

OIO No. 32/AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-37/AIU/CUS/2023-24



अपर आयुक्त, सीमा शुल्क कार्यालय
OFFICE OF THE ADDITIONAL COMMISSIONER OF
CUSTOMS
सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE, SURAT
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Skill India
कौशल भारत-कुशल भारत

PREAMBLE

A	डी आई ऐन/DIN	20250471MN000000C828
B	फ़ाइल संख्या /File No.	VIII/26-37/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and Date	VIII/26-37/AIU/CUS/2023-24 dated 18.06.2024
D	ऑर्डर-इन-ओरिजिनलनंबर/ Order-In-Original No.	32/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	31.03.2025
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	1. Shri Vejanand Ramsi Dethriya, S/o Shri Ramsi Meraman Dethriya, Samor, Jamnagar, PIN-361305, Gujarat 2. Shri Dinesh M. Dholakiya, Shreeji Krupa, Zaveri Deli, Near Ratanbai Masjid, Near Kalyanji Temple, Jamnagar, Gujarat-361001 3. Shri Jignesh Mansukh Bharadiya, House No. 111, Satyam Khodiyar Colony, Jamnagar-361006.

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.

२. इस आदेश से अपने को व्यथित महसूस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ 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.

३. 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.

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BRIEF FACTS OF THE CASE:

Shri Vejanand Ramsi Dethriya (hereinafter referred to as “passenger or noticee” for brevity), Age 24 years, S/o Shri Ramsi Meraman Dethriya, holder of Passport No. M1162733, valid up to 19.08.2024, resident of Samor, Jamnagar, PIN-361305, Gujarat, who arrived at International Airport, Surat, for boarding Air India Express Flight No. IX-185 departing for Dubai on 20.01.2024 was intercepted at the Departure Hall of Surat International Airport at around 02.15 Hrs on 20.01.2024.

2. Based on suspicion, the passenger was stopped during the security check of his baggage at the security checkpoint of Air India Express as he was suspected to be carrying some suspicious items in the baggage. The passenger was carrying two pieces of luggage, viz, one sea green colour trolley bag and one orange & black colour backpack of the brand “Wang Ka.” The Customs officers informed the passenger that they would conduct his personal search and detailed baggage examination. Thereafter, the Customs officers offered themselves for their search to the passenger. However, the passenger denied their search. The Customs officers then asked the passenger whether he wanted to be searched in the presence of a Magistrate or Superintendent (Gazetted officer) of Customs. The passenger gave his consent to be searched before the Superintendent of Customs. Thereafter, the customs officers carried out a physical search of the passenger and his luggage. In the course of a search for his orange and black colour backpack of the brand “Wang Ka” US dollars were found to be concealed under one grey colour of trousers. The entire stack of US dollars was taken out and counted, and found that it contained a total of 18,640 US Dollars. On being asked about any legal document showing the purchase/ownership of these 18,640 USD, the passenger said he did not possess any receipt. Thereafter, the other piece of baggage belonging to the passenger was scanned. However, nothing suspicious was found.

3. The following documents were withdrawn from the passenger, Shri Vejanand Ramsi Dethriya, for further investigation:

- Copy of Aadhar Card bearing No. 493682045788.
- Copy of ticket bearing PNR No. G8ZZQN from Surat to Dubai by flight No. IX-185 on 20.01.2024.
- Copy of Passport No. M1162733 dated 20.08.2014 valid up to 19.08.2024.

4. The foreign currency, i.e., USD 18,640 (USD Eighteen Thousand Six Hundred Forty only), which was found concealed in the baggage and recovered from the passenger, Shri Vejanand Ramsi Dethriya was placed under seizure under Panchnama proceedings dated 20.01.2024, on the reasonable belief that the said USD 18,640, were attempted to be smuggled outside India without declaring to Customs Authority and appeared liable for confiscation under provisions of the Customs Act, 1962. The orange and black colour backpack of the brand “Wang Ka” and one grey colour trousers used for concealment of foreign Currency, which was attempted to be smuggled outside India, also appeared liable for confiscation under the provisions of the Customs Act, 1962, and hence, were also placed under seizure vide seizure memo dated 20.01.2024. The details are as under:-

Sr. No.	Description	Qty/Pcs	Value (USD)
1.	USD 100	186	18600
2.	USD 20	02	40
3.	One orange and black colour backpack of the brand “Wang Ka” & one grey colour trousers in which seized currency was concealed.	02 (one backpack and one trousers)	---
	TOTAL		18640

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5. A statement of Shri Vejanand Ramsi Dethriya was recorded on 20.01.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was an unmarried person staying in his parents’ house located at Samor, Jamnagar, Gujarat- 361305; that he worked as a farmer; that he had completed his studies up to Class X and could read, write and understand English, Hindi, and Gujarati languages;
- that he was shown Panchnama dated 20.01.2024, drawn at International Airport, Surat. After perusing and understanding it, he put his dated signature on the panchnama in token of acceptance of the facts stated therein;
- that he had travelled three times in the past to UAE; that he was going to Dubai on 20.01.2024 by Air India Express Flight No. IX-185 departing from Surat International Airport; that he was stopped by the Customs Officers after clearing security check of Airlines, near airlines counters in the departure hall of Surat International Airport, Surat; that on being asked as to how much foreign currency and baggage, he was carrying, he had stated that he was carrying one sea green colour trolley bag and one orange and black colour backpack of the brand “Wang Ka” but not carrying any foreign currency; that during thorough checks, the Customs officers found foreign currency from his orange and black colour backpack of the brand “Wang Ka” amounting to USD 18,640, placed under one grey colour trouser inside his orange and black colour backpack of the brand “Wang Ka”;
- the details of foreign currency so recovered from him are given as follows:

Type of currency	Denomination	No. of Notes	Total (USD)
US Dollars	100	186	18600
US Dollars	20	02	40
TOTAL			18640

- that the foreign currency was handed over to him by one person, namely, Shri Dinesh M Dholakiya, whose address was near Ratanbai masjid, near Kalyanji Temple, near Javeriya Dairy, Jamnagar, Gujarat- 361001; that he did not have the contact number Shri Dinesh M Dholakiya; that Shri Dinesh M Dholakiya had told him that one person namely Shri Jignesh Mansukh Bharadiya would call him once he reached Dubai; that Shri Jignesh Mansukh Bharadiya worked in Dubai and his local address was House No. 111, Satyam Khodiyar Colony, Jamnagar- 361006; that he had to hand over the foreign currency to Mr Jignesh Mansukh Bharadiya in Dubai; that he did not have the contact number of Shri Jignesh Mansukh Bharadiya.
- that Shri Dinesh M Dholakiya had told him that Shri Jignesh Mansukh Bharadiya had offered him a job against this delivery of the foreign currency; that as he was in dire need of money and a job, he agreed to the proposal.
- that he did not have any legal documentary proof/evidence of acquisition of the said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 20.01.2024; that he agreed to the facts narrated in the panchnama dated 20.01.2024 and put his dated signature in token of its correctness;
- that he admitted to having carried USD 18,640 without declaring the same to Customs Authorities and, therefore, was smuggling the same out of India; that he was aware that carrying the said forex concealed in baggage or on the

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person without declaring the same was an offence under the Customs Act but he took a chance to gain some money and job;

- that he had intentionally not declared the said forex being smuggled by him before the Customs Authorities at the time of departure from Surat International Airport as he wanted to smuggle out the same without declaring to Customs; 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 the Customs Law.

6. During the investigation, a summons dated 22.01.2024 was issued to Shri Dinesh M. Dholakiya to appear on 29.01.2024 before the investigating officer and tender his statement, but he did not appear. Again, another summons dated 05.02.2024 was issued to Shri Dinesh M. Dholakiya, and his statement under Section 108 of the Customs Act, 1962 was recorded on 05.02.2024, wherein he inter alia stated as under:

- that he was staying at Shreeji Krupa, Zaveri Deli, Near Ratanbai Masjid, Near Kalyanji Temple, Jamnagar, Gujarat-361001 with his family comprising his wife, son, daughter-in-law, and two grandchildren; that he was the owner of a restaurant namely "*Khatirdari Restaurant*" situated in Jamnagar; that he had completed studies up to Class IX and could read, write and understand English, Hindi and Gujarati languages;
- that he was shown Panchnama dated 20.01.2024 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 knew that Shri Vejanand Ramsi Dethriya for past 7-8 years and he was the friend of his son; that out of the total seized foreign currency (18,640 USD), an amount of 7,150 USD belonged to him; that he did not possess any legal document regarding acquisition of said 7,150 USD at that time; that he had collected the said foreign currency from his friends who were working in foreign countries and they had given it to him in small amounts whenever they visited India;
- that the said 7,150 USD was handed over to Shri Vejanand Ramsi Dethriya on 19.01.2024 at Jamnagar; that Shri Vejanand Ramsi Dethriya had informed that he was going to start a business in foreign and had requested financial help and so he had lent him the said amount; that he knew about Shri Vejanand's plan to visit Dubai; that he was aware that Shri Vejanand Ramsi Dethriya was carrying foreign currency with him but he did not know the specific amount being carried by him; that he would produce the legal documents regarding the said foreign currency (USD 7,150) as soon as possible.

7. During the investigation, a summons dated 22.01.2024 was issued to Shri Jignesh Mansukh Bharadiya to appear on 29.01.2024 before the investigating officer and tender his statement, but he did not appear. Again, summons dated 05.02.2024 was issued to Shri Jignesh Mansukh Bharadiya, and his statement under Section 108 of the Customs Act, 1962 was recorded on 05.02.2024, wherein he inter alia stated as under:

- that he was then staying in Dubai at Flat No. 202, Al Fardan, Meena Bazar, Dubai; that his family stayed at House No. 111, Satyam Khodiyar Colony, Jamnagar-361006; that his family comprised his parents and wife; that he worked as carpenter at Dubai; that he had completed studies up to Class IX

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and could read, write and understand English, Hindi and Gujarati languages; that he was staying in Dubai since 2013;

- that he was shown Panchnama dated 20.01.2024 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 knew Shri Vejanand Ramsi Dethriya for past 2-3 years as he lived in his maternal uncle's village; that out of the total seized foreign currency (18,640 USD), an amount of 9,000 USD belonged to him; that he did not possess any legal document regarding acquisition of said 9,000 USD at that time; that since he was working in Dubai since 2013, he brought small amounts of USD from his savings in cash whenever he visited India;
- that the said 9,000 USD was handed over to Shri Vejanand Ramsi Dethriya during November 2023 when he was visiting India; that Shri Vejanand Ramsi Dethriya had informed that he was going to start a business in foreign and had requested financial help and so he had lent him the said amount; that he knew about Shri Vejanand's plan to visit Dubai; that he was aware that Shri Vejanand Ramsi Dethriya was carrying foreign currency with him but he did not know the specific amount being carried by him; that he would produce the legal documents regarding the said foreign currency (USD 9,000) as soon as possible.

8. 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.

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- 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 the

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passenger or, if unaccompanied, within one year before or after the 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 and 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 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.

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 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.

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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.

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 an unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

CONTRAVENTION AND VIOLATION OF LAWS

9. It therefore appeared that:-

- (i)** The passenger, Shri Vejanand Ramsi Dethriya attempted to improperly export/smuggle the seized foreign currency (USD 18,640) by concealing it 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 has also failed to produce any declaration, if any, made in compliance with the 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 illegally dealt 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 exceeds the limits prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. The passenger had thus violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. It appeared that by virtue of restrictions on the export of foreign currency and non-compliance with the statutory requirements, the seized foreign 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 constitutes 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, viz, USD 18,640, equivalent to Indian Rupees 15,35,004/- (Rupees Fifteen Lakh Thirty-Five Thousand Four only) as per Notification No. 04/2024-Customs (NT) dated 18.01.2024, which was 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 for 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. By his above-described acts of omission and commission, the passenger had rendered the seized foreign currency liable to confiscation under Section 113 of the Customs Act, 1962. Therefore, he appeared liable for penalty under Section 114(i) of the Customs Act, 1962.
- (iii)** The baggage, i.e., the orange and black colour backpack of the brand “*Wang Ka*” and one grey colour trousers used for concealing the impugned foreign currency, also appeared liable for confiscation under Sections 118 & 119 of the Customs Act, 1962.
- (iv)** Shri Dinesh M. Dholakiya appeared to have been concerned about smuggling foreign currency from Surat to Dubai. In his statement dated 20.01.2024, recorded under Section 108 of the Customs Act, 1962, the passenger, Shri Vejanand Ramsi Dethriya, stated that the impugned foreign currency was handed over to him by Shri Dinesh M. Dholakiya with the direction to hand over the same to a person named Shri Jignesh Mansukh Bharadiya at

Dubai. Further, Shri Dinesh M. Dholakiya, in his statement dated 05.02.2024 recorded under Section 108 of the Customs Act, 1962, had stated that out of the total seized foreign currency (18,640 USD), an amount of 7,150 USD belonged to him. However, he could not produce any legal document evidencing the acquisition of said foreign currency. He also accepted that he had lent the said foreign currency (USD 7,150) to the passenger, Shri Vejanand Ramsi Dethriya, to enable him to start a business in a foreign country. Shri Dinesh M. Dholakiya also agreed and accepted that he was aware that Shri Vejanand Ramsi Dethriya was carrying foreign currency to Dubai. From the above facts, it appeared that Shri Dinesh M. Dholakiya willingly connived and contributed to the commission of the said act of smuggling of foreign currency, which had rendered the said goods liable to confiscation under Section 113 (d) and (e) of the Customs Act, 1962. Thus, he appeared to have knowingly and willingly aided and abetted in the smuggling of foreign currency and thereby contravened the provisions of 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. By illicitly procuring and retaining foreign currency viz, 7,150 USD, Shri Dinesh M. Dholakiya had also violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. Thus, by his above acts of omission and commission, Shri Dinesh M. Dholakiya had rendered himself liable for penalty under Section 114 of the Customs Act, 1962.

- (v) Shri Jignesh Mansukh Bharadiya also appeared to have been involved in smuggling foreign currency from Surat to Dubai. The passenger, Shri Vejanand Ramsi Dethriya, in his statement dated 20.01.2024 recorded under Section 108 of the Customs Act, 1962, had stated that the impugned foreign currency given to him by Shri Dinesh M. Dholakiya was to be handed over to Shri Jignesh Mansukh Bharadiya at Dubai. Further, Shri Jignesh Mansukh Bharadiya, in his statement dated 05.02.2024 under Section 108 of the Customs Act, 1962 had stated that out of the total seized foreign currency (18,640 USD), an amount of USD 9,000 belonged to him. However, he could not produce any legal document evidencing the acquisition of said foreign currency. He also accepted that he had lent the said foreign currency (USD 9,000) to the passenger, Shri Vejanand Ramsi Dethriya, to enable him to start a business in a foreign country. Shri Jignesh Mansukh Bharadiya also agreed and accepted that he knew that Shri Vejanand Ramsi Dethriya was carrying foreign currency to Dubai. From the above facts, it appeared that Shri Jignesh Mansukh Bharadiya willingly connived and contributed to the commission of the said act of smuggling of foreign currency, which had rendered the said goods liable to confiscation under Section 113 (d) and (e) of the Customs Act, 1962. Thus, he appeared to have knowingly and willingly aided and abetted in the smuggling of foreign currency and thereby contravened the provisions of 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. Shri Jignesh Mansukh Bharadiya had also violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 as he could not produce any legal document evidencing acquisition of USD 9,000. Thus, by his above acts of omission and commission, Shri Jignesh Mansukh Bharadiya had rendered himself liable for penalty under Section 114 of the Customs Act, 1962.

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10. Accordingly, a Show Cause Notice F. No. VIII/26-37/AIU/CUS/2023-24 dated 18.06.2024 was issued to **Shri Vejanand Ramsi Dethriya** 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:

- (i) The foreign currency i.e., USD 18,640 equivalent to Indian Rupees 15,35,004/- (Rupees Fifteen Lakh Thirty-Five Thousand Four only) seized from him vide Seizure order dated 20.01.2024 under Panchnama proceedings dated 20.01.2024 should not be confiscated under Section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) The baggage, i.e., the orange and black colour backpack of the brand “Wang Ka” and one grey colour trousers seized vide Seizure Memo dated 20.01.2024 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.

11. Accordingly, a Show Cause Notice(s) bearing F. No. VIII/26-37/AIU/CUS/2023-24 dated 18.06.2024 was issued to **Shri Dinesh M. Dholakiya** and **Shri Jignesh Mansukh Bharadiya** calling upon them 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:

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

12. DEFENCE REPLY

The noticees in the Show Cause Notice were asked to file a defence submission in their defence within the stipulated time. All the three noticees, Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya and Shri Jignesh Mansukh Bharadiya submitted their defence replies in response to the Show Cause Notice dated 18.06.2024 issued to them.

12.1 Shri Vejanand Ramsi Dethriya filed his defence submission dated 15.07.2024, wherein he reiterated the contents of the Show Cause Notice and his statement dated 20.01.2024.

12.2 Shri Dinesh M. Dholakiya filed his defence submission dated 15.07.2024, wherein he reiterated the contents of the Show Cause Notice and his statement dated 05.02.2024. He mentioned enclosing documents evidence, i.e. bills related to foreign currency USD 7,150, to the defence submission; however, no documents were found enclosed.

12.3 Shri Jignesh Mansukh Bharadiya filed his defence submission dated 05.02.2024, in which he reiterated the contents of the Show Cause Notice and his statement dated 20.01.2024. He mentioned enclosing documents evidence, i.e. bills related to foreign currency USD 9,000, to the defence submission; however, no documents were found enclosed.

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12.4 Shri Naresh H. Navadiya, Advocate, on behalf of all three noticees, attended the personal hearing on the scheduled date and submitted documentary evidence, namely, seven invoices showing the exchange of INR to USD 19,150.

The invoices, showing the foreign currency exchange from INR to USD 19,150, submitted by the authorised representative, contain the details as follows:

Sr. No.	Name of Money Exchanger (M/s.)	Invoice No. and Date	Type of Currency Bought and Nos.	Details of Purchaser of Foreign Currency (Shri)	Passport No.	Country scheduled to visit as per invoices
1.	Riya Forex Private Limited	3026 dated 28.12.2023	USD 3000	Vejanand R. Dethariya	M1162733	Dubai (UAE)
2.	Riya Forex Private Limited	3125 dated 28.12.2023	USD 3000	Dhuryesh A. Patel	Y6990935	Dubai (UAE)
3.	Ashapura Money Changer Pvt. Ltd.	HO/312000613 dtd.11.09.2023	USD 3000	Rokadiya Chetan Vrujlal	W8431647	Thailand
4.	Ashapura Money Changer Pvt. Ltd.	HO/312000614 dtd.11.09.2023	USD 3000	Pataniya Nilesh Harvadan	S7560940	Thailand
5.	Ashapura Money Changer Pvt. Ltd.	HO/312000615 dtd.11.09.2023	USD 3000	Soni Amit Shantilal	T0347291	Thailand
6.	Ashapura Money Changer Pvt. Ltd.	HO/312000616 dtd.11.09.2023	USD 3000	Zinzuwadia Mohanlal Nikunj	S6152970	Thailand
7.	Ashapura Money Changer Pvt. Ltd.	HO/312000619 dtd.11.09.2023	USD 1150	Kondhiya Prashant Dilipbhai	T2761105	Thailand

RECORD OF PERSONAL HEARING:

13. “*Audi alteram partem*” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, the opportunity to be heard in person was granted to all three noticees to appear on 11.12.2024 vide letter of even No. dated 25.11.2024. Shri Naresh H. Navadiya, Advocate, submitted Vakalatama representing all three noticees, namely, Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya, and Shri Jignesh Mansukh Bharatiya, who attended the personal hearing on the scheduled date. During the personal hearing, Shri Naresh Navadiya reiterated their defence submission dated 15.07.2024 and submitted documentary evidence, namely, seven invoices showing the exchange of INR to USD.

DISCUSSION AND FINDINGS

14. I have carefully examined the facts of this case, the relied-upon documents, the defence submission of all three noticees, 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.

- 15.** In the instant case, I find that the main issues to be decided are whether:
- (i)** The foreign currency, i.e., USD 18,640, equivalent to INR 15,35,004/- (Rupees Fifteen Lakh Thirty-Five Thousand Four only) seized from Shri Vejanand Ramsi Dethriya vide Seizure order dated 20.01.2024 under Panchnama proceedings dated 20.01.2024 should be confiscated under Section 113 (d) and 113 (e) of the Customs Act, 1962 or otherwise;
 - (ii)** The baggage, i.e., the orange and black colour backpack of the brand “*Wang Ka*” and one grey colour trousers seized vide Seizure Memo dated 20.01.2024 should be confiscated under Section 118 and Section 119 of the Customs Act, 1962 or otherwise;
 - (iii)** Penalty should be imposed upon Shri Vejanand Ramsi Dethriya under Section 114(i) of the Customs Act, 1962 or otherwise;

(iv) Penalty should be imposed upon Shri Dinesh M. Dholakiya under Section 114(i) of the Customs Act, 1962 or otherwise.

(v) Penalty should be imposed upon Shri Jignesh Mansukh Bharatiya under Section 114(i) of the Customs Act, 1962 or otherwise.

16. I find that the Panchnama has documented the fact that Shri Vejanand Ramsi Dethriya, holder of Passport No. M1162733, resident of Samor, Jamnagar, Gujarat, was intercepted on 20.01.2024 at the Departure Hall of Surat International Airport while he was set to depart for Dubai via Air India Express Flight No. IX-185 bound for Dubai. Based on suspicion during security screening, Customs officers conducted a personal and baggage search of the passenger after obtaining his consent for the search in the presence of a Superintendent of Customs. Upon examination of his orange and black backpack (brand "Wang Ka"), US Dollars amounting to 18,640 were found concealed beneath grey trousers. The passenger failed to produce documentary evidence for the currency's legal acquisition. No contraband was found in his second piece of baggage. The seized currency, backpack, and trousers were placed under seizure as per the Panchnama dated 20.01.2024, based on a reasonable belief that an attempt was made to smuggle the foreign currency out of India in contravention of the provisions of the Customs Act, 1962.

17.1 I also find that a voluntary statement of Shri Vejanand Ramsi Dethriya was recorded on 20.01.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated that he, Shri Vejanand Ramsi Dethriya, an unmarried individual residing with his parents at Samor, Jamnagar, Gujarat, and working as a farmer, studied up to Class X and was conversant in English, Hindi, and Gujarati. He acknowledged and signed the Panchnama dated 20.01.2024 after understanding its contents. He had travelled thrice to the UAE and was intercepted at Surat International Airport on 20.01.2024 while departing for Dubai. Upon questioning, he denied carrying any foreign currency but was found in possession of USD 18,640 concealed under grey trousers inside his orange and black backpack. He stated that the currency was handed over to him by one Shri Dinesh M. Dholakiya of Jamnagar for delivery to Shri Jignesh Mansukh Bharadiya in Dubai in exchange for a job offer and some money, as made by Shri Dinesh M. Dholakiya. He admitted that he had no legal documentation for the foreign currency and knowingly attempted to smuggle it out of India without declaring it to Customs, despite being aware that such an act constituted an offence under the Customs Act, 1962.

17.2 During the investigation, a summons dated 22.01.2024 was issued to Shri Dinesh M. Dholakiya to appear on 29.01.2024 before the investigating officer and tender his statement, but he did not appear. Again, another summons dated 05.02.2024 was issued to Shri Dinesh M. Dholakiya and on appearing, his statement under Section 108 of the Customs Act, 1962, was recorded on 05.02.2024, wherein he inter alia stated that he then resided in Jamnagar with his family and owned "*Khatirdari Restaurant*"; he had studied up to Class IX and was conversant in English, Hindi, and Gujarati. He acknowledged the Panchnama dated 20.01.2024 and admitted to knowing Shri Vejanand Ramsi Dethriya for 7-8 years. He claimed ownership of USD 7,150 out of the seized USD 18,640, which he had handed over to Shri Vejanand on 19.01.2024, purportedly as financial assistance for a proposed business abroad. He admitted he had no legal documents for the said amount at the time but assured that he would produce them later, adding that he was aware Shri Vejanand was carrying foreign currency but was unaware of the exact sum.

17.3 During the investigation, a summons dated 22.01.2024 was issued to Shri Jignesh Mansukh Bharadiya to appear on 29.01.2024, but he failed to do so. Subsequently, on the issuance of another summons dated 05.02.2024, he appeared, and his statement under Section 108 of the Customs Act, 1962, was recorded on 05.02.2024. He stated that he had resided in Dubai since 2013 and worked as a carpenter while his family lived in Jamnagar. He confirmed acquaintance with Shri Vejanand Ramsi Dethriya for the past 2–3 years and admitted that of the seized USD 18,640, an amount of USD 9,000 belonged to him. He claimed to have handed over the amount to Shri Vejanand in November 2023 as financial help for a proposed business abroad. He acknowledged awareness of Shri Vejanand's travel to Dubai and that he was carrying foreign currency, though he was unaware of the exact amount. He admitted to having no legal documents for the said USD 9,000 at the time but assured that the same would be submitted later.

18. I find that all three noticees, namely, Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya, and Shri Jignesh Mansukh Bharatiya, have never retracted their aforesaid statements, recorded under Section 108 of the Customs Act, 1962. Therefore, I consider their statements 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 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.

19.1 Further, I find that Shri Vejanand had neither questioned the manner of the panchnama proceedings at the material time nor contested the facts detailed in the panchnama while recording his statement. Every procedure conducted during the panchnama by the officers was well-documented and made in the presence of the panchas and the noticee. In fact, in his statement, the noticee had admitted that he had carried the impugned foreign currency, i.e. USD 18,640 and did not declare the same before the Customs and, thereby, violated provisions of the Customs Act, the Baggage Rules, 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 Vejanand 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 without declaring the same was an offence under Customs Act, 1962. This act of Shri Vejanand establishes that he tried to smuggle the said foreign currency out of India in an illegal and mala fide manner.

19.2 After carefully reviewing the statements of three noticees, namely Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya, and Shri Jignesh Mansukh Bharadiya recorded under Section 108 of the Customs Act, 1962, I find that it is an admitted position that Shri Vejanand was in possession of the impugned foreign currency, namely USD 18,640. Further, I find that their statements are riddled with contradictions and inconsistencies, which undermine the credibility of their explanations and cast doubt on the veracity of their claims. Firstly, Shri Vejanand Ramsi Dethriya stated that the entire amount of USD 18,640 was handed over to him by Shri Dinesh M. Dholakiya for delivery to Shri Jignesh Mansukh Bharadiya in Dubai in exchange for a job offer. However, this claim is contradicted by the statements of both Shri Dinesh M. Dholakiya and Shri Jignesh Mansukh Bharadiya, who each asserted separate ownership over portions of the seized currency—USD 7,150 and USD 9,000, respectively—amounting to a total of USD 16,150, leaving the source and ownership of the remaining USD 2,490 unexplained. I further find that Shri Dinesh M. Dholakiya claimed to have handed over USD 7,150 to Shri Vejanand on 19.01.2024, just one day before the interception, whereas Shri Jignesh Mansukh Bharadiya stated that he handed over USD 9,000 to Shri Vejanand in November 2023. This substantial gap in the timeline contradicts Shri Vejanand's assertion that the full amount was received from a single source shortly before his departure. Furthermore, I find that both Shri Dinesh and Shri Jignesh claimed to have provided the foreign currency as financial help for a business venture, which is inconsistent with Shri Vejanand's statement that the money was to be delivered to Shri Jignesh in exchange for a job offer suggesting a courier role rather than personal business use. These conflicting narratives indicate a concerted but poorly coordinated attempt to conceal the true nature and source of the foreign currency. I am of the view that the discrepancies in ownership claims, a timeline of transfer, the purpose of carrying the currency, and lack of documentation, taken together, reflect deliberate suppression of facts and raise a strong presumption of attempted smuggling of foreign currency in violation of the provisions of the Customs Act, 1962.

20.1 I find that Shri Naresh H. Navadiya, Advocate on behalf of all three noticees, namely Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya, and Shri Jignesh Mansukh Bharadiya, attended the personal hearing and reiterated their respective statement and submitted the documents, i.e. seven invoices showing the purchase of foreign currency, i.e., USD 19,150. The contradiction in statements of all three noticees have already been discussed in para **19.1** and **19.2** above. I note that it is evident from the voluntary statements of Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya, and Shri Jignesh Mansukh Bharadiya that there exist material inconsistencies and contradictions *inter se*, rendering the narrative put forth by the noticees unreliable and unsubstantiated. While Shri Vejanand attributes the entire currency to Shri Dinesh M. Dholakiya, the latter admits ownership of only USD 7,150 and ascribes the remaining portion to another noticee. Conversely, Shri Jignesh Bharadiya asserts that USD 9,000 was his contribution. The figures do not reconcile with the seized amount of USD 18,640, and these contradictory claims reflect a clear attempt to obfuscate the origin and ownership of the foreign currency involved. I observe that the documents relied upon by the noticees in an effort to explain the source of foreign currency, namely, the invoices issued by Riya Forex Pvt. Ltd. and Ashapura Money Changer Pvt. Ltd., except for at Sr. No. 1, do not pertain to any of the noticees. The invoices are clearly in the name of third parties, such as Shri Rokadiya Chetan Vrujlal, Shri Pataniya Nilesh

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Harvadan, and others, who are not the subject of the present proceedings. There is no oral or documentary evidence to establish any link or transfer of foreign exchange from these original purchasers to the noticees. The absence of supporting documentation such as letters of authority, affidavits, bank transfers, or personal statements from the named purchasers further weakens the claim of the noticees regarding lawful possession. I find it apparent that the noticees have merely utilised these third-party invoices to lend a facade of legality to an otherwise illicit transaction. The said invoices have been misused to cover up the possession of smuggled foreign currency without any nexus to the individuals whose names appear therein. This seems a classic case of accommodation invoices being used to project unauthorised foreign exchange as legally procured. The invocation of invoices not in the name of any of the three noticees and the complete lack of documentation evidencing a bona fide handover of currency from the purchasers strongly indicate a deliberate and fraudulent attempt to misrepresent facts. I believe that, given the foregoing, the explanations tendered by the noticees are devoid of merit and lack evidentiary value. The admitted absence of any legal documentation, the false declarations, and the attempt to pass off unrelated third-party purchases as their own collectively demonstrate a premeditated act of smuggling foreign currency in contravention of the provisions of the Customs Act, 1962. Therefore, I find that the foreign currency seized is of smuggled character, and hence liable for absolute confiscation under Section 113(d) and 113(e) of the Act.

20.2 I observe that the invoice bearing No. 3026, dated 28.12.2023, issued by M/s. Riya Forex Pvt. Ltd., in the name of Shri Vejanand Ramsi Dethriya for purchase of USD 3,000, lacks any proximate or credible linkage to the foreign travel dated 20.01.2024 and therefore stands rejected. Travel history reveals that Shri Vejanand, holder of Passport No. M1162733 had already undertaken three foreign trips prior to the impugned journey—on 17.10.2023, 15.12.2023, and 30.12.2023 (as per invoice bearing No. 3026 dated 28.12.2023 issued by M/s. Riya Forex Pvt. Ltd., submitted by Shri Vejanand Ramsi Dethriya in his name) with corresponding arrivals on 22.10.2023, 20.12.2023, and 07.01.2024, respectively. The date of currency purchase falls squarely within this period of frequent international travel and, notably, just two days prior to his third departure on 30.12.2023, suggesting that the said currency was procured for and utilised during that trip. No documentary evidence has been furnished to establish that the foreign exchange remained unutilised and was retained for nearly a month until the next proposed journey. In the absence of such justification, the presumption that the foreign exchange was consumed during the previous trip's gains strength. Furthermore, Shri Vejanand, in his voluntary statement under Section 108 of the Customs Act, 1962, has categorically admitted that the foreign currency found in his possession on 20.01.2024 did not belong to him but was handed over by others, namely Shri Dinesh M. Dholakiya and Shri Jignesh M. Bharadiya, without any supporting documentation. Hence, the belated attempt to correlate the seized currency with the earlier invoice is untenable, illogical, and unsupported by facts.

21. Further, I find that the legal provision for taking foreign currency out of India is unambiguous and does not leave any scope for ambiguity. I also find that Rule 7 of the Baggage Rules, 2016, is about currency. It unambiguously 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 case of Shri Vejanand as he was primarily bound to follow Baggage Rules, 2016. 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. I find that Shri Vejanand has not come forward with any documents issued by any authorised authority that can establish that the noticee was granted special permission by the Reserve Bank of India to carry the foreign currency that he was carrying with them to take out of India. This, in other words, means that the noticee was governed by general permission, or in case of non-applicability of general permission, he was prohibited from carrying the foreign currency outside India. I further 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 authorised person. In the case before me, Shri Vejanand has produced legal documents, namely seven invoices of money exchange, for the purchase of 19,150 USD (the seven invoices unrelated to the noticee's trip on 20.01.2024, as discussed above). Thus, he has failed to produce any substantial documents or concrete evidence for all USD 18,640, which can establish that the foreign currency found and recovered from him were drawn from an authorised source. These acts of omission or 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.

22. Further, I find that the explanation tendered by all three noticees lacks credibility and evidentiary support. Further, none of the three noticees has produced any contemporaneous, legal or financial documents, such as remittance records, bank transfers, gift deeds, or declarations, to substantiate the alleged transactions. Thus, I find their explanation self-contradictory, inconsistent, and a post-facto justification devoid of legal merit. Also, neither is the retention of such an amount of foreign currency i.e., USD 18,640 in this case, permitted under the law. I find that in terms of Regulation 7(1) of Foreign Exchange Management (Export and import of currency) Regulations, 2015, an authorized person may send out of India foreign currency acquired in the 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 authorized 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 the 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 her from an authorised person for travel abroad. I find from the records that the noticee has failed to produce any credible, concrete 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 which can conclusively prove the lawful procurement of the foreign currency recovered. Further, I find Shri Vejanand is also not authorized to send foreign currency out of India during the normal course of business. Shri Vejanand thus has contravened the provisions of the following Act/Policy/Notification/Rules:

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- Regulation 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.

23. 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 will fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the foreign currency was kept undeclared, concealed, and carried by Shri Vejanand without fulfilment of prescribed conditions and, hence, is to be treated as goods prohibited in nature. Thus, "***mens rea***" on the part of the noticee is very much 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 the acquisition of the said foreign currency from authorized person. He has confessed in his statement that he was smuggling the goods in exchange for a job and monetary consideration. By attempting to export foreign currency without legitimate documents illicitly, it is established that Shri Vejanand had a clear intention to export/smuggle out the foreign currency undetected in contravention of Regulations 5 & 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. In his defence submission, Shri Vejanand has failed to convince the adjudicating authority regarding the evidentiary value and authenticity of the documents and explanations furnished. The foreign exchange conversion invoices are unrelated to the impugned journey dated 20.01.2024 and stand disassociated due to third-party exchange invoices and one intervening foreign visit. Further, The voluntary statements of Shri Vejanand Ramsi Dethriya, Shri Dinesh M. Dholakiya, and Shri Jignesh Mansukh Bharadiya are fraught with contradictions, rendering their version unreliable. Shri Vejanand attributes the entire currency to Shri Dinesh, who accepts only partial ownership, while Shri Jignesh claims USD 9,000. These inconsistent claims do not reconcile with the seized amount of USD 18,640 and reflect a concerted attempt to misrepresent ownership. Further, the invoices cited as proof of legal acquisition are in the names of unrelated third parties and lack supporting evidence linking the noticees, indicating misuse to legitimise unauthorised possession of foreign currency. I am therefore of the considered view that the foreign currency recovered in the present case, namely USD 18,640, was attempted to be exported in contravention of the statutory provisions and is liable for absolute confiscation under Sections 113(d), and 113(e) of the Customs Act, 1962, read with the relevant FEMA guidelines and notifications.

24.1 The impugned Foreign currency, valued at Rs. **15,35,004/-** attempted to be improperly exported without declaration to the Customs are, therefore, liable for confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. Shri Vejanand, in his statement dated 20.01.2024, had confessed that he was carrying the impugned foreign currency concealed in his baggage but had not declared the same before Customs Authorities at Surat International Airport as he wanted to smuggle the said goods. In light of the discussions in the preceding paragraphs, I assert that the aforementioned foreign currency was carried by the passenger with the intention of illicitly exporting or smuggling it from Customs Airport without proper declaration, motivated by greed for money and the job offered to him by Shri

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Dinesh M. Dholakiya (one of the noticees in this case). Consequently, the seized foreign currency, i.e. USD 18,640, is liable for confiscation. Therefore, in this case, I am non-inclined 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 gather support in favour of my position, I draw reference from the following case laws and judgments from the Hon'ble Courts and other forums:

24.2 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 the 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.”

24.3 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.

24.4 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).*

CULPABILITY OF NOTICEE NO. 1, SHRI VEJANAND RAMSI DETHRIYA:

25.1 Based on the available evidence and the statements on record, I find that Shri Vejanand Ramsi Dethriya has played a central role in the attempted smuggling of foreign currency which is facilitative in nature. He was intercepted during the outbound clearance process while attempting to export USD 18,640 concealed in his

personal baggage illegally, without any declaration to the Customs authorities, thereby contravening the provisions of Section 77 and attracting the prohibitions under Sections 113(d) and 113(e) of the Customs Act, 1962. In his voluntary statement recorded under Section 108 of the Customs Act, Shri Vejanand initially claimed that the entire seized currency belonged to Shri Dinesh M. Dholakiya. However, this assertion was not corroborated by Shri Dinesh, who admitted to owning only USD 7,150, attributing the rest to Shri Jignesh Bharadiya. Shri Vejanand's shifting stance and failure to provide cogent documentary proof of legal acquisition or ownership of the said currency clearly establish his direct involvement in the concealment and intended smuggling of the foreign currency.

25.2 Further, I believe that Shri Vejanand failed to produce any invoice, money exchange receipt, or legitimate financial trail in his name to justify the possession of such a substantial amount of foreign currency. His attempt to rely upon third-party invoices, which are unrelated to him, further evidences a deliberate effort to project the seized currency as lawfully acquired. The misuse of invoices in the name of unrelated individuals and the absence of any authorisation or transfer documents strongly suggest that Shri Vejanand was consciously carrying unauthorised foreign exchange. His role, therefore, is not merely that of a passive carrier but that of an active participant in an attempted smuggling operation aimed at circumventing the legal framework governing the export of foreign exchange from India. His conduct, taken in totality, indicates a wilful violation of customs laws with the intent to evade detection and legal scrutiny.

25.3 Given the above findings, it is evident that Shri Vejanand Ramsi Dethriya, in clear violation of the Baggage Rules, 2016 framed under the Customs Act, 1962 and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued under the Foreign Exchange Management Act, 1999, attempted to smuggle foreign currency, namely USD 18,640, equivalent to INR 15,35,004/- (Rupees Fifteen Lakh Thirty-Five Thousand Four only) as per Customs Rate of Exchange Notification No. 04/2024-Cus (NT) dated 18.01.2024. The act of illicitly attempting to export such foreign currency poses profound implications for national economic security and demonstrates Shri Vejanand's conscious and deliberate disregard for the legal regime. The presence of ***mens rea*** is clearly established through the intentional concealment of the foreign currency in checked-in baggage, the omission to declare the same before the Customs authorities, the failure to produce any evidence of lawful procurement from an authorised dealer, and the subsequent resort to contradictory and unsubstantiated explanations. Shri Vejanand's attempt to rely on invoices issued in the names of unrelated third parties, coupled with the absence of authorisations or supporting transfer documents, reflects a conscious effort to mislead and subvert lawful scrutiny. As a traveller with awareness of international travel protocols, he cannot claim ignorance of the applicable customs regulations. Accordingly, I find that Shri Vejanand attempted to smuggle foreign currency (USD 18,640) by concealing it in his baggage. He failed to produce any documentary evidence for its lawful procurement as required under Regulations 7(2) and 7(3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. He did not declare the currency as mandated under Section 77 of the Customs Act, 1962. By attempting to export the said currency without authorisation, he violated Regulations 5 and 7 of the said Regulations. Further, the amount in his possession exceeded permissible limits for a resident under Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. His unauthorised dealing, possession, and attempted transfer of foreign exchange contravene Sections 3 and 4 of the Foreign Exchange Management Act, 1999. He has also violated Para 2.45 of the Foreign Trade Policy 2015-20/2023, read with Sections 3(2), 3(3), and 11(1) of

the FTDR Act, 1992, and Section 11(3) of the Customs Act. Thus, Shri Vejanand Ramsi Dethriya, by an above-mentioned act of omission and commission, has rendered the goods liable to confiscation under Section 113 of the Customs Act, 1962. Consequently, I hold the seized foreign currency, i.e., USD 18,640, liable for confiscation under Sections 113(d) and 113(e) of the Customs Act, 1962, read with Regulation 7 of the aforesaid FEMA Regulations and Rule 7 of the Baggage Rules, 2016. I further hold Shri Vejanand Ramsi Dethriya liable for penalty under Section 114(i) of the Customs Act, 1962.

25.4 Also, I hold the baggage, i.e., the orange and black colour Backpack of the brand “*Wang Ka*” and one grey colour Trousers used to conceal the foreign currency in an attempt to smuggle the same, liable for under Section 119 of the Customs Act, 1962 respectively.

CULPABILITY OF NOTICEE NO. 2 SHRI DINESH M. DHOLAKIYA:

26.1 Given the discussion in the preceding paras, I am of the view that Shri Dinesh M. Dholakiya has been actively involved in the attempted smuggling of foreign currency discovered in this case. While the currency was physically retrieved from Shri Vejanand Ramsi Dethriya's luggage, in his initial statement, Shri Vejanand solely attributed the full amount to Shri Dinesh. He has also indicated that he was compelled to hand over the foreign currency, specifically USD 18,640, to Shri Jignesh, in return for which Shri Dinesh had offered a job offer and funds to Shri Vejanand. Although Shri Dinesh partially acknowledged possession of USD 7,150, and he distanced himself from the remaining sum of money. This partial acknowledgement, lacking any documentation to support the lawful acquisition or intended use, suggests concealment and an attempt to obscure the true nature of the transaction. It seems to me that there is no evidence demonstrating that Shri Dinesh declared this currency for export or obtained it through authorized channels, as required by the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

26.2 I find that Shri Dinesh M. Dholakiya's statements are inconsistent with those of his co-noticees and lack credibility due to the absence of corroborative evidence, such as foreign exchange purchase receipts, invoices in his name, authorization letters, or any financial documentation validating his possession of the currency. I observe that his reliance on third-party invoices, issued in the names of individuals unrelated to these proceedings—proves untenable and suggests a deliberate effort to use accommodation documents to obscure an unauthorized transaction. Such behavior indicates his complicity and a conscious attempt to facilitate the smuggling of foreign currency. As an individual engaged in international travel, Shri Dinesh cannot claim ignorance of the law. His actions, namely, ownership concealment, non-disclosure, and the use of unverified documents—clearly exhibit ***mens rea*** and warrant penalties under the Customs Act, 1962. Thus, his role is crucial in perpetuating the offense involving the attempted illegal export of foreign currency.

26.3 I find that the absence of a credible explanation, alongside his dependence on third-party invoices issued to unrelated individuals, further reveals a collusive and calculated attempt to portray unauthorized foreign currency as legitimately obtained. The discrepancies in statements, lack of legal procurement documentation, and his failure to concede or disclose the full scope of his involvement indicate a clear intention to aid and facilitate the smuggling of foreign currency in violation of established legal provisions. These facts suggest that Shri Dinesh M. Dholakiya willingly participated in and facilitated the smuggling of foreign currency, rendering the goods liable to confiscation under Sections 113(d) and (e) of

the Customs Act, 1962. His actions amount to contravention of Para 2.45 of the Foreign Trade Policy 2015-20/2023, read with Sections 3(2), 3(3), and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, and Section 11(3) of the Customs Act, 1962, and also violate Regulation 3 of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2015. Consequently, I hold the seized foreign currency, i.e., USD 18,640, liable for confiscation under Sections 113(d) and 113(e) of the Customs Act, 1962, read with Regulation 7 of the aforesaid FEMA Regulations and Rule 7 of the Baggage Rules, 2016. I further hold Shri Dinesh M. Dholakiya liable for penalty under Section 114(i) of the Customs Act, 1962.

CULPABILITY OF NOTICEE NO. 3 SHRI JIGNESH MANSUKH BHARADIYA :

27.1 Upon a comprehensive examination of the evidentiary material and statements recorded under Section 108 of the Customs Act, 1962, I find that Shri Jignesh Mansukh Baradiya has played an active and complicit role in the attempted smuggling of foreign currency in the instant case. While the currency, amounting to USD 18,640, was physically recovered from the baggage of Shri Vejanand Ramsi Dethriya, it has been categorically stated by Shri Vejanand in his initial statement that the said foreign currency was intended to be handed over to Shri Jignesh Baradiya at Dubai. Though Shri Jignesh has partially admitted to the ownership of USD 9,000, he has disclaimed any connection to the balance amount. This partial acknowledgement, coupled with the absence of any documentary evidence substantiating the lawful acquisition or intended use of the said currency, raises a strong presumption of concealment and an intent to obscure the true nature of the transaction. Further, I find that no material on record suggests that Shri Jignesh had declared the currency for export or procured the same through authorised channels as required under the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

27.2 It is further observed that the statement tendered by Shri Jignesh Baradiya lacks consistency with those of his co-noticees and is rendered unreliable in the absence of corroborative documentary evidence, such as foreign exchange purchase receipts, invoices issued in his name, authorisation letters, or any legitimate financial documentation attesting to his claim of ownership. I find that his reliance on third-party invoices issued in the names of individuals who bear no connection to the present proceedings is not only untenable but indicative of a conscious attempt to utilise accommodation documents with the objective of legitimising an unauthorised transaction. Such conduct clearly establishes his complicity in the offence and reveals a deliberate intent to facilitate the smuggling of foreign currency. I observe that as a person engaged in international transactions, Shri Jignesh cannot plead ignorance of the applicable legal provisions. His conduct, encompassing concealment of ownership, non-disclosure, and reliance on unverified documentation, evidences clear *mens rea* and renders him liable for penal consequences under the Customs Act, 1962.

27.3 Given the foregoing, I find that the absence of a credible and cogent explanation for his possession, coupled with his reliance on documents pertaining to unrelated third parties, underscores a deliberate and collusive attempt to pass off unauthorised foreign currency as legitimately acquired. I further find that the contradictions in his statements, the lack of any lawful procurement records, and his failure to fully disclose his involvement cumulatively indicate a wilful and deliberate endeavour to abet the smuggling of foreign currency in contravention of statutory provisions. Accordingly, I am of the view that Shri Jignesh Mansukh Baradiya has knowingly and intentionally abetted the attempted smuggling of foreign currency and has misrepresented material facts during the investigation. I believe these facts indicate that Shri Dholakiya willingly participated in and

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facilitated the smuggling of foreign currency, rendering the goods liable to confiscation under Sections 113(d) and (e) of the Customs Act, 1962. Further, his actions amount to contravention of Para 2.45 of the Foreign Trade Policy 2015-20, read with Sections 3(2), 3(3), and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, and Section 11(3) of the Customs Act, 1962, and also violate Regulation 3 of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2015. Consequently, I hold the seized foreign currency, i.e., USD 18,640, liable for confiscation under Sections 113(d) and 113(e) of the Customs Act, 1962, read with Regulation 7 of the aforesaid FEMA Regulations and Rule 7 of the Baggage Rules, 2016. I further hold Shri Jignesh Mansukh Bharadiya liable for penalty under Section 114(i) of the Customs Act, 1962.

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

ORDER

- (i) I order the absolute confiscation of the foreign currency, i.e., **USD 18,640**, equivalent to **INR 15,35,004/- (Rupees Fifteen Lakh Thirty-Five Thousand Four only)** recovered from **Shri Vejanand Ramsi Dethriya** and seized vide Seizure order dated 20.01.2024 under Panchnama dated 20.01.2024, under Section 113 (d) and 113 (e) of the Customs Act, 1962.
- (ii) I order the **absolute confiscation** of the baggage, i.e., the **orange and black colour Backpack** of the brand “Wang Ka” and **one grey colour Trousers** seized vide Seizure Memo dated 20.01.2024 under Section 119 of the Customs Act, 1962.
- (iii) I impose a **penalty** of Rs. **4,00,000/- (Rupees Four Lakhs only)** upon **Shri Vejanand Ramsi Dethriya** under Section 114(i) of the Customs Act, 1962.
- (iv) I impose a **penalty** of Rs. **3,00,000/- (Rupees Three Lakhs only)** upon **Shri Dinesh M. Dholakiya** under Section 114(i) of the Customs Act, 1962.
- (v) I impose a **penalty** of Rs. **3,00,000/- (Rupees Three Lakhs only)** upon **Shri Jignesh Mansukh Bharatiya** under Section 114(i) of the Customs Act, 1962.

29. This order is issued without prejudice to any other action that may be taken against the noticee(s) 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

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

F. No. VIII/26-37/AIU/CUS/2023-24

Dated:31.03.2025

DIN: 20250471NN000000C828

To,

1. Shri Vejanand Ramsi Dethriya,
S/o Shri Ramsi Meraman Dethriya,
Samor, Jamnagar-361305, Gujarat
2. Shri Dinesh M. Dholakiya,
Shreeji Krupa, Zaveri Deli,
Near Ratanbai Masjid,
Near Kalyanji Temple,
Jamnagar, Gujarat-361001
3. Shri Jignesh Mansukh Bharadiya,
House No. 111, Satyam Khodiyar Colony,
Jamnagar-361006

Copy to:

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