

	अपर आयुक्त, सीमा शुल्क कार्यालय OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE, SURAT 4 th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 Tel. 0261-2990051 Email: customs-suratairport@gov.in	 Skill India कौशल भारत - कुशल भारत
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PREAMBLE

A	डी आई एन/DIN	20250471MN0000723427
B	फाइल संख्या /File No.	VIII/26-40/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and Date	VIII/26-40/AIU/CUS/2023-24 dated 15.05.2024
D	ऑर्डर-इन-ओरिजिनलनंबर/ Order-In-Original No.	36/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	01.04.2025
F	जारी करने की तिथि / Date of Issuance	01.04.2025
G	द्वारा पारित / Passed by	Anunay Bhati Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and Address of Passenger	Shri Nirajkumar Rajkumar Sindhi, Kumbharwad, B/h Ramji Mandir, Kanpura, Vyara, Tapi, PIN-394650, Gujarat

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए यह प्रति निशुल्क प्रदान की है ।
 1. This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश से अपने को व्यक्ति महसुस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है । इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट का स्टाम्प लगा होना चाहिए ।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhavan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed within sixty days of receipt of this order by the post or person. It should bear a court fee stamp of appropriate value.

3. अपील के साथ निम्नलिखित चीजे संलग्न की जाए ।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश की प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोर्ट फी स्टाम्प लगा हो ।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

BRIEF FACTS OF THE CASE:

Shri Nirajkumar Rajkumar Sindhi, Age 33 years, having address at Kumbharwad, B/h Ramji Mandir, Kanpura, Vyara, Tapi, PIN-394650, Gujarat (as per passport) holding passport bearing No.V2370048 (hereinafter referred to as "Passenger/Noticee") was departing for Sharjah vide Air India Flight No. IX 171 scheduled on 24.01.2024 from Surat International Airport.

2. During frisking and hand baggage scanning by the CISF unit ASG Surat, one passenger, Shri Nirajkumar Rajkumar Sindhi, was found to be carrying foreign currency. The CISF unit ASG Surat submitted a Seizure list as per which the foreign currency recovered from the above passenger by the CISF is as follows:

Sr No.	Name of the passenger	Details of foreign Currency recovered by CISF
1.	Shri Nirajkumar Rajkumar Sindhi	35,000 USD

3. The CISF unit ASG Surat handed over the passenger along with his baggage, the above-mentioned recovered foreign currency, and the Seizure List drawn by them (CISF) to the Customs, Surat International Airport on 24.01.2024. The passenger was then brought to the Customs office at the Arrival Area of Surat International Airport. The Customs officer asked the passenger whether he had anything to declare to Customs, which the passenger denied. Thereafter, the customs officer informed the passenger that they would conduct a personal search and a detailed examination of his baggage. Then, the customs officers conducted a personal search of the passenger. However, the passenger politely denied the same. The customs officers asked the passenger whether he wanted to be searched in front of the executive magistrate or superintendent of customs, and the passenger gave his consent to be searched in front of the superintendent of customs. Thereafter, the Customs Officers physically searched the passenger, but nothing suspicious was found. However, upon search of the blue colour backpack of the brand "FBFASHION" carried by the passenger, it was noticed that Indian Currency was concealed in the said bag. The entire currency was taken out, counted, and found to be Rupees One Lakh. The details of total foreign/Indian currencies recovered from the said passenger, including the currency detained by the CISF, are reproduced as follows:

Sr. No.	Name & Passport No. of passenger (Shri)	Type of Currency	Deno minati on	No. of Notes	Total	Conversion Rate (Notfn. No. 04/2024-Customs (NT) dated 18.01.24	Total Value in INR
1.	Nirajkumar Rajkumar Sindhi (V2370048)	US Dollars	100	350	35000	82.35	28,82,250
		Indian Rupees	500	200	100000	--	1,00,000
						TOTAL	29,82,250

On being asked about any legal document showing the purchase/ownership of these 35000 USD, the passenger informed that at that moment he did not have receipt of these 35000 US Dollars. Thereafter, the bag, belonging to the passenger, was scanned, however nothing else suspicious was found.

4. The following documents were withdrawn from the passenger, Shri Nirajkumar Rajkumar Sindhi, for further investigations:

- Copy of Aadhar Card bearing No. 7820 3146 8614.
- Copy of boarding pass indicating Seat No. 15D, PNR No. RZRT5F from Surat to Sharjah by flight No. IX- 171 on 24.01.2024.

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- Passport No. V2370048 dated 05.11.2021 issued at Surat and valid upto 04.11.2031.

5. The foreign currency, i.e. USD 35,000/- (USD Thirty-Five Thousand only) and Indian Currency, viz., INR 1,00,000/- (Rupees One Lakh only), which were recovered from the passenger Shri Nirajkumar Rajkumar Sindhi were placed under seizure under Panchnama proceedings dated 24.01.2024, on a reasonable belief that the said currencies, were attempted to be smuggled outside India without declaring to Customs Authority and were liable to confiscation under provisions of the Customs Act, 1962. The blue colour backpack of the brand "FBFASHION" carried by the passenger and used for concealment of currency was also placed under seizure.

6. A statement of Shri Nirajkumar Rajkumar Sindhi was recorded on 24.01.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was a married person staying with his family at Kumbharwad, B/h Ramji Mandir, Kanpura, Vyara, Tapi, PIN-394650; that his family consisted of his parents, wife and one son; that he was a stock market trader; that he had completed studies up to M. Tech and could read, write and understand Hindi, English and Gujarati languages;
- that this was the second time he was travelling to Sharjah; however, he had travelled four-five times to other foreign countries;
- that he was shown Panchnama dated 24.01.2024 drawn at International Airport, Surat and after perusing and understanding it, he had put his dated signature on the panchnama in token of acceptance of the facts stated therein;
- that he was going to Sharjah on 24.01.2024 via Air India Express Flight No. IX-171 from Surat International Airport; that the CISF unit ASG Surat stopped him after clearing security check of Airlines in the departure hall of Surat International Airport; that during the handbag checking by the CISF officers, they found foreign currency from his handbag, amounting to USD 35,000/-, that he had not declared before Customs that he was carrying US Dollar with him to Sharjah;
- that during a check by Customs, Rupees One Lakh (Rs. 1,00,000/-) were also found from a blue colour backpack of brand 'FBFASHION'. The details of currencies so recovered from his possession are as given under :

Type of Currency	Denomination	No. of Notes	Total
US Dollar	100	350	35000
INR	500	200	100000
TOTAL			USD 35,000/- & INR 1,00,000/-

- that at that time, he did not have any purchase vouchers or legal documents for said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 24.01.2024.
- that the said foreign currency belonged to him, and he would submit the valid legal documents for the exchange of currency recovered from his possession within ten days; that the money belonged to him and he had earned the same

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from his profession and that he got it exchanged from the approved money exchanger; that he was carrying cash with him to save 2-3% exchange fee; that some part of the currency was to be used for shopping and the remaining for investment purpose;

- that he was aware that carrying the said currencies without declaring the same is an offence under the Customs Act, but he took a chance to gain 2-3% of the exchange fee; that he admitted that he was aware that he had committed an offence by not declaring the same to Customs for which he would have to face the consequences as prescribed under Customs law.

7. LEGAL PROVISIONS RELEVANT TO THE CASE

- a)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992- “the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.”
- b)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992- “All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.”
- c)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992- “no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”
- d)** 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.”
- e)** As per Section 2(3) – “baggage” includes unaccompanied baggage but does not include motor vehicles.
- f)** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
 - a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and
 - e. any other kind of movable property;
- g)** As per Section 2(33) of Customs Act 1962, “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- h)** As per Section 2(39) of the Customs Act 1962- 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

- i)** As per Section 11H (a) of the Customs Act 1962- “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;
- j)** As per Section 77 of the Customs Act 1962, the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- k)** As per Section 113 of the Customs Act 1962, the following export goods shall be liable to confiscation:-
 - (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
 - (e) any goods found concealed in a package which brought within the limits of a Customs area for the purpose of exportation;
- l)** As per Section 114 of the Customs Act 1962, 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;
- m)** As per Section 119 of the Customs Act 1962- “any goods used for concealing smuggled goods shall also be liable for confiscation.”
- n)** 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.”
- o)** As per Rule 7 of the Baggage Rules, 2016,- “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.”
- p) FOREIGN TRADE POLICY 2015-20**
Para 2.45- Export of Passenger Baggage
 (a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. The Provisions of the Para shall be subject to Baggage Rules issued under the Customs Act, 1962.
- q) 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

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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 authorised 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.

r) **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 3: Export and Import of Indian currency and currency notes :

- 1) Save as otherwise provided in these regulations, any person resident in India,
 - (a) may take outside India (other than to Nepal and Bhutan) currency notes of the Government of India and Reserve Bank of India notes up to an amount not exceeding **Rs. 25,000/-** (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;

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.

Import of foreign exchange into India: -

REGULATION 6: Import of foreign exchange into India:-

A person may -

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

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

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

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;

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- 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.

s) Notification No. FEMA 11(R)/2015-RB Dated 29.12.2015: Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015.

REGULATION 3: Limits for possession and retention of foreign currency or foreign coins:-

For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely:-

- i) Possession without limit of foreign currency and coins by an authorised person within the scope of his authority;
- ii) Possession without limit of foreign coins by any person;
- (iii) Retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US\$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques;
- a. was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
- b. was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or
- c. was acquired by him by way of honorarium or gift while on a visit to any place outside India; or
- d. represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

CONTRAVENTION AND VIOLATION OF LAWS

8. It therefore appeared that:

(i) The passenger, Shri Nirajkumar Rajkumar Sindhi, attempted to improperly export/smuggle the seized foreign currency (USD 35,000) and Indian currency (Rs. 1,00,000/-) by concealing in his baggage. He was unable to produce any document evidencing legitimate procurement of the said seized foreign currency in terms of Regulation 7(2) & 7(3) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015. He also failed to produce any declaration, if any, made in compliance with the

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provisions of Section 77 of the Customs Act, 1962. He had violated Regulation 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, by attempting to illegally export the foreign currency seized from his possession. The passenger had dealt unlawfully with, acquired, held and possessed the seized foreign currency and attempted to improperly export or physically transfer the same at a place outside India. He had thus contravened Section 3 and Section 4 of the Foreign Exchange Management Act, 1999. The amount of foreign currency found in his possession exceeded the limits prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. Thus, The passenger violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. Further, the passenger had also violated Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, as the amount of Indian currency carried by him (Rs. 1,00,000/-) to a foreign destination exceeded the limits prescribed under the said provisions. It appeared that by virtue of restrictions on the export of foreign/Indian currency and non-compliance with the statutory requirements, the seized foreign/Indian currency appeared to be "prohibited goods" in terms of Section 2(33) of the Customs Act, 1962. Therefore, it appeared that the passenger indulged in smuggling as defined under Section 2(39) of the Customs Act, 1962, and the attempted export constituted an act of "illegal export" as defined under Section 11H(a) of the Customs Act, 1962. The passenger had thus violated Para 2.45 of the Foreign Trade Policy 2015-20, read with Section 3(2), 3(3) and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, further read in conjunction with Section 11(3) of the Customs Act, 1962.

- (ii)** The seized foreign currency (US Dollar 35000/-) equivalent to Indian Rs. 28,82,250/- (Rupees Twenty Eight Lakh Eighty Two Thousand Two Hundred Fifty only) as per Notification No. 04/2024-Customs (NT) dated 18.01.2024 and Indian currency Rs 1,00,000/ (Rupees One Lakh only), which were attempted to be improperly and illegally exported by the passenger by concealing it in his baggage in violation of the Customs Act, 1962, Baggage Rules, 2016 and other laws in force appeared liable to confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. The said act of the passenger appeared to be an act of "smuggling" as defined under Section 2(39) of the Customs Act, 1962. The passenger, by his above-described acts of omission and commission, had rendered the seized foreign currency (USD 35000) and Indian currency (INR 1,00,000/-) liable to confiscation under Section 113 of the Customs Act, 1962, and therefore, he appeared liable for penalty under Section 114(i) of the Customs Act, 1962.
- (iii)** The baggage, i.e., one blue backpack of the brand "FBFASHION" used for concealing the impugned foreign currency, also appeared liable for confiscation under Sections 118 & 119 of the Customs Act, 1962.

9. Accordingly, a Show Cause Notice bearing F. No. VIII/26-40/AIU/CUS/2023-24 dated 15.05.2024 was issued to Shri Nirajkumar Rajkumar Sindhi calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on the 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:

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- (i) The foreign currency (USD 35000/-) equivalent to INR 28,82,250/- (Rupees Twenty Eight Lakh Eighty Two Thousand Two Hundred Fifty only) and Indian currency Rs. 1,00,000/- (Rupees One Lakh only), totally amounting to INR 29,82,250/- (Rupees Twenty Nine Lakh Eighty Two Thousand Two Hundred Fifty only) seized vide seizure order dated 24.01.2024 under Panchnama proceedings dated 24.01.2024 should not be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) The baggage, one blue colour backpack of the brand "FBFASHION" seized vide Seizure Memo dated 24.01.2024 should not be confiscated under Section 118 and Section 119 of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon him under Section 114(i) of the Customs Act, 1962.

DEFENCE REPLY

10. The noticee referenced in the Show Cause Notice was formally requested to submit a defence response within the specified timeframe. The noticee, Shri Nirajkumar Rajkumar Sindhi, submitted his defence reply dated 21.08.2024 (received on 4.09.2024), enclosed by relevant enclosures. Furthermore, during the personal hearing concerning this matter, held on 13.03.2025, Shri Ravi Kumar Singh and Shri Dheeraj Kumar, Authorized Representatives of Shri Nirajkumar, represented him and submitted defence submission 10.03.2025 enclosing copies of Vakalatnama and Balance Sheet for Financial Year 2023 to 15.01.2024. Additionally, in an email dated 16.03.2025, Shri Nirajkumar Rajkumar Sindhi informed that they had provided two defence submissions to date; however, they are relying on the legal defence submissions responding to the Show Cause Notice provided by Shri Ravi Kumar Singh and Shri Dheeraj Kumar via email dated 10.03.2025. Consequently, as requested by the noticee, the defence submission dated 10.03.2025 provided by Shri Ravi Kumar Singh and Shri Dheeraj Kumar, which was reiterated during the personal hearing, has been formally acknowledged and taken on record.

In the defence submission, he reiterated the facts of the show cause notice issued to him and inter alia submitted:

- that the noticee was scheduled to depart for Sharjah International Airport from Surat Airport along with certain foreign currency for the purposes of touring, lodging, boarding expenses and keeping in mind the investment purposes to further earn foreign exchange for his country;
- that the noticee, being completely aware of his duties and obligations, was himself going to report about the currency with him to the customs. However, before he could get any opportunity to explain himself, he was misunderstood by the officers of Central Industrial Security Forces (CISF), and the said officers took the noticee and the said currencies to the customs Officers with an entirely concocted story as to how the notice was trying to smuggle the said currency;
- that the noticee had a total of total US \$ 35000 and INR 1,00,000/- total valued at Rs. 29,82,250/- with him, which he was carrying to meet the expenses and investments abroad;
- that at the very outset, the noticee respectfully submitted before the officers that he is a law-abiding citizen of India with deep-rooted ties to society. He

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hails from a well-reputed family comprising his parents, wife, and son. The Noticee further clarified that he possessed the financial capacity to carry the said currency as he is a full-time Trader at Jainam Broking Limited, a stock broking firm, where he has been employed for the past 2.5 years. Prior to this, he worked as a Trader at Prarthana Enterprise for five years. Additionally, he is a Partner at Shelby Enterprise LLP, a money-lending firm. As a salaried professional and a responsible, tax-paying citizen, the noticee has always maintained financial transparency and conducted his affairs in full compliance with the law. The noticee has undertaken multiple visits to foreign destinations in the past without ever coming under the adverse notice of the Customs Department or facing any issues under the Foreign Exchange Management Act, 1999 (FEMA). He has never engaged in any unlawful activity, nor has he attempted to evade any statutory obligations. Furthermore, the noticee has no history of defaults and has never been involved in any criminal or customs-related cases, underscoring his commitment to lawful conduct and ethical business practices.

- that the noticee respectfully informed the Customs Officers that, at the time, he did not have necessary documents on hand but assured them that the said documents were available at his residence and would be submitted to the department within ten days of notice. Despite his clear assurances, the officers disregarded his request and proceeded to book a false and fabricated case against him. Nevertheless, the noticee is now submitting all necessary documents, including proof and income tax records certified by his Chartered Accountant ("CA"), which clearly establish his financial capacity and legitimacy in acquiring the said currency.
- that the legal provisions mentioned in the SCN are not applicable in the matter of noticee as currency was wrongly seized by the Customs;
- that there was no reasonable basis to believe that the noticee was attempting to smuggle the recovered currency out of India without declaring it to Customs. On the contrary, the noticee was in possession of legally acquired foreign currency and was in the process of declaring the same when it was mistakenly misinterpreted by the CISF personnel; he further submitted that there was no attempt at concealment; the currency was simply kept in the bag for safekeeping, and the currency was not ingeniously concealed. It was not their intention not to declare the currencies to customs;
- that the explanations and statements given by the noticee are self-explanatory and have merit for releasing the currencies to the noticee or the equivalent Indian Currency;
- that the noticee has not violated any provisions of Customs/ FEMA, etc., and there was no mala fide or guilty knowledge on the part of the Noticee with regard to the seized currency; there are a series of judicial pronouncements which says that where the default in following the legal provisions is due to ignorance of law without mala fide intention, no penalty is imposable;
- that the noticee is a well-established businessman in India with strong ties to society; that he has no criminal record or habitual offender and has never been subject to any adverse noticee by the department in the past;
- that export of foreign currency is not prohibited, and its import or export is subject to laws and rules and regulation issued by the competent authority

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and foreign currency is not “prohibited” under the Customs Act,1962 and FEMA, and given this, the foreign currencies carried by the Noticee cannot be considered as prohibited goods, and hence the officer is bound to release the goods on redemption. The noticee has relied upon the following case laws in support of their contention:

- (i) Horizon Ferro Alloys Pvt vs Union of India
- (ii) CC (AIRPORT), Mumbai vs. Alfred Mrnezes {2009 (242) ELT 334 (Bom);
- that Section 125 of the Customs Act,1962, vests the power to grant redemption of confiscated goods, and the adjudicating authority has the discretion to give an option of redemption fine in case of prohibited goods; however, for other goods, it is mandatory to give the option of redemption of goods on payment of a fine;
- that foreign currency attempted to be exported by noticee are not to be treated as ‘prohibited goods’ and, therefore, the goods are not liable for confiscation under the provisions of section 113 of the Customs Act,1962. The notice has relied upon the decision in the case of Commr. of Customs (Prev), west Bengal vs India Sales Internation (2009) ELT 182 (Cal);
- that after extolling and analysing the meaning, principles and differences between ‘prohibition’ and ‘restriction’, the notice has veered to the conclusion that foreign currency is not prohibited for import/export and, therefore, an option should be given to the importer/exporter for the redemption of the goods, even if the importer/exporter fails to fulfil the condition for export of currency;
- that in support of his case, the noticee further relies upon the following case law: Rajesh Kumar Ishwar Parikh vs Ahmedabad, dated 11 December 2020.

“9.6 As per their statements that they were taking this foreign currency for business purposes, which is otherwise permitted by the Reserve Bank of India therefore, it cannot be said that the appellant had any mala fide intention to export the foreign currency as they do not have any gain even if permission is not obtained. As regards the judgments cited by Learned Authorized Representative regarding absolute confiscation of foreign currency, I find that there is no trite law that, in each and every case, the confiscation of goods should be made absolute. The issue of whether confiscation of goods should be made absolute or conditional, such as redemption on payment of fine, has to be decided on the basis of facts of each case. It is also not in dispute that the judgments cited by the learned counsel hold that the foreign currency can be released on payment of fine in lieu of confiscation. Therefore, considering the facts and circumstances of the present case, I am of the view that the appellant is entitled to the release of foreign currencies on payment of a fine. Accordingly, as regards the appeal of Mr Rajesh Kumar Ishwar Parikh, I hold that the confiscated foreign currencies have to be released on payment of a fine of Rs.2 Lacs.

Similarly, the confiscated foreign currency from Mr. Ashish Kumar Dahya Bhai Patel has to be released on payment of fine of Rs. 1.0 Lacs.”

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9.7 Considering the same facts and circumstances and the reasons stated above I am of the view that the penalty imposed on both the appellants are very harsh and deserves to be reduced substantially.

9.8 Accordingly, I reduce the penalty on Mr. Rajesh Kumar Ishwar Parikh to Rs.1 Lac. And in respect of Mr. Ashish Kumar Dayabhai Patel the penalty is reduced to Rs.50,000.”

Mohammad Mustafa vs Hyderabad- Customs on 8 April 2024.

“25. It is further urged that the proceedings are also ab initio void as search and seizure done by at the end of Customs is wholly without jurisdiction. It is also urged that foreign currency cannot be confiscated absolutely. Reliance is placed on the ruling of the Bombay High Court in Commissioner of Customs Vs Rajinder Nirula reported at [2017 (346) ELT 9 (Bom)] wherein Hon'ble High Court held -

The Hon'ble High Court held - we do not find any merit in the learned counsel's argument that the course adopted by the tribunal was impermissible. The definition of goods includes currency and negotiable instruments under Section 2(22)(d). When the power of redemption is exercised, what the law postulates is that there is an option to pay fine in lieu of confiscation. Section 125 (1) of the Customs Act 1962 provides that whenever confiscation of any goods is authorised by this act, the officer adjudicating it may, in the case of any goods, the importation of exportation where of his prohibited under this act or any other law for the timing in force, and shall, in the case of any of the other goods, give to the owner of the goods or where such owner is not known, the person from whom or whose possession such goods have been seized, an option to pay, in lieu of confiscation, such fine as the said officer thinks fit.

It was further held by High Court - we do not find that there was any error or lack of power. The seized currency was released and by imposing fine and penalty. In the present case, the Tribunal, therefore was justified in holding that since the foreign currency is redeemed on payment of fine, the penalty also deserves to be scaled-down or reduced. This is essentially a finding of fact rendered after consideration of the materials on record. We do not find that the tribunal was in error in adopting the course it has adopted. Accordingly the High Court dismissed the appeal of revenue.

28. In view of aforementioned findings, we find that there is only venial breach of the provisions of Section 113(d) of the Act. In this view of the matter, we set aside the Order of absolute confiscation under Section 113(e) and (h) of the Act. However, we hold that the foreign currency in question is liable for confiscation under Section 113(d) of the Act, though we set aside the Order of absolute confiscation.

29. We further hold that the seized foreign currency can be redeemed by the Appellant from whose possession it was recovered on payment of a redemption fine of Rs. 10 lakhs. Further, the penalty imposed under Section 114 of the Act is also reduced to Rs. 1 lakh, and penalty under Section 13(1) of FEMA Act is set aside.”

- The noticee has further prayed that:

- the Noticee be given an opportunity for an in-person hearing before the final adjudication of the matter;
- The proceedings initiated under the said Show Cause Notice be set aside;
- the Foreign Currency seized from the Noticee be released to the Noticee at the earliest;
- the benefit of the provisions of Section 125 of the Customs Act, 1962 may be granted to the Noticee by allowing the release the currency upon redemption fine;
- refund be granted of the value of the seized Foreign Currency to the passengers;
- penalty may not be imposed on the Noticee;
- any other relief may be granted as deemed fit and proper in the facts and circumstances of the case.

RECORD OF PERSONAL HEARING:

11. “*Audi alteram partem*” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, four opportunities to be heard in person were granted to the noticee, Shri Nirajkumar Rajkumar Sindhi, to appear on 15.10.2024, 10.12.2024, 07.01.2025, and 28.02.2025 vide letters of even No. dated 01.10.2024, 25.11.2024, 26.12.2024 and 19.02.2025. During the personal hearing held on 13.03.2025, Shri Ravi Kumar Singh and Shri Dheeraj Kumar, Authorized Representatives of Shri Nirajkumar Rajkumar Sindhi, represented him and submitted and reiterated a defence submission dated 10.03.2025 enclosing copies of Vakalatnama and Balance Sheet for Financial Year 2023 to 15.01.2024. In an email dated 16.03.2025, Shri Nirajkumar Rajkumar Sindhi informed that they had provided two defence submissions. Further, as requested by the noticee, the defence submission dated 10.03.2025 provided by Shri Ravi Kumar Singh and Shri Dheeraj Kumar, which was reiterated during the personal hearing, has been formally acknowledged and taken on record.

DISCUSSION AND FINDINGS

12. I have carefully examined the facts of this case, the relied-upon documents, the defence submission dated 10.03.2025, the relevant legal provisions, and other materials on record. I, therefore, proceed to decide the instant case based on evidence and documents available on record.

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

- (i)** The foreign currency (USD 35000) equivalent to INR 28,82,250/- (Rupees Twenty Eight Lakh Eighty Two Thousand Two Hundred Fifty only) and Indian currency Rs. 1,00,000/- (Rupees One Lakh only), totally amounting to Indian Rs. 29,82,250/- (Rupees Twenty Nine Lakh Eighty Two Thousand Two Hundred Fifty only) seized vide seizure order dated 24.01.2024 under Panchnama proceedings dated 24.01.2024 should be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962 or otherwise;
- (ii)** The baggage, i.e., one blue colour backpack of brand “FBFASHION” seized vide Seizure Memo dated 24.01.2024 should be confiscated under Section 118 and Section 119 of the Customs Act, 1962 or otherwise;
- (iii)** Penalty should be imposed upon Shri Nirajkumar Rajkumar Sindhi under Section 114(i) of the Customs Act, 1962 or otherwise.

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14. I find that the Panchnama covers three passengers: Shri Nirajkumar Rajkumar Sindhi, Shri Dhruvkumar Ramlal Sindhi, and Shri Priyank Sanjaykumar Shah, who were scheduled to depart for Sharjah via Air India Flight No. IX 171 on 24.01.2024 from Surat International Airport. They were intercepted while in possession of foreign currency. However, in this case, the adjudication is restricted to that of Shri Nirajkumar Rajkumar Sindhi. The other two passengers have been issued separate show-cause notices and will be adjudicated accordingly. Further, during frisking and hand baggage screening by the CISF unit ASG Surat, Shri Nirajkumar was found in possession of foreign currency amounting to USD 35,000, equal to INR 28,82,250/-. The CISF subsequently handed over the noticee, the seized currency, and related documents to Customs officials at Surat International Airport. Upon questioning by customs, the noticee denied carrying any dutiable or declarable goods. He was informed of a personal and baggage search, for which he consented to be searched in the presence of the Superintendent of Customs. Upon examination of the blue backpack of the brand "FBFASHION" carried by the passenger, by Customs, an additional INR 1,00,000 was also recovered. Thus, the total currencies recovered were valued at INR 29,82,250/-, as recorded in the panchnama. On being asked to produce documentary evidence of lawful acquisition, the noticee admitted he did not possess any such receipt. Scanning of his baggage also yielded no further suspicious material. Certain documents were retained for further investigation. The seized currency, USD 35,000/- and INR 1,00,000/-, were placed under Panchnama dated 24.01.2024 on a reasonable belief of attempted smuggling without declaration, making it liable for confiscation under the Customs Act, 1962. The blue colour backpack of the brand "FBFASHION", carried by the passenger, used to conceal currency, was also seized under the Customs Act of 1962.

15. I find that a statement of the noticee, Shri Nirajkumar Rajkumar Sindhi, was recorded on 24.01.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated that he, Shri Nirajkumar Rajkumar Sindhi, a stock market trader residing in Vyara, Tapi, with an M. Tech qualification, stated in his statement recorded on 24.01.2024 under Section 108 of the Customs Act, 1962, that he was travelling to Sharjah for the second time. While boarding Air India Express Flight No. IX-171 from Surat International Airport, CISF officers stopped him after security clearance and found USD 35,000/- in his handbag and INR 1,00,000/- in his backpack, which he had not declared to Customs. He acknowledged signing the panchnama dated 24.01.2024 and admitted that he lacked legal documents for the seized foreign currency, though he claimed ownership and promised to submit valid proof within ten days. He stated that the money was earned through his profession and exchanged via an authorized money exchanger, carrying cash to avoid a 2-3% exchange fee. He intended to use part of the currency for shopping and the rest for investment. Aware that undeclared currency transportation was an offense under the Customs Act, he admitted to taking the risk to save on exchange fees and accepted the legal consequences.

16. I find that Shri Nirajkumar Rajkumar Sindhi has never retracted his aforesaid statement, recorded under Section 108 of the Customs Act, 1962. Therefore, I consider his statement to be material evidence in this case, and for that, I place my reliance on the following judgments/case laws;

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that the statement made before the Customs Officers though retracted within 6 days is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act, 1962;

- The confessional statement given before the Customs officers are admissible evidence as they are not the police officers. This view has been upheld by the Hon'ble Supreme Court in the case of **Badaku Joti Savant vs. State of Mysore** [1978 (2) ELT J 323 (SC)];
- The decision of the Hon'ble Madras High Court in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Raghupathy** 1998 (98) ELT 50 (Mad), in which the court held that the confessional statement under Section 108, even though later retracted is a voluntary statement and was not influenced by duress and is a true one.
- The Hon'ble Apex Court in **Naresh J Sukhawani vs UOI** held that the Statement before the Customs Officer is a material piece of evidence.

17. I find that Shri Nirajkumar had neither questioned the manner of the panchnama proceedings at the material time nor contested the facts detailed in the panchnama during the recording of his statement. Every procedure conducted during the panchnama by the officers was well-documented and made in the presence of the panchas as well as the noticee. In fact, in his statement dated 24.01.2024, the noticee had admitted that he had carried the impugned foreign currency, i.e. USD 35,000/- and INR 1,00,000/- in baggage and did not declare the same before the Customs and thereby, violated provisions of the Customs Act, the Baggage Rules, 2016, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and the Foreign Exchange Management Act, 1999. Further, Shri Nirajkumar could not produce any document evidencing legitimate foreign currency procurement. Therefore, it is established that the noticee had neither voluntarily come forward to declare to the Customs about possession of the said foreign currency nor had any document evidencing a legitimate procurement of the said foreign currency despite being aware that carrying forex and Indian currency beyond permissible limit, without declaring the same was an offence under Customs Act, 1962. This act of Shri Nirajkumar establishes that he attempted to smuggle the said foreign and Indian currencies out of India in an illegal and mala-fide manner.

18. I find that the legal provision for taking foreign/Indian currency out of India is very clear and does not leave any scope for ambiguity. I also find that Rule 7 of the Baggage Rules, 2016 is about 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 thereunder. 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 bound to follow Baggage Rules, 2016.

18.1 I find that Regulation 3 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 pertains to "Export and Import of Indian Currency and Currency Notes". The relevant portion of the Regulation 3 concerning the export of Indian currency is reproduced as follows:

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

- (1) *Save as otherwise provided in these regulations, any person resident in India,*
 - (a) *may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000/- (Rupees Twenty Five Thousand Only) per person or such*

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amount and subject to such conditions as notified by Reserve Bank of India from time to time;

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

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

I find that Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, provides that "any person resident in India, (a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000/- (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 it has also been provided that "Without prejudice to the provisions of sub-regulation (1), Reserve Bank may, on application made to it and on being satisfied that it is necessary to do so, allow a person to take or send out of India or bring into India currency notes of Government of India and/or of Reserve Bank of India subject to such terms and conditions as the Bank may stipulate". I find that from the bare perusal of the above Regulation 3 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, it is forthcoming that any person resident in India can take outside (other than to Nepal and Bhutan) Indian currency up to the extent of Rs. 25,000/- without any permission from the Reserve Bank of India (RBI). In the instant case, I observe that the noticee has attempted to take outside India/export the Indian currency Rs. 1,00,000/- (Rs. One Lakh). Further, it has also been observed that the noticee has not come forward with any permission from the RBI allowing him to take Indian currency exceeding Rs. 25,000/- outside of India. Since, In this case, the noticee has failed to produce any permission from RBI that can establish that the noticee was allowed to take Indian currency, viz., Rs. 1,00,000/- (Rs. One Lakh) recovered from him, outside of India. Thus, it conclusively proves that the noticee, without obtaining the prescribed permission from RBI to the effect, had attempted to export improperly/smuggle Indian currency exceeding Rs. 25,000/-. I find that these acts of omission or commission of offence on his part were clear violation of Rules 7 of Baggage Rules read with Regulations 3 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

18.2. I note that Regulation 5, read with Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, in very clear terms, "prohibits" the export and import of "any" foreign currency without general or special permission of the Reserve Bank of India. In the instant case, I find that the noticee has not come forward with any document issued by any authorized authority which can establish that the noticee was granted special permission by the Reserve Bank of India to carry foreign currency that he was carrying with them to take out of India. This means that the noticee was governed by general permission or, in case of non-applicability of general permission, was prohibited from carrying the foreign currency outside India. I find that regulation 7(2)(b) of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 is the general permission which applies to the noticee in the facts and circumstances of the case before me. According to this general permission, any person can take out of India foreign exchange obtained by him by drawal from an authorized person. In this case, the noticee has failed to produce any document that can establish that the foreign currency, viz., USD 35,000

found and recovered from him, was drawn from an authorized source. These acts of omission or commission of offence on his part were clear violations of Rules 7 of Baggage Rules read with regulations 5 and 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

18.3. I find that the noticee in his statement has admitted to having carried the impugned foreign currency without declaration to the Customs. In his written submission, he has not retracted his statement. I further find that the noticee in his statement stated that foreign currency amounting to USD 35,000 (350 notes of USD 100 denomination) was recovered from his possession, which he had not declared to Customs. He admitted that he had no purchase vouchers or legal documents for the currency at the time of seizure under panchnama dated 24.01.2024. He stated that the currency belonged to him, was earned through his profession, procured via authorised money exchangers and was carried in cash to avoid 2-3% exchange fees. The funds were intended partly for shopping and partly for investment. He admitted awareness of the legal requirement to declare the currency and acknowledged the offence under the Customs Act 1962, expressing willingness to face the legal consequences. I further notice that the law does not permit the retention of such an amount of foreign currency, i.e., USD 35,000 in the instant case. I find that in terms of Regulation 7(1) of Foreign Exchange Management (Export and import of currency) Regulations, 2015, an **authorised person** may send out of India foreign currency acquired in normal course of business. As per regulation 7(3), a person may take out of India foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. As per Regulation 3(i) of Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, an **authorised person** can possess foreign currency and coins without limit. As per regulation 3(iii), Retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding **US\$ 2000** or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques (a) was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or (b) was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or (c) was acquired by him by way of honorarium or gift while on a visit to any place outside India; or (d) represents the unspent amount of foreign exchange acquired by him from an authorised person for travel abroad. I find from the records that the noticee has failed to produce any legal document required under the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 for export/possession/retention of foreign currency. He is also not authorized to send foreign currency out of India in the normal course of business. Neither could he produce any documentary evidence regarding the purchase/acquisition of impugned foreign currency.

18.4 Given the discussion in the preceding paragraphs, I find that the noticee has violated the provisions governing the export of Indian and foreign currency as prescribed under the Baggage Rules, 2016, and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. The noticee attempted to export Indian currency amounting to Rs. 1,00,000/- exceeding the permissible limit of Rs. 25,000/- without obtaining prior approval from the Reserve Bank of India (RBI), thereby contravening Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Furthermore, the noticee was found in possession of USD 35,000/- without any supporting documentary evidence to establish that the foreign currency was lawfully acquired from an authorized source

as required under Regulation 7(2)(b). Additionally, the noticee admitted to carrying the foreign currency without declaration to Customs, which constitutes a violation of the Customs Act, 1962. These acts of omission and commission collectively establish that the noticee has engaged in the unauthorized export/smuggling of Indian and foreign currency in violation of the applicable laws and regulations. Thus, the noticee, Shri Nirajkumar Rajkumar Sindhi, has contravened the provisions of the following Act/Policy/ Notification/Rules:

- Regulation 3, 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015;
- Rule 7 of Baggage Rules, 2016
- Section 3 and Section 4 of the Foreign Exchange Management Act, 1999;
- Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;
- Para 2.45 of the Foreign Trade Policy 2015-20/2023, read with Section 3(2), 3(3), and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, further read in conjunction with Section 11(3) of the Customs Act, 1962.

19. I find that during the personal hearing concerning this matter, held on 13.03.2025, Shri Ravi Kumar Singh and Shri Dheeraj Kumar, Authorized Representatives of Shri Nirajkumar Rajkumar Sindhi, represented him and submitted a defence submission dated 10.03.2025 enclosing copies of Vakalatnama and Balance Sheet for Financial Year 2023 to 15.01.2024. The noticee has contended/submitted as under:

19.1 The contention of the noticee that he intended to declare the foreign currency to Customs but was allegedly intercepted prematurely by CISF is devoid of merit and contrary to the facts and record. According to the Panchnama dated 24.01.2024, the noticee was found in possession of USD 35,000 by CISF during routine screening at the departure hall after the airline security check. Later, at the arrival hall, Customs asked Shri Nirajkumar if he had anything to declare. The noticee denied it. On being examined by customs, an additional INR 1,00,000 was subsequently recovered from a blue colour backpack of the brand "FBFASHION" carried by the passenger. It proves that the noticee did not, at any point, voluntarily approach Customs for declaration. Furthermore, during his statement recorded under Section 108 of the Customs Act, 1962, the noticee admitted that he had not declared the currency and was fully aware that such non-declaration constituted an offence under the Customs Act. His admission that he attempted to avoid a 2-3% exchange fee by physically carrying foreign currency abroad confirms a wilful intention to circumvent regulatory requirements. Despite being granted sufficient time, the noticee has failed to produce any documentary evidence substantiating the lawful acquisition of the seized foreign and Indian currency, violating Regulations 3, 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015.

19.2 I find that the plea of the noticee that he is a law-abiding citizen from a reputed family with established business ventures and no criminal antecedents cannot override the objective facts and statutory violations committed. While the noticee claims to have intended to declare the foreign currency and assures of producing supporting documents, the record establishes that he had not made any declaration to the Customs, contravention of Section 77 of the Customs Act, 1962. Further, I find that the noticee himself admitted under Section 108 of the Customs Act, 1962 that he had no documents in his possession at the time of interception to prove the lawful acquisition of the currency and, to date, has failed to produce any such documentary evidence despite having had ample opportunity. I observe that his

subsequent claim that documents were available at home and the case was falsely fabricated by CISF and Customs officers is an afterthought and unsupported by any cogent evidence. The attempt to justify carrying USD 35,000/- to avoid an exchange fee and the admission of awareness that such conduct amounts to an offence further reinforces his deliberate and wilful non-compliance with Customs and FEMA provisions. It seems to me that the absence of a declaration, failure to produce legitimate source documents, and admitted awareness of illegality render the defence baseless and, therefore, I am of the view that the plea of the noticee, hence, devoid of merit and liable to be rejected in toto.

19.3 The noticee's reliance on his balance sheet for the financial year 2023-24, which reflects substantial cash-in-hand on 15.01.2024, merely indicates his financial capacity but does not establish lawful acquisition of the foreign currency amounting to USD 35,000 recovered from his possession. Financial solvency or income tax compliance alone cannot substitute the legal requirement of producing documentary evidence, such as purchase receipts from authorised money changers, as mandated under Regulation 7(2) and 7(3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Despite being granted sufficient time, the noticee failed to furnish any documents that can conclusively prove the lawful acquisition of the foreign currency. The absence of lawful proof at the time of detection and even thereafter renders the foreign currency unauthorisedly acquired and attempted to be exported in contravention of Section 77 of the Customs Act, 1962. Therefore, I believe the currency is rightly held liable for confiscation under Section 113 of the Customs Act, 1962.

19.4 I find the noticee's submission that the legal provisions cited in the Show Cause Notice are not applicable and that the foreign currency was wrongly seized to be unfounded and contrary to the facts on record. The noticee was intercepted by the CISF in the departure area after clearing airline security, carrying USD 35,000 in his hand baggage, and later Rs. 1,00,000 was recovered from his backpack, despite the noticee's denial of having anything to declare, without having declared the same to the Customs authorities in contravention of Section 77 of the Customs Act, 1962. I further find that the assertion that the currency was not concealed ingeniously and was simply placed in the bag does not absolve the noticee of liability. Concealment is not a prerequisite for an offence under the Customs Act. The offence lies in the deliberate non-declaration of foreign currency and failure to comply with statutory obligations under the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. The noticee also admitted in his statement under Section 108 of the Customs Act that he was aware of the obligation to declare the currency and knowingly chose not to do so in an attempt to save 2-3% exchange fees. I observe that while the noticee has furnished a balance sheet showing substantial cash in hand, financial capacity alone does not establish the lawful acquisition. Despite sufficient time, he has failed to produce any purchase invoices or documents from authorised money changers. The explanations offered are unsupported and do not invalidate the seizure effected under Panchnama dated 24.01.2024 and therefore, is liable to be rejected.

19.5 I find that the claim of the noticee that he has not violated any provisions of the Customs Act or FEMA and that there was no mala fide or guilty knowledge on his part is not sustainable in light of his voluntary statements and the surrounding facts. It is an established position in law that ignorance of legal obligations, especially where the statute imposes strict liability, is no excuse. In the present case, the noticee was found carrying foreign currency amounting to USD 35,000 and INR 1,00,000/- without declaring the same to the Customs authorities, in direct contravention of Section 77 of the Customs Act, 1962. I further find that the noticee has admitted in his statement under Section 108 of the Customs Act that he was

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aware that declaration was mandatory and yet wilfully chose not to disclose the currency, with the intent to save a 2-3% exchange fee. This admission defeats the defence of the absence of guilty intent. The offence of non-declaration does not require the currency to be concealed or the individual to be a habitual offender. The law requires compliance with statutory provisions at the time of travel, and failure to do so attracts consequences regardless of the individual's otherwise clean record. In addition, I observe that the noticee failed to produce any purchase documents or evidence of lawful acquisition of foreign currency as required under Regulation 7(2) and 7(3) of the FEMA Export and Import of Currency Regulations, 2015. Mere financial capacity or business reputation cannot substitute compliance with legal procedures. Therefore, I am of the view that the seized currency is rightly liable to confiscation under Section 113 of the Customs Act, 1962. The plea of ignorance and bona fides does not hold and is liable to be rejected.

20. The noticee, in his written submission, has contended that the seized goods, viz., foreign and Indian currencies, are not prohibited in any manner and in support of that, he has relied upon the cases of Horizon Ferro Alloys Pvt vs Union of India and CC (AIRPORT), Mumbai vs Alfred Menezes {2009 (242) ELT 334 (Bom)}. I find that the law on this issue is settled by various judicial pronouncements, as referenced below:

- The Hon'ble Supreme Court, in the case of Om Prakash Bhatia reported in 2003 (155) ELT 423 (SC), held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, the goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled.
- The Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors [1971 AIR 293] has held that for the purposes of Section 111(d) of the Customs Act, 1962, the term "*A prohibition*' means *every prohibition*. In other words, *all types of prohibition*. *Restriction* is one type of *prohibition*."
- In one of its latest pronouncements dated 17.06.2021, in the case of UOI & Ors vs M/s Raj Grow Impex LLP & Ors [CA Nos. 2217-2218 of 2021], the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia to hold "*any restriction on import or export is to an extend a prohibition*".
- In a case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

"89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/ restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra)."

Notably, as per Section 2(33) of the Customs Act, 1962, "*prohibited goods*" is defined as *any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such*

goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. In this case, the foreign and Indian currencies attempted to be exported improperly by the passenger without following the due process of law and without adhering to the conditions and procedures of export and have thus acquired the nature of being prohibited goods given Section 2(33) of the Act. As the currencies were kept undeclared, concealed, and carried by the said noticee without fulfilment of prescribed conditions, they are to be treated as prohibited goods. Thus, "mens rea" on the part of the noticee is evident since he had not declared to the Customs Authorities in any manner about the foreign currency being carried by him for export and did not possess valid documents showing procurement of the said foreign currency from authorized person. By attempting to export foreign and Indian currencies without legitimate documents illicitly, it is established that the noticee had a clear intention to export/smuggle out the foreign currency undetected in contravention of Regulations 3, 5 & 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. As per Section 2(39) of the Customs Act 1962 –"smuggling" in relation to any goods means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113." By the aforesaid act of commission and omission, the passenger has rendered the goods liable for confiscation under section 113 of the Customs Act 1962. I am, therefore, of the view that the foreign and Indian currencies in the present case are liable for absolute confiscation. Hence, the passenger, by the aforesaid acts of commission and omission, has rendered the impugned seized foreign currency (USD 35,000) and Indian currency (INR 1,00,000/-) liable for confiscation under Section 113 (d) & 113 (e) of Customs Act, 1962, read with Regulation 3 and 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued under Foreign Exchange Management Act, 1999, and Rule 7 of the Baggage Rules, 2016 issued under Customs Act, 1962.

21.1 The noticee has cited some case laws and requested redemption under section 125 of the Customs Act, 1962. I find that it is a settled legal position that the ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon'ble Supreme Court in the case of **CCE, Calcutta Vs. Alnoori tobacco products [2004 (170) ELT 135 (SC)]** has stressed the need to discuss how the facts of the decision relied upon apply to the factual situation of a given case and exercise caution while applying the ratio of one case to another. I find that the noticee has not discussed how the cited case laws apply to the facts of his case. This view has been supported in judgment in the case of Escort Ltd., Vs CCE, Delhi [2004] (173) ELT 113 (SC). For instance, the cases cited by the noticee for support do not apply to this situation, as the facts and circumstances differ in both instances. In the case of **Rajesh Kumar Ishwar Parikh vs Ahmedabad**, the foreign currency seized and attempted to be exported was for business purposes. The noticee provided a receipt for the partial acquisition of foreign currency. In this case, Shri Nirajkumar, in his statement dated 24.01.2024, admitted that the disputed foreign currency was intended for shopping and investment and has yet to provide any evidence regarding the lawful acquisition of the foreign currency seized from him, despite his promise to do so within ten days. In the other case of **Mohammad Mustafa vs Hyderabad- Customs** on 8 April 2024, the passenger was intercepted outside the Customs area with Foreign Currency, raising jurisdictional issues and resulting in partial relief on grounds of mere preparation, not attempt. The passenger had admittedly not approached the airline's counter. This fact is supported by the no-show status of the ticket of the passenger on the website of the airline. In the circumstances, the passenger had not entered the customs area, nor there is any failure on the part of the Appellant to make an appropriate declaration as required under Section 77 of the Customs Act. In contrast, the instant case involved interception within the airport's departure zone after collecting a boarding

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pass, post-security, with USD 35,000 and INR 1,00,000/- undeclared in hand baggage. The passenger admitted guilt, attracting Sections 113(d) and (e) of the Customs Act. Hence, the present case involved a clear attempt to smuggle, whereas the case of Mohammad Mustafa remained jurisdictionally debatable. Therefore, the case laws cited by the noticee are irrelevant to the facts and circumstances of the present case and, hence, are untenable. In the case before me, I find that the noticee has not brought out the source of the foreign currency with any documentary evidence. Moreover, the said foreign currency was attempted to be smuggled out in clear violation of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, which required the noticee to obtain foreign currencies from authorized dealers only. The condition contained in the regulation itself has thus been violated by the noticee in the case before me, which in turn makes the foreign currency very much prohibited. I am, therefore, of the view that the foreign currency, USD 35,000/-seized is liable for absolute confiscation and not fit for redemption. The Hon'ble Supreme Court, in the case of **Dropti Devi & Anr**, reported in [(2012)6 S.C.R. 307], has observed and taken a serious view of smuggling activities and observed that the smugglers, by flouting the regulations and restrictions by their misdeed directly affect the national economy and thereby endanger the security of the country. Consequently, in this instance, I am disinclined to exercise my discretion to grant the option to redeem the total foreign currency upon payment of the redemption fine, as provided under Section 125 of the Act. To support my position, I reference the following case laws and judgments from the Hon'ble Courts and other forums:

21.2 In this context, I find that the Hon'ble **High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.)** held-

"Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent- Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration- Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine – Discretion exercised by authority to deny release, is in accordance with law- Interference by Tribunal is against law and unjustified-

Redemption fine- Option- Confiscation of smuggled gold – Redemption cannot be allowed, as a matter of right- Discretion conferred on adjudicating authority to decide- Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption."

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

21.4 Further, I find that in a case decided by the **Hon'ble High Court of Madras** reported at 2016-TIOL-1664-HC-MAD-CUS in respect of **Malabar Diamond Gallery Pvt Ltd**, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited *supra*).

22. I find that Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, explicitly permits a person resident in India to take currency notes of the Government of India and the Reserve Bank of India outside of India (except to Nepal and Bhutan) up to a maximum limit of Rs. 25,000 per person without any necessary permission. In the present case, the noticee was found to be carrying a total amount of Rs. 1,00,000/- in Indian currency while attempting to take the same out of India. Since the permissible limit is Rs. 25,000/-, I find that the amount to this extent is allowable, and the same may be released unconditionally. However, the remaining amount of Rs. 75,000/- falls beyond the legally permissible limit and is, therefore, in contravention of the aforesaid regulation. The excess currency attempted to be taken out of India without requisite authorization constitutes a violation of the provisions of the Customs Act, 1962, read with the Foreign Exchange Management Act, 1999, making the said amount liable for confiscation. Accordingly, I hold the absolute confiscation of Rs. 75,000/- being the amount beyond the permissible limit under Section 113(d) and 113(h) of the Customs Act, 1962. I believe that this action is necessary to uphold the regulatory framework governing the export of currency and to prevent unauthorized outward remittance, which may have wider implications on financial security and economic stability.

23. Further, I find it evident that the noticee, Shri Nirajkumar Rajkumar Sindhi, also carried foreign currency amounting to USD 35,000 and attempted to export/smuggle the same out of India to Sharjah without making any declaration to the Customs authorities. The noticee failed to produce any documentary evidence or legitimate purchase documents evidencing lawful procurement of the said foreign exchange from authorised sources, as mandated under Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Section 2(22) of the Customs Act, 1962 defines 'goods' to include currency, and hence, any attempt to export such currency without compliance with applicable statutory provisions falls within the purview of illicit export. The noticee's admission, under Section 108 of the Customs Act, that he was aware of the requirement to declare the currency and still chose not to do so in order to save exchange fees clearly establishes ***mens rea*** and a deliberate attempt to circumvent the law. His act of carrying the foreign currency without supporting documents and in contravention of the FEMA regulations renders the said act an "illegal export" under Section 11H(a) of the Customs Act, 1962. Further, as per Section 2(33) of the Customs Act, the foreign currency in question qualifies as 'prohibited goods' since its export was attempted without fulfilment of the conditions prescribed by law. His conduct falls squarely within the definition of 'smuggling' as per Section 2(39) of the Customs Act, 1962. Therefore, I find that the said foreign currency is liable for absolute confiscation under the Customs law.

24. In view of the foregoing findings, I find it evident that Shri Nirajkumar Rajkumar Sindhi has blatantly violated the provisions of the Baggage Rules, 2016, framed under the Customs Act, 1962, and the Foreign Exchange Management

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(Export and Import of Currency) Regulations, 2015 issued under the Foreign Exchange Management Act, 1999. He attempted to improperly export/smuggle foreign currency amounting to USD 35,000 and INR 1,00,000/- equivalent to INR 29,82,250/- . I further find that the presence of **mens rea** is firmly established from his admission of deliberate non-declaration with the intent to avoid financial charges. He neither declared the currency as required under Section 77 of the Customs Act nor produced any documents in support of lawful acquisition, thereby rendering the act in clear contravention of the Customs Act, FEMA, and associated regulations. I find that by such acts of omission and commission, Shri Nirajkumar Rajkumar Sindhi has rendered the seized foreign and Indian currencies liable for confiscation under Sections 113(d) and 113(e) of the Customs Act, 1962, read with Regulation 3 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and Rule 7 of the Baggage Rules, 2016. I, therefore, hold the seized foreign currency USD 35,000/- and INR 75,000/- liable for absolute confiscation under Sections 113 (d) and 113 (e) of the Customs Act, 1962. I further hold Shri Nirajkumar Rajkumar Sindhi liable for penalty under Section 114(i) of the Customs Act, 1962.

25. Also, I hold the baggage, i.e., one blue colour backpack of the brand "FBFASHION" used to conceal the said foreign currency, liable for absolute confiscation under Section 119 of the Customs Act, 1962.

26. Accordingly, in the exercise of the powers conferred upon me as the Adjudicating Authority, I pass the following order:

ORDER

- (i) I order the **unconditional release** of the Indian Currency **Rs. 25,000/- (Twenty-Five Thousand only)** seized vide seizure order dated 24.01.2024 under Panchnama under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) I order the **absolute confiscation** of the Indian Currency of **Rs. 75,000/- (Rs. Seventy-Five Thousand only)** seized vide seizure order dated 24.01.2024 under Panchnama under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (iii) I order the **absolute confiscation** of the foreign currency, i.e., **USD 35,000**, equivalent to **INR 28,82,250/- (Rupees Twenty-Eight Lakh Eighty-Two Thousand Two Hundred Fifty only)** seized vide seizure order dated 24.01.2024 under Panchnama under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (iv) I order the **absolute confiscation** of the baggage, i.e., one blue colour backpack of the brand "FBFASHION" used to conceal the currency under Section 119 of the Customs Act, 1962;
- (v) I impose a **penalty** of **Rs. 15,000/- (Rupees Fifteen Thousand only)** upon Shri Nirajkumar Rajkumar Sindhi under Section 114(i) of the Customs Act, 1962 in respect of Point **26 (ii)** above,
- (vi) I impose a **penalty** of **Rs. 6,00,000/- (Rupees Six Lakh only)** upon Shri Nirajkumar Rajkumar Sindhi under Section 114(i) of the Customs Act, 1962 in respect of Point **26 (iii)** above.

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27. This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962, as amended or rules made thereunder or under any law for the time being in force.

(Anunay Bhati)
Additional Commissioner,
Surat International Airport,
Customs, Surat

**BY SPEED POST AD/E.MAIL/NOTICE BOARD /WEBSITE/ OTHER LEGALLY
PERMISSIBLE MODE**

F. No. VIII/26-40/AIU/CUS/2023-24
DIN : 20250471MN0000723427

Date: 01.04.2025

To,
Shri Nirajkumar Rajkumar Sindhi,
Kumbharwad, B/h Ramji Mandir,
Kanpura, Vyara, Tapi, PIN-394650,
Gujarat

Copy to:

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