



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुरानेहाईकोर्ट केसामने, नवरंगपुरा, अहमदाबाद - 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-16/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-16/SVPIA-B/O&A/HQ/2024-25 dated: 10.05.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	139/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.08.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.08.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानाम और पता / Name and Address of Importer / Passenger	:	Shri Hirenkumar Jivandas Somani, 331, Swami Naraya Nagar, Godadara, Surat City, Gujarat, Pin 394210.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे 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 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) 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 (5.00) 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 डूबी 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: -

Shri Hirenkumar Jivandas Somani, (hereinafter referred to as "the said passenger/ Noticee"), aged 38 years (D.O.B. 22.06.1985) residing at 331, Swami Naraya Nagar, Godadara, Surat City, Gujarat, Pin 394210, holding Indian Passport No. B6145027 was about to travel to Sharjah by Air Arabia Flight No. G9 419 on 21.12.2023 from the Departure Hall of T-2 of SVPIA, Ahmedabad. On the basis of specific information received from the CISF personnel present at the departure of security check of the International Airport, Ahmedabad that one passenger, namely Shri Hirenkumar Jivandas Somani holding Indian Passport bearing number B 6145027, about to travel to Sharjah by Air Arabia Flight No. G9 419 on 21.12.2023, was suspected to carry Foreign Currency and therefore the said passenger was required to be examined by the AIU Officers of Customs, SVPIA, Ahmedabad for further investigation. Thus, the AIU Officers informed the panchas that they needed to search one passenger and his baggage thoroughly. The AIU Officers requested the panchas to remain present as independent Pancha witnesses during the course of the Panchanama proceedings dated 21.12.2023.

2. Thereafter, the AIU officers reached at the Departure side of Terminal-2, SVPII Airport, Ahmedabad and intercepted the said passenger along with his checked-in baggage. It was observed that the passenger, Shri Hirenkumar Jivandas Somani was carrying black coloured shoulder bag, one big green coloured trolley bag. The AIU officers gave their introduction to the said passenger showing their identity cards and informed him that they intended to carry out his personal search and search of his baggage. On being specifically asked, the passenger told the AIU Officers, in presence of the Panchas that he is having foreign currency i.e. U.S. dollars more than 5000 in numbers. Then, the AIU Officers informed the Panchas that they are required to move to AIU Office located at the Arrival Hall of Terminal 2 of the SVPII Airport, Ahmedabad for the preparation of detailed inventory of the said foreign currency. Accordingly, the passenger and AIU officers moved to AIU Office located at the Arrival Hall of Terminal 2 of the SVPII Airport, Ahmedabad for further verification. Thereafter, the said

passenger was asked whether he wished to be searched before a Gazetted officer or Executive Magistrate for which he agreed for being searched by a Gazetted officer. Before conducting the search, the AIU officers offered their personal search to the passenger which he denied and said that he had full faith in the AIU officers.

3. Further, the AIU Officers asked Shri Hirenkumar Jivandas Somani, if he has anything to declare to Customs, in reply to which, he denied. Then, the AIU Officers carried out the personal search of the passenger Shri Hirenkumar Jivandas Somani, however, nothing objectionable found. Then the AIU officers asked the passenger to remove all the metallic objects on his body and put them in a tray placed over there. Then he was requested to pass through the DFMD Machine installed near AIU Office. The passenger passes through the DFMD machine but no beep sound was heard. The AIU Officers further thoroughly checked the baggages of the said passenger. While checking his green colour trolley bag, foreign currency notes were found in form of U.S. Dollars. The AIU Officers asked the said passenger if he has any documents regarding the purchase/ ownership of the said foreign currency to which the passenger failed to produce any such documents.

4. The AIU Officers, after recovering the foreign currency notes counted the said foreign currency notes and prepared a detailed inventory of the same which is as under:

Details of Foreign Currency recovered from Shri Hirenkumar Jivandas Somani holding Indian Passport No B 6145027 while departing from India to Sharjah via Air Arabia Flight No. G9 419 on 21.12.2023.							
Sl. No	Concealed in	Name of Foreign Currency	Denomination of Foreign Currency Notes	Total Number of Foreign Currency Notes	Amount of Foreign Currency	Exchange Rate of one unit of foreign currency equivalent to Indian Rupees as per Noti. No.90/2023 - Cus (N.T.) dtd. 07.12.2023 (taken as per exported goods)	Value equivalent to Indian Currency (taken as per exported goods)
1.	Green colour	U.S. Dollars	100	180	18,000	82.55	14,85,900/-

	trolley bag						
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4(i). The AIU officers took the photographs of above-mentioned foreign currency as below:



4(ii). The AIU Officers informed that the value of foreign currency in Indian rupees is taken as per Exchange rate Notification No. 90/2023-Cus (N.T.) dtd. 07.12.2023 (taken as per export goods) issued by CBIC.

The following documents are withdrawn from Shri Hirenkumar Jivandas Somani for further investigation.

- (i) Copy of Passport no. B6145027 (Date of Issue : 09.11.2023).
- (ii) Boarding pass of Air Arabia flight G9 419 dated 21.12.2023 having seat no. 11E.

5. Thereafter, the above said total foreign currency recovered from Shri Hirenkumar Jivandas Somani is **18,000/- U.S. Dollars**, which is equivalent to Indian **Rs.14,85,900/-** (Rupees Fourteen Lakhs Eighty Five Thousand Nine Hundred only), are placed under seizure vide seizure Memo dated 21.12.2023 by the AIU Officer under the reasonable belief that the said foreign currency was liable for confiscation under the Customs Act, 1962 and Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. The AIU Officers further informed that the recovered foreign currency from the above said passenger, attempted to be smuggled out from India, is a clear violation of the provisions of the Customs Act, 1962. Thus, the AIU officers informed that they had a reasonable belief that the recovered foreign currency attempted to be smuggled by Shri Hirenkumar Jivandas Somani is liable for confiscation as per the provisions of

Section 113(d) of the Customs Act, 1962; hence, it is being seized under Section 110 of the Customs Act, 1962. The said foreign currencies recovered and seized from Shri Hirenkumar Jivandas Somani packed in a transparent plastic box and sealed with the lac seal in presence of the panchas as well as in presence of Shri Hirenkumar Jivandas Somani after affixing a packing list in such a manner that the same could not be removed without tampering the seal.

6. Summons dated 21.12.2023 under Section 108 of Customs Act, 1962 was issued by AIU, SVPI Airport Ahmedabad, to the passenger Shri Hirenkumar Jivandas Somani for appearance on 21.12.2023 to tender statement. In response to the summons Shri Hirenkumar Jivandas Somani appeared before AIU officer on 21.12.2023 and gave his voluntary statement under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that -

His name, age and residential address given are correct. He is staying at the address for the last 25 years. On being asked, He stated that his family consists of parents, wife, younger brother, sister and one daughter. He has studied upto 11th standard. He is working as a skilled labour at a diamond industry, M/s. Royal Impex, Varacha, Surat. His monthly income is 30,000/-. He can read and write English, Gujarati and Hindi languages.

At first, he had been shown Panchnama dated 21.12.2023 drawn at SVPI Airport, Ahmedabad at the time when he was detained with foreign currency i.e. US Dollar 18,000/- equivalent to Indian Rs. 14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) which was completely his and found hiding with him without declaring/disclosing to Customs officers and he completely agreed to the facts narrated in the panchnama.

He stated that the foreign currency i.e. US Dollars 18,000/- equivalent to Indian Rs. 14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) seized from him. He further stated that the said currency is to be delivered to a person who is settled in Sharjah, to whom he does not have any personal

relationship. Since he wished to go to Sharjah for site seeing and one of his friends in Surat suggested that, a person from Surat would bear to and fro tickets and accommodation expenses of Sharjah, if he carried some US Dollars for him. He had met that person at Surat and he informed him that prior to his departure to Sharjah, he would give him foreign currency i.e. US Dollars 18,000/- equivalent to Indian Rs. 14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) at Varacha, Surat. As informed by him, on 20.12.2023 the person met him at Varacha, Surat and handed over the dollars to him. He does not know the details of the said person. He does not know his address as well. He admitted that the above said foreign currency has been seized by the Customs officers which he tried to illegally possess and tried to smuggle it out of India to Sharjah.

He stated that he has one account in India with Bank of Baroda but could not recall his account number at that time. He stated that that was the first time he was trying to smuggle the foreign currency out of India.

He accepted that said foreign currency recovered under Panchnama proceedings dated 21.12.2023 totally worth US Dollars i.e. 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) belonged to him and attempted to be smuggled by me out of India which is a clear violation of the provisions of Customs Act, 1962.

7. The above said foreign currency of 18,000/- U. S. Dollars, which is equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) recovered from Shri Hirenkumar Jivandas Somani, was attempted to be smuggled out India was a clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the foreign currency of 18000/- U. S. Dollars, which is equivalent to Indian Rs.14,85,900/- which was attempted to be smuggled by Shri Hirenkumar Jivandas Somani, liable for confiscation as per the provisions of Section 111 of the Customs Act,

1962; hence, the above said foreign currency of 18000/- U. S. Dollars, which is equivalent to Indian Rs.14,85,900/- was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 21.12.2023 and FEMA Regulations, 2016.

8. In view of the above, **Shri Hirenkumar Jivandas Somani**, residing at 331, Swami Naraya Nagar, Godadara, Surat City, Gujarat, Pin 394210 is hereby called upon to show cause to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd floor, Customs House, Ahmedabad, Near All India Radio, Navrangpura, Ahmedabad-380009 as to why:

- (i) US Dollar 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) attempted to be exported out of India in contrary to the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage rules read with Customs Act, 1962 should not be confiscated under Section 113 (d) and (e) of the Customs Act, 1962 read with the FEMA Regulations and Rule 7 of the Baggage Rules;
- (ii) Penalty should not be imposed upon the passenger, under Section 114 (i) of the Customs Act, 1962.

Defence Reply:

9. Shri Hirenkumar Jivandas Somani submitted written reply to the Show Cause Notice vide his letter dated 04.08.2024 forwarded through his Advocates, wherein he inter alia submitted that –

- The foreign currency amount equivalent to INR 14,85,900/- seized from the Noticee should not be absolutely confiscated under Section 113 (d) and (e) of the Customs Act, 1962.
- Intention was clear therefore he was carrying foreign currencies not even concealed but were found from the check in baggage of the noticee.

- There is no revenue loss to the Government of India as there is no duty on export of foreign currency.
- The foreign currency carried by the Noticee are neither restricted nor prohibited and can be released on payment of redemption fine under section 125 of the Customs Act, 1962 and no other person has claimed the currency which was found from his possession at the time of departure.
- The Noticee placed reliance on various judgements/ orders pronounced by various courts in support of his claim.

Personal Hearing:

10. Personal Hearing in this case was fixed on 21.08.2024. Shri Gaurav P Asija and Shri Viken D Shah Advocates, on behalf of the Noticee and Passenger Shri Hirenkumar Jivandas Somani appeared for personal hearing on 21.08.2024. Shri Gaurav P Asija & Shri Viken D Shah Advocates submitted that there is no revenue loss, violation is of the technical nature and hence absolute confiscation should not be made. There are various supporting judgements wherein absolute confiscation was avoided. There was no malafide intention of the Noticee. Due to ignorance of the law, the same was not declared while departing from Airport. Further, the foreign currency is neither prohibited nor restricted item and the only charge is non-declaration, which is nothing but lack of knowledge of law. There is no duty on export of foreign currency. He requested to take lenient view in the matter and allow to release the currency on payment of reasonable fine and penalty.

Discussion and Findings:

11. I have carefully gone through the facts of the case and submissions made by the Noticee in written and during the personal hearing and documents available on record.

12. The sole issue for consideration is the proposal for confiscation of foreign currency equivalent to Rs.14,85,900/- (Rupees Fourteen Lakhs Eighty-Five Thousand Nine Hundred Only) attempted to be

exported out of India in contrary to the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and Rule 7 of the Baggage rules read with Customs Act, 1962 placed under seizure vide Panchnama drawn on 21.12.2023. The seizure was made under Section 110 of Customs Act, 1962 on the reasonable belief that the said foreign currency was liable for confiscation under the Customs Act, 1962 and Foreign Exchange Management (Export and import of currency) Regulations, 2015.

13. I find that the Panchnama dated 21.12.2023 clearly draws out the fact that on the basis of specific information received from the CISF personnel present at the departure of security check of the International Airport, Ahmedabad that one passenger, namely Shri Hirenkumar Jivandas Somani holding Indian Passport bearing number B 6145027, about to travel to Sharjah by Air Arabia Flight No. G9 419 on 21.12.2023, was suspected to carry Foreign Currency and therefore, the said passenger was required to be examined by the AIU Officers of Customs, SVPIA, Ahmedabad for further investigation. The AIU officers intercepted the said passenger along with his checked-in baggage. It was observed that the passenger, Shri Hirenkumar Jivandas Somani was carrying black coloured shoulder bag, one big green coloured trolley bag. On being specifically asked, the passenger told the AIU Officers, in presence of the Panchas that he is having foreign currency i.e. U.S. dollars more than 5000 in numbers. The AIU Officers thoroughly checked the baggage of the said passenger. While checking his green colour trolley bag, foreign currency notes were found in form of U.S. Dollars. The AIU Officers asked the said passenger if he has any documents regarding the purchase/ ownership of the said foreign currency to which the passenger failed to produce any such documents. The AIU Officers, after recovering the foreign currency notes counted the said foreign currency notes and prepared a detailed inventory of the same which is as under:

Details of Foreign Currency recovered from Shri Hirenkumar Jivandas Somani holding Indian Passport No B 6145027 while departing from India to Sharjah via Air Arabia Flight No. G9 419 on 21.12.2023.

Sl. No	Concealed in	Name of Foreign Currency	Denomination of Foreign Currency Notes	Total Number of Foreign Currency Notes	Amount of Foreign Currency	Exchange Rate of one unit of foreign currency equivalent to Indian Rupees as per Noti. No.90/2023 - Cus (N.T.) dtd. 07.12.2023 (taken as per exported goods)	Value equivalent to Indian Currency (taken as per exported goods)
1.	Green colour trolley bag	U.S. Dollars	100	180	18,000	82.55	14,85,900/-

14. The above said foreign currency recovered from Shri Hirenkumar Jivandas Somani i.e. **18,000/- U.S. Dollars**, which is equivalent to Indian **Rs.14,85,900/-** (Rupees Fourteen Lakhs Eighty Five Thousand Nine Hundred only), are placed under seizure vide seizure Memo dated 21.12.2023 by the AIU Officer under the reasonable belief that the said foreign currency was liable for confiscation under the Customs Act, 1962 and Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Every procedure conducted during the Panchnama by the officers is well documented and is made in the presence of the panchas/ witnesses and the passenger. Therefore, it is conclusively established that the passenger had neither voluntarily come forward to declare to the Customs about possession of the said foreign currency nor had any document evidencing a legitimate procurement of the said foreign currency. This act of the passenger establishes his *mens rea* beyond doubt that he tried to smuggle the said foreign currency out of India by illegal and malafide manner.

15. Shri Hirenkumar Jivandas Somani in his statement dated 21.12.2023 had inter-alia stated that -

- He had been shown Panchnama dated 21.12.2023 drawn at SVPI Airport, Ahmedabad at the time when he was detained with

foreign currency i.e. US Dollar 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) which was completely his and found hiding with him without declaring/ disclosing to Customs officers and he completely agreed to the facts narrated in the Panchnama.

- He stated that the foreign currency i.e. US Dollars 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) seized from him. He further stated that the said currency is to be delivered to a person who is settled in Sharjah, to whom he does not have any personal relationship. Since he wished to go to Sharjah for site seeing and one of his friends in Surat suggested that, a person from Surat would bear to and fro tickets and accommodation expenses of Sharjah, if he carried some US Dollars for him. He had met that person at Surat and he informed him that prior to his departure to Sharjah, he would give him foreign currency i.e. US Dollars 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) at Varacha, Surat. As informed by him, on 20.12.2023 the person met him at Varacha, Surat and handed over the dollars to him. He does not know the details of the said person. He does not know his address as well. He admitted that the above said foreign currency has been seized by the Customs officers which he tried to illegally possess and tried to smuggle it out of India to Sharjah. He stated that that was the first time he was trying to smuggle the foreign currency out of India.
- He accepted that said foreign currency recovered under Panchnama proceedings dated 21.12.2023 totally worth US Dollars i.e. 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) belonged to him and attempted to be smuggled by him out of India which is a clear violation of the provisions of Customs Act, 1962.

16. I find that the legal provision for taking foreign currency out of India is very clear and does not leave any scope for any ambiguity. If the whole set of incidents is examined, first it is seen that the passenger was international passenger in a sense that he was to travel to Sharjah from Ahmedabad by Air Arabia Flight No. G9 419 on 21.12.2023. The passenger was intercepted by the Customs officials on the basis of specific information received from the CISF personnel present at the departure of security check of the International Airport, Ahmedabad. Thus, the passenger was bound by the Baggage Rules, 2016 framed under the Customs Act, 1962. There cannot be any denial for the applicability of Baggage Rules, 2016 in respect of the passenger.

I find that the Advocates of the Noticee claimed that the intention of the Noticee was clear and he was carrying foreign currencies not concealed but were found from the check in baggage of the noticee. In this regard, it is on record that the Noticee under his statement admitted that the foreign currency i.e. US Dollars 18,000/- equivalent to Indian Rs.14,85,900/- was to be delivered to a person who is settled in Sharjah, to whom he does not have any personal relationship. Since he wished to go to Sharjah for site seeing and one of his friends in Surat suggested that, a person from Surat would bear to and fro tickets and accommodation expenses of Sharjah, if he carried some US Dollars for him. He had met that person at Surat and he informed him that prior to his departure to Sharjah, he would give him foreign currency i.e. US Dollars 18,000/- equivalent to Indian Rs.14,85,900/- (Rupees fourteen lakh eighty-five thousand nine hundred only) at Varacha, Surat. As informed by him, on 20.12.2023 the person met him at Varacha, Surat and handed over the dollars to him. He does not know the details of the said person. He does not know his address as well. He admitted that the above said foreign currency has been seized by the Customs officers which he tried to illegally possess and tried to smuggle it out of India to Sharjah. He stated that that was the first time he was trying to smuggle the foreign currency out of India. Hence, the claim of the Advocates of the Noticee is not acceptable.

17. I find that Rule 7 of the Baggage Rules, 2016 is about currency and it lays down that the import or export of currency is governed by the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and notifications issued there under. Thus, I find that there cannot be any denial in respect of the fact that regulations and notifications framed under the said Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 were applicable to the passenger as he was primarily bound to follow Baggage Rules, 2016.

18. The Regulation 5 read with Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 in very clear terms "prohibits" export and import of "any" foreign currency without general or special permission of the Reserve Bank of

India. I find that the passenger has not come forward with any document issued by any authorized authority which can establish that the passenger was granted special permission by the Reserve Bank of India to carry foreign currencies he was carrying with him to take out of India. This in other words means that the passenger was governed by general permission or in case of non-applicability of general permission was absolutely prohibited to carry the foreign currencies outside India. I find regulation 7(2)(b) of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 is the general permission which is applicable to the passenger in the facts and circumstances of the case before me. According to this general permission, any person can take out of India foreign exchange obtained by him by drawl from an authorized person. In the case before me, again, the passenger has failed to come forward or produce any document which can establish that the foreign currencies found and recovered from him were drawn from an authorized source. These acts of omission or commission of offence on his part was clear violation of Rules 7 of Baggage Rules read with regulations 5 and 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. I also find that the judgements/ orders relied upon by the Advocates of the Noticee are of different facts and circumstances and hence are not applicable in this case.

19. I also find that there is a plethora of judgments in favour of release as well as against release of goods on payment of duty, redemption fine and penalty, once it is established that the goods in question comes under the ambit of "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 and the act of malafide intention in relation to subject items fall within the meaning of "smuggling", as defined under Section 2(39) of the Customs Act, 1962. I find that it is a settled legal position that ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Products [2004 (170) ELT 135 (SC)] has stressed the need to discuss how the facts of decision relied upon first factual situation of a given case and to exercise caution while applying the ration of one case to another. This has been reiterated in

judgment in the case of Escort Ltd. Vs. CCE, Delhi [2004 (173) ELT 113 (SC)] and in case of CC (Port), Chennai Vs Toyota Kirloskar [2007 (213) ELT 4 (SC)]. In the instant case it has been established beyond doubt that the foreign currency was kept undeclared and concealed in his baggage, falls within the meaning of "prohibited goods" and the act of malafide intention in relation to attempting to export foreign currency by concealing in baggage and not declared before the Customs, falls within the meaning of "smuggling". Hon'ble Supreme Court in case of Dropti Devi & Anr reported in [(2012)6S.C. R. 307] has observed and taken a serious view of smuggling activities. The smugglers by flouting the regulations and restrictions by their misdeeds directly affect the national economy and thereby endanger the security of the country.

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

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

In the case before me, as I find that the foreign currencies were illegally procured and were attempted to be smuggled out in clear violation of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which required the passenger to obtain foreign currencies from authorized dealers only. The condition

contained in the regulation itself has thus been violated by the passenger in the case before me which in turn makes the foreign currencies very much prohibited. I am therefore of the view that the foreign currencies seized is liable for absolute confiscation.

21. 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.

22. From the facts discussed above, it is evident that the passenger has carried foreign currency notes and attempted to export / smuggle the same out of India i.e., to Sharjah. The passenger had attempted to export/ smuggle out the foreign currency notes outside India without having legitimate documents from authorized sources, as mandated in Regulations 5 & 7 of the FEM Regulations. Needless to mention that Section 2(22) of the Act defines 'goods' which also includes currencies among other things. By attempting to export foreign currency without legitimate documents, it is established that the passenger had a clear intention to export/ smuggle out the foreign currency undetected in contravention to the Regulations 5 & 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. I further find that his act of carrying the foreign currency notes without legitimate purchase documents amount to "illegal export", as per the provisions of Section 11H(a) of the Act. Further, Section 2 (33) of the Act defines 'prohibited goods' means any goods for import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. These acts of omission and commission in relation to the subject currencies falls within the ambit of 'smuggling' as defined under Section 2(39) of the Act. Thus, the foreign currency recovered from the passenger is liable for confiscation.

23. Hon'ble Supreme Court in the case of *Om Prakash Bhatia* reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the foreign currencies were kept undeclared, concealed and were being carried by the passenger, are to be treated as "goods" prohibited in nature.

24. In the present case, it is seen that Shri Hirenkumar Jivandas Somani attempted to smuggle foreign currency USD 18000 equivalent to Indian Rs.14,85,900/- by concealing in baggage carried by him for

getting a renumeration/ benefit of to and fro tickets and accommodation expenses of Sharjah. Further, he could not submit any documents to prove that the impugned foreign currency notes carried by him is procured from legitimate sources/ Legally. Further, I find that the said foreign currency was handed over to him by an unknown person, who had illicitly acquired the foreign exchange. Thus, I find that the unknown person has abetted the commission of attempted improper export of the impugned foreign currencies by the passenger Shri Hirenkumar Jivandas Somani which were seized and found liable for confiscation under Section 113(d) of the Customs Act, 1962.

25. Given the above findings, it is evident that Shri Hirenkumar Jivandas Somani in blatant violation of Baggage Rules, 2016 framed under the Customs Act, 1962 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 framed under the Foreign Exchange Management Act, 1999 attempted to improperly export/ smuggle out a huge amount of foreign currency. The act of smuggling out of foreign currency results in a serious repercussion on the Indian economy by negatively affecting the conservation of foreign exchange and the safeguarding of balance of payments. In the present case "*mens rea*" on part of the passenger is very much evident since, he had not declared to the Customs Authorities in any manner about the foreign currencies being carried by him for export and did not possess valid documents showing procurement of the said foreign currencies from authorized person. By the aforesaid acts of Commission and omission Shri Hirenkumar Jivandas Somani (passenger) has rendered the impugned (seized) foreign currencies liable for confiscation under Section 113 (d) of the Customs Act, 1962, read with Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued under Foreign Exchange Management Act, 1999, and Rule 7 of the Baggage Rules, 2016 issued under the Customs Act, 1962. I, therefore, find that Shri Hirenkumar Jivandas Somani is also liable for penalty under Section 114 (i) of the Customs Act, 1962.

26. Accordingly, I pass the following order :

: O R D E R :

- (i) I order absolute confiscation of the impugned foreign currencies **18000 USD** having value equivalent to Indian currency at **Rs.14,85,900/-** (Rupees Fourteen Lakhs Eighty-Five Thousand Nine Hundred Only) attempted to be improperly exported and seized under Panchnama dated 21.12.2023 vide Seizure Order dated 21.12.2023, under Section 113 (d) of the Customs Act,1962.
- (ii) I impose a penalty of **Rs.6,00,000/-** (Rupees Six Lakhs Only) on Shri Hirenkumar Jivandas Somani, under Section 114(i) of the Customs Act 1962.

27. Accordingly, the Show Cause Notice No. VIII/10-16/SVPIA-B/O&A/HQ/2024-25 dated 10.05.2024 stands disposed of.

*Vishal
28/8/24*
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-16/SVPIA-B/O&A/HQ/2024-25

Date: 28.08.2024

DIN: 20240871MN0000818018

BY SPEED POST AD

To,

Shri Hirenkumar Jivandas Somani,
331, Swami Naraya Nagar,
Godadara, Surat City,
Gujarat, Pin 394210.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>

✓ (V) Guard File.