence and participation of the Panch witnesses, the circumstances of their selection, and whether the contents were read over and explained to them before their signatures were obtained. He relied upon the following citation of CESTAT decision in Natwar Lal Sharda (Appeal No. 50198 of 2025, decision dated 06.04.2026), Kamlesh Gupta v. Commissioner of Customs, Lucknow (Customs Appeal No. 70506 of 2019), and B.D. Goel v. Ebrahim Essa Sodha, 2014 (306) E.L.T. 337 (Bom.),

He further submitted that Section 123 is a special statutory provision and its operation depends upon the goods falling within the classes specified

in the provision and relevant notification. He disputes the automatic application of Section 123 to the foreign currency involved in the present case and relied upon the authorities cited in the original reply, including Commissioner of Customs v. Ram Prakash and Prem Singh v. Commissioner of Customs, for the proposition that foreign currency is treated as a non-notified item under Section 123. The Department is accordingly required to establish the legal basis for invoking the special burden-shifting provision in the present case.

He further contended that the recovery of currency from the trolley bag as evidence of deliberate concealment and intention to illegally export the currency. He submitted that the mere placement of currency inside an ordinary personal trolley bag does not, without additional evidence, establish conscious participation in an organized smuggling operation. The baggage contained personal belongings and photographic equipment/material. Without prejudice to the primary submission that he was intercepted before reaching the Customs declaration facility, even assuming that he had failed to make a proper declaration, such omission cannot automatically establish the separate and more serious allegations of organized smuggling, conspiracy, receipt of consideration or participation in a hawala transaction. His conduct should be assessed in its entirety, including his profession, limited educational background, stated source and intended use of the currency, the circumstances of interception, the disputed statements and the material contradictions in the co-noticee's statements.

He further submitted that foreign currency is not contraband per se and that the Department must establish the specific act or omission bringing the currency within the applicable clause of Section 113. The allegation of deliberate illegal export cannot be inferred solely from the recovery of currency, particularly when the alleged conspiracy and source/recipient are not independently established. He relied upon the citation in case of Pankaj Mittal v. Commissioner of Customs (Airport & Admn.), Kolkata, Customs Appeal No. 75538 of 2021. He further submitted

that confiscation of the trolley bag under Sections 118/119 is unwarranted unless the statutory requirements for such confiscation are independently established. The disputed allegation of conscious smuggling cannot, by itself, justify consequential confiscation of ordinary personal baggage. He further submitted that penalty under Section 114 requires establishment of the relevant act or omission and the requisite involvement attributable to the person concerned. In the present case, the Department has not produced independent and reliable evidence establishing that he was knowingly and intentionally participated in the alleged illegal export arrangement, therefore, proposal for penalty under Section 114 may kindly be dropped. He further submitted that the proposal under Section 117 cannot be sustained unless a specific contravention of a provision of the Customs Act or the rules/regulations is established against him.

He asked for cross examination of Shri Jignesh Pawar in order to test the contradictory versions regarding ownership of the currency, the alleged role of Shri Jignesh Pawar, booking of travel/accommodation, source of the currency, alleged consideration, purpose of travel and relationship with the alleged source.

and requests inspection and/or supply of the following original records and relied-upon material:

- original statement dated 14.01.2026 recorded under Section 108;
- original statement dated 19.03.2026 recorded under Section 108;
- complete Panchnama dated 13/14.01.2026;
- all material relating to his alleged ticket booking and hotel booking by Shri Jignesh Pawar;
- CCTV footage/records and other objective material relied upon to establish that he deliberately bypassed the Customs declaration facility, if such allegation is maintained; and
- any other relied-upon document or electronic record forming the basis of the allegations in the SCN.

Without prejudice to the primary contention that the proposals in the SCN are not sustainable, he submitted that he is a young freelance photographer

with limited formal education and no business or expertise in foreign exchange, money-changing or hawala transactions. His professional background, the explanation regarding the source and intended use of the currency, the absence of established financial consideration paid to him, the contradictory statements of Shri Jignesh Pawar and the circumstances of interception are relevant while determining culpability, mens rea, penalty and the quantum of any redemption fine and relied upon Hindustan Steel Ltd. v. State of Orissa, AIR 1970 SC 253, concerning the circumstances in which penalty for breach of a statutory obligation should ordinarily be imposed and also relied upon Government of India revisionary orders, namely GOI Order No. 88-90/14-Cus dated 17.04.2014 and GOI Order No. 39/14-Cus dated 05.03.2014, wherein foreign currency was permitted to be released upon redemption fine and penalty, also relied on CESTAT Kolkata decision in Pankaj Mittal v. Commissioner of Customs (Airport & Administration), Kolkata, Customs Appeal No. 75538 of 2021. He respectfully requested to release the foreign currency without fine or penalty; alternatively, any fine and penalty may be kept to the minimum permissible level after considering proportionality, bona fides, cooperation and the totality of circumstances. He submitted that the SCN does not establish, by reliable and independent evidence, that he knowingly participated in an organized foreign-currency smuggling arrangement or acted as a carrier for Shri Jignesh Pawar. He requested to drop the proposal of confiscation and penalty. In the alternative, if any technical contravention is held established, the same may kindly be dealt with proportionately and without treating it as proof of an organized smuggling operation. He prayed to:-

- drop the proceedings initiated against him under the impugned SCN;
- hold that the allegations of deliberate smuggling/illegal export and conscious participation in an organised foreign-currency transaction have not been established by reliable and independent evidence;
- refrain from treating the disputed statements as conclusive, particularly to the extent that they were not voluntarily made, were not properly understood by him, or do not represent his true version;

- grant an effective opportunity to cross-examine Shri Jignesh Pawar, the two Panch witnesses and any other person whose statement is relied upon against the Noticee;
- permit inspection of and supply copies of the relied-upon documents and original records requested hereinabove;
- drop the proposal for confiscation of the foreign currency under Section 113 of the Customs Act, 1962;
- drop the proposal for confiscation of the trolley bag under Sections 118/119 of the Customs Act, 1962;
- drop the proposed penalties under Sections 114 and 117 of the Customs Act, 1962;
- in the alternative, if any contravention is held established, release the foreign currency on the minimum permissible redemption fine and penalty after considering his bona fides, professional circumstances, cooperation and the principle of proportionality; and
- grant such other relief as the learned adjudicating authority may deem just and proper in the facts and circumstances of the case.

He requested for personal hearing in the matter.

14.1 Defense Reply of Noticee No. 2 i.e **Shri Jignesh Pawar**:- The noticee vide letter dated 25.08.2026 received on 31.08.2026 submitted his written submission wherein he denies the allegations, averments, inferences and proposals contained in the SCN, except to the extent expressly admitted herein. He submitted that the currency and the trolley bag were admittedly recovered from the baggage of Shri Ajaykumar Dineshkumar Jansari at SVPI Airport. Nothing was recovered from him. The SCN does not rely on any search recovery, currency document, bank trail, travel-payment record, electronic communication, CCTV footage or independent witness that connects him with the currency. He denied that he was the owner or source of the seized currency; that he financed the entire trip; that he instructed any person to avoid Customs declaration, or that he knowingly or intentionally abetted an unlawful export. These allegations are not proved by independent evidence.

He expressly and unequivocally retracts the statements dated 14.02.2026 and 06.05.2026 attributed to him under section 108 of the Customs Act, insofar as they are sought to be used as admissions or evidence against him. The typed statements and his signatures were obtained under duress and pressure. He was not allowed to read and verify the contents before being made to sign them. They were not voluntary statements. Copies of the statements were not supplied to him at the time of recording of statement or at any time before service of the SCN and the RUDs. Since he had not been allowed to read and verify the typed statements before signing and no copies were supplied thereafter, he did not know the complete answers and recitals recorded by the Investigating Officer. He first obtained the complete text with the SCN. This reply is therefore his first effective opportunity to examine what has been attributed to him and to retract it. The present retraction is made at that first opportunity. The Department is put to strict proof of any alleged earlier service of either statement by producing the acknowledgement, dispatch record, covering letter or any other contemporaneous proof. In the absence of such proof, the explanation for the timing of retraction must be accepted. Signatures appearing on typed pages do not, by themselves, establish that he was allowed to read and verify the contents or that the answers and signatures were voluntary. The printed sentence that the statement was voluntary cannot decide the very dispute about voluntariness. The adjudicating authority is required to make an independent finding on the surrounding circumstances. The law does not permit reliance on a coerced and uncorroborated statement. He relied upon citations in following cases:-

- In Commissioner of Customs (Imports), Mumbai v. Ganpati Overseas, 2023 (386) E.L.T. 802 (S.C.), paragraph 28, the Hon'ble Supreme Court held that an officer recording a statement under section 108 has an onerous responsibility to act fairly and judiciously with procedural safeguards. The operative words are: "……Certainly a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording

of such a statement since the adjudicating authority exercises quasi-judicial powers....." The Court placed the responsibility of deciding duress or coercion upon the quasi-judicial adjudicating authority.

- In Vinod Solanki v. Union of India, (2008) 16 SCC 537, reported at 2009 (233) E.L.T. 157 (S.C.), the Hon'ble Supreme Court explained that where a confession is retracted, the authority seeking to rely upon it must satisfy the test of voluntariness. The timing, manner and circumstances of retraction are relevant. Here, the timing is directly explained by the Department's failure to supply the English statements until the SCN.
- In K.I. Pavunny v. Assistant Collector, 1997 (90) E.L.T. 241 (S.C.), the Hon'ble Supreme Court recognised admissibility but also stated that practice and prudence require assurance from corroborative evidence when a confession has been retracted.

The present RUDs contain no independent evidence of source, ownership, handover, payment, ticket funding, hotel funding or instruction to avoid declaration. Repetition of an allegation in two statements of the same passenger is not independent corroboration. Nor can the disputed later English statement corroborate itself. Section 138B regulates when a signed statement may be used for the truth of its contents and applies, so far as may be, to adjudication. In Basudev Garg v. Commissioner of Customs, 2013 (294) E.L.T. 353 (Del.), paragraph 14, the Delhi High Court held: *'unless such circumstances exist, the Noticee would have a right to cross-examine the persons whose statements are being relied upon'.* No exceptional circumstance under section 138B(1)(a) is pleaded in this SCN. In Andaman Timber Industries v. Commissioner of Central Excise, 2015 (324) E.L.T. 641 (S.C.), paragraphs 6 to 8, the Supreme Court held that *'not allowing the assessee to cross-examine the witnesses ... is a serious flaw'*. If Shri Jansari's testimony is excluded here, no independent material links him with the seized currency. Further, In Kamlesh Gupta v. Commissioner of Customs (Preventive), Lucknow, (2023) 10 Centax 139 (Tri.-All.); 2023 (386) E.L.T. 581 (Tri.-All.), paragraph 4.4, the Tribunal held: '.....*In my opinion such confirmation of the panchnama behind the back of the appellant, is not*

acceptable evidence in law.....' Paragraph 4.5 further holds that, if the panch witnesses are unavailable, the officers who recorded the panchnama should be examined. He requests that Shri Jansari be examined in the adjudication and made available for cross-examination before his statements are treated as proof of their contents. If the Department claims any exception under section 138B(1)(a), the material and a reasoned proposed finding must first be disclosed to submit his response. He further requested for examination of the officer who recorded his statements, limited to the circumstances of attendance, preparation of the typed text, whether and when the pages were made available for reading and verification, pressure or threat, signatures obtained, and non-supply of copies and claimed it as necessary for a fair determination of voluntariness.

He submitted that the alleged presence of both panch witnesses at Terminal-2 throughout the panchnama requires a clear explanation supported by documentary evidence. Entry into the restricted or security-controlled area of an airport is ordinarily not possible without a valid travel ticket and boarding pass, an airport-entry permit, or specific authorization from the competent authority. If the witnesses were passengers, the Department must produce their tickets, boarding passes, PNR particulars, flight timings and travel records and explain how they could remain present during the entire overnight proceedings without boarding or missing their flights merely to act as witnesses. If they were not passengers, the Department must disclose the authority under which they entered or remained in the restricted area, including their airport-entry passes or other authorization, the identity of the officer who arranged their entry and the purpose for which they were present there. He therefore requests production and cross-examination of both panch witnesses regarding their occupation and employer, passenger or non-passenger status, authority for entering Terminal-2, exact place and manner in which they were contacted, prior acquaintance with any officer, duration of their presence and what they personally witnessed. If either witness is not produced, the officer who selected or called the witnesses and the officers who prepared the

panchnama must be examined and offered for cross-examination on all these matters. In the absence of such evidence and examination, the claimed independent character and credibility of the panch witnesses, and consequently the evidentiary value of the panchnama, cannot be accepted without strict scrutiny.

He further alleged that no airline or travel-agent record is relied upon to show who created the booking, from which account or card payment was made, or who paid for the return journey; No hotel booking voucher, payment record, e-mail, telephone number or account trail is relied upon to prove that he booked or paid for accommodation; No bank, credit-card, UPI or cash-withdrawal trail connects him to the value of Rs. 42,06,340/-, the alleged payment of Rs. 35,000, the alleged payment of Rs. 15,000, or the travel arrangements; No call-detail record, chat, WhatsApp message, e-mail, device extraction or location record proves communication about currency, handover, non-declaration or the unknown Bangkok recipient; No CCTV footage or independent witness proves a trolley-bag handover at New Ranip, at his residence, or at the airport; The alleged unknown supplier in Ahmedabad and unknown recipient in Bangkok were not identified. No identification exercise, sketch, CCTV trace, mobile-number analysis or money trail concerning either person appears in the RUDs.

He further submitted that without admitting the disputed statement dated 06.05.2026, the SCN's own recital says that an unidentified person bore the cost of the air ticket. The later statement does not contain an admission that he himself financed the ticket cost. The SCN nevertheless concludes that he 'financed and arranged the entire trip'. The conclusion contradicts the very recital relied upon. His later statement contains no admission regarding booking and payment for hotel accommodation. The said allegation was made by Shri Jansari alone which is not supported by any booking or payment record. He alleged that the relied-upon records contain material errors that require caution—specifically, an error in mentioning the correct ascertained amount of GBP 20 notes. Instead of mentioning the correct amount as GBP 17,160, it was mentioned as GBP 2,050, and there was also an error in recording the correct time of the event.

He explained the FEMA regulation and Baggage rules under which provisions are made for import and export of currency. Regulation 5 of Notification No. FEMA 6(R)/2015-RB contains the general restriction on import and export of foreign currency, subject to the permissions specifically provided under the Regulations. Regulation 6 deals with foreign exchange brought into India, whereas Regulation 7 deals with foreign exchange taken or sent out of India. He further mentioned that Section 77 of the Customs Act, 1962 places the obligation to declare the contents of baggage upon the owner of the baggage at the time of clearance. In the present case, he was not the passenger and did not carry or present the baggage for Customs clearance and was not present at the Customs declaration point. Therefore, the alleged failure to declare the currency cannot, by itself, constitute a direct violation of Section 77 by him.

He further submitted that the SCN alleges that the Noticee failed to discharge the burden of proof under section 123. However, section 123 applies only to gold, manufactures of gold, watches and such other goods as may be specifically notified by the Central Government in the Official Gazette. The SCN does not refer to any notification by which foreign currency has been brought within the scope of section 123. Therefore, the burden of proof under that section cannot be placed upon him. Further, the foreign currency was not seized from his possession, and he neither claims ownership of it nor admits that he supplied it. The Department must, therefore, prove its allegations against him by reliable evidence. The alleged statement that bank statements would be submitted does not alter this legal position or create any reverse burden under section 123. Non-production of bank statements during the investigation may be considered only along with the other evidence on record; by itself, it does not prove that he owned, purchased or supplied the currency, handed it over to Shri Ajay Jansari, knew its source or intended export, or knowingly assisted in any unlawful act. These facts must first be proved by the Department through reliable and independent evidence.

He further submitted that Penalty under section 114 can be imposed only if the Department first establishes that the goods were liable to

confiscation under a particular clause of section 113 and that the Noticee did, omitted to do or abetted the act that made the goods liable to confiscation. In support of section 113(d), the present SCN relies upon FEMA, 1999, the RBI Regulations and the directions relating to carriage of foreign currency. In Salt Experiences & Management Pvt. Ltd. v. Commissioner of Customs, New Delhi, Final Order Nos. 50149-50152/2026 dated 21.01.2026, paragraphs 31 and 33 to 35 explain that the earlier FERA contained provisions by which specified foreign-exchange restrictions were treated as prohibitions under the Customs Act. FEMA, 1999 does not contain a similar provision. Paragraph 38 holds that Customs authorities cannot decide compliance with RBI instructions under the Customs Act unless they are acting under a valid authorization granted under FEMA. Paragraph 40 consequently holds that confiscation under section 113(d) and penalty under section 114, based only upon FEMA restrictions, amounted to an "extra-legal and egregious exercise of power".

He further submitted that the present SCN does not identify any notification under section 11(3) of the Customs Act by which the FEMA or RBI restrictions relied upon in the SCN have been made enforceable under the Customs Act. It also does not show that the present proceedings have been initiated by an officer acting as a duly authorized FEMA authority and in accordance with the procedure prescribed under FEMA. Therefore, following the decision in Salt Experiences, the SCN has not established the legal basis for treating the alleged FEMA or RBI violation as a ground for confiscation under section 113(d) and for imposing consequential penalty under section 114 upon the Noticee. Sections 113(e) and 113(h) are separate provisions of the Customs Act and cannot be established merely by alleging a violation of FEMA or the RBI Regulations. For section 113(e), the Department must prove that the currency was concealed in a package brought into the customs area for export. For section 113(h), it must prove that the currency was required to be included in a declaration under section 77 and was omitted from, or exceeded the amount stated in, such declaration. Each of these facts must be proved through reliable evidence. In any event, the currency was not recovered from his possession, and he was

not the passenger carrying the baggage or making the declaration under section 77. Even if the currency carried by the passenger is held liable to confiscation under any clause of section 113, penalty cannot be imposed upon him unless the Department separately proves that he knowingly and intentionally participated in, or assisted, the concealment, non-declaration or attempted unlawful export of the currency.

He further submitted that Section 114 applies only where a person does or omits to do an act that renders the goods liable to confiscation under section 113, or abets such an act or omission. The Department must, therefore, first identify and establish the particular clause of section 113 under which the currency is alleged to be liable to confiscation. It must then prove the specific act, omission or abetment attributed to the Noticee. Paragraph 13.1 of the SCN proposes penalty under section 114 without stating whether clause (i), (ii) or (iii) is being invoked. Although clause (i) is reproduced elsewhere in the SCN, the operative proposal does not clearly identify the clause under which penalty is sought or the legal basis for treating the currency as prohibited goods, in Amrit Foods v. Commissioner of Central Excise, 2005 (190) E.L.T. 433 (S.C.), paragraph 5, the Hon'ble Supreme Court approved the finding that "the assessee was not put on notice as to the exact nature of the contravention". The Department must clearly state the precise charging provision and cannot impose penalty under a clause that was not specifically proposed in the SCN. The SCN mainly alleges that he abetted the attempted export of the currency. Where penalty is proposed on the ground of abetment, the Department must prove conscious knowledge and intentional assistance. In Aeromar Logistics (I) Pvt. Ltd. v. Commissioner of Customs, Ahmedabad, Customs Appeal No. 10436 of 2024, Final Order No. 10240/2025 dated 11.04.2025, paragraphs 4, 7 and 8, the CESTAT Ahmedabad set aside penalty under section 114(iii) because no positive act or reliable evidence proving abetment was produced. The Tribunal held that mere facilitation, without knowledge of the unlawful act, does not amount to abetment. In the present case, there is no independent evidence that he owned or supplied the currency, knew that it had been obtained from an unauthorised source, knew that the passenger

would not declare it, instructed the passenger not to declare it, financed the journey or intentionally assisted any unlawful export. No payment record, bank trail, travel record, electronic communication, CCTV footage or independent witness supports these allegations.

He further submitted that Section 117 is a residual provision. It applies only to a contravention, abetment or failure to comply for which no express penalty is elsewhere provided. Textoplast Industries v. Additional Commissioner of Customs, 2011 (272) E.L.T. 513 (Bom.), paragraphs 5 and 6, describes section 117 as residuary and requires an identified obligation or contravention for which no express penalty exists. He prayed to :-

- take the present express retraction of the statements dated 14.02.2026 and 06.05.2026 on record as having been made at the first effective opportunity after copies were supplied with the SCN;
- hold that the disputed statements cannot be relied upon unless voluntariness, a real opportunity to read and verify the typed contents before signature, and the applicable evidentiary safeguards are first established;
- decline to rely on Shri Jansari's statements for their truth without compliance with section 138B and the requested cross-examination;
- hold that the Department has not established any valid section 113 confiscation predicate against him, any conscious act or abetment under section 114, or any separate residual contravention under section 117;
- drop in full the proposals to impose penalties on Shri Jignesh Pawar under sections 114 and 117 of the Customs Act, 1962;
- supply the requested documents and allow the requested examination and cross-examination before adjudication, if any part of the proceedings is proposed to be continued;
- grant a personal hearing and permit the Noticee to be represented by an authorised advocate/consultant; and
- grant liberty to file additional documents, written submissions and a supplementary reply after receipt of the requested material and before the matter is decided.

15. Both noticees were given opportunity for personal hearing on 07.09.2026, 16.09.2026 & 22.09.2026. The letters for personal hearings were issued to both noticees at their recorded address, as well as copies were also emailed to the provided email ID of the noticee. In response to the PH letters, both noticees failed to appear and represent their case. In the instant case, the noticees have been granted sufficient opportunity of being heard in person on three occasions, but they failed to appear on any of them. In view of the above, it is evident that the Noticees are indifferent to the ongoing adjudication proceedings and does not have anything to say in their defence. I am of the opinion that sufficient opportunities have been offered to both Noticees in accordance with the principles of natural justice, and there is no prudence in keeping the matter in abeyance indefinitely.

Discussion and Findings:

16. I have carefully gone through the case records, the Show Cause Notice, the documents relied upon therein, and the statements of the noticees. Further, sufficient opportunities of being heard were provided to both noticees in accordance with the principles of natural justice.

17. I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to Shri Ajaykumar Dineshkumar Jansari and Shri Jignesh Pawar but they did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings was also done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: —

a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

d) by making it available on the common portal;

e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;

f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that the Show Cause Notice alongwith all Relied Upon Documents was duly served to both noticees through Post as well as on their provided mail ids and same is also confirmed by the noticees in their respective written submission. Further, Personal Hearing letters were also duly served to the Noticee through post as well as on their provided mail ids, but they did not respond as if they did not have anything to submit in their defense.

17.1. I find that Shri Ajaykumar Dineshkumar Jansari and Shri Jignesh Pawar have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte on the basis of written submission made by both noticees.

17.2. With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

17.2.1. Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

> 19. No doubt hearing includes written submissions and personal hearing as well but the principle of *Audi Alteram Partem* does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.
>
> 21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another* v. *M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

17.2.2. Hon'ble Tribunal of Mumbai in the case of Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

> "8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

17.2.3. Hon'ble High Court of Delhi in the case of Saketh India Ltd Vs. Union of India reported in 2002 (143) ELT 274 (Del), has observed that:

> "Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant inspite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

17.2.4. The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

> "Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated."

17.2.5. The Hon'ble Supreme Court in the case of Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.) has held as under:

> 7. Our attention was also drawn to a recent decision of this Court in *A.K. Kripak* v. *Union of India* - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of *audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly, he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.

17.2.6. Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)]** has observed that:

> "9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed *ex parte* order against the respondent."

In view of the discussion held in Para 17 to 17.2.6. above, in case of Noticees i.e. **Shri Ajaykumar Dineshkumar Jansari** and **Shri Jignesh Pawar**, I proceed to adjudicate the Show Cause Notice No. VIII/10-17/SVPIA-C/O&A/HQ/2026-27 dated 07.07.2026 ex parte only on the basis of written submission made by both noticees as well as records available on file.

18. The sole issue for consideration in the present proceedings is whether the foreign currency comprising 10,000 USD (100x100), 10,700 GBP (50x214), and 17,160 GBP (20x858), collectively equivalent to Rs. 42,06,340 seized under Section 110 of the Customs Act, 1962, vide Panchnama dated 13/14.01.2026, is liable for confiscation under the

Customs Act, 1962, for being attempted to be exported out of India in contravention of Notification No. FEMA 6 (R)/RB-2015 and the Baggage Rules, 2016 or otherwise and further, whether one blue "Aristocrat" trolley bag used for concealing the said currency is liable for confiscation under Section 119 of the Act, and whether the noticees, Shri Ajaykumar Dineshkumar Jansari and Shri Jignesh Pawar, are liable for personal penalties under Section 114 and Section 117 of the Customs Act, 1962 or otherwise.

19. Before discussing the allegations leveled in the impugned Show Cause Notice (SCN), it is imperative to address the contention raised by both noticees in their written submissions dated 25.08.2026 (received on 31.08.2026). They have argued that the statements tendered by them were involuntary, recorded under duress and pressure, and therefore retracted as they did not represent the true and correct facts. Both of them through their respective written submission alleged that the statements were not voluntary, claiming that their signatures were obtained under duress and pressure. They further alleged that they were not allowed to read and verify the content of the statement. They also further contended that since copies of the statements were not supplied to them until the issuance of the Show Cause Notice (SCN), their reply constitutes their first effective opportunity to challenge and retract them. Shri jignesh Pawar contended that printed sentences cannot decide the voluntariness of statement. Signatures appearing on typed pages donot, by themseleves, establish that he was allowed to read and verify the content or that the answers and signatures were voluntary. Further, Shri Ajaykumar Jansari specifically alleged that he was studied upto 8th standard; statements dated 14.01.2026 & 19.03.2026 were recorded in English and he was not well conversant with english language alongwith the legal and statutory terminology used in the statements. He further alleged that he disputes the portion attributing to him conscious participation in an organized illegal export of foreign currency or knowingly acting as a carried for Shri Jignesh Pawar. In support of their contention, they relied upon the judgments in case of Vinod Solanki Vs.

Union of India [2008 (233) E.L.T 157 (S.C)/(2008) 16 SCC 537], Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate [(2007) 8 SCC 254(SC)] and K.I Pavunny Vs. Assistant Collector (HQ) C.Ex, Cochin [1997(90) E.L.T 241 (S.C), Commissioner of Customs (import), Mumbai Vs. Ganpati Overseas, 2023(386) E.L.T 802(S.C).

In this regard, I find that Shri Ajaykumar Jansari and Shri Jignesh Pawar had explicitly admitted in their respective statements dated 14.01.2026, 19.03.2026, 14.02.2026 & 06.05.2026 that the statements were given voluntarily, as per their own narration, and without any inducement, threat, coercion, or improper means. Furthermore, the said statements were explained to Shri Ajaykumar Jansari in Hindi as well, and after verifying the correctness of the recorded facts, he appended his dated signature in a full and conscious state of mind. The Latin maxim *"Verba volant, scripta manent"* meaning *"spoken words may fly away, but written words remain"* is aptly applicable here.

Furthermore, I note that Shri Ajaykumar Jansari's statements were recorded on two different occasions, leaving a gap of more than two months between his first statement and his subsequent second statement and in each instance, the statement was made under Section 108 of the Customs Act, 1962. In every instance, he affirmed that the statements were given voluntarily, without any threat, pressure, or inducement, and he signed them after verifying the correctness of the facts, in full presence of mind. In each of these statements, he acknowledged and signed the contents after going through his own earlier statement as well as the statement of other noticee i.e Shri Jignesh Pawar. He further confirmed the correctness of the contents of the Panchnama dated 13/14.01.2026, accepting that he was present throughout the entire proceeding and had signed the documents after verifying their accuracy. Moreover, the noticee Shri Ajaykumar Jansari has retracted from his statements after lapse of more than seven months (through his written submission dated 25.08.2026 received on 31.08.2026) from his first statement which indicates a calculated step to just mislead the

proceedings. Shri Ajaykumar Jansari also submitted that he studied up to the 8th standard and is not conversant in the English language, despite the statement being recorded in English. In this regard, I find that in his statement he explicitly claimed that he can read, write, and understand both Hindi and English. Additionally, I find that the written submission made by noticee Shri Ajaykumar Jansari was submitted in the English language only and he himself signed the written submission, which directly contradicts his claim that he is not well-versed in the language. This glaring contradiction renders his claim unconvincing and appears to be a deliberate attempt to mislead the adjudicating authority. The contention that the statements were obtained forcefully is clearly an afterthought and a strategic move to derail or misguide the adjudication process.

Further, I find that Shri Jignesh Pawar also alleged that the statements were involuntary and signatures were obstained under duress and pressure. In this regard, I find that the statement of Shri Jignesh Pawar was recorded on two different occassions i.e 14.02.2026 and 06.05.2026, leaving a gap of almost four months between his first statement and his subsequent second statement and in each instance, the statement were made under Section 108 of the Customs Act, 1962. In every instance, he affirmed that the statements were given voluntarily, without any threat, pressure, or inducement, and he signed them after verifying the correctness of the facts, in full presence of mind. Furthermore, his statements were recorded in a span of alomost four months. In each of these statements, he acknowledged and signed the contents after going through his own earlier statement as well as the statement of other noticee i.e Shri Ajaykumar Jansari. If a noticee alleges that such statements were obtained under coercion, threat, or undue influence, it is expected that the retraction be made immediately, or at least within a reasonable time, along with supporting documentary evidence. In the present case, Shri Jignesh Pawar's statements were recorded on two different occasions i.e. on 14.02.2026 and 06.05.2026. Even during the statement recorded on 06.05.2026 which was conducted almost four months after his initial statement, he did not express

any grievance or objection regarding the voluntariness of his earlier statement. This conduct strongly suggests that the statements were made without duress. If coercion or pressure had truly been applied, he should have objected against the same instantly rather than remaining silent until the issuance of the Show Cause Notice. However, the fact is that Shri Jignesh Pawar consistently provided detailed, specific, and self-incriminating information across the statements, strongly suggests that the statements were made voluntarily.

I find that both noticees alleged that they were not provided any copies of their statements, receiving them only at the time of the SCN issuance, and thus argue that their written submissions constitute their first available opportunity to retract. This assertion is highly implausible; if they were fully aware that statements were forced out of them, they did not require the exact verbatim text of those statements to file a basic protest or general retraction regarding the alleged coercion. Therefore, this assertion is nothing but an afterthought and a dilatory tactic to delay the process.

I find that Shri Ajaykumar Jansari and Shri Jignesh Pawar have failed to furnish any credible documentary evidence to substantiate their allegations of duress, coercion, or threat. It is a settled principle of law that the retraction of a statement recorded under Section 108 of the Customs Act, 1962, must be backed by cogent evidence to prove it was obtained under pressure or inducement. The law presumes a statement made under Section 108 to be voluntary unless compelling evidence to the contrary is presented; an individual is under no legal obligation to endorse a typed statement if it is truly being obtained through coercion. Furthermore, during the recording of their initial statements, Shri Ajaykumar Jansari and Shri Jignesh Pawar provided detailed, specific, and personal information that could only have emanated from their personal knowledge, strongly indicating that the statements were made voluntarily. There is nothing on record to cast the slightest doubt on the voluntary nature of the statement dated 14.01.2026, 14.02.2026, 19.03.2026 & 06.05.2026.

I have also carefully perused the judgments relied upon by the noticees, namely *Vinod Solanki Vs. Union of India [2008 (233) E.L.T 157 (S.C)]*, *Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate [(2007) 8 SCC 254]*, *K.I. Pavunny Vs. Assistant Collector, Cochin [1997 (90) E.L.T 241 (S.C)]*, and *Commissioner of Customs Vs. Ganpati Overseas [2023 (386) E.L.T. 802 (S.C.)]*. There is no dispute regarding the settled legal propositions laid down in these landmark rulings; however, the facts and circumstances of the present case are distinguishable. It is a settled principle that ratios of judgments cannot be applied blindly in a mechanical manner without evaluating the underlying facts. Because the present case features strong, independent physical recovery corroborating a highly consistent, multi-stage admission, the ratios of the cited judgments do not support the noticees' plea to discard these voluntary statements. The primary ratio of *Vinod Solanki*, *Mohtesham Mohd. Ismail*, and *Ganpati Overseas*, dictates that when a confessional statement is retracted, the authority must look at the attendant circumstances and seek independent corroboration rather than relying solely on the confession. In the present matter, the department's case does not hinge solely on the statements of the noticees. The detailed, sequential admissions made by the noticees are fully supported and corroborated by a contemporaneous Panchnama dated 13/14.01.2026, which records the actual physical recovery of undeclared foreign currency in the presence of independent witnesses, alongside relevant material/travel logs. Furthermore, while *K.I. Pavunny* mandates immense caution, it affirms that a retracted statement can be acted upon if the authority is satisfied with its truthfulness and voluntariness. The facts here conclusively satisfy this test; the noticees consistently reinforced their admissions across multiple statements recorded over a span of four months without raising a single grievance before any judicial or medical authority.

In light of the above, the allegations of pressure, duress, and coercion raised by Shri Ajaykumar Jansari and Shri Jignesh Pawar appear to be a clear afterthought, motivated entirely by a desire to extricate themselves from the consequences of their own admissions. The detailed, sequential

admissions made by the noticees are fully supported by the contemporaneous Panchnama, which records the actual physical recovery of the undeclared foreign currency in the presence of independent witnesses. Apart from making a bare retraction, both have failed to submit any corroborative evidence regarding the legitimate procurement of foreign currency. Therefore, their retraction is untenable and cannot be accepted as a valid ground to discard the evidentiary value of their detailed and consistent confession. The comprehensive, consistent, and corroborated nature of their admissions, coupled with the lack of a prompt retraction or any supporting evidence for their claims, leads to the inescapable conclusion that their statements were voluntary and fully admissible under Section 108 of the Customs Act, 1962. Finally, it is well-established that the mere fact that a statement is subsequently retracted does not diminish its inherent evidentiary value. In support of my view, I relied 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 evidence"***.

(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) 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."

(v) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.

(vi) 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 "ln 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."

(vii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. ***As far as retraction***

statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily. *When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

(viii) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. ***At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained****.* ***It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted****. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."*

(emphasis supplied)

(ix) Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30**.

20. Regarding the noticee Shri Ajaykumar Jansari's contention that he was intercepted before reaching the Customs declaration counter and that the department failed to prove a deliberate bypass, I find this argument to be legally untenable and structurally flawed. I find that every procedure

executed by the officers during the Panchnama proceedings was meticulously documented and conducted in the presence of independent panchas, as well as the noticee himself. Under Section 77 of the Customs Act, 1962, the statutory burden rests squarely on the passenger to proactively declare all restricted goods, including foreign currency, before entering the international departure hall. The sequential movement recorded in the Panchnama confirms that the noticee had already cleared immigration and was proceeding toward the final security check; by advancing deep into the international transit zone with a large volume of undeclared foreign currency, the "attempt to export" under Section 113(d) was fully complete and matured. Intent is established not by the physical position of the passenger relative to a counter, but by the objective fact of non-declaration and concealment of currency exceeding permissible statutory limits without any valid RBI permit or Currency Declaration Form. Furthermore, his demand for auxiliary evidence like CCTV footage or airport layout maps is entirely redundant, as the physical recovery of the currency is conclusively established by a contemporaneous, spot Panchnama executed in the presence of independent witnesses and signed by the noticee himself.

Moreover, in his voluntary statement dated 14.01.2026, the noticee explicitly admitted that he was traveling to Bangkok with the foreign currency in his possession. He conceded that the said foreign currency was given to him by his friend, Shri Jignesh Pawar, who instructed him to hand it over to an individual in Bangkok, whose details were to be provided to him upon arrival. He admitted to carrying it without any legitimate documents and without general or specific permission. He categorically admitted that he did not declare the said currency before the Customs authorities, doing so with the explicit intent to smuggle it out of India.

Additionally, the allegations leveled in the Show Cause Notice (SCN) do not rely solely on the Panchnama and the noticee's statement. The noticee has consistently failed to produce any credible documentary

evidence to establish that the said currency was acquired through legitimate channels. In fact, his own admissions confirm that he was not aware of the source, documents, details of authorized agents, or the underlying transactions regarding the seized foreign currency. He merely received the said foreign currency from Shri Jignesh Pawar.

21 Furthermore, it is imperative to note that both noticees, in their respective written submissions, have requested the cross-examination of the Panch witnesses. They contend that this evidence is material to verifying the manner in which the search and inventory proceedings were conducted, the panchas' occupations and employers, their status as passengers or non-passengers, their authority for entering Terminal-2, the exact place and manner in which they were contacted, any prior acquaintance with the officers, the duration of their presence, and what they personally witnessed. Shri Jignesh Pawar further asserted that if these witnesses are not produced, the officer who selected or summoned the panchas, as well as the officer who prepared the Panchnama, must be called for cross-examination. Additionally, both noticees have requested the cross-examination of the officers who recorded their statements. Beyond these requests, each noticee has sought the cross-examination of the other in their individual submissions; Shri Ajaykumar Jansari requested to cross-examine Shri Jignesh Pawar on the grounds of contradictory statements, while Shri Jignesh Pawar demanded to cross-examine Shri Ajaykumar Jansari on the basis that such cross-examination is necessary if Jansari's statement is to be used against him. In support of their contention, Shri Jignesh Pawar relied upon judgment in case of Basudev Garg vs. Commissioner of Customs, 2013(294) E.L.T 353(Del), Judgment in case of Andaman Timber Industries Vs. Commissioner of Central Excise, 2015(324) E.L.T 641(S.C) and Kamlesh Gupta Vs. Commissioner of Customs (preventive) Lucknow (2023) 10 Centax 139 (Tri. All) and Shri Ajaykumar Jansari relied upon judgment in case of Kashmira Singh Vs. State of Madhya Pradesh [AIR 1952 SC 159], Surinder Kumar Khanna Vs. Intelligence officer, Directorate of Revenue Intelligence [(2018) 8 SCC 271] and Hon'ble CESTAT decision in

matter of Natwar lal Sharda (Appeal no. 50198 of 2025 decision dated 06.04.2026), Kamlesh Gupta Vs. Commissioner of Customs (preventive) Lucknow(Customs Appeal No. 70506 of 2019) and B.D Goel Vs. Ebrahim Essa Sodha, 2014 (306) E.L.T 337 (Bom)

I find that the noticee Shri Jignesh Pawar has advanced the arguments that statements recorded under Section 108 of the Customs Act,1962 are subject to Section 138B and insisted upon that examination / cross examination of panch witnesses, co-noticee and officers, as provided under sub-section (2) of Section 138 of the Customs Act, 1962, as the entire case is based merely on statements recorded under Section 108 of the Customs Act,1962. In this regard, I find the provisions of Section 138B as under:

"Section 138B. Relevancy of statements under certain circumstances

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

On perusal of Section 138B of the Customs Act,1962, I find that Section 138B(2)of the Act Ibid, has used the word "shall so far as may be"

which suggest that as far as possible, examination /cross examination may be permitted by adjudicating authority, however, it is explicit that it is not a mandatory provision. The civil proceedings is distinguished from criminal proceedings from degree of evidence as former proceeds on preponderance of probability and later on standard degree of evidence, so in strict sense applicability of Section 138B(2) is found not plausible in all cases in quasi judiciary proceedings. I find that cross examination is not expressly mentioned in Section 124 and Section 122 of Customs Act, 1962. The relevance of cross-examination, the identity of the person sought to be cross-examined, the context of their statements, and the nature of the dispute are all critical considerations. In taxation matters, which are civil in nature, the standard for appreciating evidence is based on the principle of *preponderance of probability*, unlike criminal proceedings where the strict provisions of the Indian Evidence Act apply.This interpretation of the Act has also been supported with plethora of judicial pronouncement including the judgment of the Hon'ble Calcutta High Court in the case of Commissioner Versus M/s. Ashirwad Foundries Private Limited and Anothers, reported at 2022(12) LCX0059, wherein the Hon'ble High Court has observed that:

(i) *"9……. The issue has been well settled and is no longer res integra. The statement recorded from the Director of the respondent is admissible in evidence and the provisions of Section 164 of the Criminal Procedure Code are not applicable. Further it has been held that a confession statement made before the Customs Officer though retracted within the period of 6 days is an admission and binding since the customs officers are not police officers, and also as could be seen from the language of Section 108 of the Customs Act. Further, under the scheme of the Act the right to cross examination is not absolute and denial of cross examination was held to be valid upon sound logic and if the same had been done such orders of adjudication have been upheld. Further it has been pointed out that natural justice must not be strained to become artificial justice; procedural justice according to statutes or under statutory rules are different from concepts of natural justice and the procedure under the statute or the rule must governed and if the customs officers (or the Central Excise Officers) were to conduct himself to a regular*

court of law hearing formal cross examination and applying Evidence Act and Civil and Criminal Procedure Code then it will be physically and literally impossible for him to function as an adjudicating authority….."

21.1 I find that statements recorded under Section 108 of Customs Act are voluntary/ confessional in nature. The statement tendered by Shri Ajaykumar Jansari and Shri Jignesh Pawar under Section 108 of the Customs Act, 1962, contain intrinsic details, which were exclusively known to them only and thus the statements are to be construed as voluntary. It is to be noted that there is a distinction between retraction and coercion. At no point has any evidence of threat or coercion in recording the statement been brought on record. Considering that the statement under Section 108 of Customs Act before a Customs Officer is distinct from a statement before a police officer. It is on the prniciple of natural justice that both sides should be heared 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. However, natural justice does not necessarily mandate formal cross-examination in every case. 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 further support the above view:-

(ii) 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'.

(iii) 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.

(iv) 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.

(v) 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.

Furthermore, I find that it is a well settled position that proceedings before a quasi-judicial authority are not on the same footing as proceedings before a court of law. It is within the discretion of the quasi-judicial authority to decide whether or not to allow request of cross examination, based on the requirements of natural justice in a given case. Denial of such a request has consistently been held not to violate the principles of natural justice in quasi-judicial proceedings, as upheld 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 donot 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. Accordinlgy, 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- futher, 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 circumstancial 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."

j. In case of Subhrabrata Chattaraj Vs. Commissioner of Customs, 2024(02)LCX0413, Hon'ble Tribunal Delhi held that *" Though the appellant has taken plea that the statement as relied upon by the Adjudicating Authorities are of those, whowere not allowed to be cross-examined by the appellant. But, we observe that the appellant's own statement afford sufficient corroboration to those statements. Cross-examination is vital for meeting out the allegations But when there issufficient corroboration to those allegations, denial of cross-examination cannot be held prejudicial.....In the light of the entire above discussion, we do not find any infirmity in the order under challenge, the same istherefore upheld. Consequently, the appeal stands dismissed."*

21.2 I also observe 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. I also find that the statements of officers who recorded their statemant and drawn panchnama were neither recorded nor relied upon in the Show Cause Notice. I note that the Cross-examination is a tool used to challenge or test the veracity of a witness's statement or the reliability of evidence brought against a person. It is not intended to be used by an individual to question the testimony of those persons whose statements have neither been recorded nor relied upon in the Show Cause Notice. I note that it is well settled principle that cross-examination is not an automatic right in adjudication proceedings, particularly when the statements or depositions of the persons sought to be cross-examined have not been relied upon in the Show Cause Notice. Regarding the noticee's reliance on the judicial precedents of *Andaman Timber Industries v. CCE [2015 (324) E.L.T. 641*

(S.C.)], and *Basudev Garg v. Commissioner of Customs [2013 (294) E.L.T. 353 (Del.)]*, I find that the noticee's arguments are legally untenable and the cited case laws are distinguishable from the facts of the instant case. On perusal of case laws, I find that the case of Andaman Timbers Industries was related to price difference between the goods sold at ex-factory and delivery basis in comparison with the goods which were sold to the buyers from their depots and the case of Basudev Garg was primarily related the misdeclaration of Country of Origin for import Ball Bearing, therefore, the cases are distinguished on the facts. The officers merely performed their statutory duties under the Act. The case stands independently on objective, contemporaneous material evidence. In the present case, I note that no statements of any officers have been relied upon in the SCN to support the allegations against the noticees. The entire case is built upon documentary and voluntary statement of the noticee recorded under Section 108 of the Customs Act, 1962, and material seized during the course of the investigation. The panchnama dated 13/14.01.2026, is a contemporaneous record of proceedings drawn in the presence of independent panch witnesses. Even Shri Ajaykumar Jansari in his statement dated 14.01.2026 narrated the events happened/recorded on 13/14.01.2026 wherein he clealrly admitted that after completion of check in formalities, while he was waiting for boarding, he was intercepted by the officers resulted into recovery of foreign currency amounting to 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) which was equivalent to Rs. 42,06,340/-. The noticee Shri Ajaykumar Jansari has not brought forth any credible material to indicate that the contents of the panchnama was fabricated or distorted. General allegations of suppression or distortion, without any supporting evidence or specific contradiction, do not justify the cross-examination of officers who were merely discharging their statutory functions. Further, the request for cross-examination of panch witnessess appears to be an attempt to delay and stretch the adjudication process unnecessarily. In the absence of such justification, cross-examination cannot be permitted merely for the purpose of fishing for a defence or weakening procedural propriety without substance. Since no statements of

the officers have been relied upon in the SCN and the panchnama is duly supported by independent witnesses and corroborative evidence, I find no merit in the request for cross-examination of the officers and independent panch witnessess. In support of this view, I place reliance on the following judgements:

(i) Further, the Hon'ble Kerela High Court in case of ***N.S. Mahesh* v. *CC, Cochin* reported in 2016 (331) E.L.T. 402 (ker.)** dismissed the petition filed by the petitioner against the order of Commissioner of Customs regarding denial of cross examination of the departmental officers. The relevant para of order of Commissioner as reproduced in the judgement is as under:

"i. Cross-examination of all officers who assessed, audited, examined the impugned consignments :

The investigating unit has developed the case on the basis of documents recovered during investigation and other evidences and not relied on statements of any officers who examined/audited/assessed the consignment. Moreover, said officers have discharged these functions as part of their official duty, based on documents provided by the importer. Further noticee No. 2 has not given any reasons for examining the said officer, nor the evidences sought to be brought out from them. It is also learnt that the dockets of the bills of entry relied upon by investigation have already been supplied along with the show cause notice. However, if required, noticee No. 2 can obtain additional set of copies of documents from SIIB, under prior intimation to undersigned. Accordingly, the request for cross-examining all officers who assessed/audited/examined the impugned consignments cannot be acceded to.

(ii) The Tribunal in case of **JSW STEELS LTD. Versus COMMISSIONER OF C. EX., BELGAUM, 2010 (254) E.L.T. 318 (Tri. – Bang.)** also held that the Commissioner adjudicated the classification dispute on the basis of relevant facts ascertained from the assessee. Further, it was held that denial of cross-examination of departmental officer has not violated natural justice as such officers do not contribute to judicial determination of classification Natural justice.

(iii) In the case of M/s Kudrat Corporation relied upon by Noticee No. 3, the Tribunal did not allow the cross-examination of the SIO, holding that the SIO is part of the investigation and that the SCN relied upon various statements, letters, and opinions.

21.4 Lastly, both noticees, in their respective submissions, requested the cross-examination of each other. Specifically, the first noticee argued that cross-examining Shri Jignesh Pawar was necessary to test the contradictory versions regarding the ownership and source of the currency, the booking of travel and accommodation, and his alleged role in the present case. Conversely, Shri Jignesh Pawar requested the cross-examination of Shri Ajaykumar Jansari, provided that the latter's statements were to be relied upon. I find that the noticees who have demanded for cross examination had to have specific reasons for it and in the present case in hand for adjudication, I find that none of the noticees had come forward to the adjudicating authority with specific reasons for cross examination, and simply mentioning that the cross of co-noticees required if the statement of co-noticee is to be relied upon and to test and check his contradictory versions. Further I find that the cross-examination of the co-noticee cannot be granted as they failed to provide any cogent or valid reason for the cross-examination of co-noticees as asked. In support of my view, I rely on the following judgments: -

- 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 lsit of 26 persons for cross examoination without indicating the specific reason for cross examination. The …….it 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).
- Hon'ble CESTAT, Kolkata in its decision in Dipu Das Vs. Commissioner of Customs, Kolkata reported as 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."*

- Union Of India V. Rajendra Bajaj Reported In 2010 (253) E.L.T. (Bom.);
- Jagdish Shankar Trivedi V. Commissioner Of Customs, Kanpur Reported In 2006 (194) E.L.T. 290 (Tri. Delhi);
- N.S.Mahesh V. CC, Cochin (Supra)
- Laxmi V. Collector Of Customs, Lucknow, Reported In 2001 (138) E.L.T. 1090;
- M/S. Om International V. CC, New Delhi Reported In 2007 (217) E.L.T. 88 (Tri. Del);
- Liyakat Shah V. Commissioner Of C.Ex. Indore-II (Bhopal) Reported In 2000 (120) E.L.T. 556;
- Shri Ranchhodbhai M. Patel V. Central Board of Revenue, New Delhi Reported In 2000 (125) E.L.T. 281 (Punj);
- Harinder Pal Singh Shergill V. Commissioner Reported In 2010 (259) E.L.T. A19 (SC);
- M/s. Erode Annai Spinning Mills (Pvt.) Ltd. Reported In 2019 (366) E.L.T. 647 (T).

21.5 Further, the Panchnama was drawn concurrently at the spot of detection (the Airport) in the absolute presence of two independent witnesses who affixed their signatures voluntarily, certifying the sequence of events, recoveries, and inventory precisely as they occurred. The noticee's objection that the witnesses belonged to Surat City and Vadodara City rather than being local residents of the area surrounding the Airport does not invalidate the proceedings. There is no statutory mandate under Section 100 of the Code of Criminal Procedure (CrPC) or the Customs Act, 1962, requiring Panch witnesses to reside in the immediate vicinity of an international airport terminal. Airports are highly secure, transit-heavy zones where finding static local residents is impractical. The primary criterion for a Panch witness is their independence and willingness to voluntarily witness the proceedings. Passersby, travelers, or individuals present at the airport complex from different cities are routinely requested to join as independent witnesses. The fact that these individuals were from

different cities merely confirms their random presence at the airport and reinforces their absolute independence from both the department and the noticee. The core purpose of introducing a third-party independent person as a Panch is to secure an impartial eye-witness to the spot proceedings. Their residential address has no bearing on their ability to see, perceive, and attest to the factual sequence of events. They were chosen strictly to observe the physical realities on the ground, namely- the interception, the search of the noticee's person, and the examination and inventory of his baggage. Moreover, the noticee has failed to produce a single shred of evidence to show any "prior association" or bias between the officers and these randomly selected transit witnesses. it is also a settle legal stand that cross-examination cannot be claimed as a matter of right and the request for cross-examination has to be examined in the context of facts and circumstances of that particular case. In the present case, the Noticees have fully availed the opportunity of examining the veracity of the entire set of documentary and oral evidences sought to be relied upon by the Revenue. Therefore, no evidence is sought to be used against the said noticees behind their back and the principles of natural justice have been duly followed. Therefore, cross-examination is not warranted in the instant case since the cause of Noticees are not vitiated for want of such cross-examination. I find that the noticees have relied upon various judgments pronounced by various appellate foras, wherein the Hon'ble appellate foras has allowed cross-examination. I have gone through the facts and circumstances of such cases and find quite different from the facts and circumstances of the present case. The ratio of the case laws relied upon by the noticees does not apply squarely to this case, and they are distinguished as under:

- **Kashmira Singh Vs. State of Madhya Pradesh [AIR 1952 SC 159]:** Relied upon by Shri Ajaykumar Jansari, this case is distinguishable as it arose out of a murder investigation and was governed strictly by the provisions of the Indian Penal Code and the CrPC, which operates on entirely different parameters than special fiscal statutes like the Customs Act.

- **Kamlesh Gupta Vs. Commissioner of Customs, Lucknow:** This case is distinguishable on facts because, in that matter, the adjudicating authority itself had arrived at a finding regarding the incorrectness of the statement made by the noticee. No such parallel exists in the present proceedings.
- **Surinder Kumar Khanna Vs. Intelligence Officer, DRI:** The reliance placed on this judgment is misplaced as it arose under the strict context of the **Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985**, examining the parameters of conviction based solely on the uncorroborated statement of a co-accused.
- **Natwar Lal Sharda and B.D. Goel Vs. Ebrahim Essa Sodha:** In theses matter, the demands were set aside because the department relied upon unverified, distant witnesses or lacked physical corroboration. Conversely, in the instant case, the Panchnama was drawn on the spot at Terminal-2 in the presence of independent witnesses, and the noticee explicitly admitted the physical recovery of the currency.

In view of the above discussions, I find that demanding of cross examination of witnesses/ co-noticees /officers in the present case is solely for the purpose of delaying the adjudication proceedings and the request of Noticees for cross-examination is not imperative in the facts and circumstances of the case and as such I reject the request for cross examination.

22. I find that the legal provisions for Importation and exportation of foreign currency are 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 about to fly to Bangkok from Ahmedabad (AMD) on 13.01.2026 via VietJet Flight No. VZ751, from the departure hall of the Terminal-2 of SVPIA, Ahmedabad, without making any declaration to the Customs authority. The noticee Shri Ajaykumar Jansari was intercepted by the Customs officials in presence of two independent panchas while he was in waiting area and was about to fly. 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, 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 as amended.

22.1. Regulation 5 and 7 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: -

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: Export of foreign exchange and currency notes:

(1) An authorised person may send out of India foreign currency acquired in normal course of business,

(2)Any person may take or send out of India, -

a. Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;

b. foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder;

c. currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank;

(3) Any person may take out of India, -
a. foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;

b. unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;

(4) Any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

Thus, on a cumulative reading of the above referred regulations it is clear that there is a stringent condition is imposed under the Regulations with regard to export or import of foreign currency and in terms of Regulation 5, a prohibition of export and import of foreign currency except as provided under the regulations. It is observed that the noticee did not make the statutory declaration before Customs authorities since the Forex (10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) carried by Shri Ajaykumar Dineshkumar Janasri 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 and the provisions of Customs Act, 1962. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, clearly stipulates that in the absence of general or specific permission from the RBI, such currency acquires the nature of **prohibited goods**. Therefore, the noticee as a matter of right is not

entitled to import or export in manner as he wishes without complying with the provisions of the regulations.

23. I note that Regulation 5, read with Regulation 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, explicitly **"prohibits"** the **export and import of any foreign currency** without the general or special permission of the Reserve Bank of India (RBI). In the present case, the noticee, Shri Ajaykumar Jansari, has failed to produce any documentary evidence from an authorized authority to establish that he was granted special/general permission by the RBI to export the foreign currency recovered from his possession. Shri Ajaykumar Jansari failed to declare the foreign currency in the prescribed format or file the statutory declaration required to prove that the funds were being carried legally. Furthermore, as admitted in his voluntary statement, the noticee deliberately concealed the said foreign currency inside his trolley bag to evade detection by the Customs officers. These acts of omission and commission constitute a clear violation of Rule 7 of the Baggage Rules, read with Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Consequently, the contention raised by the co-noticee, Shri Jignesh Pawar claiming that the Show Cause Notice (SCN) is legally flawed because it does not identify a specific notification under Section 11 of the Customs Act, 1962, to enforce the FEMA or RBI restrictions is entirely misconceived and lacks merit. The Noticee Shri Jignesh Pawar placed reliance on the Salt Experiences & Management Pvt Ltd Vs. Commissioner of Customs, New Delhi (2026) case to argue that since FEMA, 1999 lacks an automatic "deeming clause," external RBI regulations cannot be enforced as Customs "prohibitions" without an explicit Section 11(3) notification. This argument fails on two fundamental counts: First, Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 imposes a blanket statutory prohibition on the export of foreign currency out of India, subject only to strict, conditional exceptions. Any attempt to export currency in commercial

volumes without authorization breaks these conditions and violates the law and secondly, the jurisdictional bridge is securely anchored inside the Customs Act itself. Section 2(33) defines "prohibited goods" as any goods whose import or export is restricted or prohibited under "**any other law for the time being in force**". Further, Rule 7 of the Baggage Rules,2016 explicitly mandates that the import and export of currency shall be governed in accordance with the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder. Therefore, an unauthorized export in contrary to prohibition imposed under FEMA, 1999 and by RBI automatically satisfies the definition of "**prohibited goods**" under the Customs Act. This makes the currency fully liable to confiscation under Section 113(d) (bringing goods within limits of Customs and contrary to any Prohibition), Section 113(e) (concealment) and Section 113(h) (unreported baggage excess), fully triggering the penal consequences of Section 114. The jurisdictional challenges are therefore rejected.

24. Further, the Noticee Shri Ajaykumar Jansari in his submission claimed that the said seized currency did not fall under the Category of "Contraband /Prohibited Goods". In this regard, 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. I note that Regulation 5, read with Regulation 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, explicitly **"prohibits"** the **export and import of any foreign currency** without the general or special permission of the Reserve Bank of India (RBI). From the records on file, it is crystal clear that Shri Ajaykumar Jansari have not any general or

specific permission with him for the seized currency, which clearly makes the seized currency as "Prohibited Goods". 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 means that if the conditions prescribed for import or export of goods in not complied with, it would be considered to be prohibited goods"*

Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (i.e the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".*

Relying on the proportion of the judgments and regulations stated above, I find that the seized currency brought in customs area for export out from India by the noticee Shri Ajaykumar Jansari is **"prohibited goods"** under the definition of Section 2(33) of the Customs Act, 1962 and

same is liable for confiscation in terms of Section 113 of Customs Act, 1962. Therefore, I rejected the contention of noticee as the same merits no credence.

25. Shri Ajaykumar Jansari through his submission claimed that the seized foreign currency constitutes fees earned from freelance photography assignments and loans from foreign acquaintances to upgrade his camera and its equipment in Bangkok, are entirely frivolous, uncorroborated, and a deliberate afterthought engineered to escape legal liability. This subsequent claim of ownership is completely demolished by his own voluntary statements tendered on 14.01.2026 and 19.03.2026, wherein he categorically admitted, in the presence of independent panchas, that he was carrying the currency without any legitimate documents entirely on the instructions of Shri Jignesh Pawar, who placed the currency in his trolley bag and bore all his travel expenses. I find that in his voluntary statements he confirmed that the said currency did not belong to him and same was handed over to him by Shri Jignesh Pawar for carrying the same out of India. Furthermore, while perusing the Statement dated 14.02.2026 of Shri Jignesh Pawar wherein he denied of having any link with the said currency, Shri Ajaykumar Jansari on contrary reaffirmed in his statement dated 19.03.2026 that the currency was handed over to him by Shri Jignesh Pawar. Therefore, the shifting stances in the Noticee's submission and his sudden claim of ownership are nothing but an afterthought, entirely unsupported by documentary evidence. Therefore, the changing stances in his submission and claiming ownership on the currency is nothing but an afterthought which itself not backed by any supporting documentary evidences.

The Noticee’s defense severely lacks credibility as he has failed to produce a single piece of documentary evidence such as service invoices, loan agreements, banking transactions, or the identities of the alleged foreign lenders rendering it commercially implausible that foreign nationals would advance a massive unsecured loan to a person whom they have just taken freelance service of photography, without any surety/

guarantee or formal terms. Furthermore, even if his version of acquiring the currency through photography assignments for his foreign friends and loans were accepted for the sake of argument, it constitutes a blatant violation of Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, which strictly prohibits resident Indians from retaining foreign currency notes exceeding an aggregate cap of US$ 2,000. However, Regulation 7 of the Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015, issued vide Notification No. FEMA 9(R)/2015-RB dated 29.12.2015 unequivocally mandates that every resident individual in India shall surrender to an authorised person any foreign exchange received, realized, unspent, or unused, whether in the form of currency notes, coins, or travellers' cheques, within a period of 180 days from the date of its receipt, realisation, purchase, acquisition, or from the date of return to India, as the case may be.

Since the Noticee did not possess any general or special permission from the Reserve Bank of India (RBI) and actively attempted to take the currency out of the country without making the mandatory declaration to Customs at the point of departure, he has flagrantly violated the restrictions imposed under the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, read with Rule 7 of the Baggage Rules, 2016. Therefore, relying upon the judgment of the Hon'ble High Court of Madras in Commissioner of Customs (AIR), Chennai Vs. Veeracchi Vithayaphalert [2014 (303) ELT 49 (Mad.)], which upheld the confiscation of foreign currency under identical circumstances of non-declaration and reversed the Hon'ble Tribunal's order [2005 (186) ELT 296 (Tri.Chennai)], I hold that the Noticee has failed to discharge his burden of proof as placed upon him under Section 123 of Customs Act, 1962 and that the seized foreign currency is legally liable for confiscation under Section 113 of the Customs Act, 1962.

26. I further find that the Noticee Shri Ajaykumar Jansari neither voluntarily came forward to declare the possession of the said foreign

currency to Customs nor possessed any document evidencing its legitimate procurement at the time of interception; rather, the illicit carriage was unearthed only after he was intercepted and searched by the Customs Officers. The Noticee, in his voluntary statements, explicitly admitted to the possession, carriage, concealment, non-declaration, and recovery of the foreign currency, which carries absolute evidentiary value under Section 108 of the Customs Act, 1962. The fact that the seized foreign currency was deliberately concealed inside trolley bag conclusively establishes his mens rea and express intention to hoodwink the Customs authorities. By failing to declare these goods, the Noticee flagrantly contravened Section 77 of the Customs Act, 1962, and failed to fulfill the statutory conditions governing the export of foreign currency. Given that the Noticee was entirely ineligible to export such a substantial quantity of undeclared foreign currency, the seized currency cannot be treated as "bonafide baggage" under Section 79 of the Customs Act, 1962, read with Section 11 of Customs Act, 1962 thereof. Consequently, this illicit attempt to export foreign currency out of India in direct violation of the Customs Act, 1962, read with the Foreign Exchange Management Act (FEMA), 1999, and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, renders the currency "prohibited goods" under law. Therefore, I hold that the covert actions of the Noticee squarely constitute an act of smuggling as defined under Section 2(39) of the Customs Act, 1962, thereby rendering the seized foreign currency legally liable for confiscation under Section 113 of the said Act.

27. I further find that the Noticee's contention claiming that merely placing the foreign currency inside an ordinary personal trolley bag does not establish conscious participation in an organized smuggling operation, and that non-declaration alone cannot be equated to organized smuggling is completely vague, unsubstantiated, and wholly unsupported by any cogent or contemporaneous documentary evidence. This defense deliberately misinterprets the explicit mandates of the law, specifically Section 77 of the Customs Act, 1962, which explicitly stipulates that the

owner of any baggage shall, for the purpose of clearing it, make a true declaration of its contents to the proper officer. Furthermore, as per the Customs Baggage Declaration (Amendment) Regulations, 2016 (issued vide Notification No. 31/2016-Customs (N.T.) dated 01.03.2016), it is mandatory for all passengers carrying any dutiable or prohibited goods to declare their accompanied baggage under Section 77. The Noticee's argument entirely overlooks Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, which strictly prohibits the export or import of any foreign currency without the specific or general permission of the Reserve Bank of India (RBI). Crucially, even if the Noticee's shifting version of acquiring the foreign currency as unsecured loans or assignment fees from foreign tourists were accepted for the sake of argument, his possession remains flagrantly illegal under Regulation 7 of the Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 (notified vide Notification No. FEMA 9(R)/2015-RB dated 29.12.2015). This statutory regulation unequivocally mandates that every resident individual in India must surrender any received, realized, unspent, or unused foreign exchange whether in the form of currency notes, coins, or travellers' cheques to an authorised person within a strict period of 180 days from the date of its acquisition, receipt, or realization. Despite these binding statutory obligations, the Noticee has miserably failed to produce a single piece of documentary evidence demonstrating compliance, nor has he submitted mandatory surrender certificates issued by an authorised dealer. In the complete absence of contemporaneous records, invoices, or independent corroborative trails, the Noticee's assertion that the seized foreign currency represent legitimately accumulated currency is entirely devoid of evidentiary value and fails to inspire any confidence. Consequently, this plea is exposed as a transparent afterthought advanced post-seizure solely to construct an *ex-post facto* explanation for illicit possession, and it is hereby rejected.

28. Once the seized goods are held to be liable for confiscation, the next question before me to decide is whether to allow the release of the impugned goods on Redemption Fine or order for absolute confiscation of the same. The provisions related to redemption of confiscated goods are stipulated in Section 125 of the Customs Act, 1962; sub-section (1) of the said section 125 says that

> *"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 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. It is, amply clear from the said Section that, where the confiscated goods are not prohibited for import or export, the Adjudicating Authority is under obligation to release the same. However, in those cases where the confiscated goods are prohibited for import or export, discretion has been vested in the Adjudicating Authority to decide the issue on the basis of the facts and circumstances involved.*

The noticee Shri Ajaykumar Jansari in his submission contended that currency does not warrants absolute confiscation and same is allowed on redemption find and penalty and relied on judgments of Government of India revisionary orders No. 88-90/14-Cus dated 17.04.2014 and GOI Order No. 39/14-Cus dated 05.03.2014 and Hon'ble CESTAT Kolkata decision in Pankaj Mittal Vs. Commissioner of Customs Kolkata (Appeal No. 75538 of 2021) and requested to release the currency on redemption fine and penalty.

28.1. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. There is no bar on the Adjudicating Authority

allowing redemption of prohibited goods on merit. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import/export have not been satisfied, may not be harmful to the society at large. The import/export of Currency are governed by the procedure laid down as per Customs Act, 1962 and FTP 2015-20 as amended vide FTP 2023; from the above cited legal provisions, it is construed that section 125 of Customs Act, 1962 provides that in case of goods other than prohibited goods, the adjudicating authority has to give an option of redemption of the goods on fine in lieu of confiscation and in cases where goods become prohibited by way of some conditions which are not followed in the manner as required, the adjudicating authority may allow redemption of the confiscated goods in that cases also.

In light of the landmark judgment of the Hon'ble Supreme Court in *Om Prakash Bhatia v. Commissioner of Customs*, I find that the said currency carried by Shri Ajaykumar Jansari squarely falls under the definition of "Prohibited Goods". It is a settled position of law, laid down by the Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] *that the option to release 'Prohibited goods' on redemption fine is discretionary*. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that *"that 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; has to be based on relevant consideration.*". Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive."* This position was further reinforced by the Hon'ble Delhi High Court in its consolidated order dated 21.08.2023 in

W.P. (C) No. 8902/2021 (and connected matters), wherein it held that *"an infraction of any condition attached to the import or export of goods brings those goods within the ambit of Section 2(33) of the Act, thereby making their redemption and release subject to the discretionary power of the Adjudicating Officer*."

28.2. In the instant case, the noticee Shri Ajaykumar Jansari failed to declare the foreign currency of 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) which was then equivalent to Indian **Rs.42,06,340/-**, as mandated under Section 77 of the Customs Act, 1962, which were concealed by the noticee in his luggage bag, hence, the goods are liable for confiscation. Also, the noticee, Shri Ajaykumar Jansari, carried the seized amount of 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) equivalent to Indian **Rs.42,06,340/-** without any such general or specific permission. Furthermore, it is pertinent to note that foreign currency cannot be imported or exported without the general or special permission of the Reserve Bank of India (RBI) or an authorized agency. Additionally, he failed to produce legitimate documents verifying the purchase of this foreign currency, offering only a vague explanation that the amount was acquired as fees for the photography assignment provided to foreign tourist as well as through financial assistance/loans from certain foreign friends/acquaintances for purchasing/upgradation of his camera and its equipments. Therefore, keeping in view the binding judicial pronouncements cited above, the intentional nature of the concealment, and the overall facts and circumstances of the case, ***I am not inclined to exercise my statutory discretion to grant an option to redeem the seized foreign currency on payment of a redemption fine as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as :-

28.2.1. In case of Rayavarapu Sri Devi vs. Principal Commissioner of Customs (Adjudication-Air), Chennai (2024) 25 Centax 254 (Mad.)/2025 (392) E.L.T. 72 (Mad.) [19-02-2024], Hon'ble High Court of Madras clearly

held that carrying of foreign currency in contradiction of any regulation. Para 33 to 37 of the said order is as:-

> ***33.*** *Only an authorised person is entitled to send foreign currency acquired in the normal course of business. Any person other than the authorised person may send out of Indian Foreign Exchange obtained by drawl from an authorised person in accordance with the provisions of the Act or Rules or direction made or issued thereunder.*
>
> ***34.*** *Foreign Trade (Development and Regulation) Act, 1992 r/w Foreign Trade (Regulation) Rules, 1993 read with The Foreign Trade Policy 2015-2020 and the provisions of the Foreign Exchange Management Act, 1999 read with The Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 thus contain restriction on import and export of foreign currency.*
>
> ***35.*** *Section 125 of the Customs Act, 1962 gives a discretion to the Adjudicating Authority to impose fine in lieu of confiscation. There is no doubt that the currency that was attempted to be exported out of country without proper declaration by the petitioner was liable for the confiscation under the provisions of the Customs Act, 1962 and the provisions of the regulations mentioned above framed under the provisions of the Foreign Exchange Management Act, 1999.*
>
> ***36.*** *Therefore, without doubt, it is clear that import or export of foreign currency is prohibited if it is in contradiction of the above Regulation.*
>
> ***37.*** *If import or export of "goods" is prohibited either under the provisions of the Customs Act, 1962, or under any other law time being in force, such goods can be ordered to be confiscated under Section 112 & Section 113 of the Customs Act, 1962.*

28.2.2 In case of Arun Kumar vs. Commissioner of Customs (Preventive), Lucknow (2023) 9 Centax 299 (Tri.-All)/2023 (386) E.L.T. 449 (Tri.-All) [07-08-2023], Hon'ble CESTAT, Regional Bench, Allahabad held that importation of currencies has been made without any declaration to the Customs or any authority the same will be prohibited

and would be liable for absolute confiscation under section 111(d) of Customs Act. The relevant paras of the said order are as:-

> ***4.8*** *The Regulation 6 and RBI Circular referred above do permit the importation of the Foreign Currency, the said importation is subject to restrictions to the extent that the appellant was required to make declaration of the Currency which he carries if the same is in excess of US$ 5000/- or equivalent. Appellant has failed to make any such declaration, and hence these currencies have been imported in contravention of the provisions of Regulation 6 read with RBI Circular and have to be held confiscable under section 111 (d) holding the same to be prohibited.*
>
> ***4.9*** *Thus in respect of the currency which is above the value of US $ 5,000/- or equivalent needs to be confiscated by the Authorities. As importation of such currencies has been made without any declaration to the Customs or any authority the same will be prohibited and would be liable for absolute confiscation under section 111(d) of Customs Act.*
>
> ***4.10*** *As the total value of seized Foreign Currency imported in one go exceeds the value of US$ 5000/- the entire currency becomes liable for confiscation. However, currency up to US $ 5,000 (US Dollars Five Thousand only) should have been allowed for redemption under section 125 (2) of the Customs Act.*

28.2.3 Further, Hon'ble Commissioner (Appeals), New Delhi in the matter of Shri Julius Ikebude (2003 (154) E.L.T. 762 (Commr. Appl.)) clearly held that *"Non-declaration of foreign currency at the time of arrival to the proper officer of customs at the Currency Declaration Counter - In accordance with the proviso to Regulation 6(3) of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, issued under clause (9) of sub-section (3) of Section 6 of FEMA, 1999 declaration of foreign currency before the customs officer is mandatory and by not doing so, the import of foreign currency is hit by Section 11 ibid - Violation of Section 77 of the Customs Act, 1962 - Statute has not restricted the power to order absolute confiscation of goods under the provisions of Customs Act, as confiscation ipso facto includes absolute confiscation and therefore no infirmity in the order of absolute confiscation passed by the Adjudicating Authority - Section 111(m) ibid."*

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

28.2.5 The Hon'ble High Court of Bombay in the matter of Fayaz Gulam Godil Vs. Union of India 2016 (338) E.L.T. 42 (Bom.) held-

> *"9. On the other hand, in this case we find that the contentions as raised before us were specifically raised duly noted and considered by the Tribunal. The Tribunal found that once this is an admitted case of illegal export of foreign currency from India by concealing the same in baggage and considering the substantial quantum of currency seized, the discretion ought not be exercised so as to allow release of the same by paying redemption fine, then, this is not a case of any perversity or an error of law apparent on the face of the record. Rather, this is a case where the prohibited act was rightly dealt with. This is not a case where any other provision but Section 113 could be applied. In the facts peculiar to this case, the invocation and application of Section 113 also was permissible. The other appeal, namely, Central Excise Appeal No. 75 of 2015 impugns only the imposition of penalty. For the reasons indicated above, that also fails. Additionally, we find that the penalties were rightly imposed on the appellants. Their complicity and involvement in the illegal act is established."*

28.2.6. The Hon'ble CESTAT, West Zonal Bench, Mumbai in the matter of Suresh Gangaram Hole Vs. Commissioner of Customs, Airport, Mumbai 2015 (327) E.L.T. 555 (Tri. - Mumbai) has held- *"Illegal export of currency is an offence under Foreign Exchange Management Act, 1999 (FEMA) and violation of Reserve Bank of India (RBI) guidelines and as such, impugned currency are 'prohibited goods' as defined in Customs Act, 1962, liable to absolute confiscation."*

The said judgment of Hon'ble Tribunal is again affirmed by Hon'ble High Court of Bombay in Suresh Gangaram Hole vs. Commissioner of Customs, Mumbai 2018 (362) E.L.T. 210 (Bom.)

29. Further, I note that Shri Ajaykumar Jansari has placed reliance on various judgments of the Hon'ble CESTAT, and Orders of Government of India in cases of similar nature, I observe that the facts and circumstances in each of the cases relied upon by the noticee were different and therefore the quantum of punishment and relief have also varied accordingly. I therefore hold that the facts in the present case are altogether different from the facts in all other cases relied upon by the noticee and therefore the decision, as in other cases, ought also to be on the individual merits of the facts and circumstances of this particular case. Considering the facts of the present case before me and the judgements and rulings cited above, the said foreign currency 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858) equivalent to Indian **Rs.42,06,340 (Rupees Forty Two Lakhs Six Thousand Three Hundred Forty only)**, carried by Shri Ajaykumar Jansari is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said seized foreign currency equivalent to Rs. 42,06,340/-, placed under seizure would be liable to absolute confiscation under Section 113(d), 113(e) & 113(h) of the Customs Act, 1962.**

30. I shall now proceed to examine the allegations leveled against the noticee, Shri Jignesh Pawar, in light of his written submissions

30.1 I find that the name of the noticee, Shri Jignesh Pawar, emerged from the statement dated 14.01.2026 tendered by Shri Ajaykumar Jansari. In the said statement, Shri Ajaykumar Jansari explicitly admitted that the seized foreign currency equivalent to Rs.42,06,340/- in Indian currency was handed over to him by Shri Jignesh Pawar, who is friend of him from more than six years. Shri Ajaykumar Jansari explicitly admitted

that his to and fro tickets alongwith the accommodation was booked/arranged by Shri Jignesh Pawar.

Further, I note that the noticee, Shri Jignesh Pawar, in his initial statement dated 14.02.2026, denied having any link with the seized currency. While he admitted his friendship with Shri Ajaykumar Jansari, he denied booking any flight tickets or accommodation for him. He acknowledged meeting Shri Jansari on 13.01.2026 for the purpose of dropping him off at the airport. He also admitted meeting Shri Jansari on 15.01.2026, thereby coming to know that a case of foreign currency smuggling had been booked against the latter. In this statement, he denied any knowledge regarding the procurement of the foreign currency or the contents of the baggage.

However, in his subsequent statement dated 06.05.2026, Shri Jignesh Pawar categorically admitted that he had booked the flight tickets for Shri Ajaykumar Jansari, conceding that his previous denial was incorrect. Vide the statement dated 06.05.2026, he further confirmed that his earlier assertion regarding no knowledge of/ any link with currency was false, admitting that the correct fact was that he had indeed handed over the said currency to Shri Ajaykumar Jansari in a trolley bag. He further detailed the chain of events regarding the procurement of the foreign currency, explaining that it was delivered to his residence by an unknown person whom he had previously met at the airport. This unknown person handed over the foreign currency, equivalent to Rs. 42,06,340/-, and offered him a sum of Rs.35,000/- to clear the currency out of India to Thailand. He affirmed that, as per the plan, he booked the tickets for his friend, Shri Ajaykumar Jansari, who agreed to undertake the task in lieu of a payment of Rs.15,000/- alongwith other expenditures viz. tickets and accommodations. He added that the cost of the tickets was also borne by the said unknown person. However, he expressed his inability to provide the contact details or whereabouts of the aforementioned individual.

Upon a meticulous evaluation of the statement dated 06.05.2026, it is abundantly clear that the noticee, Shri Jignesh Pawar, possessed prior, comprehensive knowledge regarding the illicit foreign currency. The sequence of events narrated by him explicitly demonstrates that when the unknown individual approached him to smuggle the currency out to Thailand, he consciously agreed with him and actively participated in the illegal activity for monetary consideration. Instead of executing the plan personally, he sublet the illegal task to his friend, Shri Ajaykumar Jansari, by offering him a financial inducement of Rs.15,000/- alongside covering all logistics, including air tickets and accommodation. This subletting of work and financial arrangement unequivocally establishes his active *mens rea* (guilty mind) and deliberate intent to smuggle currency for personal enrichment.

Furthermore, his shifting stance deeply undermines his credibility and points directly to his complicity. In his initial statement dated 14.02.2026, he resorted to a blanket denial of any link to the seized currency. However, after a gap of almost three months, he completely reversed his position in his statement dated 06.05.2026, firmly admitting to handing over the currency to Shri Ajaykumar Jansari in a trolley bag and providing a detailed narration of how the currency was acquired. Although the noticee has contended in his subsequent written submission that the confessional statement dated 14.02.2026 & 06.05.2026 were involuntary and tendered under duress and pressure, this afterthought cannot be sustained. Since I have already discussed and evaluated this contention at length in Paragraph 19 hereinabove, I refrain from repeating the same findings here to avoid redundancy. A voluntary confession does not lose its evidentiary value merely because the noticee retracts it much later during adjudication proceedings as a matter of legal strategy. The sheer granularity and precision with which he described the procurement, the involvement of the unknown person, and the financial split of Rs. 35,000/- and Rs. 15,000/- could only be within his exclusive personal knowledge. Such intricate factual details could not have been concocted

by investigating officers under duress. Therefore, I find his shifting stance to be a calculated attempt to evade liability, and I hold that his active, intentional involvement in the smuggling of foreign currency stands fully established.

30.2 Regarding the noticee's contentions that the seized foreign currency was not recovered from his physical possession, that he has neither claimed ownership over it nor supplied it, and that the SCN fails to identify any specific statutory notification bringing foreign currency within the ambit of Section 123 of the Customs Act, 1962. Further he contended that the Show Cause Notice (SCN) lacks independent corroborative evidence such as bank trails, digital communications, or CCTV footage and that the burden of proof cannot be shifted under Section 123 of the Customs Act, 1962. I find the arguments advanced to be legally untenable. As a matter of law, I find that in intricate clandestine operations such as the smuggling of gold or foreign currency, the role of a co-noticee's involvement may extend beyond direct possession of the smuggled goods, encompassing various roles such as facilitator by procuring the goods, facilitating transportation or providing logistical support. Therefore, the mere fact that the contraband was recovered from the physical baggage of the passenger, Shri Ajaykumar Jansari, does not diminish or dilute the noticee’s deep systemic involvement.

It is a well-settled judicial principle that smuggling conspiracies are conceived, planned, and executed in absolute secrecy. Direct ocular or documentary evidence of funding and handovers is seldom available on record. The chain of complicity is cleanly established by the categorical admission of the co-noticee, Shri Ajaykumar Jansari, which stands heavily corroborated by the noticee's own highly detailed subsequent confession dated 06.05.2026. The intricate facts regarding the distribution of commissions and the routing to Thailand could only be known to an active participant, thereby dispensing with the need for peripheral physical trails. Therefore, considering the totality of the circumstances and evaluating the synchronous statements of both the co-noticee and the

noticee himself, the full extent of his complicity becomes undeniable. Based on the compelling evidence detailed on record, I hold that the noticee, Shri Jignesh Pawar, actively, knowingly, and intentionally participated in the smuggling of foreign currency, and his defenses are hereby rejected.

30.3 Furthermore, the noticee's technical argument regarding the misapplication of the USD 5,000 threshold under FEMA Regulations does not absolve him of liability. Whether the USD 5,000 threshold strictly applies as an incoming declaration limit under Regulation 6 or an outward limit under Regulation 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations is secondary to the core infraction. The uncontroverted fact remains that a massive commercial quantity of foreign currency (equivalent to Rs. 42,06,340/-) was actively concealed in a trolley bag and attempted to be exported without any legal drawal documents or RBI permissions. Therefore, the legal premise of the investigation remains unassailable.

30.4 The modus operandi adopted by Shri Jignesh Pawar reveals a high degree of premeditation, structural planning, and deliberate execution. He intentionally capitalized on the occasion of Shri Ajaykumar Jansari's scheduled tour to Bangkok, luring him into the conspiracy by offering a monetary inducement of Rs.15,000/- and bearing all his travel logistics, including air tickets and accommodation. As part of this premeditated plan, he instructed Shri Ajaykumar Jansari to meet him at New Ranip, where he handed over foreign currency equivalent to Rs. 42,06,340/- in trolley bag brought by Shri Ajay Jansari. The cumulative weight of the evidence on record, anchored by the voluntary and detailed confessional statements, conclusively establishes that Shri Jignesh Pawar was the principal operator who orchestrated and executed this smuggling operation. The seized contraband comprised 10,000 USD (100 notes of USD 100), 10,700 GBP (214 notes of GBP 50), and 17,160 GBP (858 notes of GBP 20), aggregating to a total Indian currency equivalent of Rs. 42,06,340/-.

Furthermore, I note that the noticee, Shri Jignesh Pawar, failed to avail himself of the opportunities for a personal hearing granted to him in the interest of natural justice. Despite being served multiple opportunities through letters dated 25.08.2026, 08.09.2026, and 16.09.2026, he chose not to appear. This persistent non-cooperation and failure to defend his contentions during the personal hearing further fortify the conclusion that he has no plausible defense to offer against his active, conscious, and deep-seated involvement in the smuggling of the said foreign currency. His culpability, therefore, stands fully established on record.

30.5 The cumulative oral and documentary evidence on record unequivocally establishes that the noticee, Shri Jignesh Pawar, acted in tandem and hatched a structural conspiracy with the passenger carrier to smuggle foreign currency out of India to Bangkok. The mechanism of this conspiracy has been detailed at length hereinabove: Shri Ajaykumar Jansari acted as the designated carrier who, operating under the precise instructions and orchestration of Shri Jignesh Pawar, collected the foreign currency without any general or specific permission/authorization from the Reserve Bank of India (RBI). Shri Ajaykumar Jansari on instruction of Shri Jignesh Pawar actively concealed the contraband inside his trolley bag and attempted to smuggle it out of India clandestinely without making a mandatory declaration before Customs.

Consequently, under the law of conspiracy, any admissions or statements made by either co-noticee regarding their common design are fully admissible against both. My findings in this regard are aptly supported by the judgment of the Hon'ble High Court of Delhi in the case of ***S.K. Jain Vs. Commissioner of Customs [2016 (333) E.L.T. 89 (Del.)]***, wherein it was held:

> *"In the case at hand, there is a recovery of foreign currency from the co-accused. The relationship of employer and employee has been admitted both by the petitioner and the co-accused.* ***The statement of the co-accused and the other documents seized show that the co-accused was acting on the behest of the petitioner.*** *At this stage, the Court will not dissect the*

evidence against each accused and come to the conclusion that the only evidence against the petitioner is the statement of the co-accused and that being not substantive evidence, no charge can be framed against him. ***It is well settled that in a case of conspiracy if there is reasonable ground to believe that two or more persons have conspired together to commit an offence then by virtue of Section 10 of the Evidence Act, anything said, done or written by one of such persons in reference to their common intention, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy****, as for the purpose of showing that any such person was a party to it."*

Moreover, the Hon'ble Supreme Court in the landmark case of Collector of Customs v. D. Bhoormull [1983 (13) E.L.T. 1546 (S.C.)] explicitly held that the law does not require the department to prove the impossible, but only requires the establishment of a high degree of probability based on the evidence on record. The Hon'ble Apex Court observed that since smuggling operations are cloaked in absolute secrecy, the department is not mandated to mathematically demonstrate every single hidden link in the chain. The relevant portion of the judgment reads as under

"2004 (165) ELT 136(SC) 1999 (109) ELT 247 (T) (1997) 90 ELT 241 (SC) (1997) 89 ELT 646 (SC) 1983 (13) ELT 1546 (SC) —The law does not require the prosecution to prove the impossible. All that is required is the establishment of such a degree of probability that a prudent man may, on the basis, believe in the existence of the fact in issue. The Hon'ble Court further observed that secrecy and stealth being its covering guards, it is impossible for the preventive department to unravel every link of the process."

30.6 Based on the aforementioned findings, I conclude that the noticee, Shri Jignesh Pawar, in active connivance with the carrier-passenger, Shri Ajaykumar Jansari, knowingly engaged himself in the procurement, carrying, removing, keeping, concealing, and delivering of foreign currency with the explicit intention to smuggle it out of the country. These illicit activities were systematically executed without the knowledge or authorization of the Customs authorities, without making the mandatory

statutory declaration under Section 77 of the Customs Act, 1962, and in absolute violation of the statutory frameworks governing the export of foreign exchange under FEMA, 1999 read with the FEMA regulations 2015, all with the clear intent to smuggle the impugned currency.

Accordingly, I find and hold that Shri Jignesh Pawar was the principal orchestrator who actively managed the smuggling of foreign currency from India to Bangkok for personal enrichment. I further find and hold that their joint acts of omission and commission have directly rendered the seized foreign currency equivalent to Rs. 42,06,340/- liable to absolute confiscation under Sections 113(d), 113(e), and 113(h) of the Customs Act, 1962. Consequently, the noticee, Shri Jignesh Pawar, has made himself liable to penal action under Sections 114 and 117 of the Customs Act, 1962.

31. I find that both noticees i.e Shri Jignesh Pawar and Shri Ajaykumar Jansari in their respective submissions prayed for setting aside the proposed confiscation under Section 113 of the Customs Act, 1962, as well as the proposed penalties under Sections 114 and 117 of the Act and placed reliance upon the judgment of Hon'ble Supreme Court in Amrit foods Vs. Commissioner of Central Excise, 2005(190) E.L.T 433 (S.C), Hon'ble CESTAT, Ahmedabad in Aeromar Logistics (I) Pvt Ltd vs. Commissioner of Customs, Ahmedabad (Customs Appeal No. 10436 of 2024 Final Order No. 10240/2025 dated 11.04.2025). I find that the deliberate manner of concealment clearly establishes that the noticee, Shri Ajakumar Jansari, attempted to smuggle the seized foreign currency specifically to evade detection by the Customs authorities. Furthermore, no evidence regarding the legitimate procurement or legal source of this currency was produced either at the time of interception or during the subsequent stages of the investigation. Moreover, the noticee Shri Jignesh Pawar firstly did not claim any link with the seized currency but later in his subsequent statement dated 06.05.2026, he firmly mentioned that the seized currency was handover by him to Shri Ajaykumar Janasri for smuggle out from the country for monetary consideration and again in his written submission he disown the currency claiming that said currency

did not belong to him in any manner; that he neither claimed ownership on currency nor supplied it. I find that the noticee, Shri Jignesh Pawar, has continuously adopted a shifting, deeply contradictory, and evasive stance throughout the course of these proceedings. In his initial statement dated 14.02.2026, he resorted to a blanket denial, claiming he had no link whatsoever with the seized currency. Conversely, after a gap of nearly three months, he completely reversed his position in his subsequent statement dated 06.05.2026. In that statement, he firmly and categorically admitted that the seized currency belonged to him, that he had procured it from an unknown individual at his residence, and that he had personally handed it over to the carrier-passenger, Shri Ajaykumar Jansari, in a trolley bag for the express purpose of smuggling it out of the country to Thailand for financial gain. Strikingly, at the adjudication stage, the noticee has altered his narrative yet again. In his written submission dated 25.08.2026, he has once more disowned the currency, pleading that it did not belong to him in any manner, that he never claimed ownership over it, and that he did not supply it to the passenger. This oscillating trajectory moving from an initial denial to a detailed, fact-specific confession, and finally retreating back to a blanket denial in his written reply unequivocally demonstrates that his defenses are a calculated after-thought systematically deployed at different stages to evade legal accountability and circumvent the statutory penalties under the Act. He merely changing his stance without any supporting documents which establishes that he has nothing to do with the Currency. Both of them completely failed to discharge the statutory burden of proof cast upon them under Section 123 of the Act. They have not provided any supportive documentation to prove that the seized currency was legitimately purchased and was not for smuggling. I further find and hold that their joint acts of omission and commission have directly rendered the seized foreign currency equivalent to Rs. 42,06,340/- liable to absolute confiscation under Sections 113(d), 113(e), and 113(h) of the Customs Act, 1962.

32. Based on the foregoing discussion, and upon a holistic evaluation of the submissions made by both noticees alongside the relevant provisions of the Customs Act, 1962, read with FEMA, 1999, and the Foreign Exchange Management Regulations, 2015, I find that both noticees have failed to submit any valid documentary evidence in their defense. The submission of irrelevant and non-probative documents appears to be a calculated attempt to derail the investigation and evade the clutches of law. The noticees failed to produce any legitimate documents to justify the physical possession of the currency, thereby failing to discharge the burden placed upon them by Section 123 of the Act. Section 114 mandates the imposition of a severe financial penalty on 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. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that *"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute."* For the export of "prohibited goods" (which this currency represents due to the lack of RBI permissions and absolute concealment), Section 114(i) authorizes a penalty not exceeding three times the value of the goods as declared by the exporter or determined by the proper officer. The noticee, Shri Ajaykumar Jansari, actively engaged in physical acts designed to export the currency illegally. Concurrently, Shri Jignesh Pawar actively abetted the smuggling operation by procuring and handing over currency to Shri Ajay Jansari and instructed him to take the foreign currency out of India without any legitimate documentation. These intentional actions directly caused the goods to become liable for absolute confiscation under Sections 113(d), 113(e), and

113(h) of the Customs Act, 1962. Additionally, the trolley bag, which was actively used to conceal the foreign currency, is also liable for absolute confiscation under Section 118 read with Section 119 of the Customs Act, 1962, as trolley bag used to hide smuggled goods. Their distinct individual roles establish full personal and vicarious liability for substantial penalties under Section 114(i) of the Act on both noticees.

32.1 I find that Section 117 of the Customs Act, 1962 provides for the imposition of a penalty on any person who contravenes any provision of the Act, or abets such contravention, or fails to comply with any provision of the Act with which it is his duty to comply, where no express penalty is provided elsewhere for such contravention or failure. The maximum penalty prescribed under Section 117, which was originally Rs. 1,00,000/-, was enhanced to Rs. 4,00,000/- with effect from 01.08.2019.

The findings recorded in the foregoing paragraphs conclusively establish that both noticees have committed distinct and independent contraventions of the provisions of the Customs Act, 1962, apart from rendering the seized foreign currency liable to confiscation. Their acts and omissions demonstrate a conscious disregard of the statutory obligations cast upon them under the Act and the regulatory framework governing the export of foreign exchange.

The evidence on record establishes the following independent contraventions:

- Shri Ajaykumar Dineshkumar Jansari failed to make a true, complete, and correct declaration of the foreign currency carried by him before the proper officer, thereby contravening the mandatory provisions of Section 77 of the Customs Act, 1962.
- Shri Ajaykumar Jansari, acting at the instance and under the instructions of Shri Jignesh Pawar, knowingly attempted to export foreign currency in violation of the restrictions prescribed under the Foreign Exchange Management (Export and Import of Currency)

Regulations, 2015, thereby facilitating and abetting the unlawful export of foreign exchange for personal enrichment.

- Both noticees failed to produce any contemporaneous documentary evidence, including banking records, loan documents, authorised dealer documents, purchase receipts, accounting records, or any other financial documents, to establish the lawful acquisition, possession, accounting, and intended export of the foreign currency in question. Such failure constitutes a breach of their statutory obligations under the Customs Act and the applicable regulatory framework.

Further, Shri Ajaykumar Jansari has unequivocally admitted that he was physically carrying the impugned foreign currency out of India and that the same had been handed over to him by Shri Jignesh Pawar with specific instructions to transport it abroad. The role of Shri Ajaykumar Jansari was not that of an innocent carrier but of an active participant in the attempted unauthorized export of foreign currency for monetary consideration. Simultaneously, Shri Jignesh Pawar was the principal architect of the transaction, having arranged, entrusted, and directed the export of the foreign currency through Shri Ajaykumar Jansari. The acts of both noticees were, therefore, deliberate, coordinated, and in furtherance of a common design to export foreign currency in contravention of the provisions of the Customs Act, 1962 and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

The aforesaid violations are independent statutory defaults and are not merely incidental to the confiscation of the seized currency. They constitute separate failures to comply with mandatory obligations imposed under the Customs Act, 1962, for which no specific penal provision has been provided elsewhere in the Act. Consequently, the ingredients of Section 117 stand fully attracted.

Accordingly, I hold that this is a fit case for the invocation of the provisions of Section 117 of the Customs Act, 1962 against both Shri

Ajaykumar Jansari and Shri Jignesh Pawar. Having regard to the nature and gravity of the contraventions, the conscious and coordinated manner in which they were committed, and the complete absence of any bona fide explanation or supporting documentary evidence, I hold that both noticees are liable to penalty under Section 117 of the Customs Act, 1962.

33. Accordingly, I pass the following Order:

O R D E R

i.) I order **Absolute Confiscation** of the seized foreign currency, comprising 10000 USD (100x100), 10700 Pound (50x214), 17160 Pound (20x858), having a cumulative re-determined Indian currency of **Rs.42,06,340 (Rupees Forty Two Lakhs Six Thousand Three Hundred Forty only)**, which was attempted to smuggle out of India by way of concealing the same in trolley bag by Shri Ajaykumar Dineshkumar Jansari, contrary to the prohibition imposed in terms of Notification No. FEMA 6 (R)/RB-2015 dated 29/12/2015 [Foreign Exchange Management (Export and Import Currency) Regulations, 2015 read with Customs Act, 1962 and Baggage Rules, 2016 and were seized vide Panchnama dated 13/14.01.2026 and Seizure Memo dated 14.01.2026, under Sections 113(d), 113(e) and 113(h) of the Customs Act, 1962, read with the FEMA Regulations, 2015 and Rule 7 of the Baggage Rules,2016.

ii.) I order absolute confiscation of 01 Blue Trolley Bag Marked as “Aristocrat” used to conceal the foreign currency, seized vide Panchnama dated 13/14.01.2026 and Seizure Memo dated 14.01.2026, as packing and concealment material of the foreign currency attempted to be illegally exported/ smuggled, under Section 118 read with Section 119 of Customs Act, 1962.

iii.) I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs Only)** upon the Noticee, Shri Ajaykumar Dineshkumar Jansari, under Section 114(i) of the Customs Act, 1962.

iv.) I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs Only)** upon the Noticee, Shri Jignesh Pawar, under Section 114(i) of the Customs Act, 1962.

v.) I impose a further penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon the Noticee, Shri Ajaykumar Dineshkumar Jansari, under Section 117 of the Customs Act, 1962.

vi.) I impose a further penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon the Noticee, Shri Jignesh Pawar, under Section 117 of the Customs Act, 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-17/SVPIA-C/O&A/HQ/2026-27 dated 07.07.2026 stands disposed of.

Digitally signed by SHREE RAM VISHNOI
Date: 14-10-2026 15:28:36

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-17/SVPIA-C/O&A/HQ/2026-27 Date:14.10.2026
DIN: 20261071MN00006BF899

By SPEED POST A.D.

To,

01) Shri Ajaykumar Dineshkumar Jansari,
B/37/ F.F, Paramsukh Society,
Nr. Kamdhenu Society, B/H Bobbin Factory,
Ranip, Ahmedabad, Pin – 382480, Gujarat, India.

02) Shri Jignesh Pawar,
S/o Shri Sureshbhai Nathubhai Pawar,

14, Sarabhai Block, Pitaliya Bamba,

Ahmedabad, PIN 380001

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in.
6. Guard File.