

F. No. VIII/10-85/ DRI-AZU /O&A/HQ/2024-25
OIO No. 214/ADC/SRV/O&A/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

“सीमाशुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-85/ DRI-AZU /O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-85/ DRI-AZU /O&A/HQ/2024-25 Dated 04.06.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	214/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	31.12.2024
E	जारी करनेकी तारीख/ Date of Issue	:	31.12.2024
F	द्वारापारित/ Passed By	:	SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	1) M/S. PRADIP FOREX PVT LTD, WARD NO. 9/321, BHRAMIN PANCHNI WADI, DUDHIYA TALAV, NAVSARI-396445 2) SHRI PRAKASHCHANDRA H SONI, H/809, SARJAN TOWER SUBHASH CHOWK GURUKUL ROAD, AHMEDABAD-380052 3) M/S. KOTHARI FOREX PVT LTD, 51, GROUND FLOOR, 59, KAKAL BLDG, GOA STREET, DR. SUNDERLAL BAHL PATH, NEAR GPO, FORT, MUMBAI-400001 4) M/S. MANGLIK FOREX PVT LTD, 10/11, NAND PREM BUILDING, SHOPPING CENTRE, M G ROAD, CORNER VILLEPARLE EAST, MUMBAI-400057 5) M/S. RPFX FOREX PVT LTD, FF-17, GOYAL TOWERS, NR. JHANAVI RESTAURANT, PANJARAPOLE, AHMEDABAD- 380009 6) M/S. ADMAN FOREX & SERVICES PVT LTD, 16, SURMOUNT, OPP ISKON MEGA MALL, SG ROAD, AHMEDABAD-380015 7) M/S. MONTY FOREX PVT LTD., PLOT NO. 616, 14TH ROAD, NEAR DOMINO’S PIZZA, KHAR(W), MUMBAI-400052

		<div>8) M/S. VIJAYKUMAR VIKRAMBHAI & COMPANY-AANGADIYA, 2, GANESH CHAMBER GROUND FLOOR, OPP JANTA BAKERY, RATANPOL, AHMEDABAD, GUJARAT</div> <div>9) SHRI MAHENDRABHAI HARGOVAN DAS, EMPLOYEE OF M/S. VIJAYKUMAR VIKRAMBHAI & COMPANY, 2, GANESH CHAMBER GROUND FLOOR, OPP JANTA BAKERY, RATANPOL, AHMEDABAD, GUJARAT</div> <div>10)</div> <div>11)SHRI HAMIDBHAI USMANBHAI DHUKKA, RESIDENT OF MUMANVAS, KHALI, TAL. SIDHPUR, DISTRICT PATAN – 384151</div>
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

BRIEF FACTS OF THE CASE

An intelligence was gathered by Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as ‘DRI’) that persons belonging to few Aangadia firms coming from Mumbai on board Saurashtra Mail train (No. 22945) may carry smuggled gold and other contraband/high valued goods through Ahmedabad Kalupur Railway Station. Further, these persons would board the cars/vehicles in the “Pick-up’ area outside the railway station.

2. Acting on the said intelligence, the officers from DRI intercepted 15 passengers who were approaching the vehicles in the ‘Pick up’ area outside the Railway Station at around 04:50 hrs on 07.06.2023. The said passengers were carrying different bags and they informed that they were working for different Angadiya firms. Thereafter, taking into consideration the quantum of baggages and reasons of safety, the officers with the consent of the passengers took them to the DRI, Ahmedabad Zonal Unit office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad, for the examination of the baggage. The proceedings were

recorded in the presence of the independent panchas under Panchnama dated 07.06.2023.

3. Accordingly, the examination of the baggage of the passengers was done in separate rooms of the DRI, Ahmedabad office under respective Panchnama dated 07.06.2023. During examination of the bags of one passenger, who identified himself as Shri Mahendrabhai Hargovan Das, the officers found that his bags contained various parcels. Shri Manilal Patel, partner of M/s. Vijaykumar Vikrambhai & Company also came to the office during the search. The Officers from DRI, in their presence, prepared inventory of all the goods found during the examination of baggage. During the search, Shri Mahendrabhai Hargovan Das also informed that the said goods are meant to be delivered to M/s. Vijaykumar Vikrambhai & Company.

4. On completion of the examination of the goods, the officers found that certain parcels contained foreign currency. However, on being asked by the DRI officer, the passenger could not provide any satisfactory explanation or produce any legitimate documents pertaining to the possession of the said goods, which included foreign currency. Therefore, the said goods, which included foreign currency were detained for further explanation. The details of the goods found in the baggage of Shri Mahendrabhai Hargovan Das are as per Table-1 below:

TABLE-1

S. No.	Parcel No.	Sender name	To be delivered	Item Found
1	3	-	Prakash bhai, C.G. Road, Ahmedabad (9724445818)	15000 Canadian Dollar
2	9	Kavya Jewellers, Surat (9428796485)	DG Sons, 101, Shivam Complex, Swagat Char Rasta, Nr. National Handloom, CG Road, Ahmedabad (Keyur Dhari-9825626999)	101.820 (.995) gram Gold in raw form (as per slip found in box)
3	36	J M Patel, Anand, 9913059553	Shilin Adani, Shantisagar Bungalow, Ahmedabad	2 boxes of Gold Necklace with precious stones
4	A-1	Bikha bhai B. Patel, Malad (9820357292)	Dhanrajbhai R. Patel, Sidhpur (9327514615)	3,50,000 Indian Currency
5	A-2	Rajubhai, Mumbai	Viralbhai, Ahmedabad (9925006268)	10000 Singapore Dollar & 124000 Thai Baht
6	A-3	Parth (9428282614)	Rajbhai, CG Raod, Ahmedabad (9574821821)	8500 Canadian Dollar
7	A-4	Dikshit Shah, Bandra Kurla Complex (9820950806)	Bharatbhai Patel, Palanpur, Behind College (8160527623	1,62,000 Indian Currency
8	A-6	Mohmmad bhai, Malad	Anglodia Diamon, Sahibag Shopping Cente, Palace Road, Palanpur (0274-2261240)	17,54,000 Indian Currency
9	A-24	Raj, Ahmedabad, 9574821821	Umang, 9726248338	10000 Singapore Dollar
10	A-25	Sanjay B	Bhavesh Bhai, Pahini Jewel	Gold bar of 50 Grams of Fine gold 99.5

11	A-26	Tanuj, 9022780730	Jay Bhai Mehsana, 9825193814	5000 Saudi Riyals
12	A-39	Dinesh bhai Mumbai	Nilesh Bhai, Botad, 7600636161	5,80,000 Indian Currency

5. STATEMENT OF SHRI MUKESHKUMAR MANILAL PATEL, PARTNER OF M/s. VIJAYKUMAR VIKRAMBHAI & COMPANY RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 16.06.2023

5.1 Shri Mukeshkumar Manilal Patel, Partner of M/s. Vijaykumar Vikrambhai & Company voluntarily presented himself on 16.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 16.06.2023, wherein interalia he stated that:-

- Their firm specialized in courier services of precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and that they pay GST @18% as per the CGST Rules and regulations.
- That they pick up the parcels from the office or business premises of the customer and also deliver the parcels at the address and details provided by the sender and is mentioned by them on the parcel.
- On being asked he stated that their company’s pick-up vehicles generally go to the customers’ office to collect the goods in majority of the cases. In case of precious parcels, the same are sealed by the sender and they do not know the exact description of goods. That they act on the basis of invoice and description mentioned on the parcel by the sender.
- On being asked about the type of goods which they may transport to which he stated that any legitimate goods with proper invoice can be transported but they mainly accept parcels related to precious metals and valuable goods, documents, gems and jewellery, diamonds.
- On being asked as to whether they can accept the parcels related to foreign currency, foreign origin gold, to which he stated that **they cannot accept the** parcels related to foreign currency, foreign origin gold in bars or in any other form. However, the customer may sometimes mis-declare the correct description and nature of the goods in the parcel.
- He was shown the panchnama dated 07.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence vide which the examination of their parcels/goods was conducted.
- He produced the documents/ details in respect of the said goods vide Panchnama dated 07.06.2023 in respect of the items as per Table-2 below:-

TABLE-2

S. No.	Item Description	Details of Sender of the parcel	Documents submitted
1	15000 Canadian Dollar	Prakash bhai, C.G. Road, Ahmedabad (9724445818)	Cash Memo from M/s Pradip Forex Pvt Ltd to Shri Prakashchandra H Soni

2.	101.820 (.995) gram Gold in raw form (as per slip found in box)	Kavya Jewellers, Surat (9428796485)	Bill from M/s Kavyashree Jewellers Pvt Ltd to M/s DG Sons.
3.	2 boxes of Gold Necklace with precious stones	J M Patel, Anand, 9913059553	Bill from M/s Shivam Jems and Handicraft to M/s Jigyam Jewellery
4.	3,50,000 Indian Currency	Bikha bhai B. Patel, Malad (9820357292)	Letter dtd 13.06.2023 from Shri Bhikha Bhai
5.	10000 Singapore Dollar & 124000 Thai Baht	Rajubhai, Mumbai	Letter from M/s Adman Forex and Services Pvt Ltd along with Daily Summary and Balance Book
6.	8500 Canadian Dollar	Parth (9428282614)	Bill from M/s RPFx Forex Pvt Ltd along with purchase bill and payment slip
7.	1,62,000 Indian Currency	Dikshit Shah, Bandra Kurla Complex (9820950806)	Letter from Shri Dixit Mansukhlal Shah along with bank statement, ITR, balance sheet and medical documents
8.	17,54,000 Indian Currency	Mohmmad bhai, Malad	Copy of GST Registration, Books of account, ITR forms Bank Statement, Cash Ledger etc.
9.	10000 Singapore Dollar	Umang, 9726248338	Bill from M/s RPFx Forex Pvt Ltd purchased from M/s Kothari Forex Pvt Ltd along with purchase bill and payment slip
10.	Gold bar of 50 Grams of Fine gold 99.5	Sanjay B	Bill from M/s Sunil Jewellers to M/s Pahini Jewellery Ltd
11.	5000 Saudi Riyals	Tanuj, 9022780730	Cash Memo from M/s Monty Forex Pvt Ltd to Shri Dhukka HamidbhaiUsmanbhai
12	5,80,000 Indian Currency	Paresh dhandli, 9820110497	Letter from Mudassir M. Aglodiya along with ITR returns of Shre Paresh Jeevrajbhai Saliya and bank Statement.

6. **RELEASE OF GOODS UNDER PANCHNAMA DATED 19.06.2023:**

6.1 M/s. Vijaykumar Vikrambhai & Company submitted certain documents as detailed at para 5 above pertaining to the goods including gold and Indian Currency detained under the Panchnama dated 07.06.2023. Accordingly, the representative of the said Aangadiya firm, Shri Mukeshkumar Manilal Patel was called to the DRI office and the goods as mentioned in the table-2 above, except the foreign currency, as mentioned at 1,5,6,9 & 11 in the same table, was released to the Aangadiya firm. The said proceedings were carried out under Panchnama dated 19.06.2023 in the presence of the independent panchas. Thus, the foreign currency, as detailed in Table-3 below, was again sealed back and kept in the DRI custody.

TABLE-3

Sl. No .	Currency Details	Total value of foreign currency	Name of the concerned Party
1.	Canadian Dollars	15000/-	Shri Prakashchandra H. Soni

2.	Singapore Dollars	10,000/-	M/s. RPFX Forex Pvt. Ltd
3.	Canadian Dollars	8,500/-	
4.	Singapore Dollars	10,000/-	M/s. Adman Forex and Services Pvt. Ltd
5.	Thai Bhat	1,24,000/-	
6.	Saudi Riyals	5,000/-	M/s. Monty Forex Pvt. Ltd

7. INVESTIGATION W.R.T. 15,000/- CANADIAN DOLLARS PERTAINING TO SHRI PRAKASHCHANDRA H. SONI

7.1 STATEMENT OF SHRI PRAKASHCHANDRA H. SONI, RESIDENT OF H/809, SARJAN TOWER, SUBHASH CHOWK, GURUKUL ROAD, AHMEDABAD-380052 RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 11.07.2023

7.1.1 Shri Prakashchandra H. Soni, Resident of H/809, Sarjan Tower Subhash Chowk Gurukul Road, Ahmedabad-380052, voluntarily presented himself on 11.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 11.07.2023, wherein he accepted that the said parcel containing 15000 Canadian Dollar was handed over by him to M/s. Vijaykumar Vikrambhai Patel and Company (Aangadia Firm) to deliver the same to him in Ahmedabad. Shri Prakashchandra H. Soni stated that the said foreign currency was purchased by him from M/s. Pradip Forex Pvt. Ltd, Navsari.

7.1.2 On being asked about the reason to buy foreign currency, Shri Prakashchandra H. Soni stated that his son lives in USA and he was planning to visit him in USA on 07.07.2023 and thereafter they were planning to visit Canada, so he had bought 15000 Canadian dollars. On being asked about the payment of the purchase, he stated that he had given the cheques dated 06.06.2023 to M/s Pradip Forex Pvt. Ltd, Navsari which were encashed on 08.06.2023. He also submitted copies of the ICICI cheques, bearing nos. 485574, 000037 & 113256, all dated 06.06.2023 issued for a total of Rs.9,36,000/- in favour of M/s. Pradip Forex Pvt Ltd.

7.1.3 On being asked about the invoice regarding the purchase of 15000 Canadian dollars, Shri Prakashchandra H. Soni stated that on the day of purchase of 15000 Canadian dollars, no invoice was issued by M/s Pradip Forex Pvt. Ltd, Navsari. However, M/s Pradip Forex Pvt. Ltd, Navsari has issued the invoice for the purchase of Canadian Dollar on 07.06.2023.

7.1.4 On being asked about who had purchased 15000 Canadian dollars from M/s. Pradip Forex Pvt Ltd, Navsari, Shri Prakashchandra H. Soni stated that he himself had purchased and he was present in Navsari on 06.06.2023. Further, he stated that he had travelled to Navsari on 06.06.2023 by his personal car.

7.1.5 On being asked about the movement of foreign currency through Aangadiya firm, Shri Prakashchandra H. Soni stated that he had forwarded the 15,000/- Canadian dollars through Aangadiya for safety reasons. However, he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel.

7.2 STATEMENT OF SHRI MINESHKUMAR HASMUKHLAL BHOJAK, DIRECTOR, M/s. PRADIP FOREX PVT LTD, WARD NO. 9/321, BHARAMIN PANCH NI WADI, DUDHIYA TALAV, NAVSARI-396445, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 11.07.2023

7.2.1 Shri Prakashchandra H. Soni in his statement dated 11.07.2023 had stated that he had purchased the said foreign currency, i.e. 15,000/- Canadian Dollars from M/s. Pradip Forex Pvt. Ltd, Navsari. Shri Mineshkumar Hasmukhlal Bhojak, Director, M/s. Pradip Forex Pvt. Ltd, Ward no. 9/321, BhraminPanchni wadi, Dudhiya Talav, Navsari-396445 and resident of 21, Puma Society, Opp. H.P. Petrol Pump station road, Navsari, Gujarat-396445, voluntarily presented himself on 11.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 11.07.2023.

7.2.2 During the statement, Shri Mineshkumar Hasmukhlal Bhojak, on being asked the work profile of his company, stated that their firm deals in the work related to procurement and sale of foreign currency of different countries. He stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Banks. He further stated that they sell the foreign currency in retails to the persons who are travelling abroad on the production of passport, ticket, Visa and to other registered dealers. Shri Mineshkumar Hasmukhlal Bhojak stated that on the services provided by them, they are exempted to pay GST as per the CGST rules and regulations. On being asked, he stated that their company M/s. Pradip Forex Pvt. Ltd. mainly deals in foreign currency like US Dollar, Canadian Dollar, Singapore Dollar, etc.

7.2.3 On further being asked about the license of their company in Navsari, Shri Mineshkumar Hasmukhlal Bhojak stated that their company is a registered firm and they have been issued license in the year 2004 by the Reserve Bank of India under Foreign Exchange Management Act, 1999. On being asked, he stated that their license No. FE.AH.AM.03/2004 which was issued by Reserve Bank of India is valid upto 01.03.2025.

7.2.4 On being asked about the rules and regulations regarding the transactions involved in the exchange of foreign currency, Shri Mineshkumar Hasmukhlal Bhojak stated that they are governed by the rules specified under Foreign Exchange Management Act, 1999. On being asked about the purchase of foreign currency, he stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Banks. He further stated that they verify the documents like Visa, Passport, Travel history, PAN card etc. of the persons who had travelled abroad

before procuring foreign currency from them. Further on the basis of their requirement and rates of the foreign currency, they procure foreign currency from registered dealers and Banks.

7.2.5 On being asked about the sale of foreign currency, Shri Mineshkumar Hasmukhlal Bhojak stated that they sell foreign currency to the persons who are going to travel abroad, other registered dealers and Banks. He further stated that they verify the documents like Visa, Passport, Ticket, PAN card etc. of the persons who are going to travel abroad before selling foreign currency to them. Further, they also sell foreign currency to other registered dealers and Banks. On being asked about the mode of payment on the sale of foreign currency, he stated that they receive the payment on the sale of foreign currency through online, cheques, and sometimes in cash if the amount is below Rs. 50,000/-

7.2.6 On being asked specifically about the parcel detained under Panchnama dated 07.06.2023, Shri Mineshkumar Hasmukhlal Bhojak stated that he had sold the foreign currency of 15,000/- Canadian dollars to Shri Prakahchandra H. Soni after verification of his travel along with family detail as per norms, as Shri Prakahchandra H. Soni was about to travel abroad.

7.2.7 On being asked about the purchase of the said foreign currency of 15,000/- Canadian dollars, Shri Mineshkumar Hasmukhlal Bhojak stated that foreign currency of 15,000/- Canadian dollars were purchased from various customers and banks for the purpose of sale.

7.2.8 On being asked about the general practice for purchase of foreign currency, Shri Mineshkumar Hasmukhlal Bhojak stated that in general practices, they purchase the foreign currency from the banks or registered dealers only when there is requirement but sometimes, they purchase smaller amount to maintain some stock of various types of foreign currency.

7.2.9 On being asked regarding the payment of the sale of Canadian Dollar, Shri Mineshkumar Hasmukhlal Bhojak stated that Shri Prakahchandra H. Soni made the payment via Bank Check dated 06.06.2023. However, the sale invoice was issued on 07.06.2023 as Large Remittance Scheme (LRS) reporting to bank is done by 6:30 PM and this transaction was done late in the evening, hence, they had to issue the sale invoice on 07.06.2023.

7.2.10 On being asked about handing over of the foreign currency without sale invoice, Shri Mineshkumar Hasmukhlal Bhojak stated that the sale invoice was issued on 07.06.2023 after the parcel was intercepted by the officers of DRI and the cheque was also encashed on 08.06.2023.

7.2.11 On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other, Shri Mineshkumar Hasmukhlal Bhojak stated that as per the norms issued by RBI, the movement of foreign currency through courier service from one place to other is not permitted.

7.3 SEIZURE OF THE DETAINED CURRENCY AMOUNTING TO 15,000/- CANADIAN DOLLARS PERTAINING TO SHRI PRAKASHCHANDRA H. SONI

7.3.1 Shri Prakashchandra H. Soni of Ahmedabad in his statement dated 11.07.2023 informed that they had purchased the said foreign currency from M/s Pradip Forex Pvt. Ltd, Navsari and the same was intended to be taken outside the country. Further, he admitted that he is not having any licit documents for the purchase and transportation the above said Foreign Currency on the day of interception of the parcel by the officers of DRI. Shri Prakashchandra H. Soni appeared to attempt to export the foreign currency and contravened the provisions of Customs Act, 1962 read with Baggage Rules, 2016 and Foreign Exchange Management (Export and Import of Foreign Currency) Regulations 2015 and therefore same should be treated as illegal export as stipulated under section 11H(a) of Customs Act, 1962. The details of Foreign currency is as per Table-4 below:-

TABLE-4

Sr. No	Currency Details	Total value of Foreign Currency (in FC)	Value in INR as per CBIC Notification No. 39/2023 dated 01.06.2023(@INR 59.85 per CAD)
1	Canadian Dollars	15,000/-	Rs. 8,97,750 /-

7.3.2 Shri Prakashchandra H. Soni in his statement dated 11.07.2023 stated that these foreign currency notes were meant to be taken outside the country. Thus, it appeared that the above foreign currency notes illicitly procured were to be smuggled out of India. Therefore, total 15,000/- Canadian dollars, equivalent to Rs. 8,97,750/- as mentioned in the para above were placed under seizure vide Seizure Memo dated 05.10.2023 and bearing DIN-202310DDZ1000000D343 under the provisions of Customs Act, 1962 on the reasonable belief that the same are liable for confiscation under Section 113 of the Customs Act, 1962.

7.4 ANALYSIS OF THE EVIDENCE ON RECORD

7.4.1 Shri Mineshkumar Hasmukhlal Bhojak, Director, M/s. Pradip Forex Pvt. Ltd during his statement dated 11.07.2023 submitted the travel details of Shri Prakashchandra H. Soni and his family along with Cash Memos dated 07.06.2023 for the purchase of the said foreign currency along with the corresponding invoices dated 07.06.2023 issued by M/s. Pradip Forex Pvt Ltd. From the documents submitted by Shri Prakashchandra Soni and Shri Mineshkumar Hasmukhlal Bhojak of M/s. Pradip Forex Pvt Ltd, it appeared that the said cash memos and invoices were generated only on 07.06.2023, i.e. after the said foreign currency was detained by the officers of DRI, Ahmedabad. Also, Shri Prakashchandra H. Soni has informed during his statement

dated 11.07.2023 that the cheques issued in favour of M/s. Pradip Forex Pvt. Ltd were encashed only on 08.06.2023. Therefore, it also appeared that the cheques and the invoices were deliberately generated on 07.06.2023 so that the said purchase of foreign currency by Shri Prakashchandra H. Soni from M/s. Pradip Forex Pvt. Ltd looks legitimate.

8. INVESTIGATION W.R.T. 10,000/- SINGAPORE DOLLARS AND 8500/- CANADIAN DOLLARS PERTAINING TO M/s. RPFX FOREX PVT. LTD

8.1 STATEMENT OF SHRI PARTHKUMAR BHARATBHAI PATEL, DIRECTOR, M/s. RPFX FOREX PVT LTD, FF-17, GOYAL TOWERS, NR. JHANAVI RESTAURANT, PANJARAPOLE, AHMEDABAD-380009, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 11.07.2023

8.1.1 Summons dated 07.07.2023 under Section 108 of Customs Act, 1962 was issued to M/s. RPFX Forex Pvt Ltd and accordingly, Shri Parthkumar Bharatbhai Patel, Director, M/s. RPFX Forex Pvt. Ltd, FF-17, Goyal Towers, Nr. Jhanavi Restaurant, Panjarapole, Ahmedabad-380009 and resident of C-802, Swastik Sopan 2, Near Randesan, Gandhinagar-382421, voluntarily presented himself on 11.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 11.07.2023.

8.1.2 During the statement, Shri Parthkumar Bharatbhai Patel, on being asked the work profile of their company, stated that their firm deals in the work related to procurement and sale of foreign currency of different countries. They procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they sell the foreign currency in retail to the persons who are travelling abroad on the production of passport, ticket, Visa and to other registered dealers. Further, he stated that on the services provided by them, they pay GST@ 0.18% as per the CGST rules and regulations. On being asked, he stated that their company M/s. RPFX Forex Pvt. Ltd. mainly deals in foreign currency like US Dollar, Canadian Dollar, Singapore Dollar, Thai Bhat, UAE AED, EURO, Vietnam Dong, Pound etc.

8.1.3 On being asked about his work profile in M/s. RPFX Forex Pvt. Ltd, Shri Parthkumar Bharatbhai Patel stated that he looks after the work related to RBI, Accounts, Purchase, Sale etc. and responsible for day to day work of the company.

8.1.4 On further being asked about the license of their company in Ahmedabad, Shri Parthkumar Bharatbhai Patel stated that their company is a registered firm and they have been issued license in the year 2017 by the Reserve Bank of India under Foreign Exchange Management Act, 1999. On being asked, he stated that their license No. FE.AH.AM.19/2017 which was issued by Reserve Bank of India is valid upto 01.01.2024.

8.1.5 On being asked about the rules and regulations regarding the transactions involved in the exchange of foreign currency, Shri Parthkumar Bharatbhai Patel stated that they are governed by the rules specified under Foreign Exchange Management Act, 1999. On being asked about the purchase of foreign currency, he stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Banks. He further stated that they verify the documents like Visa, Passport, Travel history, PAN card etc. of the persons who had travelled abroad before procuring foreign currency from them. Further on the basis of their requirement and rates of the foreign currency, they procure foreign currency from registered dealers and Bank.

8.1.6 On being asked about the sale of foreign currency, Shri Parthkumar Bharatbhai Patel stated that they sell foreign currency to the persons who are going to travel abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Ticket, PAN card etc. of the persons who are going to travel abroad before selling foreign currency to them. Further, they also sell foreign currency to other registered dealers and Bank. On being asked about the mode of payment on the sale of foreign currency, Shri Parthkumar Bharatbhai Patel stated that they receive the payment on the sale of foreign currency through online, Cheque, and sometimes in cash if the amount is below Rs. 50,000/-

8.1.7 On being asked specifically about two different parcels, pertaining to M/s. RPFX Forex Pvt Ltd, detained under Panchnama dated 07.06.2023, Shri Parthkumar Bharatbhai Patel stated that that one parcel containing 10000 Singapore Dollars was forwarded by Shri Nayanbhai (Uman) of M/s. Kothari Forex Pvt. Ltd., Mumbai and other parcel containing 8500 Canadian dollars was forwarded by Shri Yogesh Bhai of M/s. Manglik Forex Pvt. Ltd., Mumbai for them.

8.1.8 On being asked about the payment made by them for the purchase of 10,000 Singapore Dollars and 8,500/- Canadian dollars, Shri Parthkumar Bharatbhai Patel stated that they had made the payment on 08.06.2023 through NEFT which was credited in their account on 09.06.2023.

8.1.9 During the statement, Shri Parthkumar Bharatbhai Patel was also shown the invoice no. AHMD/313000020 dated 07.06.2023 issued by them for the purchase of 10000 Singapore dollars from M/s. Kothari Forex Pvt. Ltd, Mumbai and invoices no. AHMD/313000019 dated 07.06.2023 issued by them for the purchase of 3200 Canadian dollars & invoice no. AHMD/313000018 dated 07.06.2023 for the purchase of 5300 Canadian dollars from M/s. Manglik Forex Pvt. Ltd, Mumbai in which the date of payment is mentioned as 08.06.2023. He perused the invoices and accepted that he had edited the said invoices to insert the date of payment in them.

8.1.10 On being asked about the bulk purchase of foreign currency by them in this manner, he stated that this is the first time they had procured the foreign currency from

Mumbai and asked their Mumbai counterparts to handover the said currency to M/s. Vijaykumar Vikrambhai and Company to deliver to them in Ahmedabad.

8.1.11 On being asked about the general practice for purchase of foreign currency, Shri Parthkumar Bharatbhai Patel stated that in general practice, they purchase the foreign currency from the banks or registered dealers only when there is requirement.

8.1.12 On being asked regarding the documents related to courier of foreign currency through Angadiya firm, Shri Parthkumar Bharatbhai Patel stated that they had not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. Further, he also stated that they also had not informed Angadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by them contained currency. They had only informed them about the value of the parcel and on the basis of that they had paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

8.1.13 On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other, Shri Parthkumar Bharatbhai Patel stated that as per the norms issued by RBI, the movement of foreign currency through courier service from one place to other is not permitted.

8.1.14 Shri Parthkumar Bharatbhai Patel, Director of M/s. RPFX Forex Pvt. Ltd thus stated in his statement dated 11.07.2023 that parcel containing 10000 Singapore Dollars was forwarded by M/s. Kothari Forex Pvt Ltd., Mumbai and other parcel containing 8500 Canadian dollars was forwarded by M/s. Manglik Forex Pvt Ltd., Mumbai for them. The statements of the authorised representatives of M/s. Kothari Forex Pvt. Ltd. and M/s. Manglik Forex Pvt Ltd. were thus conducted on 12.07.2023.

8.2 STATEMENT OF SHRI NAYANKUMAR KHUBILAL KOTHARI, DIRECTOR, M/s. KOTHARI FOREX PVT LTD, 51, GROUND FLOOR, 59, KAKAL BLDG, GOA STREET, DR. SUNDERLAL BAHL PATH, NEAR GPO, FORT, MUMBAI-400001, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 12.07.2023-

8.2.1 Shri Nayankumar Khubilal Kothari, Director, M/s. Kothari Forex Pvt. Ltd, 51, Ground Floor, 59, Kakal Bldg, Goa Street, Dr. Sunderlal Bahl Path, Near GPO, Fort, Mumbai-400001 and resident of Room No-14, 1stFloor, Patel Mansion, 24/26 Manohar Das Street/Mint Road, Opp. GPO, Fort, Mumbai- 400001, voluntarily presented himself on 12.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 12.07.2023.

8.2.2 During the statement, on being asked the work profile of their company, Shri Nayankumar Khubilal Kothari stated that their firm deals in the work related to procurement and sale of foreign currency of different countries. They procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they sell the foreign currency in retail to the persons who are

travelling abroad on the production of passport, ticket, Visa and to other registered dealers. Further, he stated that on the services provided by them, they pay GST@ 0.18% as per the CGST rules and regulations. On being asked, he stated that their company M/s. Kothari Forex Pvt Ltd mainly deals in foreign currency like US Dollar, Canadian Dollar, Singapore Dollar, Thai Bhat, UAE AED, EURO, Vietnam Dong, Pound etc.

8.2.3 On being asked about his work profile in M/s. Kothari Forex Pvt. Ltd, Shri Nayankumar Khubilal Kothari stated that he looks after the work related to RBI, Accounts, Purchase, Sale etc. and responsible for day to day work of the company.

8.2.4 On further being asked about the license of their company in Mumbai, Shri Nayankumar Khubilal Kothari stated that their company is a registered firm and they have been issued license in the year 2017 by the Reserve Bank of India under Foreign Exchange Management Act, 1999. On being asked, he stated that their license No. FE.MUM.1968/2017 which was issued by Reserve Bank of India is valid upto 30.09.2024.

8.2.5 On being asked about the rules and regulations regarding the transactions involved in the exchange of foreign currency, Shri Nayankumar Khubilal Kothari stated that they are governed by the rules specified under Foreign Exchange Management Act, 1999. On being asked about the purchase of foreign currency, he stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Travel history, PAN card etc. of the persons who had travelled abroad before procuring foreign currency from them. Further on the basis of our requirement and rates of the foreign currency, they procure foreign currency from registered dealers and Bank.

8.2.6 On being asked about the sale of foreign currency, Shri Nayankumar Khubilal Kothari stated that we sell foreign currency to the persons who are going to travel abroad, other registered dealers and Bank. I further state that we verify the documents like Visa, Passport, Ticket, PAN card etc. of the persons who are going to travel abroad before selling foreign currency to them. Further we also sell foreign currency to other registered dealers and Bank. On being asked about the mode of payment on the sale of foreign currency I state that we receive the payment on the sale of foreign currency through online, Cheques, and sometimes in cash if the amount is below Rs. 50,000/-.

8.2.7 On being asked specifically about the parcel containing 10000 Singapore dollars, detained under Panchnama dated 07.06.2023 and pertaining to M/s. RPFX Forex Pvt. Ltd, Ahmedabad, Shri Nayankumar Khubilal Kothari stated that the said 10,000/- Singapore dollars were purchased by them from M/s. Milan Forex India Ltd, Mumbai on the request of Shri Parthkumar Patel/Raj Kumar Modi of M/s. RPFX Forex Pvt. Ltd in Ahmedabad. Further, they had made the payment through online banking system into their account on 07.06.2023 as they had credit account with them.

8.2.8 During the statement, Shri Nayankumar Khubilal Kothari was also shown the invoice no. BS/23/9 dated 06.06.2023 issued by them for the sale of 10000 Singapore dollars to M/s. RPFX Forex Pvt. Ltd, Ahmedabad in which the date of payment is mentioned as 07.06.2023. He perused the invoice and accepted that they had received the payment on 09.06.2023 and not on 07.06.2023 and that they had wrongly mentioned the date of payment receipt in the invoice.

8.2.9 On being asked about the handing over of foreign currency by them to Aangadiya firm in this manner, Shri Nayankumar Khubilal Kothari stated that this is the first time they had handed over the foreign currency to M/s. Vijaykumar Vikrambhai and Company to deliver to M/s. RPFX Forex Pvt. Ltd. in Ahmedabad on their request. He admitted that it was their mistake and the said movement is not valid as per regulations issued by RBI.

8.2.10 On being asked regarding the documents related to courier of foreign currency through Angadiya firm, Shri Nayankumar Khubilal Kothari stated that they have not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. Further, he also stated that they also had not informed angadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by them contained currency. They had only informed them about the value of the parcel and on the basis of that they had paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

8.2.11 On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other, Shri Nayankumar Khubilal Kothari stated that as per the norms issued by RBI the movement of foreign currency through courier service from one place to other is not permitted and in this regard, they had made the mistake.

8.3 STATEMENT OF SHRI MOOLCHAND VANECHAND PAREKH, DIRECTOR, M/s. MANGLIK FOREX PVT LTD, 10/11, NAND PREM BUILDING, SHOPPING CENTRE, M G ROAD, CORNER, VILLEPARLE EAST, MUMBAI-400057, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 12.07.2023

8.3.1 Shri Moolchand Vanechand Parekh, Director, M/s. Manglik Forex Pvt Ltd, 10/11, Nand Prem Building, Shopping Centre, M G Road, Corner, Ville Parle East, Mumbai-400057 and resident of Flat No-701, 7th Floor, Pratham Building, Prathana Samaj Road, Ville Parle East, Mumbai- 400057, voluntarily presented himself on 12.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 12.07.2023.

8.3.2 During the statement, Shri Moolchand Vanechand Parekh, on being asked about the work profile of their company, stated that their firm deals in the work related to procurement and sales of foreign currency of different countries. They procure foreign

currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they sell the foreign currency in retail to the persons who are travelling abroad on the production of passport, ticket, Visa and to other registered dealers. Further, he stated that on the services provided by them, they pay GST@ 0.18% as per the CGST rules and regulations. On being asked, he stated that their company M/s. Manglik Forex Pvt. Ltd. mainly deals in foreign currency like US Dollar, Canadian Dollar, Singapore Dollar, Thai Bhat, UAE AED, EURO, Vietnam Dong, Pound etc.

8.3.3 On being asked about his work profile in M/s. Manglik Forex Pvt Ltd, Shri Moolchand Vanechand Parekh stated that he looks after the work related to RBI, Accounts, Purchase, Sale etc and responsible for day to day work of the company.

8.3.4 On further being asked about the license of their company in Mumbai, Shri Moolchand Vanechand Parekh stated that their company is a registered firm and they have been issued license in the year 2008 by the Reserve Bank of India under Foreign Exchange Management Act, 1999. On being asked, he stated that their license No. FE.MUM.1764/2008 which was issued by Reserve Bank of India is valid upto 30.09.2023.

8.3.5 On being asked about the rules and regulations regarding the transactions involved in the exchange of foreign currency, Shri Moolchand Vanechand Parekh stated that they are governed by the rules specified under Foreign Exchange Management Act, 1999. On being asked about the purchase of foreign currency, he stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Travel history, PAN card etc of the persons who had travelled abroad before procuring foreign currency from them. Further on the basis of their requirement and rates of the foreign currency, they procure foreign currency from registered dealers and Bank.

8.3.6 On being asked about the sale of foreign currency, Shri Moolchand Vanechand Parekh stated that they sell foreign currency to the persons who are going to travel abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Ticket, PAN card etc of the persons who are going to travel abroad before selling foreign currency to them. Further, they also sell foreign currency to other registered dealers and Bank. On being asked about the mode of payment on the sale of foreign currency, he stated that they receive the payment on the sale of foreign currency through online, Cheque, and sometimes in cash if the amount is below Rs. 50,000/-

8.3.7 On being asked specifically about the parcel containing 8500 Canadian dollars, detained under Panchnama dated 07.06.2023 and pertaining to M/s. RPFx Forex Pvt Ltd, Ahmedabad, Shri Moolchand Vanechand Parekh stated that said Canadian dollars were in their stock and the same were purchased by them from registered AD-II dealers. Further, they have made the payment through online banking system into their account.

8.3.8 During the statement, Shri Moolchand Vanechand Parekh was also shown the invoice no. BS/23/87 dated 05.06.2023 for the sale of 5300 Canadian dollars to M/s. RPFX Forex Pvt. Ltd, Ahmedabad and invoice no. BS/23/88 dated 05.06.2023 for the sale of 3200 Canadian dollars to M/s. RPFX Forex Pvt Ltd, Ahmedabad in which the date of payment is mentioned as 05.06.2023. He perused the invoices and accepted that they had received the payment on 09.06.2023 and not on 05.06.2023 and that they had wrongly mentioned the date of payment receipt in the invoice.

8.3.9 On being asked about the handing over of foreign currency by them to Aangadiya firm in this manner, Shri Moolchand Vanechand Parekh stated that this is the first time, they had handed over the foreign currency to M/s. Vijaykumar Vikrambhai and Company to deliver M/s. RPFX Forex Pvt. Ltd in Ahmedabad on their request. He admitted that it was their mistake and the said movement is not valid as per regulations issued by RBI.

8.3.10 On being asked regarding the documents related to courier of foreign currency through Angadiya firm, Shri Moolchand Vanechand Parekh stated that they have not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. He also stated that they also had not informed Aangadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by them contained currency. They had only informed them about the value of the parcel and on the basis of that they had paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

8.3.11 On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other, Shri Moolchand Vanechand Parekh stated that as per the norms issued by RBI, the movement of foreign currency through courier service from one place to other is not permitted.

8.4 SEIZURE OF THE DETAINED CURRENCY AMOUNTING TO 10,000/- SINGAPORE DOLLARS AND 8500/- CANADIAN DOLLARS PERTAINING TO M/s. RPFX FOREX PVT. LTD

8.4.1 Shri ParthKumar Bharatbhai Patel of M/s RPFX Forex Pvt. Ltd, Ahmedabad in his statement dated 11.07.2023 informed that they had purchased the said foreign currency from Mumbai and the same was intended to export outside the country. Further, he admitted that they are not having any licit documents for the purchase and transportation the above said Foreign Currency. Shri ParthKumar Bharatbhai Patel appeared to have attempted to export the foreign currency and to have contravened the provisions of Customs Act, 1962 read with Baggage Rules, 2016 and Foreign Exchange Management (Export and Import of Foreign Currency) Regulations 2015 and therefore same should be treated as illegal export as stipulated under section 11H(a) of Customs Act, 1962. The details of Foreign currency is as per Table-5 below:-

TABLE-5

Sr. No	Currency Details	Total value of Foreign Currency (in FC)	Value in INR (Rs.) as per CBIC Notification No. 39/2023 dated 01.06.2023
1	Singapore Dollars	10,000/-	(@60.10) Rs. 6,01,000/-
2	Canadian Dollars	8,500/-	(@59.85) Rs. 5,08,725/-

8.4.2 Shri ParthKumar Bharatbhai Patel in his statement dated 11.07.2023 stated that these foreign currency notes were meant for supply to foreign going persons without any valid documents. Thus, it appeared that the above foreign currency notes illicitly procured were to be smuggled out of India. Therefore, a total of 10,000/- Singapore Dollars, equivalent to Rs 6,01,000/- and 8500/- Canadian Dollars, equivalent to Rs. 5,08,725/-,as mentioned in the para above were placed under seizure vide Seizure Memo dated 05.10.2023 and bearing DIN-202310DDZ10000666C9C under the provisions of Customs Act, 1962 on the reasonable belief that the same are liable for confiscation under Section 113 of the Customs Act, 1962.

8.5 ANALYSIS OF THE EVIDENCE ON RECORD

Certain documents were submitted by Shri Mukeshkumar Manilal Patel of M/s. Vijaykumar Vikrambhai & Company during his statement dated 16.06.2023, which were analysed by this office.

8.5.1 The self-invoices issued by M/s. RPFX Forex Pvt. Ltd, i.e. invoices no. AHMD/313000020 dated 07.06.2023 for the purchase of 10000 Singapore dollars from M/s. Kothari Forex Pvt. Ltd, Mumbai and invoices nos. AHMD/313000019 dated 07.06.2023 for the purchase of 3200 Canadian dollars & AHMD/313000018 dated 07.06.2023 for the purchase of 5300 Canadian dollars from M/s. Manglik Forex Pvt. Ltd, Mumbai were created only on 07.06.2023, i.e. after the said currency were detained by DRI under Panchnama dated 07.06.2023 and it appeared that the said invoices were not available on the date of delivery of the said currency from Mumbai. Further, 08th June’2023 is printed as the date of payment on the said invoices issued on date 07.06.2023 which itself was sufficient to raise suspicion. Thus, it appeared that the said invoices are doctored and created just for the sake of submission to DRI for the ongoing enquiry. Also, Shri Parthkumar Bharatbhai Patel, Director, M/s. RPFX Forex Pvt Ltd in his statement dated 11.07.2023 had accepted that he had edited the said invoices to insert the date of payment in them.

8.5.2 The invoices issued by M/s. Manglik Forex Pvt. Ltd, i.e. invoice no. BS/23/87 dated 05.06.2023 for the sale of 5300 Canadian dollars to M/s. RPFX Forex Pvt Ltd, Ahmedabad and invoice no. BS/23/88 dated 05.06.2023 for the sale of 3200 Canadian dollars to M/s. RPFX Forex Pvt Ltd, Ahmedabad have the date of payment mentioned as 05.06.2023. However, other documents submitted by M/s. Vijaykumar Vikrambhai & Company, i.e. Axis Bank payment screenshots mention the date of payments as

08.06.2023 for both the transaction of Rs. 3,30,720/- (for sale of 5300 Canadian Dollars) and Rs. 2,00,000/- (for sale of 3200 Canadian Dollars), which imply that the back dated invoices were created just for the sake of submitting them to the officers of DRI for the ongoing enquiry. Also, Shri Moolchand Vanechand Parekh, Director of M/s. Manglik Forex Pvt. Ltd accepted that they had received the payment on 09.06.2023 and not on 05.06.2023 and that they had wrongly mentioned the date of payment receipt in the invoice.

8.5.3 Similarly, the invoice no. BS/23/9 dated 06.06.2023 issued by M/s. Kothari Forex Pvt. Ltd. for the sale of 10,000/- Singapore dollars to M/s. RPFX Forex Pvt. Ltd, Ahmedabad mentions the date of payment as 07.06.2023, which imply that the date of payment was deliberately inserted afterwards. Also, the corresponding Axis Bank payment screenshot mentions the corresponding date of payment as 08.06.2023 for the transaction of Rs. 6,30,000/- . Further, Shri Nayankumar Khubilal Kothari, Director of M/s. Kothari Forex Pvt Ltd accepted that they had received the payment on 09.06.2023 and not on 07.06.2023 and that they had wrongly mentioned the date of payment receipt in the invoice.

8.5.4 Therefore, it appeared that said foreign currency of 10,000/- Singapore Dollars and 8500/- Canadian Dollars were illicitly being transported from Mumbai to Ahmedabad without any licit documents with an attempt to export of out the country and the documents submitted were created only after the said currency was detained by DRI under Panchnama dated 07.06.2023.

9. INVESTIGATION W.R.T. 10,000/- SINGAPORE DOLLARS AND 1,24,000/- THAI BAHT PERTAINING TO M/s. ADMAN FOREX AND SERVICES PVT LTD, AHMEDABAD

9.1 STATEMENT OF SHRI VIRAL SHAH, DIRECTOR, M/s. ADMAN FOREX AND SERVICES PVT LTD, 16, SURMOUNT, OPP ISKON MEGA MALL, SG ROAD, AHMEDABAD-380015, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 11.07.2023

9.1.1 Summons dated 07.07.2023 under Section 108 of Customs Act, 1962 was issued to M/s. Adman Forex and Services Pvt Ltd and accordingly, Shri Viral Shah, Director, M/s. Adman Forex and Services Pvt Ltd, 16, Surmount, Opp Iskon Mega Mall, SG Road, Ahmedabad-380015 and resident of A/402, Aaryan Opulance, Opp. Jayantilal Park, BRTS Bus Stand, Ambli Bopal Road, Ambli, Ahmedabad-380058, voluntarily presented himself on 11.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 11.07.2023.

9.1.2 During the statement, Shri Viral Shah, on being asked the work profile of his company, stated that their firm deals in the work related to procurement and sale of foreign currency of different countries. They procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. Shri Viral Shah further

stated that they sell the foreign currency in retail to the persons who are travelling abroad on the production of passport, ticket, Visa and to other registered dealers. Shri Viral Shah stated that on the services provided by them, they pay GST@ 0.18% as per the CGST rules and regulations. On being asked, he stated that their company M/s. Adman Forex and Services Pvt. Ltd. mainly deals in foreign currency like US Dollar, Canadian Dollar, Singapore Dollar, Thai Bhat, etc.

9.1.3 On further being asked about the license of their company in Ahmedabad, Shri Viral Shah stated that their company is a registered firm and they had been issued license in the year 2006 by the Reserve Bank of India under Foreign Exchange Management Act, 1999. On being asked, Shri Viral Shah stated that their License No. FE.AH.AM.14/2006 which was issued by Reserve Bank of India was valid upto 01.11.2022 and they had applied for renewal of the license vide application dated 26.08.2022 before Reserve Bank of India, which is still pending before Reserve Bank of India.

9.1.4 On being asked about the rules and regulations regarding the transactions involved in the exchange of foreign currency, Shri Viral Shah stated that they are governed by the rules specified under Foreign Exchange Management Act, 1999. On being asked about the purchase of foreign currency, Shri Viral Shah stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Travel history, PAN card etc. of the persons who had travelled abroad before procuring foreign currency from them. Further on the basis of their requirement and rates of the foreign currency, they procure foreign currency from registered dealers and Bank.

9.1.5 On being asked about the sale of foreign currency, he stated that they sell foreign currency to the persons who are going to travel abroad, other registered dealers and Bank. Shri Viral Shah further stated that they verify the documents like Visa, Passport, Ticket, PAN card etc. of the persons who are going to travel abroad before selling foreign currency to them. Further, they also sell foreign currency to other registered dealers and Bank. On being asked about the mode of payment on the sale of foreign currency, he stated that they receive the payment on the sale of foreign currency through online, Cheque, and sometimes in cash if the amount is below Rs. 50,000/-

9.1.6 On being asked specifically about the parcel detained under Panchnama dated 07.06.2023 pertaining to M/s. Adman Forex and Services Pvt. Ltd, Shri Viral Shah stated that he had sent the foreign currency of 10,000/- Singapore dollars and 1,24,000/- Thai Bhat with one of his employee to Mumbai to hand over the same to a person who could be travelling abroad but this could not happen due to pricing issues, so Shri Viral Shah had asked his employee to send the parcel back through Aangadiya firm namely M/s. Vijaykumar Vikrambhai and Company as he was having some work in Mumbai.

9.1.7 On being asked about the purchase of the said foreign currency, i.e. 10,000/- Singapore dollars and 1,24,000/- Thai Bhat, Shri Viral Shah stated that he had purchased 2,00,000 Thai Bhat on 11.05.2023 from M/s. World One India Forex Pvt. Ltd, Ahmedabad and the Singapore Dollar from M/s. Capital India, Ahmedabad for the purpose of sale.

9.1.8 On being asked about the general practise for purchase of foreign currency, Shri Viral Shah stated that in general practices, they purchase the foreign currency from the banks or registered dealers only when there is requirement but sometimes they purchase smaller amount to maintain some stock of various types of foreign currency.

9.1.9 On being asked regarding the documents related to courier of foreign currency through Angadiya firm, Shri Viral Shah stated that they have not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. Further, he also stated that they also had not informed Aangadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by them contained currency. They had only informed them about the value of the parcel and on the basis of that, they had paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

9.1.10 On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other, Shri Viral Shah stated that as per the norms issued by RBI, the movement of foreign currency through courier service from one place to other is not permitted.

9.2 SEIZURE OF THE DETAINED CURRENCY AMOUNTING TO 10,000/- SINGAPORE DOLLARS AND 1,24,000/- THAI BHAT PERTAINING TO M/s. ADMAN FOREX AND SERVICES PVT LTD

9.2.1 Shri Viral Shah of M/s. Adman Forex and Services Pvt Ltd Ahmedabad in his statement dated 11.07.2023 informed that they had purchased the said foreign currency from Ahmedabad and the same was intended to handover a person in Mumbai who is visiting outside the country. Further, he admitted that they are not having any licit documents for the transportation of the above said Foreign Currency. Shri Viral Shah appeared to have attempted to export the foreign currency and to have contravened the provisions of Customs Act, 1962 read with Baggage Rules, 2016 and Foreign Exchange Management (Export and Import of Foreign Currency) Regulations 2015 and therefore same should be treated as illegal export as stipulated under section 11H(a) of Customs Act, 1962. The details of Foreign currency is as per Table-6 below:-

TABLE-6

Sr. No	Currency Details	Total value of Foreign Currency (in FC)	Value in INR (Rs.) as per CBIC Notification No. 39/2023 dated 01.06.2023
1	Singapore Dollars	10,000/-	(@60.10) Rs. 6,01,000/-

2	Thai Bhat	1,24,000/-	(@2.36) Rs. 2,92,640/-*
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9.2.2 Shri Viral Shah in his statement dated 11.07.2023 stated that these foreign currency notes were meant for supply to foreign going persons without any valid documents. Thus, it appeared that the above foreign currency notes illicitly transported were attempted to be smuggled out of India. Therefore, total 10,000/- Singapore dollars, equivalent to Rs 6,01,000 /- and 1,24,000/- Thai Bhat, equivalent to Rs. 2,92,640/-, as mentioned in the para above were placed under seizure vide Seizure Memo dated 05.10.2023 and bearing DIN-202310DDZ1000022452C under the provisions of Customs Act, 1962 on the reasonable belief that the same are liable for confiscation under Section 113 of the Customs Act, 1962.

9.3 ANALYSIS OF THE EVIDENCE ON RECORD

9.3.1 The License No. FE.AH.AM.14/2006 issued by Reserve Bank of India authorizing M/s. Adman Forex and Services Pvt. Ltd to undertake money changing business, was valid upto 01.11.2022. Though they had applied for renewal of the license vide application dated 26.08.2022 before Reserve Bank of India, however the same was still pending for approval when their foreign currency was detained by DRI under Panchnama dated 07.06.2023. Thus, it appeared that M/s. Adman Forex and Services Pvt Ltd have engaged themselves in dealing of foreign currencies without valid license.

9.3.2 Further, Shri Viral Shah of M/s. Adman Forex and Services Pvt Ltd in his statement dated 11.07.2023 accepted that they had sent the said foreign currency with one of his employees to Mumbai to be sold to a customer. However, as the said deal could not happen, the said foreign currency was handed over to Aangadiya to be delivered back at their office in Mumbai. However, no supporting invoice was submitted by M/s. Adman Forex and Services Pvt. Ltd. It appeared that they indulged in the transportation of the foreign currency without licit documents.

10. INVESTIGATION W.R.T. 5000/- SAUDI RIYALS PERTAINING TO M/s. MONTY FOREX PVT LTD, MUMBAI

10.1 STATEMENT OF SHRI TANUJ SUKANRAJ PARMAR, DIRECTOR, M/s. MONTY FOREX PVT LTD, PLOT NO. 616, 14TH ROAD, NEAR DOMINO’S PIZZA, KHAR(W), MUMBAI-400052, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 12.07.2023

10.1.1 Summons dated 07.07.2023 was issued to M/s. Monty Forex Pvt Ltd and accordingly, Shri Tanuj Sukanraj Parmar, Director, M/s. Monty Forex Pvt Ltd, Plot No. 616, 14thRoad, Near Domino’s Pizza, Khar (W), Mumbai-400052 and resident of 5th Floor, Room No. 51, Gold Field Building, A-Wing, Dharavi, Mumbai - 400017, voluntarily presented himself on 12.07.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 12.07.2023.

10.1.2 During the statement, Shri Tanuj Sukanraj Parmar, on being asked about the work profile of their company, stated that their firm deals in the work related to procurement and sales of foreign currency of different countries. They procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they sell the foreign currency in retail to the persons who are travelling abroad on the production of passport, ticket, Visa and to other registered dealers. Further, he stated that on the services provided by them, they pay GST@ 0.18% as per the CGST rules and regulations. On being asked, he stated that their company M/s. Monty Forex Pvt Ltd. mainly deals in foreign currency like US Dollar, Canadian Dollar, Singapore Dollar, Thai Bhat, UAE AED, EURO, Vietnam Dong, Pound etc.

10.1.3 On being asked about his work profile in M/s. Monty Forex Pvt Ltd, Shri Tanuj Sukanraj Parmar stated that he looks after the work related to RBI, Accounts, Purchase, Sale etc and responsible for day to day work of the company.

10.1.4 On further being asked about the license of their company, Shri Tanuj Sukanraj Parmar stated that their company is a registered firm and they have been issued license in the year 2008 by the Reserve Bank of India under Foreign Exchange Management Act, 1999. On being asked, he stated that their license No. FE.MUM.1958/2017 which was issued by Reserve Bank of India is valid upto 31.10.2025.

10.1.5 On being asked about the rules and regulations regarding the transactions involved in the exchange of foreign currency, Shri Tanuj Sukanraj Parmar stated that they are governed by the rules specified under Foreign Exchange Management Act, 1999. On being asked about the purchase of foreign currency, he stated that they procure foreign currency from the persons who had travelled abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Travel history, PAN card etc of the persons who had travelled abroad before procuring foreign currency from them. Further on the basis of their requirement and rates of the foreign currency, they procure foreign currency from registered dealers and Bank.

10.1.6 On being asked about the sale of foreign currency, Shri Tanuj Sukanraj Parmar stated that they sell foreign currency to the persons who are going to travel abroad, other registered dealers and Bank. He further stated that they verify the documents like Visa, Passport, Ticket, PAN card etc of the persons who are going to travel abroad before selling foreign currency to them. Further, they also sell foreign currency to other registered dealers and Bank. On being asked about the mode of payment on the sale of foreign currency, he stated that they receive the payment on the sale of foreign currency through online, Cheque, and sometimes in cash if the amount is below Rs. 50,000/-

10.1.7 On being asked specifically about the parcel containing 5000 Saudi Riyals, detained under Panchnama dated 07.06.2023 and pertaining to M/s. Monty Forex Pvt. Ltd, Mumbai, Shri Tanuj Sukanraj Parmar stated that the said Saudi Riyals was handed

over by him to M/s. Vijaykumar Vikrambai & Company to deliver the same to Shri Jay Shah in Mehsana who in turn would have delivered the parcel to Shri Hamidbhai Usmanbhai Dhukka, as he was going abroad. On being asked, he stated that Shri Jay Shah is his friend and currently living in Mehsana, Gujarat. He stated that he had sold the foreign currency of 5000 Saudi Riyals to Shri Hamidbhai Usmanbhai Dhukka as he was about to travel abroad after verification of his details including Passport, PAN card and Visa as per norms.

10.1.8 On being asked about the ticket for foreign travel, Shri Tanuj Sukanraj Parmar stated that ticket was not submitted by Shri Hamidbhai Usmanbhai Dhukka at the time of purchase of Saudi Riyals, as he approached him through his friend Shri Jay Shah.

10.1.9 On being asked to specify the rules regarding the sale of foreign currency without the verification of ticket, Shri Tanuj Sukanraj Parmar stated that as per the norms issued by RBI, the sale of foreign currency without a valid ticket is not permitted and sale of the foreign currency without a valid ticket is not a valid transaction.

10.1.10 On being asked about the purchase of the said foreign currency of 5000 Saudi Riyals, Shri Tanuj Sukanraj Parmar stated that it was purchased from various customers for the purpose of sale. On being asked about the general practise for the purchase of foreign currency, he stated that they purchase the foreign currency from the banks or registered dealers only when there is requirement but sometimes they purchase smaller amount to maintain some stock of foreign currency.

10.1.11 On being asked regarding the payment of the sale of Saudi Riyals, Shri Tanuj Sukanraj Parmar stated that Shri Hamidbhai Usmanbhai Dhukka had not made the payment and is still pending with them.

10.1.12 On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other, Shri Tanuj Sukanraj Parmar stated that as per the norms issued by RBI, the movement of foreign currency through courier service from one place to other is not permitted and he admitted that he had made a mistake by selling the foreign currency to Shri Hamidbhai Usmanbhai Dhukka and handing over the parcel to M/s. Vijaykumar Vikrambhai & Company.

10.2 SEIZURE OF THE DETAINED CURRENCY AMOUNTING TO 5000/- SAUDI RIYALS PERTAINING TO M/s. MONTY FOREX PVT LTD.

10.2.1 Shri Tanuj Sukanraj Parmar of M/s. Monty Forex Pvt. Ltd in his statement dated 12.07.2023 informed that they had purchased the said foreign currency from various customers and the same was intended to be handed over to a person in Mehsana who is visiting outside the country. Further, he admitted that they are not having any licit documents for the transportation of the above said Foreign Currency. Shri Tanuj Sukanraj Parmar appeared to have attempted to export the foreign currency and to have

contravened the provisions of Customs Act, 1962 read with Baggage Rules, 2016 and Foreign Exchange Management (Export and Import of Foreign Currency) Regulations 2015 and therefore same should be treated as illegal export as stipulated under section 11H(a) of Customs Act, 1962. The details of Foreign currency is as per Table-7 below:-

TABLE-7

Sr. No	Currency Details	Total value of Foreign Currency (in FC)	Value in INR (Rs.) as per CBIC Notification No. 39/2023 dated 01.06.2023
1	Saudi Riyals	5,000/-	(@21.35) Rs. 1,06,750/-

10.2.2 Shri Tanuj Sukanraj Parmar in his statement dated 12.07.2023 stated that these foreign currency notes were meant for supply to foreign going person without any valid documents. Thus, it appeared that the above foreign currency notes illicitly transported and were to be smuggled out of India. Therefore, total 5000/- Saudi Riyals, equivalent to Rs 1,06,750/-, as mentioned in the para above were placed under seizure vide Seizure Memo dated 05.10.2023 and bearing DIN-202310DDZ10000062712 under the provisions of Customs Act, 1962 on the reasonable belief that the same are liable for confiscation under Section 113 of the Customs Act, 1962.

10.3 STATEMENT OF SHRI HAMIDBHAI USMANBHAI DHUKKA, RESIDENT OF MUMANVAS, KHALI, TAL. SIDHPUR, DISTRICT PATAN - 384151, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 30.04.2024

10.3.1 Summons dated 04.04.2024 was issued to Shri Hamidbhai Usmanbhai Dhukka and accordingly, Shri Hamidbhai Usmanbhai Dhukka, resident of Mumanvas, Khali, Tal. Sidhpur, District Patan - 384151, voluntarily presented himself on 30.04.2024 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 30.04.2024.

10.3.2 During the statement, Shri Hamidbhai Usmanbhai Dhukka, on being asked, stated that he had planned to visit Mecca on Haj Yatra last year in June 2023, therefore he needed some foreign currency for his expenses in Saudi Arabia. He stated that therefore, one of his acquaintances, Shri Riyajbhai in his village had told him that he could arrange Saudi Riyals through his friend, one Shri Jay Bhai of Mehsana. Shri Hamidbhai Usmanbhai Dhukka stated that he had therefore, asked Shri Riyajbhai to arrange 5000 Riyals for him for which Shri Hamidbhai Usmanbhai Dhukka had told him that he would pay him equivalent amount of Indian currency after delivery of the Saudi Riyals. On being asked, he stated that the 5000 Saudi Riyals detained by the officers of DRI, Ahmedabad under Panchnama dated 07.06.2023 were supposed to be delivered to him by Shri Jay Bhai of Mehsana, as he told earlier and the same were meant to be exported out of the country along with him to Saudi Arabia.

10.3.3 On being asked, Shri Hamidbhai Usmanbhai Dhukka stated that he personally does not know Shri Jay Bhai of Mehsana and from where, he was supposed to source

the Saudi Riyals. On being asked about M/s. Monty Forex Pvt. Ltd., he stated that he does not know any such firm. He stated that however, a tax invoice/cash memo dated 06.06.2023 was issued by M/s. Monty Forex Pvt. Ltd. in his name, which was handed over by Shri Jay Bhai of Mehsana to Shri Riyajbhai, who in turn had handed over that to him in around Aug'2023.

10.3.4 On being asked, Shri Hamidbhai Usmanbhai Dhukka stated that Shri Riyajbhai had informed him on 07.06.2023 that the foreign currency, i.e. Saudi Riyals needed by him could not be arranged by Shri Jay Bhai stating that the said foreign currency had been detained by DRI for some inquiry. Shri Hamidbhai Usmanbhai Dhukka stated that however, he did not inquire much about the same as it did not concern him.

10.3.5 On being asked about the documents, viz. passport, visa, air ticket etc. provided by Shri Hamidbhai Usmanbhai Dhukka to Shri Riyajbhai or Shri Jay Bhai for the purchase of Saudi Riyals, Shri Hamidbhai Usmanbhai Dhukka stated that he had not provided any documents and also Shri Riyajbhai or Shri Jay Bhai had not asked him for any documents for the purchase of Saudi Riyals. Shri Hamidbhai Usmanbhai Dhukka stated that however, later on after the said foreign currency were detained by DRI, Shri Jay Bhai had asked Shri Riyajbhai for the copy of his passport, visa and air tickets for some DRI inquiry for which he had provided him the copies of the said documents.

10.3.6 On being asked, Shri Hamidbhai Usmanbhai Dhukka stated that he had booked his and his wife's ticket on 13.06.2023 for their travel from Ahmedabad to Riyadh for Mecca visit on 16.06.2023. On being asked about the legal rules regarding the sale and purchase of foreign currency, he stated that he is not aware of any such rules. On being asked about the statutory documents required for the purchase of foreign currency, he stated that he is also not aware of the same.

10.3.7 On being asked about the payment for the sale of Saudi Riyals, Shri Hamidbhai Usmanbhai Dhukka stated that as the said Saudi Riyals were not delivered to him, he did not make any payment for the same.

10.4 ANALYSIS OF THE EVIDENCE ON RECORD

10.4.1 Shri Tanuj Sukanraj Parmar of M/s. Monty Forex Pvt. Ltd during his statement dated 12.07.2023 submitted an invoice dated 06.06.2023 issue by M/s. Monty Forex Pvt. Ltd. in the name of Shri Hamidbhai Usmanbhai Dhukka for the sale of 5000 Saudi Riyals along with copy of Passport and Visa of Shri Hamidbhai Usmanbhai Dhukka. However, Shri Hamidbhai Usmanbhai Dhukka had not made the payment as he did not receive the said Foreign Currency. Also, Shri Hamidbhai Usmanbhai Dhukka had booked the ticket to Saudi Arabia from Ahmedabad for himself and for his wife only on 13.06.2023 as accepted by Shri Hamidbhai Usmanbhai Dhukka in his statement dated 30.04.2024. Also, Shri Hamidbhai Usmanbhai Dhukka stated during his statement that

he had not provided any documents and also Shri Riyajbhai or Shri Jay Bhai had not asked him for any documents for the purchase of Saudi Riyals. He stated that however, later on after the said foreign currency were detained by DRI, Shri Jay Bhai had asked Shri Riyajbhai for the copy of his passport, visa and air tickets for some DRI inquiry for which he had provided him the copies of the said documents. Thus, it appears that M/s. Monty Forex Pvt. Ltd had sent the said foreign currency of 5000 Saudi Riyals without any licit documents.

11. Thus, to summarize, the foreign currency carried by the Aangadiya person working for M/s. Vijaykumar Vikrambhai & Company were detained and subsequently seized vide Seizure Memo dated 05.10.2023 as it appeared they were meant to be smuggled out of India. The foreign currencies, thus seized are as per Table-8 below:

TABLE-8

Sl. No.	Currency Details	Total value of foreign currency	Value in INR (Rs.) as per CBIC Notification No. 39/2023 dated 01.06.2023	Name of the concerned Party
1.	Canadian Dollars	15000/-	8,97,750/-	Shri Prakashchandra H. Soni purchased from M/s. Pradip Forex Pvt. Ltd
2.	Singapore Dollars	10,000/-	6,01,000/-	M/s. RPFx Forex Pvt. Ltd purchased from M/s. Manglik Forex Pvt. Ltd and M/s. Kothari Forex Pvt. Ltd
3.	Canadian Dollars	8,500/-	5,08,725/-	
4.	Singapore Dollars	10,000/-	6,01,000/-	
5.	Thai Bhat	1,24,000/-	2,92,640/- (as per prevailing rates)	M/s. Adman Forex and Services Pvt. Ltd
6.	Saudi Riyals	5,000/-	1,06,750/-	M/s. Monty Forex Pvt. Ltd
Total			30,07,865/-	

12. The investigation could not be completed in the stipulated time period of six months from the date of the detention of goods. The competent authority vide letter dated 01.12.2023 granted the extension by a further period of six months for issuance of Show Cause Notice in respect of seized goods in terms of the first proviso of Section 110(2) of the Customs Act, 1962 as amended by the Finance Act, 2018.

13. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOM ACT, 1962:

SECTION 2(22):

- "goods" includes*
- a) vessels, aircrafts and vehicles;*
 - (b) stores;*
 - (c) baggage;*
 - (d) **currency and negotiable instruments;** and*

(e) any other kind of movable property;”

SECTION 2(33):

““prohibited goods” means any goods the import or export of which is subject to any prohibition under the Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;”

SECTION 2(39):

““smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;”

SECTION 11H(a):

““illegal export” means the export of any goods in contravention of the provisions of the Act or any other law for the time being in force;”

SECTION 113:

“Confiscation of goods attempted to be improperly exported, etc.–The following export goods shall be liable to confiscation: -

(d) any goods attempted to be exported or brought within the limits of any Customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Act or any other law for the time being in force;”

SECTION 119:

“Any goods used for concealing smuggled goods shall also be liable to confiscation.”

SECTION 114:

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

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

B. THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999;

SECTION 2. Definitions –

“In the Act, unless the context otherwise requires, -

(m) “foreign currency” means any currency other than Indian currency;”

SECTION 3. Dealing in foreign exchange, etc.—

“Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—

deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;”

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

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

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

“REGULATION 7: *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, -

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

(ii) 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;

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

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

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

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

(4) Any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in

accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.”

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

RULE 7. Currency. –

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

E. FOREIGN EXCHANGE MANAGEMENT (POSSESSION AND RETENTION OF FOREIGN CURRENCY) REGULATION, 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.”*

14. SUMMARY OF INVESTIGATION:

14.1 From the records and evidences discussed in the foregoing paras, it appeared that in the instant case, Foreign Currency equivalent to total Indian Rupees **30,07,865/-** (Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only) were handed over by certain parties to Aangadiya M/s. Vijaykumar Vikrambhai & Company to be handed over to different persons based in Gujarat. Further, any said

concerned party was unable to produce any legal document showing legitimate procurement of the seized foreign currency during investigation of the case.

14.2 As per Regulation 5 of Foreign Exchange Management (Export and import of currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 6 (R)/RB-2015 dated 29/12/2015, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, any foreign currency. Similarly, on the basis of Regulation 7 *ibid*, a person is entitled to take or send out foreign exchange drawn from an Authorized Person in accordance with the provisions of the Act or the rules or regulations or directions made or issued there under. During the search of baggage of Shri Mahendrabhai Hargovan Das, employee of Aangadiya M/s. Vijaykumar Vikrambhai & Company under Panchnama dated 07.06.2023, documents to the effect of legal purchase with respect to Foreign Currency as per Regulation 7 *ibid*, were not found. Further, Shri Mahendrabhai Hargovan Das was not authorized to acquire possession of foreign currency. Thus, it appeared that the foreign currency was being transported/ couriered without any licit documents. Also, it appeared that the Aangadiya-M/s. Vijaykumar Vikrambhai and Company had collected the said foreign currencies without any legal documents and thus was accomplice in the attempt to smuggle the same out of India in violation of the said Act/Rules/Regulations in force.

14.3 On the basis of Regulation 3 *ibid*, a person is entitled to possess or retain the foreign currency or foreign coins up to the limit of 2000 USD subject to condition that same should be acquired legally or the method provided in the said regulation 3. However, during the search of baggage of Shri Mahendrabhai Hargovan Das, employee of Aangadiya M/s. Vijaykumar Vikrambhai & Company under Panchnama dated 07.06.2023, Currency more than the limit, without any documents for legal possession of foreign currency, was found. Thus, it appeared that the foreign currency was being transported by M/s. Vijaykumar Vikrambhai and Company through their employee Shri Mahendrabhai Hargovan Das in the attempt to smuggle the same out of India in violation of the said Act/Rules/Regulations in force.

14.4 Further, the documents submitted by the concerned parties inferred that the relevant documents regarding sale of the foreign currencies were not created on the day of actual sale of the foreign currency while the same were created afterwards for the specific purpose of submission to the officers of DRI, Ahmedabad. The statements of the concerned parties alongwith the analysis of the documents submitted can be summarized as follows:

- (i) With respect to the 15,000/- Canadian Dollars seized pertaining to Shri Prakashchandra H. Soni, Shri Mineshkumar Hasmukhlal Bhojak, Director of M/s. Pradip Forex Pvt. Ltd has himself admitted in his statement dated 11.07.2023 that the invoice for the sale of the said Foreign Currency to Shri Prakashchandra H. Soni was created only on 07.06.2023, i.e. a day after the said foreign currency were handed over to Aangadiya by Shri Prakashchandra

H. Soni. Also, the cheques issued in favour of M/s. Pradip Forex Pvt. Ltd were encashed only on 08.06.2023. Thus, it appeared that the invoices and cheques were issued deliberately after the said foreign currency was detained by DRI on 07.06.2023 and the said foreign currency was handed over to Aangadiya without any licit documents. Further, Shri Prakashchandra H. Soni in his statement dated 11.07.2023 had stated that he had purchased the said foreign currency as he was about to travel to Canada. It is also evident from the documents subsequently provided that Shri Prakashchandra H. Soni was to travel to USA with his family and it appeared that the foreign currency was procured by him without any documents as it was intended to be smuggled out of India. However, pursuant to the detention of the foreign currency, he subsequently chose to legitimize his purchase of foreign currency by way of presenting invoices which were absent on the day of purchase and at the time of interception by DRI Ahmedabad. By indulging in such act, they have rendered themselves liable for penal action under Section 114 and 117 of the Customs Act, 1962.

- (ii) With respect to the 10000/- Singapore Dollars and 8500/- Canadian Dollars seized pertaining to M/s. RPFX Forex Pvt. Ltd, it appeared that M/s. RPFX Forex Pvt. Ltd has created self-invoice dated 07.06.2023 afterwards and solely for the purpose of submission to DRI. Also, both the suppliers of the said foreign currency for M/s. RPFX Forex Pvt. Ltd, i.e. M/s. Kothari Forex Pvt. Ltd and M/s. Manglik Forex Pvt. Ltd have made sale invoices dated 05.06.2023 and 06.06.2023 of back date for the purpose of submission to DRI as the corresponding INR transactions were done only on 08.06.2023 while they both have mentioned the date of payments as 07.06.2023 and 05.06.2023. Also, the concerned persons of all these firms have accepted in their respective statements that they had wrongly inserted date of payments in the respective invoices. Further, Shri Parthkumar Bharatbhai Patel in his statement dated 11.07.2023 has stated that they sell foreign currency to the persons who are going to travel abroad, other registered dealers and Bank. Thus, it appeared that the foreign currency was procured without any licit documents at the material time with an attempt to smuggle the same out of India and he had intentionally tampered with documents only with a view to mislead the investigation. By indulging in such act they have rendered themselves liable for penal action under Section 114 and 117 of the Customs Act, 1962.
- (iii) With respect to the 10000/- Singapore Dollars and 1,24,000/- Thai Bhat seized pertaining to M/s. Adman Forex & Services Pvt. Ltd, Shri Viral Shah, Director of M/s. Adman Forex & Services Pvt. Ltd had accepted in his statement dated 11.07.2023 that the said currency was first transported with one of his employees to Mumbai for sale to a person but as the said deal could not happen, the said foreign currency was handed over to Aangadiya to be resented back to their office in Ahmedabad. Also, M/s. Adman Forex & Services

Pvt. Ltd could not submit any document regarding the transportation of the said foreign currency in such manner. Also, M/s. Adman Forex & Services Pvt. Ltd have indulged in dealing of foreign currency without valid license as their license no. FE.AH.AM.14/2006 issued by Reserve Bank of India authorizing M/s. Adman Forex and Services Pvt Ltd to undertake money changing business, was valid only upto 01.11.2022 and was pending for renewal during the material time. As Viral Shah has admitted that the said foreign currency was intended to be to hand over to a person in Mumbai who could be travelling abroad, therefore, it appeared that the said foreign currency was procured without any licit documents at the material time with an attempt to smuggle the same out of India. Further, M/s. Adman Forex & Services Pvt. Ltd was operating illicitly without any due authorisation. By indulging in such acts of omission and commission they have rendered themselves liable for penal action under Section 114 and 117 of the Customs Act, 1962.

- (iv) With respect to the 5000/- Saudi Riyals seized pertaining to M/s. Monty Forex Pvt. Ltd, from the statements of Shri Tanuj Sukanraj Parmar, Director of M/s. Monty Forex Pvt. Ltd and Shri Hamidbhai Usmanbhai Dhukka, it appeared that the said foreign currency were attempted to be sold without cover of any documents. It is only after the said currency were detained by DRI, the documents, i.e. copies of the Passport, Visa, Tickets were obtained from Shri Hamidbhai Usmanbhai Dhukka, which were submitted by M/s. Monty Forex Pvt Ltd during his statement dated 11.07.2023. Shri Hamidbhai had never approached M/s. Monty Forex Pvt. Ltd for purchase of foreign currency nor had he provided any documents for the same. The presentation of documents subsequently of Shri Hamidbhai Usmanbhai Dhukka appeared to be a ploy to cover the foreign currency seized by DRI. Thus, it appeared that there was an intention to smuggle the said foreign currency out of India. By indulging in such act of omission and commission, they have rendered themselves liable for penal action under Section 114 and 117 of the Customs Act, 1962. Also, Shri Hamidbhai Usmanbhai Dhukka in his statement has stated that the 5000 Saudi Riyals detained by DRI, Ahmedabad under Panchnama dated 07.06.2023 were supposed to be delivered to him by Shri Jay Bhai of Mehsana, as he told earlier, and the same were meant to be exported out of the country along with him to Saudi Arabia, which means he was aware about the plot. Thus, Shri Hamidbhai Usmanbhai Dhukka has rendered himself liable for penal action under section 117 of the Customs Act, 1962.

Thus, in view of the above, it appeared that the said foreign currencies were being carried, possessed/retained illegally with intention to smuggle the same out of India in violation of the said Act/Rules/Regulations in force.

14.5 Further, it appeared that the concerned parties, i.e. (i) M/s. Pradip Forex Pvt. Ltd, (ii) M/s. Kothari Forex Pvt. Ltd, (iii) M/s. Manglik Forex Pvt. Ltd, (iv) M/s. Adman Forex & Services Pvt. Ltd and (v) M/s. Monty Forex Pvt. Ltd had supplied/meant to supply the seized foreign currency to their respective buyers during the material time without verification of the KYC documents and also had not issued any valid documents, i.e. invoice or delivery challan. The seized foreign currencies in transit were not accompanied with the licit documents of procurement at the time of interception by DRI. All the invoices produced during the investigation appeared to be an afterthought as the goods, i.e. foreign currency was seized by DRI. It appeared that these concerned parties were aware that those foreign currencies were meant to be smuggled out of India and have thus abetted in doing so. By such act of omission and commission they have rendered themselves liable to penal action under Section 114 and 117 of the Customs Act, 1962.

14.6 In view of the discussions in forgoing paras, it appeared that the foreign currency seized, cannot be exported without having proper legal and legitimate documents. Therefore, it appeared that the possession, retention, sale and transportation of the said foreign currency in this manner is a clear violation of the restrictions imposed under Foreign Exchange Management (Export and import of currency) Regulations, 2015, the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 and hence the same appeared to fall under the ambit of “prohibited goods” as defined under Section 2(33) of the Customs Act, 1962. Further, in terms of Section 11H (a) of the Customs Act, 1962, the commission of the said act, i.e. purchase and handing over of the said foreign currency to Aangadiya without possession of any legitimate documents again amounts to “Illegal export” of foreign currencies by (i) Shri Prakashchandra H Soni with respect to seized 15,000/- Canadian Dollars, (ii) M/s. RPFx Forex Pvt. Ltd with respect to seized 10,000/- Singapore Dollars and 8,500/- Canadian Dollars, (iii) M/s. Adman Forex & Services Pvt. Ltd with respect to seized 10,000/- Singapore Dollars and 1,24,000/- Thai Bhat and (iv) M/s. Monty Forex Services Pvt. Ltd with respect to seized 5,000/- Saudi Riyals, in as much as they failed to produce any legitimate/legal document in support of purchase/sale of the foreign currency during the course of investigation.

14.7 Thus, the foreign currencies totally equivalent to Indian Rupees 30,07,865/- (Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only) seized from the person namely, Shri Mahendrabhai Hargovan Das, working for M/s. Vijaykumar Vikrambhai & Company-Aangadiya appeared to be attempted to be smuggled out of India. Further Shri Mukeshkumar Manilal Patel during recording of his statement admitted that the carrying of foreign currency is not allowed through courier service. Despite having knowledge that the courier of foreign currency is not allowed as per RBI regulations, they attempted providing courier service of foreign currency without licit documents and thus abetted the above mentioned persons in their plans to take the said seized foreign currency out of country. They were not authorized by RBI to deal with courier of foreign currency. Thus, it appeared that Shri Mahendrabhai Hargovan

Das, the employee and M/s. Vijaykumar Vikrambhai & Company have indulged themselves in dealing with the smuggled foreign currency without licit documents, which was liable to confiscation under section 113(d) of the Customs Act, 1962. It also appeared that by such acts of omission and commission they have rendered themselves liable for penalty under Section 114 and 117 of the Customs Act, 1962.

15. Therefore, in view of foregoing paras, it appeared that following parties, by committing the said act, have rendered themselves liable for penalty under the provisions of section 114 and 117 of the Customs Act, 1962:

- (i) M/s. Pradip Forex Pvt Ltd for the sale of 15,000/- Canadian Dollars to Shri Prakashchandra H. Soni without verification of KYC documents and without issuance of sale invoice at the material time abetted in the attempt to take the foreign currency out of India.
- (ii) Shri Prakashchandra H Soni for the purchase of 15,000/- Canadian Dollars without any invoice and handing over the same to Aangadiya without any valid documents, abetted in the attempt to take the foreign currency out of India.
- (iii) M/s. Kothari Forex Pvt Ltd for the sale of 10,000/- Singapore Dollars to M/s. RPFX Forex Pvt Ltd and handing over the same to Aangadiya without any valid documents, abetted in the attempt to take the foreign currency out of India.
- (iv) M/s. Manglik Forex Pvt Ltd for the sale of 8,500/- Canadian Dollars to M/s. RPFX Forex Pvt Ltd and handing over the same to Aangadiya without any valid documents, abetted in the attempt to take the foreign currency out of India.
- (v) M/s. RPFX Forex Pvt Ltd for the purchase of 10,000/- Singapore Dollars and 8,500/- Canadian Dollars without any valid documents, abetted in the attempt to take the foreign currency out of India.
- (vi) M/s. Adman Forex & Services Pvt Ltd for the transportation and handing over of 10,000/- Singapore dollars and 1,24,000/- Thai Bhat to Aangadiya without any supporting documents and valid RBI License, abetted in the attempt to take the foreign currency out of India.
- (vii) M/s. Monty Forex Pvt Ltd. for the handing over of 5,000/- Saudi Riyals to Aangadiya without any supporting documents, abetted in the attempt to take the foreign currency out of India.
- (viii) M/s. Vijaykumar Vikrambhai & Company-Aangadiya, and Shri Mahendrabhai Hargovan Das, Employee of M/s. Vijaykumar Vikrambhai & Company for the transportation of the said foreign currency in the said manner without any documents which could support the legitimate procurement of the said currency and abetted in the attempt to take the foreign currency out of India.

16. Thereafter, vide Show Cause Notice issued from F. No. VIII/10-85/ DRI-AZU /O&A/HQ/2024-25 dated 04.06.2024, (1) M/s. Pradip Forex Pvt Ltd, (2) Shri Prakashchandra H Soni, (3) M/s. Kothari Forex Pvt Ltd, (4) M/s. Manglik Forex Pvt Ltd, (5) M/s. RPFX Forex Pvt Ltd, (6) M/s. Adman Forex & Services Pvt Ltd, (7) M/s. Monty Forex Pvt Ltd., (8) M/s. Vijaykumar Vikrambhai & Company-Aangadiya (9) Shri Mahendrabhai Hargovan Das, Employee of M/s. Vijaykumar Vikrambhai & Company and (10) Shri Hamidbhai Usmanbhai Dhukka were called upon to show cause to the Additional Commissioner of Customs, having his office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:-

(i) The Foreign Currency detained during Panchnama dated 07.06.2023, i.e. (i) 15,000 Canadian Dollars pertaining to Shri Prakashchandra H Soni, (ii) 10,000 Singapore Dollars and 8,500 Canadian Dollars pertaining to M/s. RPFX Forex Pvt Ltd, (iii) 10,000/- Singapore Dollars and 1,24,000 Thai Bhat pertaining to M/s. Adman Forex & Services Pvt Ltd and (iv) 5,000 Saudi Riyals pertaining to M/s. Monty Forex Pvt Ltd., having value equivalent to Indian **Rs. 30,07,865/-(Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only)** seized from possession of the Shri Mahendrabhai Hargovan Das working for M/s. Vijaykumar Vikrambhai & Company and attempted to be smuggled/improperly exported out of India without licit documents of procurement in contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 read with Rule 7 of the Baggage Rules, 2016, seized under Seizure Memo dated 05.10.2023, should not be confiscated under section 113 (d) of the Customs Act, 1962;

(ii) Penalty should not be imposed under the provisions of **Section 114 & 117** of the Customs Act, 1962 on:

1. M/s. Pradip Forex Pvt Ltd, Ward no. 9/321, Bhramin Panchni wadi, Dudhiya Talav, Navsari-396445
2. Shri Prakashchandra H Soni, H/809, Sarjan Tower Subhash Chowk Gurukul Road, Ahmedabad-380052
3. M/s. Kothari Forex Pvt Ltd, 51, Ground Floor, 59, Kakal Bldg, Goa Street, Dr. Sunderlal Bahl Path, Near GPO, Fort, Mumbai-400001
4. M/s. Manglik Forex Pvt Ltd, 10/11, Nand Prem Building, Shopping Centre, M G Road, Corner villeparle East, Mumbai-400057.
5. M/s. RPFX Forex Pvt Ltd, FF-17, Goyal Towers, Nr. Jhanavi Restaurant, Panjarapole, Ahmedabad-380009.
6. M/s. Adman Forex & Services Pvt Ltd, 16, Surmount, Opp Iskon Mega Mall, SG Road, Ahmedabad-380015.
7. M/s. Monty Forex Pvt Ltd., Plot No. 616, 14th Road, Near Domino's Pizza, Khar(W), Mumbai-400052.

8. M/s. Vijaykumar Vikrambhai & Company-Aangadiya, 2, Ganesh Chamber Ground Floor, Opp Janta Bakery, Ratanpol, Ahmedabad, Gujarat.
9. Shri Mahendrabhai Hargovan Das, Employee of M/s. Vijaykumar Vikrambhai & Company, 2, Ganesh Chamber Ground Floor, Opp Janta Bakery, Ratanpol, Ahmedabad, Gujarat

(iii) Penalty should not be imposed under the provisions of **117** of the Customs Act, 1962 on:

- a) Shri Hamidbhai Usmanbhai Dhukka, resident of Mumanvas, Khali, Tal. Sidhpur, District Patan – 384151

17. WRITTEN SUBMISSIONS AND PERSONAL HEARINGS:-

SHRI PRAKASHCHANDRA H. SONI:

17.1 In response to the show-cause notice, Shri Prakashchandra H. Soni submitted a reply vide letter dated 21.06.2024 received on 26.06.2024 interalia he submitted that:-

1. He denied the charges and allegations against him in the SCN. He has legitimate documents available with him to show that the noticee legally acquired 15000 Canadian Dollars. The seizure made by the investigating authority even though the purchase invoice produced during investigation is contrary to the provisions of the Customs Act.
2. Noticee bought these dollars from M/s. Pradip Forex Pvt. Ltd., Navsari for his planned travel to USA and Canada. He issued cheques bearing nos. 485574, 000037 and 113256 dated 06.06.2023 for purchase of the same. The cheques were encashed on 08.06.2023. The invoice by seller was issued for the purchase on 07.06.2023. The noticee handed over 15000 Canadian Dollars to Angadia for safety reasons. Above facts were confirmed by Shri Mineshkumar H. Bhojak, Director of M/s. Pradip Forex Pvt. Ltd. vide his statement on 11.07.2023. Shri Bhojak also stated that since the transaction was done late in the evening of 06.06.2023, the sales invoice was issued on 07.06.2023.
3. Foreign Currency does not fall under Section 123 of the Customs Act, hence burden lies upon Revenue to prove that the noticee illegally acquired the foreign currency.
4. Merely invoice was issued after a day of handing over the foreign currency to the noticee, does not mean that currency was sold illegally to the noticee.
5. The noticee has purchased foreign currency for his own use and not for trading purpose. The noticee has not violated any provisions of the FEMA Act and regulations made thereunder and acquired lawful possession of the foreign currency.
6. The charges of confiscation under Section 111 and 113 of Customs Act will not attract in the case, He relied upon following case laws:-
 - a. *Commissioner of Customs vs. Amit Kumar Saha reported at 2004 (174) ELT 158*
 - b. *Commissioner of Customs vs. L. Rajkumar reported at 2014 (312) ELT 99*

7. Section 113(d) makes it amply clear that the goods are liable for confiscation if the goods are attempted to be exported contrary to any prohibitions under the Act. Prohibition in FEMA on trading and possession of foreign currency will not come within the scope of Section 113(d) because this section deals with export and prohibitions on export and no other prohibition.
8. The Angadia was supposed to handover the foreign currency to the noticee and it is not the case that the noticee tried to export foreign currencies out of India. Accordingly, the provisions of section 113(d) is not applicable and foreign currencies have been illegally seized and therefore, liable to be released without any conditions.

17.2 The opportunity to be heard in person was given to Shri Prakashchandra H. Soni on 14.11.2024, which was attended by Ms. Shweta Garge, Advocate. Ms. Garge reiterated the written submission dated 26.06.2024 and requested to drop the proceedings initiated in the SCN.

M/s. PRADIP FOREX PVT. LTD.:

17.3 The opportunity to be heard in person was given to M/s. Pradip Forex Pvt. Ltd on 14.11.2024, which was attended by Shri Dhwanil Minesh Bhojak, Director of M/s. Pradip Forex Pvt. Ltd. Shri Bhojak submitted that the forex was purchased on 06.06.2023 from HDFC Bank and sold on same day, but invoicing was done on 07.06.2023 due to LRS reporting was done on 06.06.2023 already. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice.

M/s. KOTHARI FOREX PVT. LTD.:

17.4 In response to the show-cause notice, M/s. Kothari Forex Pvt. Ltd submitted a reply vide letter dated 06.07.2024 through their advocate inter alia they submitted that:-

1. They denied the charges and allegations against them in the SCN. They are a registered firm and their license is valid upto 30.09.2024.
2. They purchased 10000 Singapore Dollars from M/s. Milan Forex India Ltd. on 06.06.2023 and made payment online on 07.06.2023. Copy of invoice and bank statement were also submitted. The said 10000 SGD were sold to M/s. RPFX Forex Pvt. Ltd. on 06.06.2023 and received payment on 08.06.2023. Copy of sale invoice, purchase invoice dated 07.06.2023 by M/s. RPFX and screenshot of NEFT transaction were also submitted. All the documents regarding procurement and sale were submitted by the noticee during the investigation proceedings. The noticee submitted that allegation of illegal procurement without valid documents is baseless. Further, RPFX Forex Pvt Ltd is within territory of India.
3. The noticee denied the contents of Para 14.1 vehemently. Serious cognizance be taken of this unethical and illegal tactics tried by the DRI to distort facts, so as to falsely implicate the noticee. There is no shred of evidence to even remotely suggest

that there is attempt to smuggle the seized foreign currency through any person by M/s. RPFX Forex Pvt. Ltd.

4. The noticee has sold the currency to M/s. RPFX, hence the ownership of currency is transferred. The transactions carried out by M/s. RPFX are not concerned with the noticee as they have been carried out in his individual capacity and does not involve the noticee.
5. It is a settled law that the reasonable belief cannot be formed on mere pretense or suspicion. In this case, the Panchnama drawn by the DRI is a narration like a caged parrot wherein without there being any iota of evidence, the allegation has been raised on a mere suspect of alleged smuggling.
6. The noticee submitted that contentions of Para 15.1 and 15.3 are denied that invoice no. BS/23/9 dated 06.06.2023 is doctored. The date of payment was entered wrongly due to clerical error.
7. The noticee submitted that the statement of Shri Parthkumar Bharatlal Patel of M/s. RPFX cannot be relied upon in the absence of any corroborative evidence to substantiate the same. They relied upon following judgments:-
 - Vikram Singh Dahiya 2008 (223) ELT 619 (Tri-Del)
 - Jaswinder Singh 1996 (83) ELT 175 (Tribunal)
 - Mehul Roadways 2009 (246) ELT 660 (Tri - Ahmd)
 - J I Gandhi Silk Mills 2009 (237) ELT 103 (Tri -Ahmd)
 - K K Jain 2009 (235) ELT 170 (Tri - Ahmd)
8. The charge of abetting inviting penalty under section 114 of the Customs Act, 1962 has to be established by the Revenue. Any amount of suspicion or negligence cannot be considered for penalty, evidence of a positive act with knowledge on the part of the noticee should be there. The facts of the case do not reveal any *mens rea* or conscious knowledge qua the noticee.
9. The noticee has local trading business, thus has not abetted the actions or omissions of anyone in any manner relating to the alleged smuggling.
10. The noticee is unconnected with the other noticees.
11. The noticee requested the cross-examination of Shri Suresh Kumar, IO, DRI-AZU, Shri Rajesh Parnami, SIO, DRI-AZU and Shri M L Godara, DIO, DRI-AZU.
12. The SCN is illegal, unsustainable and bad-in-law and deserves to be withdrawn/dropped forthwith in the interest of justice.

17.5 The opportunity to be heard in person was given to M/s. Kothari Forex Pvt. Ltd. on 29.11.2024, which was attended by Shri Vijay M. Advani, Advocate. Shri Advani reiterated the written submission dated 06.07.2024 and requested to drop the proceedings initiated in the SCN.

M/S. MANGLIK FOREX PVT LTD.:

17.6 In response to the show-cause notice, M/s. Manglik Forex Pvt. Ltd submitted a reply vide letter dated 18.07.2024 through their director Shri Moolchand V. Parekh, interalia they submitted that:-

1. They denied the charges and allegations against them in the SCN.
2. The noticee has submitted concrete invoice and bank statement etc. during the statement that they have procured and supplied the currency legally and validly.
3. The seized currency was neither imported nor being exported into and from the country and as such the wrong allegation of smuggling and the surmise that currency after being smuggled into India from elsewhere or vice-versa are brought to India or being sent outside through domestic route and violations of provisions of Customs Act are not at all applicable to the noticee and the said SCN be immediately withdrawn on this ground alone.
4. The seized currency were sent to M/s. RPFX Forex Pvt. Ltd. legally as prescribed and Copy of sale invoice, purchase invoice by M/s. RPFX and KYC were also submitted.
5. The noticee denied the para concerning them and mere based on suspicion and without proper explanation or licit documents, the seized currency appears to have been smuggled. The said currency does not fit into section 2 (33), 2 (39), 11H (a), 113, 114, 119 of Customs Act.
6. The authority failed to see that it is common general industry practice to which they are questioning as the account keeping system is not as per any standard procedure or formula or expensive hi-tech digital technology. The practice is that the payment for currency is done on receipt of the same, which RPFX did as NEFT/RTGS. The currency was seized and in the hassle the payment was delayed.
7. The noticee has not imported or exported any good let alone the currency and hence, the provisions of FTDR cannot be applied on the noticee. The noticee is a currency merchant and deals in foreign currency exchange, trading legally within the bounds of law, rules and regulations.
8. The burden of proof under Section 123 of the Customs Act is on M/s. RPFX as they are the owner of the currency after being sold to them by the noticee.
9. Bare perusal of section levied under the Customs Act regarding confiscation & penalty, it is revealed that the same is applicable only in cases of confiscation & penalty of improperly exported goods etc. On reading of Section 114, the officers have failed to understand the transaction and making the noticee a scapegoat.
10. The noticee denies the charges under Section 119 as they have carried out a legal transaction and the same does not amount to improper export.
11. The provisions of FTDR Act, 1992 and FTDR Rules, 1993 and Foreign Trade Policy requiring IEC and applicable only in improperly imported-exported goods and not applicable in the present case.
12. They relied on the judgment in the case of Commissioner of Customs (Import), Mumbai vs. Konkan Synthetic Fibres 2012 (278) ELT 37 (SC), where it was held that in fiscal or taxation laws, while ascertaining the scope or expression use in a particular entry, the opinion of the experts in the field of trade should not be ignored, rather it should be given due importance.
13. They requested for personal hearing in the matter. And further submitted that it is highly erroneous to say that the noticee have aided, attempted and abetted in the act of smuggled currency.

17.7 The opportunity to be heard in person was given to M/s. Manglik Forex Pvt. Ltd. on 14.11.2024, which was attended by Shri Moolchand V. Parekh, Director of M/s. Manglik Forex Pvt. Ltd. Shri Parekh reiterated the written submission dated 18.07.2024 and requested to drop the proceedings initiated in the SCN.

M/S. RPFY FOREX PVT LTD.:

17.8 The opportunity to be heard in person was given to M/s. RPFY Forex Pvt. Ltd. on 29.11.2024, which was attended by Shri Parthkumar Bharatbhai Patel, Director of M/s. RPFY Forex Pvt. Ltd. Shri Parthkumar Bharatbhai Patel submitted that the forex was purchased on 06.06.2023 from Kothari Forex and Manglik Forex and payment was done on 08.06.2023. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice. He also sought 07 days' time for written submission.

17.9 M/s. RPFY Forex Pvt. Ltd submitted a reply vide letter dated 10.12.2024 through their director, inter alia they submitted that:-

1. They denied the charges and allegations against them in the SCN.
2. The noticee has purchased the foreign currencies namely 8500 Canadian Dollars and 10000 Singapore Dollars duly and legally and transportation done through proper documentations by M/s. Vijaykumar Vikrambhai & Co. The valid payment slip/receipts and invoices were handed over to the Angadiya for transportation.
3. They declared that foreign currency in transit was not imported into the country for export and such parcels are not exported and were accompanied by documentation.
4. The shipment adhered to the provisions of noti. FEMA-6®/RB-2015 dated 29.12.2015 and at no time, the noticee attempted to take foreign currency out of India.
5. Shri Parthkumar Bharatbhai Patel willingly appeared for the statement on 11.07.2023 before investigating officers and provided all relevant details and documents to justify the genuineness of the confiscated currency.
6. The charges on the noticee seemed to be founded on misapplication of facts. RPFY Forex Pvt Ltd did not performed any act of omissions or commissions which attract the provision of Section 114 or 117.
8. They countered that the currency had been legally purchased, registered and transported within the country with proper invoices and there was no attempt to either export or smuggle the currency. Every parcel had proper documentation as indicated by invoices, payment slips and properly transported.
9. The Angadiya firm M/s. Vijaykumar Vikrambhai & Co. has assured the noticee thatt the parcels were sent through their standard procedure with all relevant documents.
10. RPFY carries on its business with due transparency under the strict regulatory frame work provided by RBI and FEMA. All transactions are recorded and audited to ensure compliance with the appropriate laws.

11. The currency seized with valid invoices clearly established that it has a lawful origin, there is no evidence of smuggling or mal-intent. They requested for release of Currency and closing of proceedings initiated vide the SCN.

M/S. ADMAN FOREX & SERVICES PVT LTD.:

17.10 In response to the show-cause notice, M/s. Adman Forex & Services Pvt. Ltd. submitted a reply vide letter dated 02.07.2024 through their director Shri Viral R. Shah, interalia they submitted that:-

1. The Currency movement on official papers as per RBI guidelines is not available because the staff of their office left Ahmedabad and traveled to Mumbai with the said currency for anticipated transaction. It was anticipated that the deal to sell the said foreign currency would be finalized on receipt of official physical papers like passport, visa, air ticket, Aadhar card, PAN card etc. from the client. As no deal could be made possible, hence documents could not be obtained from the client.
2. The attempt to expoting foreign currency is not there as the same is not seized from the Customs Area as per Section 2(11) of the Customs Act.
3. The currency was meant to deliver the same to the client and not for any kind of smuggling activity.
4. The currency is official and legal as per our financial records and the same is not liable for confiscation under provisions of the Customs Act.
5. They submitted that there is no such situation or facts or evidence available with the Customs authority to prove the smuggling and hence the currency is not liable for confiscation.
6. The License no. FE.AH.AM. 14/2006 issued by RBI is not renewed but under consideration for renewal by RBI and it is still found active on the RBI website.
7. The foreign currency handed over to angadia at Mumbai was meant for delivery to our office without any supporting documents as per the procedure prescribed by RBI.

17.11 The opportunity to be heard in person was given to M/s. Adman Forex & Services Pvt. Ltd on 14.11.2024, which was attended by Shri Viral Shah, Director of M/s. Adman Forex & Services Pvt. Ltd. Shri Viral Shah reiterated the written submission dated 02.07.2024 and requested to drop the proceedings initiated in the SCN.

M/S. MONTY FOREX PVT LTD.:

17.12 The opportunity to be heard in person was given to M/s. Monty Forex Pvt. Ltd on 14.11.2024, which was attended by Shri Tanuj S. Parmar, Director of M/s. Monty Forex Pvt. Ltd. Shri Tanuj S. Parmar submitted that they do not agree with the allegation in the SCN. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice.

SHRI HAMIDBHAI USMANBHAI DHUKKA:

17.13 The opportunity to be heard in person was given to Shri Hamidbhai Usmanbhai Dhukka on 14.11.2024, which was attended by him and he submitted that he ordered Forex from Monty Forex Pvt. Ltd, however he did not get any forex. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice.

M/S. VIJAYKUMAR VIKRAMBHAI & COMPANY & SHRI MAHENDRABHAI HARGOVAN DAS:

17.14 Shri Rohan Thakkar, CA submitted written submission on behalf of M/s. Vijaykumar Vikrambhai & Company on 28.11.2024 as under:-

1. The Noticee reject all the allegations casted upon him under the said SCN. In the present case, the Noticee is into the business of the Angadiya, and he has not imported the goods, rather he was transporting the goods, from one place to another place. Further Noticee is also in possession of the legitimate invoice of goods transported by him.
2. From the statements given by the partner of the Noticee and also the suppliers of the goods, all the suppliers have stated that they have not informed to the noticee that the parcel given to them contains the Foreign Currency. Hence, it is spick and span that the noticee has no idea that foreign currency was inside the parcels. Further, they receive the goods in the packed seal hence, they are not in position to check whether the foreign currency was inside the parcels or Indian currency or confidential documents. Noticee is simply doing the business of the transport of the goods which he has been asked to it, he has no authority to check the legality of the goods, Noticee has to rely on the documents given by the supplier and information provided by the Supplier. It is the supplier who has to check the goods and the onus remain on the supplier only.
3. The Noticee has to rely on the invoices issued by the suppliers. Noticee has no jurisdiction neither he has authority to unearth what kind of goods is in the parcel.
4. The Noticee is not only carrying the goods which department has seized, they are also transporting other goods like Ornaments, jewellery, Indian origin Bars, etc. which has the legitimate documents and the same has also been verified by the DRI officer, if the Noticee has the illicit intention then they will be transporting only goods of the foreign currency and the Noticee is into the business since longtime and he is genuinely doing his business. Which clearly indicates that the noticee was completely unaware about the origin of the impugned Goods.
5. The noticee is not aware of the fact the goods that are being transported by noticee is the foreign currency.
6. section 114, means that if any person who do or fail to do any act or encourage someone to do or omits to do the things with respect to import of the Goods which render the goods liable to confiscation under section 113 of the Customs Act, 1962. Section 113 of the Act, stipulates about the improperly exported Goods, In the present case the Noticee is not exporting the goods neither he is directly or indirectly

involved in the export of the goods. The disputed goods in which the Noticee dealing was given produce before him after the import of the goods, further, as stated earlier paras the noticee absolutely unaware of that the goods are seized are detained goods. Therefore, the Section 114 cannot be invoked on the Noticee.

7. Noticee was not aware that the gold which was being transported are foreign currency. The noticee herein case acted in the bona fide manner, completing his duty, what he had paid for, he was not aware that the disputed goods are foreign currency. Further, appellant is not directly or indirectly involved with suppliers.

8. The above adjudication clearly portrays that noticee could not be penalized under section 114 of the act, 1962 as he was merely doing his duty in the capacity of 'Courier'. Further, it is also to be noted that the Noticee has no knowledge that the goods has been carrying by him was foreign currency, that has not been disclosed by the suppliers as well as the recipients of the goods, he has relied on the documents and statement produced by the Suppliers which the Noticee do in the normal course of the business, Further, the Noticee has not gained any pecuniary benefits neither he has any intention to gain, single penny from the disputed goods except otherwise the service charge for the service which he supposed to provide in the due course of the business. the '*mens rea*' is not established in the present case, hence section 114 should not be pressed against the noticee,

9. in the present case the noticee is mere a Angadiya service provider and there is no personal gain involved.

10. the pronouncements referred under the said law is also relied upon as under:-

- i. Gujarat Borosil v CCE (2007) 217 ELT 367 (CESTAT)
- ii. Suren International Limited v CC 2006 (203) ELT 597 (CESTAT)
- iii. Rammaica (India) Limited v. CCE 2006 (198) ELT 379 (CESTAT)
- iv. O P Agarwal v CC (2005) 185 ELT 387 (CESTAT)
- v. Vinod Kumar v. CCE (2006) 199 ELT 705 (CESTAT)
- vi. Carpenter Classic Exim v CC (2006) 200 ELT 593 (CESTAT)
- vii. Farwood Industries v. CCE (2005) 185 ELT 401 (CESTAT)
- viii. Subhash Gupta v. CCE (2007) 10 STT 411 (CESTAT)
- ix. Commissioner of Central Excise Versus M/s. Goodwill Electricals 2010 - TMI - 202550 - BOMBAY HIGH COURT
- x. Cipla Coated Steel v. CCE 1999 (113) ELT (490) (CEGAT)
- xi. M Hariraju v. CCE1998 (100) ELT (203) (CEGAT);
- xii. Jalmadhu corporation v. CCE 1999 (114) ELT 883 (CEGAT);
- xiii. Bindu S Mehta v. CCE2000 (121) ELT 281 (CEGAT);
- xiv. A K Tantia v. CCE 2003(158)ELT 638 (CESTAT SMB);
- xv. Bellary steel v. CCE 2003(157) ELT 324(CESTAT);
- xvi. Poonam Sparkv v. CCE 2004(164) ELT (282) (CESTAT)
- xvii. HMTD Engineering v. CC 2000(122) ELT 749(CEGAT)
- xviii.SM Zschimmer & Scharwz v. CCE 2000 (126) ELT 729(CEGAT);
- xix. CCE v. New Tobacco Co. 2001(134) ELT 176 (CEGAT);
- xx. Concorde Overseas v. CCE 2003 (156) ELT 287 (CESTAT);
- xxi. Nusli Davar v. CCE 2003 (156) ELT 1022 (CEGAT);

- xxii. L P Desai v. UOI 2004 (165) ELT (151) (Del HC);
- xxiii. Standard Pencils v. CCE 2006 (197) ELT 346 (CESTAT);
- xxiv. P V Malhotra v. CCE 2006 (194) ELT 89 (CESTAT);
- xxv. Hindustan Lever v. CCE(2007) 210 ELT 60 (CESTAT SMB)
- xxvi. Caltron Instruments v. CCE 2004 (165) ELT 174 (CESTAT)
- xxvii. Dayaram Agarwal v. CCE(2007) 218 ELT 33 (CESTAT)
- xxviii. applied electronics v. CCE 2001(130) ELT 500=40RLT 409 (CEGAT)
- xxix. Arebee Star Maritime Agencies v. CCE 2004 (173) ELT 185 (CESTAT)
- xxx. Shrikant Processors v. CCE2006 (203) ELT 98 (CESTAT SMB)
- xxxi. Chowbey Sugandhit v. CCE 2001 (131) ELT 222 (CEGAT)
- xxxii. Metro Appliances v. CCE(2001) 137 ELT 554 (CEGAT);
- xxxiii. Laurel Organics v. CCE 2002(140) ELT 151 (CEGAT);
- xxxiv. Mewar Bottling v. CCE 2002(140) ELT 237 (CEGAT);
- xxxv. Keshav Kumar Tharad v. CCE 2003 (156) ELT 211 (CESTAT SMB);
- xxxvi. Nirmal metal fabricators v. CCE (2004) 169 ELT 168 (CESTAT SMB);
- xxxvii. Mettaco Engineering v. CC2005 (182) ELT 210 (CESTAT);
- xxxviii. S K & Co. v. CCE 2006 (203) ELT 137 (CESTAT).

11. The noticee neither has the knowledge of the goods being carried is foreign currency nor he has transgressed the in provisions of the Customs Act, 1962 as he was not involved in the exportation of the disputed goods. The Noticee was only doing transportation of the goods in the normal course of his business. The Noticee has not imported the disputed goods nor he has any illicit intention to remove the goods. As the Noticee has not violated any of the provisions of the Customs Act, 1962, hence, the penalty under section 117 is not be tenable.

17.15 Shri Rohan Thakkar, CA submitted reply dated 28.11.2024 on behalf of Shri Mahendrabhai Hargovan Das, as per Para 17.14 above.

17.16 Shri Rohan Thakkar, CA attended personal hearings on behalf of M/s. Vijaykumar Vikrambhai & Company and Shri Mahendrabhai Hargovan Das, on 29.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN.

18. DISCUSSION AND FINDINGS:-

18.1 I have carefully gone through the records of the case, the Show Cause Notice, the submissions of all the noticees, records of personal hearings and facts of the case before me.

18.2 I find that while acting upon specific intelligence, the officers of DRI intercepted 15 passengers outside Kalupur Railway Station, Ahmedabad at around 04:50 hrs. on 07.06.2023. During the examination of the baggage of the passengers at the office of DRI, Ahmedabad Zonal Unit ("AZU"), bags of a passenger, Shri Mahendrabhai Hargovan Das, employee of Aangadiya M/s. Vijaykumar Vikrambhai & Company ("the aangadia firm"), the officers found that certain parcels were containing foreign currencies. The documents with respect to Foreign Currency were not found which could prove the legal

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purchase of foreign currency from any authorized person and the employee of the Aangadia firm was not authorized to acquire possession of foreign currency. Thus, it appeared that the foreign currency was being transported/ couriered without any licit documents. A detailed investigation revealed the flow of foreign currency as under:-

15000 Canadian Dollars		
Pradip Forex Pvt. Ltd.	→	Shri Prakashchandra Soni
10000 Singapore Dollars		
Kothari Forex Pvt. Ltd.	→	RPFX Forex Pvt. Ltd.
8500 Canadian Dollars		
Mangalik Forex Pvt. Ltd.	→	RPFX Forex Pvt. Ltd.
10000 Singapore Dollars		
+		
1,24,000 Thai Bhat		
Adman Forex and Services Pvt Ltd.	→	Adman Forex and Services Pvt Ltd
5000 Saudi Riyals		
Monty Forex Pvt. Ltd.	→	Shri Hamidbhai Usmanbhai Dhukka

18.3 The said foreign currency having value equivalent to Indian Rs. 30,07,865/- (Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only) were placed under seizure vide Seizure Memos dated 05.10.2023 under the provisions of Section 110 of Customs Act, 1962. Statements of all noticees and others were recorded u/s 108 of the Customs Act, 1962 and the aforesaid show cause notice was issued proposing confiscation of said foreign currencies under the provisions of Section 113(d) of Customs Act, 1962 and penalties on all the noticees under Section 114 & 117 of the Customs Act, 1962. Thus, I find that the issue before me to decide as to:

- a. Whether the seized foreign currencies were possessed/owned in contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 read with Rule 7 of the Baggage Rules, 2016 and were attempted to be smuggled/exported out of India and the same are liable for confiscation under the provisions of Section 113(d) of Customs Act, 1962?
- b. Whether the noticees are liable for penalties under Section 114 & 117 of the Customs Act, 1962?

18.4 Now, I proceed to decide Whether the seized foreign currencies were possessed/owned in contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 read with Rule 7 of the Baggage Rules, 2016 and were attempted to be smuggled/exported out of India and the same are liable for confiscation under the provisions of Section 113(d) of Customs Act, 1962.

15,000/- CANADIAN DOLLARS PERTAINING TO SHRI PRAKASHCHANDRA H. SONI

18.4.1 I find that 15000/- Canadian Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to Shri Prakashchandra H. Soni, which as per his statement dated 11.07.2023 was purchased from M/s. Pradip Forex Pvt. Ltd. in Navsari and was handed over by him to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad.

On being asked specifically about the parcel, I state that the said parcel contained 15000 Canadian Dollar was handed over by me to M/s. Vijaykumar Vikrambhai Patel and Company to deliver the same to me in Ahmedabad. The said foreign currency was purchased by me from M/s Pradip Forex Pvt Ltd, Navsari.

I find that Shri Prakashchandra H. Soni has submitted that the same forex was bought for his planned visit to Canada to his son.

On being asked about the reason to buy foreign currency, I state that my son lives in U.S.A and I was planning to visit him in USA on 07.07.2023 and thereafter we were planning to visit Canada so I had bought 15000 Canadian dollars.

18.4.2 I find that Shri Prakashchandra H. Soni submitted that the on the day of purchase i.e. 06.06.2023, no invoice was issued by M/s. Pradip Forex Pvt. Ltd., however they issued an invoice on 07.06.2023 for the purchase of foreign currency. The payment was made by him on 06.06.2023 vide cheque dated 06.06.2023 which were encashed on 08.06.2023.

On being asked about the payment of the purchase, I state that I had given the cheque dated 06.06.2023 to M/s Pradip Forex Pvt Ltd, Navsari which were encashed on 08.06.2023.

On being asked about the invoice regarding the purchase of 15000 Canadian dollars I state that on the day of purchase of 15000 Canadian dollars no invoice was issued by M/s Pradip Forex Pvt Ltd, Navsari. However, M/s Pradip Forex Pvt Ltd, Navsari has issued the invoice for the purchase of Canadian Dollar on 07.06.2023.

I find from the statement of Shri Mineshkumar Hasmukhlal Bhojak, Director of M/s. Pradip Forex Pvt. Ltd dated 11.07.2023, that they could not issue invoice on 06.06.2023 as the transaction was done late in the evening, while Large Remittance Scheme (LRS) reporting is done at 6.30 PM.

On being asked regarding the payment of the sale of Canadian Dollar, I state that Shri Prakahchandra H Soni made the payment via Bank Check dated 06.06.2023. However the sale invoice was issued on 07.06.2023 as Large Remittance Scheme (LRS) reporting to bank is done by 6:30 PM and this transaction was done late in the evening hence we have to issue the sale invoice on 07.06.2023.

However, Shri Mineshkumar Hasmukhlal Bhojak, Director of M/s. Pradip Forex Pvt. Ltd also stated during his statement that

On being asked about handing over of the foreign currency without sale invoice, I state that the sale invoice was issued on 07.06.2023 after the parcel was intercepted by the DRI and the check was also encashed on 08.06.2023.

18.4.3 I find further, from the documents submitted by Shri Mukeshkumar Manilal Patel, Partner of M/s. Vijaykumar Vikrambhai & Company during the Panchnama proceedings dated 07.06.2023 is only a Cash Memo from M/s Pradip Forex Pvt. Ltd to Shri Prakashchandra H. Soni and no other supporting documents.

S. No.	Item Description	Details of Sender	Documents submitted
1	15000 Canadian Dollar (150 no in denomination of 100)	Praksh bhai, C.G. Road, Ahmedabad (9724445818)	Cash Memo from M/s Pradip Forex Pvt Ltd to Shri Prakashchandra H Soni

I find that Shri Prakashchandra H. Soni has submitted that he himself travelled to Navsari for Forex purchase by his car and trasported it through Aangadiya for safety reason and also undertook to submit Toll receipt, however the same had not been submitted yet.

On being asked about who has purchased 15000 Canadian dollars from M/s Pradip Forex Pvt Ltd, Navsari I state that I myself has purchased and I was present in navsari on 06.06.2023. Further, I state that I have travelled to navsari on 06.06.2023 by my personal car bearing number GJ 01/.. 3210.

On being asked to submit the toll payment details I undertake to submit the details to toll tax tomorrow as currently I am not having. I also state that the fast tag is registered on my number only.

18.4.4 I also find that Shri Prakashchandra H. Soni has submitted 03 different cheques as proof of payment issued by Shri Prakashchandra H. Soni, Shri Pravinkumar H. Soni & Rakeshkumar P. Soni and Ms. Jigisha Soni dated 06.06.2023, however, the same were encashed on 08.06.2023 by M/s. Pradip Forex Pvt. Ltd. I also find that Shri Prakashchandra H. Soni has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 11(R)/2015-RBdated 29/12/2015, the Reserve Bank specifies the limits for possession or retention of foreign currency or foreign coins, 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.

On the basis of Regulation 3 *ibid*, a person is entitled to possess or retain the foreign currency or foreign coins up to the limit of 2000 USD subject to condition that same should be acquired legally or the method provided in the said regulation 3. In the present case, I find that the employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das was carrying forex exceeding the limit imposed by the regulation 3 *ibid*, even without valid documents.

18.4.5 I further find that the said invoice dated 07.06.2023 and cheques were issued only after the DRI intercepted the Aangadiya persons to legitimize the transaction. I also find that Shri Prakashchandra H. Soni has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find clearly from this that his intent was not to declare the said foreign currency to the Customs Authorities and take/export the foreign currency outside India while going USA without declaring. As per Regulation 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, *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.* Further Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 specifies the conditions for taking/sending out foreign exchange and currency notes out of India. I find that 15000/- Canadian Dollars were being attempted to be taken out illegally in terms of Regulation 5 read with Regulation 7 *ibid*.

18.4.6 I find that the law on the subject relating to possession/own and export of foreign currency is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), and 'smuggling' as defined under Section 2(39) of the Act read with Section 11H (a) providing 'illegal export'. In the present case of foreign currency to tune of 15000/- Canadian Dollars were found in the possession of employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das. The sender of the said forex is Shri Prakashchandra H. Soni. The Aangadia firm could not produce any evidentiary document showing that the forex was purchased through legal means and documents submitted by Shri Prakashchandra H. Soni and M/s. Pradip Forex Pvt. Ltd. were created after interception to legitimize the transaction.

18.4.7 I find that all these circumstances establish beyond a shadow of doubt that Shri Prakashchandra H. Joshi and M/s. Pradip Forex Pvt. Ltd. knowingly and intentionally tried to evade the prohibition that was in force with respect to the export of foreign currency out of the country. As observed by the Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. VS. ADDITIONAL DIRECTOR GENERAL,**

DIRECTORATE OF REVENUE INTELLIGENCE, CHENNAI - 2016 (341) E.L.T. 65 (MAD.):

“The expression, subject to the prohibition under the Customs Act, 1962, or any other law for the time being in force, in Section 2(33) of the Customs Act, has to be read and understood, in the light of what is stated in the entirety of the Act and other laws..”

Madras High Court in the case of *Malabar Diamond Gallery P. Ltd.* (supra) *inter alia* observed :

“86. If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited. For prohibitions and restrictions, Customs Act, 1962, provides for machinery, by means of search, seizure, confiscation and penalties. Act also provides for detection, prevention and punishment for evasion of duty.”

In view of the above, I hold that 15,000/- Canadian Dollars pertaining to Shri Prakashchandra H. Soni were attempted to be smuggled/exported out of India.

10,000/- SINGAPORE DOLLARS AND 8500/- CANADIAN DOLLARS PERTAINING TO M/s. RPFX FOREX PVT LTD

18.4.8 I find that 10000/- Singapore Dollars and 8500/- Canadian Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company (“Aangadiya firm”) pertains to M/s. RPFX Forex Pvt. Ltd., which were purchased from M/s. Kothari Forex Pvt. Ltd and M/s. Mangalik Forex Pvt. Ltd. respectively and was handed over by respective persons of the sellers to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad. The following is excerpt from the statement dated 11.07.2023 of Shri Parthkumar Bharatbhai Patel, Director of M/s. RPFX Forex Pvt. Ltd.:-

On being asked specifically about the two different parcel, I state that one parcel containing 10000 Singapore Dollars was forwarded by Shri Nayanbhai(Umang) of M/s. Kothari Forex Pvt Ltd., Mumbai and other parcel containing 8500 Canadian dollars was forwarded by Shri Yogesh Bhai M/s. Manglik Forex Pvt Ltd., Mumbai for us.

18.4.9 I find that Shri Parthkumar Bharatbhai Patel admitted issuing self-invoices by M/s. RPFX Forex Pvt. Ltd, i.e. invoices no. AHMD/313000020 dated 07.06.2023 for the purchase of 10000 Singapore dollars from M/s. Kothari Forex Pvt. Ltd, Mumbai and invoices nos. AHMD/313000019 dated 07.06.2023 for the purchase of 3200 Canadian dollars & AHMD/313000018 dated 07.06.2023 for the purchase of 5300 Canadian dollars from M/s. Manglik Forex Pvt. Ltd, Mumbai only on 07.06.2023, i.e. after the said currency were detained by DRI under Panchnama dated 07.06.2023. Thus I find that the said invoices were not available on the date of delivery of the said

currency from Mumbai. I also find that the payment was made through NEFT on 08.06.2023, which credited to the sellers' account on 09.06.2023.

On being asked about the payment made by us for the purchase of 10000 Singapore Dollars and 8500 Canadian dollars I state that we have made the payment on 08.06.2023 through NEFT which was credited in their account on 09.06.2023.

Now I have been shown GST Invoice Number AHMD/313000020 dated 07.06.2023 issued by us for the bulk purchase Bordeaux(FFMC/AD-II) placed at page number 48 of the documents submitted by M/s. Vijaykumar Vikrambhai and Company vide their letter dated 16.06.2023. I perused the said invoice and state that the said invoice by issued by us. On being asked about the contents of the said invoice I state that this is a bulk purchase invoice issued by us for the purchase of 10000 Singapore dollars from M/s. Kothari Forex Pvt Ltd, Mumbai. Further, on being asked the date of payment mentioned as 08.06.2023 on an invoice issued on date 07.06.2023 I state and admit that it was our mistake and I have edited the invoice to insert the date of payment.

Further, I have been shown GST Invoice Number AHMD/313000019 dated 07.06.2023 issued by us for the bulk purchase Bordeaux(FFMC/AD-II) placed at page number 25 of the documents submitted by M/s. Vijaykumar Vikrambhai and Company vide their letter dated 16.06.2023. I perused the said invoice and state that the said invoice by issued by us. On being asked about the contents of the said invoice I state that this is a bulk purchase invoice issued by us for the purchase of 3200 Canadian dollars from M/s. Manglik Forex Pvt Ltd, Mumbai. Further, on being asked the date of payment mentioned as 08.06.2023 on an invoice issued on date 07.06.2023 I state and admit that it was our mistake and I have edited the invoice to insert the date of payment.

Further, I have been shown GST Invoice Number AHMD/313000018 dated 07.06.2023 issued by us for the bulk purchase Bordeaux(FFMC/AD-II) placed at page number 22 of the documents submitted by M/s. Vijaykumar Vikrambhai and Company vide their letter dated 16.06.2023. I perused the said invoice and state that the said invoice by issued by us. On being asked about the contents of the said invoice I state that this is a bulk purchase invoice issued by us for the purchase of 5300 Canadian dollars from M/s. Manglik Forex Pvt Ltd, Mumbai. Further, on being asked the date of payment mentioned as 08.06.2023 on an invoice issued on date 07.06.2023 I state and admit that it was our mistake and I have edited the invoice to insert the date of payment.

Debar
11/07/23

P B Patel
11/07/2023

18.4.10 I also find that Shri Parthkumar Bharatbhai Patel had admitted his mistake of editing invoice to insert the date of payment. Further, I find from the statement of Shri Moolchand V. Parekh, Director of Mangalik Forex Pvt. Ltd. that invoice issued by them- invoice no. BS/23/87 dated 05.06.2023 for the sale of 5300 Canadian dollars to M/s. RPFx Forex Pvt. Ltd, Ahmedabad and invoice no. BS/23/88 dated 05.06.2023 for the sale of 3200 Canadian dollars to M/s. RPFx Forex Pvt Ltd, Ahmedabad have the date of payment mentioned as 05.06.2023. However, the date of payments are as 08.06.2023 for both the transaction of Rs. 3,30,720/- (for sale of 5300 Canadian Dollars) and Rs. 2,00,000/- (for sale of 3200 Canadian Dollars).

date 05.06.2023 I state and admit that we have received payment on 09.06.2023 and not on 05.06.2023, it was our mistake and we have wrongly mentioned the date of payment receipt in the invoice just to issue invoice.

by issued by us. On being asked about the contents of the said invoice I state that this is a bulk sale invoice issued by us for the sale of 3200 Canadian dollars to M/s. RPFX Forex Pvt Ltd, Ahmedabad. Further, on being asked the date of payment receipt mentioned as 05.06.2023 on the invoice issued on date 05.06.2023 I state and admit that we have received payment on 09.06.2023 and not on 05.06.2023, it was our mistake and we have wrongly mentioned the date of payment receipt in the invoice just to issue invoice.

Similarly I find that the invoice no. BS/23/9 dated 06.06.2023 issued by M/s. Kothari Forex Pvt. Ltd. for the sale of 10,000/- Singapore dollars to M/s. RPFX Forex Pvt Ltd, Ahmedabad mentions the date of payment as 07.06.2023. However, the corresponding Axis Bank payment screenshot mentions the corresponding date of payment as 08.06.2023 for the transaction of Rs. 6,30,000/-. Shri Nayankumar Khubilal Kothari, Director of M/s. Kothari Forex Pvt Ltd accepted in his statment that they had received the payment on 09.06.2023 and not on 07.06.2023 and that they had wrongly mentioned the date of payment receipt in the invoice.

18.4.11 I find that M/s. Mangalik Forex Pvt. Ltd has submitted that the Revenue failed to see that it is common general industry practice to which they are questioning as the account keeping system is not as per any standard procedure or formula or expensive hi-tech digital technology. The practice is that the payment for currency is done on receipt of the same, which RPFX did as NEFT/RTGS. The currency was seized and in the hassle the payment was delayed. However, from the statement of Shri Moolchand V. Parekh, I find that he was aware about the legality of trasporting foreign currency through Aangadia and still they did so.

Generally, we hand over the foreign currency to the authorised person or the person himself who can purchase the foreign currency in legal terms. Further, I admit that it was our mistake and the said movement is not valid as per regulations issued by RBI.

On being asked regarding the documents related to courier of foreign currency through Angadiya firm I state that we have not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. Further, I also state that we also had not informed angadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by us contained currency. We have only informed them about the value of the parcel and on the basis of that we have paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

On being asked to specify the rules regarding the movement of foreign currency through courier service from one place to other I state that as per the norms issued by RBI the movement of foreign currency through courier service from one place to other is not permitted.

Also, Shri Paarthkumar Bharatbhai Patel stated that they did not provide any documents to the Aangadia, which put a question on the authenticity of invoices and bills as they may have been created back-dated to legitimize transactions.

On being asked regarding the documents related to courier of foreign currency through Angadiya firm I state that we have not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. Further, I also state that we also had not informed angadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by us contained currency. We have only informed them about the value of the parcel and on the basis of that we have paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

18.4.12 I find that Shri Parthkumar Bharatbhai Patel has stated that they did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 11(R)/2015-RB dated 29/12/2015, the Reserve Bank specifies the limits for possession or retention of foreign currency or foreign coins, 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.*

On the basis of Regulation 3 *ibid*, a person is entitled to possess or retain the foreign currency or foreign coins up to the limit of 2000 USD subject to condition that same should be acquired legally or the method provided in the said regulation 3. In the present case, I find that the employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das was carrying forex exceeding the limit imposed by the regulation 3 *ibid*, even without valid documents.

18.4.13 I further find that the said invoices and payments were created/ issued only after the DRI intercepted the Aangadiya persons to legitimize the transactions. I also find that they have stated that they did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find clearly from this that their intent was not to declare the said foreign currency to the Customs Authorities and sell the foreign currency to persons going outside India without declaring. As per Regulation 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, *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. Further Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 specifies the conditions for taking/sending out foreign exchange and currency notes out of India. I find that 10000/- Singapore Dollars and 8500/- Canadian Dollars were being attempted to be taken out illegally in terms of Regulation 5 read with Regulation 7 *ibid*.

18.4.14 I find that the law on the subject relating to possession/own and export of foreign currency is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), and 'smuggling' as defined under Section 2(39) of the Act read with Section 11H (a) providing 'illegal export'. In the present case of foreign currency to tune of 15000/- Canadian Dollars were found in the possession of employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das. The sender of the said forex are M/s. Kothari Forex Pvt. Ltd. and M/s. Mangalik Forex Pvt. Ltd. They did not provide documents to the Aangadia firm and the documents submitted later were created after interception to legitimize the transaction.

18.4.15 I find that all these circumstances establish beyond a shadow of doubt that M/s. RPFX Forex Pvt. Ltd., M/s. Kothari Forex Pvt. Ltd. and M/s. Mangalik Forex Pvt. Ltd. knowingly and intentionally tried to evade the prohibition that was in force with respect to the export of foreign currency out of the country as observed by the Madras High Court in ***MALABAR DIAMOND GALLERY P. LTD. VS. ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE, CHENNAI - 2016 (341) E.L.T. 65 (MAD.)***. In view of the above, I hold that 10000/- Singapore Dollars and 8500/- Canadian Dollars pertaining to M/s. RPFX Forex Pvt. Ltd. were attempted to be smuggled/exported out of India.

10,000/- SINGAPORE DOLLARS AND 1,24,000/- THAI BAHT PERTAINING TO M/s. ADMAN FOREX AND SERVICES PVT LTD, AHMEDABAD

18.4.16 I find that 10000/- Singapore Dollars and 1,24,000/- Thai Bhat recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to M/s. Adman Forex and Services Pvt Ltd., which were being sent back to them at Ahmedabad from Mumbai by their employee, who carried the same with him to Mumbai for a deal which could not be fulfilled. The following is excerpt from the statement dated 11.07.2023 of Shri Viral R. Shah, Director of M/s. Adman Forex & Services Pvt. Ltd.:-

On being asked specifically about the parcel, I state that I had sent the foreign currency of 10000 Singapore dollars and 124000 Thai Bhat with one of my employee i.e. Shri Rakesh Vyas(Raju), 9016640428(A-1139, Rajiv park society, Adinath, Odhav, Ahmedabad) to Mumbai to hand over to a person who could be travelling abroad but this could not happen due to rate issues I asked him to send the parcel back through angadiya firm namely M/s. Vijaykumar Vikrambhai and Company as he was having some work in Mumbai.

18.4.17 I find that Shri Viral R. Shah stated that they had purchased said currency from M/s. Capital India, Ahmedabad and M/s. World One India Forex Pvt. Ltd. He also

admitted that the manner of transaction done by them is very rare as they had never brought currency back to Ahmedabad.

On being asked about the transactions made by us in this manner I state that this is very rare and we have never brought the currency back to Ahmedabad.

On being asked about the purchase of the said foreign currency 10000 Singapore dollars and 124000 Thai Bhat I state that I have purchased 2,00,000 Thai Bhatt on 11.05.2023 from M/s. World One India Forex Pvt Ltd, Ahmedabad and the Singapore Dollar from M/s. Capital India, Ahmedabad for the purpose of sale.

18.4.18 Also, Shri Viral R. Shah stated that they did not provide any documents to the Aangadia.

On being asked regarding the documents related to courier of foreign currency through Angadiya firm I state that we have not issued any documents related to courier of foreign currency from Mumbai to Ahmedabad. Further, I also state that we also had not informed angadiya firm M/s. Vijaykumar Vikrambhai and Company that the parcel forwarded by us contained currency. We have only informed them about the value of the parcel and on the basis of that we have paid freight charges to M/s. Vijaykumar Vikrambhai and Company for the courier of foreign currency from Mumbai to Ahmedabad.

18.4.19 I also find that Shri Viral R. Shah stated that their License No. FE.AH.AM.14/2006 which was issued by Reserve Bank of India was valid upto 01.11.2022 and they had applied for renewal of the license vide application dated 26.08.2022 before Reserve Bank of India, which is still pending before Reserve Bank of India. Therefore, I find that they are not allowed to trade in Forex. I find without any authority to sell the foreign currency, M/s. Adman Forex & Services Pvt. Ltd. tried to sell the foreign currency to unknown person with a motive to export it out of India or smuggled out of India.

18.4.20 As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 11(R)/2015-RB dated 29/12/2015, the Reserve Bank specifies the limits for possession or retention of foreign currency or foreign coins, 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.

On the basis of Regulation 3 *ibid*, a person is entitled to possess or retain the foreign currency or foreign coins up to the limit of 2000 USD subject to condition that same should be acquired legally or the method provided in the said regulation 3. In the present case, I find that the employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das was carrying forex exceeding the limit imposed by the regulation 3 *ibid*, even without valid documents.

18.4.21 I further find that Shri Viral R. Shah M/s. Adman Forex & Services Pvt. Ltd have stated that they did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find clearly from this that their intent was not to declare the said foreign currency to the Customs Authorities and sell the foreign currency to persons going outside India without declaring. As per Regulation 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, *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.* Further Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 specifies the conditions for taking/sending out foreign exchange and currency notes out of India. I find that 10000/- Singapore Dollars and 1,24,000/- Thai Bhat were being attempted to be taken out illegally in terms of Regulation 5 read with Regulation 7 *ibid*.

18.4.22 I find that the law on the subject relating to possession/own and export of foreign currency is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), and 'smuggling' as defined under Section 2(39) of the Act read with Section 11H (a) providing 'illegal export'. In the present case of foreign currency to tune of 15000/- Canadian Dollars were found in the possession of employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das. The sender of the said forex are M/s. Adman Forex & Services Pvt. Ltd. They did not provide documents to the Aangadia firm during the transportation.

18.4.23 I find that all these circumstances establish beyond a shadow of doubt that M/s. Adman Forex & Services Pvt. Ltd. knowingly and intentionally tried to evade the prohibition that was in force with respect to the export of foreign currency out of the country. As observed by the Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. VS. ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE, CHENNAI - 2016 (341) E.L.T. 65 (MAD)** In view of the above, I hold that 10000/- Singapore Dollars and 1,24,000/- Thai Bhat pertaining to M/s. Adman Forex & Services Pvt. Ltd. were attempted to be smuggled/exported out of India.

5000/- SAUDI RIYALS PERTAINING TO M/s. MONTY FOREX PVT LTD, MUMBAI

18.4.24 I find that 5000/- Saudi Riyals recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to M/s. Monty Forex Pvt. Ltd., which as per the statement dated 12.07.2023 of Shri Tanuj Sukanraj Parmar, Director of M/s. Monty Forex Pvt. Ltd. was sent to Shri Jay Shah of Mehsana to be sold to Shri Hamidbhai Usmanbhai Dhukka, who was travelling abroad and was handed over by him to the Aangadiya Firm for transporting to be delivered to Shri Jay Shah.

On being asked specifically about the parcel, I state that the said parcel contained 5000 Saudi Rials was handed over by me to M/s. Vijaykumar Vikrambhai Patel and Company to deliver the same to Shri Jay Shah in Mehsana who in turn would have delivered the parcel to Shri Hamidbhai Usmanbhai Dhukka, as he was going abroad.

I find that Shri Hamidbhai Usmanbhai Dhukka has accepted the facat in his statement dated 30.04.2024. he stated that he had a planned visit to Mecca in Jun 2023 and he arranged the Foreign currency from M/s. Monty Forex Pvt. Ltd through his acquaintances and the foreign currency were meant to be exported out of the Country.

On being asked, I state that I had planned to visit Mecca on Haj Yatra last year in June 2023, therefore I needed some foreign currency for my expenses in Saudi Arabia. I state that therefore, one of my acquaintances, Shri Riyajbhai in my village had told me that he could arrange Saudi Riyals through his friend, one Shri Jay Bhai of Mehsana. I state that I had therefore, asked Shri Riyajbhai to arrange 5000 Riyals for me for which I had told him that I would pay him equivalent amount of Indian currency after delivery of the Saudi Riyals. On being asked, I state that the 5000 Saudi Riyals detained by DRI, Ahmedabad under Panchnama dated 07.06.2023 were supposed to delivered to me by Shri Jay Bhai of Mehsana, as I told earlier and the same were meant to be exported out of the country along with me to Saudi Arabia.

18.4.25 I find that Shri Hamidbhai Usmanbhai Dhukka has booked tickets on 13.06.2023 for visit to Mecca for 16.06.2023 also he stated that he had not given any documents, viz. passport, visa, air ticket etc. to Shri Riyajbhai or Shri Jay Bhai for the purchase of Saudi Riyals, and also Shri Riyajbhai or Shri Jay Bhai had not asked him for any documents for the purchase of Saudi Riyals.

On being asked about the documents, viz. passport, visa, air ticket etc. provided by me to Shri Riyajbhai or Shri Jay Bhai for the purchase of Saudi Riyals, I state that I had not provided any documents and also Shri Riyajbhai or Shri Jay Bhai had asked me for any documents for the purchase of Saudi Riyals. I state that however, later on after the said foreign currency were detained by DRI, Shri Jay Bhai had asked Shri Riyajbhai for the copy of my passport, visa and air tickets for some DRI inquiry for which I had provided him the copies of the said documents.

I also find from the statement of Shri Hamidbhai Usmanbhai Dhukka that later on after the said foreign currency were detained by DRI, Shri Jay Bhai had asked Shri Riyajbhai for the copy of his passport, visa and air tickets for some DRI inquiry for which he had provided him the copies of the said documents. I find that M/s. Monty Forex Pvt. Ltd. tried to sell him foreign currency without any legal channel for exporting out of the country.

18.4.26 I find from the statement of Shri Tanuj S. Parmar, Director of M/s. Monty Forex Pvt. Ltd dated 12.07.2023, that ticket was not submitted by Shri Hamidbhai Usmanbhai Dhukka at the time of purchase of Saudi Riyals, as he approached him through his friend Shri Jay Shah. On being asked to specify the rules regarding the sale of foreign currency without the verification of ticket, Shri Tanuj Sukanraj Parmar stated that as per the norms issued by RBI, the sale of foreign currency without a valid ticket is not permitted and sale of the foreign currency without a valid ticket is not a valid transaction.

On being asked specifically about the parcel, I state that I had sold the foreign currency of 5000 Saudi Rials to Shri Hamidbhai Usmanbhai Dhukka, as he was about to travel abroad after verification of his details including Passport, PAN Card and Visa as per norms.

On being asked about the document submitted for purchase of Saudi Rials by Shri Hamidbhai Usmanbhai Dhukka, I state that Shri Hamidbhai Usmanbhai Dhukka submitted a copy of passport, Visa and PAN Card.

On being asked about the ticket for foreign travel, I state that ticket was not submitted by Shri Hamidbhai Usmanbhai Dhukka at the time of purchase of Saudi Rials, as he approached me through my friend Shri Jay Shah. On being asked I state that on 13.06.2023 Shri Hamidbhai Usmanbhai Dhukka has submitted the ticket which was booked after the detention of the parcel,

On being asked to specify the rules regarding the sale of foreign currency without the verification of ticket I state that as per the norms issued by RBI the sale of foreign currency without a valid ticket is not permitted and sale of the foreign currency without a valid ticket is not a valid transaction.

Further, I find that Shri Tanuj S. Parmar could not provide any payment proof for sell of said foreign currency to Shri Hamidbhai Usmanbhai Dhukka.

On being asked regarding the payment of the sale of Saudi Rials, I state that Shri Hamidbhai Usmanbhai Dhukka has not made the payment and is still pending with him.

18.4.27 I find further, from the documents submitted by Shri Mukeshkumar Manilal Patel, Partner of M/s. Vijaykumar Vikrambhai & Company during the Panchnama proceedings dated 07.06.2023 is only a Cash Memo from M/s Monty Forex Pvt. Ltd to Shri Jay Shah and no other supporting documents.

11.	5000 Saudi Riyals (9 no in denomination of 500, 11 no in denomination of 200, 2 no in denomination of 100, 1 no in denomination of 20 and 8 no in denomination of 10)	Tanuj, 9022780730	Cash Memo from M/s Monty Forex Pvt Ltd to Shri Dhukka Hamidbhai Usmanbhai
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18.4.28 As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 11(R)/2015-RBdated 29/12/2015, the Reserve Bank specifies the limits for possession or retention of foreign currency or foreign coins, 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.*

On the basis of Regulation 3 *ibid*, a person is entitled to possess or retain the foreign currency or foreign coins up to the limit of 2000 USD subject to condition that same should be acquired legally or the method provided in the said regulation 3. In the present case, I find that the employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das was carrying forex exceeding the limit imposed by the regulation 3 *ibid*, even without valid documents.

18.4.29 I further find that Shri Tanuj S. Parmar has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find clearly from this that his intent was not to declare the said foreign currency to the Customs Authorities and take/export the foreign currency outside India while going USA without declaring. As per Regulation 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, *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.* Further Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 specifies the conditions for taking/sending out foreign exchange and currency notes out of India. I find that 5000/- Saudi Riyals were being attempted to be taken out illegally in terms of Regulation 5 read with Regulation 7 *ibid*.

18.4.30 I find that the law on the subject relating to possession/own and export of foreign currency is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), and 'smuggling' as defined under Section 2(39) of the Act read with Section 11H (a) providing 'illegal export'. In the present case of foreign currency to tune of 5000/- Saudi Riyals were found in the possession of employee of Aangadia firm M/s. Vijaykumar Vikrambhai & Company, Shri Mahendrabhai Hargovan Das. The sender of the said forex is M/s. Monty Forex Pvt. Ltd.. The Aangadia firm could not produce any evidentiary document showing that the forex was sold through legal means and documents submitted by Shri Tanuj S. Parmar of M/s. Monty Forex Pvt. Ltd. were created after interception to legitimize the transaction.

18.4.31 I find that all these circumstances establish beyond a shadow of doubt that M/s. Monty Forex Pvt. Ltd. knowingly and intentionally tried to evade the prohibition that was in force with respect to the export of foreign currency out of the country. As observed by the Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. (supra)**. In view of the above, I hold that 5,000/- Saudi Riyals pertaining to M/s. Monty Forex Pvt. Ltd were attempted to be smuggled/exported out of India.

Now I proceed to decide whether the seized foreign currency are liable for confiscation under the provisions of Section 113(d) of Customs Act, 1962.

18.4.32 I find that that the Show Cause Notice proposed absolute confiscation under the provisions of Section 113(d) of Customs Act, 1962 of above said Foreign Currency detained during Panchnama dated 07.06.2023, i.e. (i) **15,000 Canadian Dollars pertaining to Shri Prakashchandra H Soni**, (ii) **10,000 Singapore Dollars and 8,500 Canadian Dollars pertaining to M/s. RPFX Forex Pvt Ltd**, (iii) **10,000/- Singapore Dollars and 1,24,000 Thai Bhat pertaining to M/s. Adman Forex & Services Pvt Ltd** and (iv) **5,000 Saudi Riyals pertaining to M/s. Monty Forex Pvt Ltd.**, having value equivalent to Indian **Rs. 30,07,865/-(Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only)** seized from possession of the Shri Mahendrabhai Hargovan Das working for M/s. Vijaykumar Vikrambhai & Company and attempted to be smuggled/improperly exported out of India without licit documents of procurement in contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 read with Rule 7 of the Baggage Rules, 2016, seized under Seizure Memo dated 05.10.2023.

18.4.33 SECTION 113:

“Confiscation of goods attempted to be improperly exported, etc.–The following export goods shall be liable to confiscation: -

(d) any goods attempted to be exported or brought within the limits of any Customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Act or any other law for the time being in force;”

18.4.34 From the discussion in foregoing paras, I find that said foreign currency having market value **Rs. 30,07,865/-** recovered from possession of the Shri Mahendrabhai Hargovan Das working for M/s. Vijaykumar Vikrambhai & Company, were seized vide Seizure Memos dated 05.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the same are liable for confiscation under Section 113 of the Customs Act, 1962. From the statements, documents and corroborative evidences, it was found that the seized foreign currency were being attempted to be exported out/smuggled out of India as defined under Section 2(39) of the Customs Act, 1962.

18.4.35 I also find that the noticees did not controvert the facts detailed in the Panchnama during the course of recording their statements recorded under section 108 of the Customs Act, 1962 except that they stated that they are not aware of the Customs

Laws and Rules. since ignorance of law is no excuse as held by **HON'BLE HIGH COURT OF CALCUTTA IN THE CASE OF PROVASH KUMAR DEY V. INSPECTOR OF CENTRAL EXCISE AND OTHERS REPORTED AT 1987 (31) E.L.T. 13 (CAL.)**, therefore, I find that therefore statements of the noticees may be taken as evidence. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. The said smuggling of foreign currency thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

18.4.36 I find that as per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improper export of foreign currency/ smuggling without following the due process of law and without adhering to the conditions and procedures of export have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act. I further find that the foreign currency is not on the list of prohibited items but export of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the foreign currency were attempted to be smuggled out of India. In view of the above discussions, I hold that the said foreign currency are liable for absolute confiscation. I rely on the case decided by the Hon'ble High Court of Madras in respect of **Malabar Diamond Gallery Pvt Ltd**, where 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).

18.4.37 Further, I am not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act. I rely on the judgment of 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 as-

“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.”

18.4.38 Further, I find that in the case of **SAMYNATHAN MURUGESAN [2009 (247) ELT 21 (MAD)]**, the High Court upheld the absolute confiscation, ordered by the adjudicating authority and thereby allowed the departmental appeal. While upholding absolute confiscation, it was observed by the Hon'ble High Court as under:

“....From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from [Section 11](#) which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in Sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods....”

In the case before me, the export of foreign currencies is conditional, applying the ratio of the decisions cited above, I hold that non-compliance of such conditions make foreign

currencies prohibited for the purpose of export. I am therefore of the view that the foreign currencies in the present case are liable for confiscation.

18.4.39 I find that the noticee Shri Prakashchandra H. Soni and others have contended that The charges of confiscation under Section 111 and 113 of Customs Act will not attract in the present case as per cases - *Commissioner of Customs vs. Amit Kumar Saha reported at 2004 (174) ELT 158* and *Commissioner of Customs vs. L. Rajkumar reported at 2014 (312) ELT 99*, however I find that in the same judgment, the Hon'ble HC has held that-

*"Technically speaking, Shri Saha's action of being in possession of foreign currency may not attract the provisions of either Sections 111 or 113 of the Customs Act, but that, in our view, would not render the order of confiscation of the said currency bad and/or entitle him to receive back the same, since he was not lawfully entitled to be in possession thereof. In the peculiar facts of the case we are of the view that certain presumptions are required to be drawn regarding the manner in which such a large sum of foreign currency came to be in **Shri Saha's possession and the manner in which the same was to be utilised and in the face of such presumption we are convinced that the learned Tribunal was wrong in setting aside the order of confiscation** and directing that the seized currency be returned to Shri Saha."*

18.4.40 Given the facts of the present case before me and the judgments and rulings cited above, I hold the (i) 15,000 Canadian Dollars pertaining to Shri Prakashchandra H Soni, (ii) 10,000 Singapore Dollars and 8,500 Canadian Dollars pertaining to M/s. RPFX Forex Pvt Ltd, (iii) 10,000/- Singapore Dollars and 1,24,000 Thai Bhat pertaining to M/s. Adman Forex & Services Pvt Ltd and (iv) 5,000 Saudi Riyals pertaining to M/s. Monty Forex Pvt Ltd., having value equivalent to Indian Rs. 30,07,865/-(Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only), placed under seizure would be liable to absolute confiscation under Section 113(d) of the Customs Act, 1962.

18.5 Now, I proceed to decide the roles of all the noticees and whether the noticees are liable for penalties under Section 114 & 117 of the Customs Act, 1962.

18.5.1 SECTION 114: Penalty for attempt to export goods improperly, etc.-

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -
(i) in the case of goods in respect of which any prohibition is in force under the Act or any other law for the time being in force, to a penalty not exceeding

three times the value of the goods as declared by the exporter or the value as determined under the Act, whichever is greater;"

18.5.2 SECTION 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 1[four lakh rupees].

SHRI PRAKASHCHANDRA H. SONI:

18.5.3 I find that 15000/- Canadian Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to Shri Prakashchandra H. Soni, which as per his statement dated 11.07.2023 was purchased from M/s. Pradip Forex Pvt. Ltd. in Navsari and was handed over by him to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad. I find that Shri Prakashchandra H. Soni has submitted that he himself travelled to Navsari for Forex purchase by his car and transported it through Aangadiya for safety reason and also undertook to submit Toll receipt, however the same had not been submitted yet.

18.5.4 I find that Shri Prakashchandra H. Soni has submitted 03 different cheques as proof of payment issued by Shri Prakashchandra H. Soni, Shri Pravinkumar H. Soni & Rakeshkumar P. Soni and Ms. Jigisha Soni dated 06.06.2023, however, the same were encashed on 08.06.2023 by M/s. Pradip Forex Pvt. Ltd. I also find that Shri Prakashchandra H. Soni has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I further find that the said invoice dated 07.06.2023 and cheques were issued only after the DRI intercepted the Aangadiya persons to legitimize the transaction. Therefore, I find that he had intentionally tried to mislead the investigation by presenting wrong facts in his first statement.

18.5.5 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that Shri Prakashchandra H. Soni had knowingly indulged/concerned himself in purchase/possession/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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, will be liable for penalty under Section 114. I find that that Shri Prakashchandra H. Soni is culpable and the act of omission and commission made on his part for attempt to

improper export which are liable for confiscation, has rendered him liable for penalty under Section 114 of the Customs Act, 1962.

18.5.6 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, wherein the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. I would also like to refer to the judgment in the case of **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]** wherein it was held as under:

“Evidence - Statement - Retraction of - Confessional statement under Section 108 of Customs Act, 1962 - Proceedings under Section 108 ibid is a judicial proceeding and if any retraction of confession to be made, to be made before same authority who originally recorded the statement - Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement.”

18.5.7 I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal, 1999 (110) E.L.T. 324 (S.C.)*
- *Percy Rustam Ji Basta v. State of Maharashtra, 1983 (13) E.L.T. 1443 (S.C.),*
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors. - 2000 (120) E.L.T. 280 (S.C.) and*
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa - 2001 (134) E.L.T. 3 (S.C.)*

I find that once there is an admission by the noticee himself nothing further is required to be proved to the contrary. The Apex Court in **SURJEET SINGH CHHABRA V. UNION OF INDIA - 1997 (89) E.L.T. 646 (SC)** held that confession made by the appellant binds him. Reliance is placed on **COMMISSIONER OF C. EX., MADRAS V. M/S. SYSTEMS AND COMPONENTS PVT. LTD. - 2004 (165) E.L.T. 136 (S.C.)** where it has been held that it is a basic and settled law that what has been admitted need not be proved.

18.5.8 I find further that Shri Prakashchandra H. Soni is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act by transportation of foreign currency through illegal channels and non-compliance of the Customs Act and allied acts which was his duty to comply.

M/s. PRADIP FOREX PVT. LTD.:

18.5.9 I find that 15000/- Canadian Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertaining to Shri Prakashchandra H. Soni, which was purchased from M/s. Pradip Forex Pvt. Ltd. in Navsari and was handed over by him to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad. I also find that Shri Prakashchandra H. Soni has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find that M/s. Pradip Forex Pvt Ltd sold the Foreign currency worth 15,000/- Canadian Dollars to Shri Prakashchandra H. Soni without verification of KYC documents and without issuance of sale invoice at the material time.

18.5.10 I also find that Shri Prakashchandra H. Soni has submitted 03 different cheques as proof of payment issued by Shri Prakashchandra H. Soni, Shri Pravinkumar H. Soni & Rakeshkumar P. Soni and Ms. Jigisha Soni dated 06.06.2023, however, the same were encashed on 08.06.2023 by M/s. Pradip Forex Pvt. Ltd. I further find that the said invoice dated 07.06.2023 and cheques were issued only after the DRI intercepted the Aangadiya persons to legitimize the transaction.

18.5.11 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that M/s. Pradip Forex Pvt. Ltd. had abetted in purchase/possession/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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, will be liable for penalty under Section 114.** I find that that M/s. Pradip Forex Pvt. Ltd are culpable and the act of omission and commission made on their part for abetment to attempt to improper export which are liable for confiscation, has rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

18.5.12 I find further that M/s. Pradip Forex Pvt. Ltd are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act by selling of Foreign Currency without KYC documents and transporting same through illegal channels and non-compliance of the Customs Act and allied acts /FEMA which was their duty to comply.

M/s. RPFX FOREX PVT. LTD.:

18.5.13 I find that 10000/- Singapore Dollars and 8500/- Canadian Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company pertains to M/s. RPFX Forex Pvt. Ltd., which were purchased from M/s. Kothari Forex Pvt. Ltd and M/s. Mangalik Forex Pvt. Ltd. respectively and was handed over by respective persons of the sellers to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad.

18.5.14 I find that Shri Parthkumar Bharatbhai Patel admitted issuing self-invoices by M/s. RPFX Forex Pvt. Ltd, i.e. invoices no. AHMD/313000020 dated 07.06.2023 for the purchase of 10000 Singapore dollars from M/s. Kothari Forex Pvt. Ltd, Mumbai and invoices nos. AHMD/313000019 dated 07.06.2023 for the purchase of 3200 Canadian dollars & AHMD/313000018 dated 07.06.2023 for the purchase of 5300 Canadian dollars from M/s. Manglik Forex Pvt. Ltd, Mumbai only on 07.06.2023, i.e. after the said currency were detained by DRI under Panchnama dated 07.06.2023. I also find that Shri Parthkumar Bharatbhai Patel had admitted his mistake of editing invoice to insert the date of payment. Thus I find that the said invoices were not available on the date of delivery of the said currency from Mumbai. Therefore, I find that he had intentionally tried to mislead the investigation by presenting wrong facts.

18.5.15 Shri Paarthkumar Bharatbhai Patel stated that they did not provide any documents to the Aangadia, which put a question on the authenticity of invoices and bills as they may have been created back-dated to legitimize transactions. However in his submission, M/s. RPFX Forex Pvt. Ltd submitted that every parcel had proper documentation as indicated by invoices, payment slips and properly transported and also, the Angadiya firm M/s. Vijaykumar Vikrambhai & Co. has assured the noticee that the parcels were sent through their standard procedure with all relevant documents. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, wherein the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. I would also like to refer to the judgment in the case of **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]** (supra)

18.5.16 I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal, 1999 (110) E.L.T. 324 (S.C.)*

- *Percy Rustam Ji Basta v. State of Maharashtra, 1983 (13) E.L.T. 1443 (S.C.),*
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors. - 2000 (120) E.L.T. 280 (S.C.) and*
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa - 2001 (134) E.L.T. 3 (S.C.).*

I find that once there is an admission by the noticee himself nothing further is required to be proved to the contrary. The Apex Court in **SURJEET SINGH CHHABRA V. UNION OF INDIA - 1997 (89) E.L.T. 646 (SC)** held that confession made by the appellant binds him. Reliance is placed on **COMMISSIONER OF C. EX., MADRAS V. M/S. SYSTEMS AND COMPONENTS PVT. LTD. - 2004 (165) E.L.T. 136 (S.C.)** where it has been held that it is a basic and settled law that what has been admitted need not be proved.

18.5.17 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that M/s. RPFEX Forex Pvt. Ltd. had abetted in purchase/possession/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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**, will be liable for penalty under Section 114. I find that that M/s. RPFEX Forex Pvt. Ltd are culpable and the act of omission and commission made on their part for attempt to improper export which are liable for confiscation, have rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

18.5.18 I find further that M/s. RPFEX Forex Pvt. Ltd. are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and other allied acts by faking the sale/purchase documents and failed to comply with the provision of the Customs Act with which was their duty to comply.

M/s. MANGALIK FOREX PVT. LTD.:

18.5.19 I find that 8500/- Canadian Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company pertaining to M/s. RPFEX Forex Pvt. Ltd., which were purchased from M/s. Mangalik Forex Pvt. Ltd. respectively and was handed over by respective persons of the sellers to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad. I also find that Shri Parthkumar Bharatbhai Patel has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find that M/s. Mangalik Forex Pvt. Ltd sold the foreign currency worth 8500/- Canadian Dollars to M/s. RPFEX Forex Pvt. Ltd

without verification of KYC documents and without issuance of sale invoice at the material time.

18.5.20 I find from the statement of Shri Moolchand V. Parekh, Director of Mangalik Forex Pvt. Ltd. that invoice issued by them- invoice no. BS/23/87 dated 05.06.2023 for the sale of 5300 Canadian dollars to M/s. RPFX Forex Pvt. Ltd, Ahmedabad and invoice no. BS/23/88 dated 05.06.2023 for the sale of 3200 Canadian dollars to M/s. RPFX Forex Pvt. Ltd, Ahmedabad have the date of payment mentioned as 05.06.2023. However, the date of payments are as 08.06.2023 for both the transaction of Rs. 3,30,720/- (for sale of 5300 Canadian Dollars) and Rs. 2,00,000/- (for sale of 3200 Canadian Dollars). I further find that the said invoices dated 05.06.2023 and payments were issued only after the DRI intercepted the Aangadiya persons to legitimize the transaction.

18.5.21 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that M/s. Mangalik Forex Pvt. Ltd. had abetted in purchase/possession/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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, will be liable for penalty under Section 114**. I find that that M/s. Mangalik Forex Pvt. Ltd are culpable and the act of omission and commission made on their part for abetment to attempt to improper export which are liable for confiscation, has rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

18.5.22 I find further that M/s. Magalik Forex Pvt. Ltd are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act by selling of Foreign Currency without KYC documents and transporting same through illegal channels and non-compliance of the Customs Act and allied acts /FEMA which was their duty to comply.

M/s. KOTHARI FOREX PVT. LTD.:

18.5.23 I find that 10000/- Singapore Dollars recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company pertaining to M/s. RPFX Forex Pvt. Ltd., which were purchased from M/s. Kothari Forex Pvt. Ltd. respectively and was handed over by respective persons of the sellers to the Aangadiya Firm for transporting to be delivered to him in Ahmedabad. I also find that Shri Parthkumar Bharatbhai Patel has stated that he did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find that M/s. Kothari Forex Pvt. Ltd sold the foreign currency worth 10000/- Singapore Dollars to M/s. RPFX Forex Pvt. Ltd

without verification of KYC documents and without issuance of sale invoice at the material time.

18.5.24 I find from Shri Nayankumar Khubilal Kothari, Director of M/s. Kothari Forex Pvt Ltd accepted in his statement that invoice no. BS/23/9 dated 06.06.2023 issued by M/s. Kothari Forex Pvt. Ltd. for the sale of 10,000/- Singapore dollars to M/s. RPFX Forex Pvt Ltd, Ahmedabad mentions the date of payment as 07.06.2023. However, the corresponding Axis Bank payment screenshot mentions the corresponding date of payment as 08.06.2023 for the transaction of Rs. 6,30,000/-. I further find that the said invoices and payments were issued only after the DRI intercepted the Aangadiya persons to legitimize the transaction.

18.5.25 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that M/s. Kothari Forex Pvt. Ltd. had abetted in purchase/possession/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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, will be liable for penalty under Section 114**. I find that that M/s. Kothari Forex Pvt. Ltd are culpable and the act of omission and commission made on their part for abetment to attempt to improper export which are liable for confiscation, has rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

18.5.26 I also hold that the officers of Customs cannot be called for cross-examination as requested by M/s. Kothari Forex Pvt. Ltd. in view of the case of **N.S. MAHESH VERSUS COMMISSIONER OF CUSTOMS, COCHIN [2016 (331) E.L.T. 402 (KER.)]**. as their statements were not relied upon in the said Show-Cause Notice.

18.5.27 I also find that M/s. Kothari Forex Pvt. Ltd submitted that the statement of Shri Parthkumar Bharatlal Patel of M/s. RPFX cannot be relied upon in the absence of any corroborative evidence to substantiate the same, however, I hold that every inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required as held in the case of **ZAKI ISHRATI (supra) and P.B. NAIR C&F PVT. LTD. (supra)**. I find that there are sufficient corroborative evidences such as editing of invoices, payment after interception etc. Hence, I reject their contentions.

18.5.28 I find further that M/s. Kothari Forex Pvt. Ltd are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act by selling of Foreign Currency without KYC documents and transporting

same through illegal channels and non-compliance of the Customs Act and allied acts /FEMA which was their duty to comply.

M/s. ADMAN FOREX AND SERVICES PVT LTD.:

18.5.29 I find that 10000/- Singapore Dollars and 1,24,000/- Thai Bhat recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to M/s. Adman Forex and Services Pvt Ltd., which were being sent back to them at Ahmedabad from Mumbai by their employee, who carried the same with him to Mumbai for a deal which could not be fulfilled.

18.5.30 I find that Shri Viral R. Shah admitted their License No. FE.AH.AM.14/2006 which was issued by Reserve Bank of India was valid upto 01.11.2022 and they had applied for renewal of the license vide application dated 26.08.2022 before Reserve Bank of India, which is still pending before Reserve Bank of India. Therefore, I find that they are not allowed to trade in Forex. I find without any authority to sell the foreign currency, M/s. Adman Forex & Services Pvt. Ltd. tried to sell the foreign currency to unknown person with a motive to export it out of India or smuggled out of India.

18.5.31 I further find that Shri Viral R. Shah M/s. Adman Forex & Services Pvt. Ltd have stated that they did not tell Aangadiya about the contents of parcel as they had not asked the content of the parcel and charged the freight on the basis of value of the parcel. I find clearly from this that their intent was not to declare the said foreign currency to the Customs Authorities and sell the foreign currency to persons going outside India without declaring.

18.5.32 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that M/s. Adman Forex & Services Pvt. Ltd. had abetted in sell/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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**, will be liable for penalty under Section 114. I find that that M/s. Adman Forex & Services Pvt. Ltd are culpable and the act of omission and commission made on their part for attempt to improper export which are liable for confiscation, have rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

18.5.33 I find further that M/s. Adman Forex & Services Pvt. Ltd. are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and other allied acts by not following proper channel for

purchase/sell of the foreign currency and failed to comply with the provision of the Customs Act with which was their duty to comply.

M/s. MONTY FOREX PVT. LTD.:

18.5.34 I find that 5000/- Saudi Riyals recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to M/s. Monty Forex Pvt. Ltd., which as per the statement dated 12.07.2023 of Shri Tanuj Sukanraj Parmar, Director of M/s. Monty Forex Pvt. Ltd. was sent to Shri Jay Shah of Mehsana to be sold to Shri Hamidbhai Usmanbhai Dhukka, who was travelling abroad and was handed over by him to the Aangadiya Firm for transporting to be delivered to Shri Jay Shah.

18.5.35 I find from the statement of Shri Tanuj S. Parmar, Director of M/s. Monty Forex Pvt. Ltd dated 12.07.2023, that ticket was not submitted by Shri Hamidbhai Usmanbhai Dhukka at the time of purchase of Saudi Riyals, as he approached him through his friend Shri Jay Shah. On being asked to specify the rules regarding the sale of foreign currency without the verification of ticket, Shri Tanuj Sukanraj Parmar stated that as per the norms issued by RBI, the sale of foreign currency without a valid ticket is not permitted and sale of the foreign currency without a valid ticket is not a valid transaction. I find that M/s. Monty Forex Pvt. Ltd tried to sell the foreign currency worth without verification of KYC documents and without issuance of sale invoice at the material time.

18.5.36 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that M/s. Monty Forex Pvt. Ltd. had abetted in purchase/possession/attempt to improper export/smuggling of said foreign currency and which is liable to confiscation under Section 113(d) of the Customs Act, 1962. I find 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, will be liable for penalty under Section 114**. I find that that M/s. Mnty Forex Pvt. Ltd are culpable and the act of omission and commission made on their part for abetment to attempt to improper export which are liable for confiscation, has rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

18.5.37 I find further that M/s. Monty Forex Pvt. Ltd are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act by selling of Foreign Currency without KYC documents and transporting same through illegal channels and non-compliance of the Customs Act and allied acts /FEMA which was their duty to comply.

SHRI HAMIDBHAI USMANBHAI DHUKKA:

18.5.38 I find that 5000/- Saudi Riyals recovered from Shri Mahendrabhai Hargovan Das, employee working for M/s. Vijaykumar Vikrambhai & Company ("Aangadiya firm") pertains to M/s. Monty Forex Pvt. Ltd., which as per the statement dated 12.07.2023 of Shri Tanuj Sukanraj Parmar, Director of M/s. Monty Forex Pvt. Ltd. was sent to Shri Jay Shah of Mehsana to be sold to Shri Hamidbhai Usmanbhai Dhukka, who was travelling abroad and was handed over by him to the Aangadiya Firm for transporting to be delivered to Shri Jay Shah.

18.5.39 I find that Shri Hamidbhai Usmanbhai Dhukka has accepted the fact in his statement dated 30.04.2024. he stated that he had a planned visit to Mecca in Jun 2023 and he arranged the Foreign currency from M/s. Monty Forex Pvt. Ltd through his acquaintances and the foreign currency were meant to be exported out of the Country. I find that Shri Hamidbhai Usmanbhai Dhukka has booked tickets on 13.06.2023 for visit to Mecca for 16.06.2023 also he stated that he had not given any documents, viz. passport, visa, air ticket etc. to Shri Riyajbhai or Shri Jay Bhai for the purchase of Saudi Riyals, and also Shri Riyajbhai or Shri Jay Bhai had not asked him for any documents for the purchase of Saudi Riyals. I find that Shri Hamidbhai Usmanbhai Dhukka tried to buy foreign currency from M/s. Monty Forex Pvt. Ltd without verification of KYC documents and without issuance of sale invoice at the material time for attempt to illegal export of the said foreign currency.

18.5.40 As discussed in foregoing paras, it was found that the said foreign currency were attempted to be improperly exported/smuggled out of India, therefore, I find that Shri Hamidbhai Usmanbhai Dhukka are liable for penalty under Section 117 of the Customs Act, 1962 as he had not complied the provisions of the Customs Act by trying to purchase Foreign Currency through illegal channels.

M/S. VIJAYKUMAR VIKRAMBHAI & COMPANY & SHRI MAHENDRABHAI HARGOVAN DAS:

18.5.41 I find that in present case, the employee namely Shri Mahendrabhai Hargovan Das of M/s. Vijaykumar Vikrambhai & Company ("Aangadia Firm") was intercepted by the officers of DRI in the 'Pick up' area outside the Kalupur Railway Station, Ahmedabad and on the examination of the baggage of the those two employees, the officers of DRI found that certain parcels containing foreign currency. I find that the employees of the Aangadia Firm could not produce any documents showing legitimate sell/purchase of the said goods and these goods appeared to be attempted to be illegally exported/smuggled out of India. I find from the statement of Shri Mukeshkumar Manilal Patel, partner of M/s. Vijaykumar Vikrambhai & Company recorded under section 108 of the Customs Act, 1962 on 16.06.2023, that M/s. Vijaykumar Vikrambhai & Company is specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and the said parcels were carried by their employee Shri Mahendrabhai Hargovan Das for delivery to concerned recipients. Further, as discussed

in foregoing paras, (i) 15,000 Canadian Dollars pertaining to Shri Prakashchandra H Soni, (ii) 10,000 Singapore Dollars and 8,500 Canadian Dollars pertaining to M/s. RPFEX Forex Pvt Ltd, (iii) 10,000/- Singapore Dollars and 1,24,000 Thai Bhat pertaining to M/s. Adman Forex & Services Pvt Ltd and (iv) 5,000 Saudi Riyals pertaining to M/s. Monty Forex Pvt Ltd., having value equivalent to Indian Rs. 30,07,865/- (Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only), were found to be liable for confiscation under Section 113 (d) of the Customs Act, 1962.

18.5.42 I find that M/s. Vijaykumar Vikrambhai & Company and its employees Shri Mahendrabhai Hargovan Das had concerned themselves into attempted smuggling of foreign currency out of India as they had taken up to carry and deliver the said goods without verifying the legitimate documents of sell/purchase of said goods from respective senders. I find that Shri Mukeshkumar Manilal Patel, partner of M/s. Vijaykumar Vikrambhai & Company admitted in his statement dated 16.06.2023 that they cannot accept the parcels containing foreign currency for transport. The quoted texted is reproduced below:-

Gems and Jewellery, Diamonds, Cash etc. On being specifically asked whether we can accept foreign currency, Foreign origin gold I state that we cannot accept the parcels related to foreign currency, Foreign origin gold in bars or any other form, but sometimes it may be possible that the customer may mis declare the correct description and nature of goods in the parcel.

18.5.43 I find from the statement of Shri Mukeshkumar Manilal Patel that they assisted in attempted smuggling of foreign currency which are liable for confiscation under Section 113(d) of the Customs Act, to respective revenue authorities. By indulging themselves in such acts of omission and commission, i.e. *"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,"* they rendered them liable for penal action under Section 114 of the Customs Act, 1962.

18.5.44 I find that the employees Shri Mahendrabhai Hargovan Das of M/s. Vijaykumar Vikrambhai & Company are well aware of their company's work as well as nature of their own job. They have to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. They were supposed to know the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law is no excuse. I find that merely acting upon the directions of their employer M/s. Vijaykumar Vikrambhai & Company, was not expected from them however while receiving the parcels containing smuggled Gold, they should have checked the documents of legal purchase/sell of the said foreign currency. I further find that both Shri Mahendrabhai Hargovan Das had concerned himself in carrying of the foreign currency which they know or have reasons to believe were liable to confiscation under Section 113(d) of Custom Act, 1962.

18.5.45 I also find that Shri Mahendrabhai Hargovan Das is liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of

the Customs Act and failed to comply with the provision of the Customs Act by not reporting to the concerned authorities about the illegal transfer of foreign currency.

18.6 I also find that the case laws cited by the noticees in their submissions, having different facts and circumstances, are not squarely applicable in this case.

ORDER

19. Thus, from discussions in para supra, I pass the following order –

- a) I order absolute confiscation of Foreign Currency, i.e. (i) **15,000 Canadian Dollars** pertaining to Shri Prakashchandra H Soni, (ii) **10,000 Singapore Dollars and 8,500 Canadian Dollars** pertaining to M/s. RPFX Forex Pvt Ltd, (iii) **10,000/- Singapore Dollars and 1,24,000 Thai Bhat** pertaining to M/s. Adman Forex & Services Pvt Ltd and (iv) **5,000 Saudi Riyals** pertaining to M/s. Monty Forex Pvt Ltd., having value equivalent to Indian **Rs. 30,07,865/-(Rupees Thirty Lakhs Seven Thousand Eight Hundred and Sixty Five only)**, seized from possession of the Shri Mahendrabhai Hargovan Das working for M/s. Vijaykumar Vikrambhai & Company and placed under seizure vide Seizure Memos dated 05.10.2023, under the provisions of Section 113(d) of the Customs Act, 1962;
- b) I impose a Penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on Shri Prakashchandra H Soni, H/809, Sarjan Tower Subhash Chowk Gurukul Road, Ahmedabad-380052 under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- c) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Prakashchandra H Soni, H/809, Sarjan Tower Subhash Chowk Gurukul Road, Ahmedabad-380052 under section 117 of the Customs Act, 1962;
- d) I impose a Penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Pradip Forex Pvt. Ltd. under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- e) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Pradip Forex Pvt. Ltd. under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- f) I impose a Penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. RPFX Forex Pvt. Ltd. under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;

- g) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. RPFX Forex Pvt. Ltd. under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- h) I impose a Penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on M/s. Mangalik Forex Pvt. Ltd. under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- i) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Mangalik Forex Pvt. Ltd. under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- j) I impose a Penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on M/s. Kothari Forex Pvt. Ltd. under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- k) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Kothari Forex Pvt. Ltd. under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- l) I impose a Penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Adman Forex & Services Pvt. Ltd. under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- m) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Adman Forex & Services Pvt. Ltd. under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- n) I impose a Penalty of **Rs 15,000/- (Rupees Fifteen Thousand Only)** on M/s. Monty Forex Pvt. Ltd. under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- o) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Monty Forex Pvt. Ltd. under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- p) I impose a Penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Hamidbhai Usmanbhai Dhukka under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- q) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Vijaykumar Vikrambhai & Company under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;

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- r) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Thousand Only)** on M/s. Vijaykumar Vikrambhai & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- s) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Mahendrabhai Hargovan Das, employee of M/s. Vijaykumar Vikrambhai & Company under section 114 of the Customs Act, 1962 as discussed in foregoing Paras;
- t) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Mahendrabhai Hargovan Das, employee of M/s. Vijaykumar Vikrambhai & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras.

20. The Show-cause notice bearing no. VIII/10-85/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

F. No. VIII/10-85/DRI-AZU/O&A/HQ/2024-25
DIN-20241271MN000000FFD1

Dated:**31.12.2024**

BY SPEED POST:

To,

- 1) **M/S. PRADIP FOREX PVT LTD,**
WARD NO. 9/321, BHRAMIN PANCHNI WADI,
DUDHIYA TALAV, NAVSARI-396445
- 2) **SHRI PRAKASHCHANDRA H SONI,**
H/809, SARJAN TOWER SUBHASH CHOWK
GURUKUL ROAD, AHMEDABAD-380052
- 3) **M/S. KOTHARI FOREX PVT LTD,**
51, GROUND FLOOR, 59, KAKAL BLDG,
GOA STREET, DR. SUNDERLAL BAHL PATH,
NEAR GPO, FORT, MUMBAI-400001
- 4) **M/S. MANGLIK FOREX PVT LTD,**
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OIO No. 214/ADC/SRV/O&A/2024-25

- 6) **M/S. ADMAN FOREX & SERVICES PVT LTD,**
16, SURMOUNT, OPP ISKON MEGA MALL,
SG ROAD, AHMEDABAD-380015
- 7) **M/S. MONTY FOREX PVT LTD.,**
PLOT NO. 616, 14TH ROAD,
NEAR DOMINO'S PIZZA, KHAR(W),
MUMBAI-400052
- 8) **M/S. VIJAYKUMAR VIKRAMBHAI & COMPANY-AANGADIYA,**
2, GANESH CHAMBER GROUND FLOOR,
OPP JANTA BAKERY, RATANPOL,
AHMEDABAD, GUJARAT
- 9) **SHRI MAHENDRABHAI HARGOVAN DAS,**
EMPLOYEE OF
M/S. VIJAYKUMAR VIKRAMBHAI & COMPANY,
2, GANESH CHAMBER GROUND FLOOR,
OPP JANTA BAKERY, RATANPOL,
AHMEDABAD, GUJARAT
- 10) **SHRI HAMIDBHAI USMANBHAI DHUKKA,**
RESIDENT OF MUMANVAS,
KHALI, TAL. SIDHPUR, DISTRICT PATAN – 384151

Copy to:

- 1) The Principal Commissioner of Customs, Ahmedabad Commissionerate, for information please (Kind Attention: RRA Section).
- 2) The Additional Director General, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad
- 3) The Superintendent System In-Charge, Customs, HQ, Ahmedabad for uploading on the official web-site.
- 4) The Superintendent (Task Force), Customs-Ahmedabad.
- 5) Guard File.