



F.No.VIII/26-40/AIU/CUS/2023-24

Dated : 15.05.2024

DIN: 20240571MN000072247F**SHOW CAUSE NOTICE****(Issued under Section 124 of the Customs Act, 1962)**

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

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

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

3. The CISF unit ASG Surat handed over the passenger alongwith his baggage, above mentioned recovered foreign currencies as well as Seizure List drawn by them (CISF) to the Customs, Surat International Airport on 24.01.2024. The said passenger was then brought to the Customs office located at the Arrival Area of Surat International Airport. The Customs officer asked the passenger whether he had anything to declare to Customs, in reply to which the passenger denied. Thereafter, the Customs officer informed the said passenger, that they would be conducting his personal search and detailed examination of his baggages. Then, the Customs officers offered their personal search to the passenger, however the passenger politely denied the same. The Customs officers asked the passenger whether he wants to be searched in front of the Executive Magistrate or Superintendent of Customs, in reply to which the said passenger gave his consent to be searched in front of the Superintendent of Customs. Thereafter the Customs Officers carried out

physical search of the passenger, but nothing suspicious was found. However, upon search of blue colour bagpack of brand "FBFASHION" carried by the said passenger, it was noticed that Indian Currency is concealed in the said bag. The entire currency was taken out and counted and found to be Rupees One Lakh. The details of total foreign/Indian currencies recovered from the said passenger, including the currency detained by the CISF, is enclosed (**Annexure-C** to panchnama). The summary of the same is reproduced as under:-

TABLE-1

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

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

4. Following documents were withdrawn from the passenger, Shri Dhruvkumar Ramlal Sindhi, for further investigations:-

- Copy of Aadhar Card bearing No. 7820 3146 8614.
- Copy of boarding pass indicating Seat No. 15D, PNR No. RZRT5F from Surat to Sharjah by flight No. IX- 171 on 24.01.2024.
- Passport No. V2370048 dated 05.11.2021 issued at Surat and valid upto 04.11.2031.

5. The foreign currency i.e. US Dollars 35000/- (US Dollar Thirty Five Thousand only) and Indian currency, viz, INR 100000/- (Rupees One Lakh only) which were recovered from the passenger Shri Nirajkumar Rajkumar Sindhi were placed under seizure under Panchnama proceedings dated 24.01.2024, on a reasonable belief that the said currencies, were attempted to be smuggled outside India without declaring to Customs Authority and were liable to confiscation under provisions of the Customs Act, 1962. The blue colour

bagpack of brand "FBFASHION" carried by the passenger which was used for concealment of currency was also placed under seizure.

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

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

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

- that at that time he did not have any purchase vouchers / legal documents of said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 24.01.2024.
- that the said foreign currency belong to him and he would submit the valid legal documents for the exchange of currency recovered from his possession within ten days.
- that the money belonged to him and he had earned the same from his profession and that he got it exchanged from the approved money exchanger; that he was carrying cash with him to save 2-3% exchange fee.

- that some part of the currency was to be used for shopping and the remaining for investment purpose.
- that he was aware that carrying the said currencies without declaring the same is an offence under Customs Act but he took a chance to gain 2-3% of exchange fee.
- that he admitted that he was aware that he had committed an offence by not declaring the same to Customs for which he would have to face the consequences as prescribed under Customs law.

7. LEGAL PROVISIONS RELEVANT TO THE CASE

- a)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992- "the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."
- b)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992- "All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."
- c)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992- "no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."
- d)** As per Section 11(3) of the Customs Act, 1962- "Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit."
- e)** As per Section 2(3) — "baggage" includes unaccompanied baggage but does not include motor vehicles.
- f)** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
 - a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and
 - e. any other kind of movable property;
- g)** As per Section 2(33) of Customs Act 1962, "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in

force.

- h)** As per Section 2(39) of the Customs Act 1962- 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- i)** As per Section 11H (a) of the Customs Act 1962- "illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- j)** As per Section 77 of the Customs Act 1962, the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- k)** As per Section 113 of the Customs Act 1962, the following export goods shall be liable to confiscation:-
 - (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
 - (e) any goods found concealed in a package which brought within the limits of a Customs area for the purpose of exportation;
- l)** As per Section 114 of the Customs Act 1962, any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-
 - (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;
- m)** As per Section 119 of Customs Act 1962- "any goods used for concealing smuggled goods shall also be liable for confiscation."
- n)** As per Section 110 of Customs Act, 1962- "if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods."
- o)** As per Rule 7 of the Baggage Rules, 2016,- "the import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder."

p) FOREIGN TRADE POLICY 2015-20

Para 2.45- Export of Passenger Baggage

- (a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.

q) THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999;

SECTION 2. Definitions.-In this Act, unless the context otherwise requires,-(m) "foreign currency" means any currency other than Indian currency;

SECTION 3. Dealing in foreign exchange, etc.- Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

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

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

REGULATION 3: Export and Import of Indian currency and currency notes :

1) Save as otherwise provided in these regulations, any person resident in India,

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding **Rs.25000/-** (Rupees Twenty Five Thousand Only) per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;

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

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

Import of foreign exchange into India: -

REGULATION 6: Import of foreign exchange into India:-

A person may -

a. send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers' cheques;

b. bring into India from any place outside India without limit foreign exchange (other than unissued notes),

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

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

currency notes brought in by such person at any one time does not exceed US \$ 5,000 (US Dollars five thousand) or its equivalent.

REGULATION 7: Export of foreign exchange and currency notes:-

- (1) An authorised person may send out of India foreign currency acquired in normal course of business,
- (2) Any person may take or send out of India, -
 - a. Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;
 - b. foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder ;
 - c. currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank;
- (3) Any person may take out of India, -
 - a. foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;
 - b. unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;
- (4) Any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

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

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

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

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

- c.was acquired by him by way of honorarium or gift while on a visit to any place outside India; or
- d.represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

CONTRAVICTION AND VIOLATION OF LAWS

8. It therefore appears that:

- a. The passenger, Shri Nirajkumar Rajkumar Sindhi attempted to improperly export/smuggle the seized foreign currency (US Dollar 35,000/-) and Indian currency (Rs. 1,00,000/-) by concealing in his baggage. He was unable to produce any document evidencing legitimate procurement of the said seized foreign currency in terms of Regulation 7(2) & 7(3) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015. He also failed to produce any declaration, if any made in compliance to the provisions of the Section 77 of Customs Act, 1962. He has violated Regulation 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 by attempting to illegally export the foreign currency seized from his possession. The passenger has illegally dealt with, acquired, held and possessed the seized foreign currency and attempted to improperly export or physically transfer the same at a place outside India. He has thus contravened Section 3 and Section 4 of the Foreign Exchange Management Act, 1999. The amount of foreign currency found in his possession exceeds the limits prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. The passenger has thus violated Regulation 3 of the the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. Further, the passenger has also violated Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 as the amount of Indian currency carried by him (Rs. 1,00,000/-) to a foreign destination exceeded the limits prescribed under the said provisions. It appears that by virtue of restrictions on the export of foreign/Indian currency, and non-compliance of the statutory requirements, the seized foreign/Indian currency appears to be "prohibited goods" in terms of Section 2(33) of the Customs Act, 1962. Therefore, it appears that the passenger indulged in smuggling as defined under Section 2(39) of the Customs Act, 1962 and the attempted export constitutes an act of "illegal export" as defined under Section 11H(a) of the Customs Act, 1962. The passenger has thus violated Para 2.45 of the Foreign Trade Policy 2015-20 read with Section 3(2), 3(3) and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962.

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

9. Now therefore, Shri Nirajkumar Rajkumar Sindhi is hereby called upon to show cause in writing to the Additional/Joint Commissioner of Customs, I/c of Surat International Airport, Surat, having his office situated on the 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 within 30 days from the receipt of this notice as to why :

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

10. The noticee is further required to state in his written reply whether he wishes to be heard in person before the case is adjudicated. If no specific mention is made about this in the written submissions, it shall be presumed

that he does not wish to be heard in person. He should produce, at the time of showing cause, all the evidences upon which he intends to rely in support of his defence.

11. The noticee is further required to note that his reply should reach within 30 (thirty) days from the receipt of this SCN or within such extended period as may be allowed by the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this Show Cause Notice or if he does not appear before the adjudicating authority as and when the case is posted for hearing, the case shall be decided ex-parte on the basis of facts and evidences available on record.

12. The relied upon documents for the purpose of this notice are listed in **Annexure-A**, and copies thereof are enclosed with this notice.

13. This Show Cause Notice is issued without prejudice to any other action that may be taken against the noticee, under this Act or any other law for the time being in force, or against any other company, the person(s), goods and conveyances whether named in this notice or not.

14. Department reserves its right to amend, modify or supplement this notice at any time before adjudication of the case.



(Anunay Bhati)

Additional Commissioner

BY SPEED POST A.D.

F.No. VIII/26-40/AIU/CUS/2023-24

Date: 15.05.2024

DIN : 20240571MN000072247F

To

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

Copy to:

1. The System In charge, Customs Commissionerate HQ, Ahmedabad for uploading on official web-site i.e., <http://www.ahmedabadcustoms.gov.in>.
2. Guard File

