



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंजिल 4th Floor, हडकोभवन HUDDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000EED2

क	फ़ाइलसंख्या FILE NO.	S/49-415/CUS/AHD/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128केअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-81-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	16.06.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	174/ADC/VM/O&A/2023-24, dated 22.11.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	16.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Ms Sahil Patel, A-202, Pancha Ratna Gruh, Yojna Nagar, Near Hathijan Circle, Ahmedabad - 382445.
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारिकियागया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग), संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं।	

	<p>Under Section 129 D(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.</p>
	<p>निम्नलिखित सम्बन्धित आदेश/Order relating to :</p>
(क)	बैगेज के रूपमें आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारतमें आयात करने हेतु किसी वाहनमें लादागयाले किन भारतमें उनके गन्तव्यस्थान पर उतारे न गए मालयाउस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर याउस गन्तव्यस्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(ब)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	<p>पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :</p> <p>The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :</p> <p>(क) कोर्ट फी एक्ट, 1870 के मदसं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रतियां में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.</p> <p>(a) 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन न उतारा है में रु. 200/- (रूपए दो सौ मात्र) यारु. 1,000/- (रूपए एक हजार मात्र), जैसा भी माल लाहो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी आर. 6 की दो प्रतियां यदि शुल्क, मांग गया व्याज, लगाया गया दंड की राशि और रूपए एकलाख याउस से कम गहोतो ऐसे फीस के रूप में रु. 200/- और यदि एकलाख से अधिक गहोतो फीस के रूप में रु. 1,000/-</p> <p>(d) The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.</p>
4.	<p>मदसं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि दिकोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमाशुल्क, के न्यूयार्ट पादशुल्क और सेवाकर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं</p> <p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p>
	<p>सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p>

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(ख)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहजाररुपए	
(ब)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ग)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.	
(द)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ह)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेहै,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।	
(ज)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Mr Sahil Patel, A-202, Pancha Ratna Gruh, Yojna Nagar, Near Hathijan Circle, Ahmedabad - 382445(hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order -in- Original No.174/ADC/VM/O&A/2023-24, dated 22.11.2023 (hereinafter referred to as "the impugned order") passed by Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of Intelligence received by the Directorate of Revenue Intelligence, Ahmedabad (hereinafter referred to as "DRI") indicated that a passenger namely Shri Hardik Rohitbhai Shah, holding Indian Passport bearing number M4721794, would be departing for Dubai by Spice Jet Flight SG 15 on 29.11.2022 from Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad and would be smuggling foreign currency by concealing the same in the baggage.

2.1 The officers of DRI identified and intercepted Shri Hardik Rohitbhai Shah and his check-in baggage was examined in the presence of two independent Panchas witnesses under Panchnama dated 29.11.2022. On examination of check-in baggage of the appellant i.e. a grey coloured suitcase bearing the mark 'Delsey', 12 wads of foreign currency 'USA dollar' each wads containing 50 notes of 100 denominations totally amounting to 60,000 USA Dollar were found concealed in the grey coloured suitcase. These notes were hidden inside the both packet of trouser which were kept in the said suitcase. The value of the foreign currency in Indian Rupee comes to Rs.48,54,000/- calculated on the basis of exchange rate Notification No. 97/2022-Cus (N.T.) dated 17.11.2022 effective from 18.11.2022 (taken as per exchange rate of export goods) issued by CBIC. On being enquired about the relevant documents in respect of possession of the above recovered foreign currency from his baggage equivalent to Rs.48,54,000/-, he could not produce any licit documents/declaration made before the Customs in this regard. Thus it appeared that the recovered foreign currency from the possession of Shri Hardik Rohitbhai Shah was attempted to be smuggled out from India in violation of the provisions of the Customs Act, 1962, Baggage Rules, 2016 read with the provisions of Foreign Exchange Management Act, (FEMA), 1999 and the rules and regulation made there under coupled with the fact of non-possession of any licit documents for the above recovered 600 foreign currency notes collectively amounting to 60,000 USD valued in INR 48,54,000/-. Accordingly, the same became liable for confiscation under

the provisions of Section 113(d) of the Customs Act, 1962. Therefore, the said foreign currency i.e., 60,000 USD, totally amounting to Rs.48,54,000/- were placed under seizure under the provisions of Section 110 of the Customs Act, 1962 vide Panchnama and Seizure Memo dated 29.11.2022.

2.2 Statement of Shri Hardik Rohitbhai Shah was recorded on 29.11.2022 under Section 108 of the Customs Act, 1962, wherein he, inter alia, confirmed the fact mentioned in the panchnama dated 29.11.2022. He admitted that he was carrying foreign currency to the tune of 60,000/- USD, he did not declare before the Customs Authority. He further stated that he was doing trading in Mobile and for purchasing mobile from Dubai, he was going to Dubai. Further, he was also trying for Job at Dubai and for the said reason also, he was going to Dubai. He further stated that his ticket to Dubai was sponsored by a friend (who stayed mostly in Dubai) of one Shri Prakashbhai Desai. He was running short of fund to go to Dubai and to manage the fund, he met one Shri Jayeshbhai Desai (Rabari) and asked for money on interest basis. Shri Jayeshbhai informed that there is one friend of Shri Prakashbhai Desai, who could sponsor his ticket to Dubai provided he brought his bag having USD with him from Ahmedabad to Dubai. Subsequently, he received e-ticket from Prakash bhai's mobile phone on Whatsapp. He further stated that in the morning he got a call from mobile number 7778887416 and the person informed that they should meet at Gita Mandir, ST Char Rasta, he went there and found the person who handed over one Grey coloured empty Suitcase and instructed him to keep some pairs clothes and then asked him to reach at RTO circle between 1.30 to 2.00 PM to collect the dollar. Then immediately he received a call from +971544841984, who informed that he may reach at RTO circle in between 1.30 to 2.00 PM wherein one person namely Shri Llabhai would come at Divya Gathiya Rath, RTO circle and would give him USD. Accordingly, he reached at Divya Gathiya Rath, RTO Circle around 2.00 o'clock waited for around half an hour. Then one person namely Llabhai came and himself kept the 12 bundles of USD (Denomination-100 USD) inside his jeans/trousers pockets. He was aware about the foreign currency as it was the pre-condition for sponsoring his ticket. He further stated that he had intentionally not declared the said foreign currency (60000 USD) carried by him collectively amounting at equivalent INR 48,54,000/-, before the Customs Authorities during his departure from SVP International Airport Ahmedabad, as he wanted to clear it illicitly from security checks and handed over to the deputed person at Dubai. He was fully aware that foreign currency in huge amount without any legitimate documents and without declaring before Customs was an offence, under

the provisions of Customs Act, 1962 and Regulations. He further confessed that he neither filled any Declaration form for declaring Foreign Currency to Customs nor produced any legitimate documents regarding procurement of foreign currency from any authorized currency exchange.

2.3 Statement of Shri Jayesh Rabari was recorded on 02.12.2022 under Section 108 of the Customs Act, 1962, wherein he, inter-alia stated that he and Hardik stayed together in Dubai at Laljibhai's place at meena bazar, bur Dubai. He was working in Grocery shop in Al-madina. He further stated his uncle Shri Laljibhai initially borne the expense on loan basis, which was to paid back to him. Accordingly, Half of the expense had been reimbursed to him and remaining half is still pending. He further stated that Hardikbhai met him for money on interest basis/ loan basis for which he denied; then Shri Hardik talked about one friend of Shri Prakashbhai who used to sponsor ticket subject to condition, if a person carry their dollar at Dubai and asked me if I have any idea about the person. I could not remember. Then Shri Hardikbhai asked me for the number of Shri Prakash bhai, which I gave to him. Shri Hardik bhai himself informed on next date that he was caught at the airport. Prior to that He received a call from Shri Prakashbhai, who inquired about Shri Hardik against he informed that he did not know anything. He further stated that he did not know about person dealing in Dollar but Prakashbhai may be knowing.

2.4 Statement of the appellant was recorded on 26.04.2023 under Section 108 of the Customs Act, 1962, wherein he, inter-alia stated that he did not personally know Shri Hardik Shah and he made a phone call to Shri Hardik in the morning of 29.11.2022 and asked him to meet near Gita Mandir to hand over the empty bag which he brought from Dubai. He further stated that he handed over a one grey coloured empty suitcase to Shri Hardik Rohitbhai Shah who came on white colour Activa and also conveyed the message given by person namely Jayesh Patel that Shri Hardik may have to keep two three pairs of clothes in the said bag and may reached at the RTO around 1.30 to 2.00 PM to collect money. He further stated that to best of his memory, JP asked him to convey Hardik "to collect money" not dollar and accordingly he conveyed. As it was not his concern, hence, he neither bothered to asked Shri JP nor to Shri Hardik about the money to be collected. He went to Dubai for job and came back on 29.11.2022, during his stay he stayed at Dubai with his friend Harshadbhai at A-102 and to best of his memory Building name was Al-Hamid in Bur Dubai. During the aforesaid visit/stay, he came across with Harshadbhai's friend, who were called upon by Shri Harshadbhai as J.P urf Jayesh Patel. On 27.11.2022, Shri Jayesh asked him that if he could

buy and carry empty bag to Ahmedabad and to hand over to his cousin in Ahmedabad. He further stated that Jayesh Patel was not known to him but friend of Shri Harshadbhai and he had a full faith upon his friend Shri Harshadbhai. Accordingly, he asked Harshadbhai whether he should carry the same or not. Shri Harshadbhai informed that when Jayesh was giving money, bag was to be purchased by me only, hence there was no harm or risk to me for carrying the same; accordingly, he agreed to the proposal of Shri Jayesh Patel. Shri Jayesh Patel then gave him 500 Dirham and asked him to purchase within this amount. He purchased bag in around 325 Dirham and Shri Jayesh Patel also gave him the number of his cousin 9913888088 and when he came from Dubai on 29.11.2022 and landed at Ahmedabad Airport at around 9.00 A.M and he called up on the given number and asked him to meet near Gita Mandir and handed over the bag to Shri Hardik and conveyed him the message of JP. He went to Dubai for Job purpose i.e. Dabeli Karigar but Harshad bhai referred him a sweeper type job, which did not suit him and accordingly he came back. He did not know any person namely Shri Lalbhai, Shri Jayesh Rabari and Shri Prakashbhai.

2.5 A further statement of the appellant was recorded on 20.05.2023 under Section 108 of the Customs Act, 1962, wherein he, inter-alia after seeing the photograph shown to him of Shri Jayesh Rabari stated that he did not recognize the person in the said photograph and he never met him; person in photograph is not JP as JP appeared to be around 50 years and he was bald. On being asked that JP had given him 500 Dirham, whereas Bag was purchased for 325 dirhams than what did he do to the remaining amount, he stated that after deducting misc, expense viz Taxi around 25 Dirham, he gave the remaining amount i.e. around 150 dirhams to Shri Harshad bhai to give it back to Shri JP. He also gave purchase bill of the said suitcase to Shri Harshad bhai to give it to Shri JP.

2.6 In view of the above and on carefully going through the evidences available on record in the form of Panchnama dated 29.11.2022 and statements of concerned persons recorded under Section 108 of the Customs Act, 1962 etc., it appears that the appellant is involved in the illegal export of foreign currency. The appellant brought grey colour suitcase from Dubai; handed over the same to Shri Hardik Shah; also passed on the message given by Shri Jayesh Patel Urf JP to Shri Hardik Shah for keeping some pairs of clothes in the said suitcase and to reach at the RTO circle around 1.30 PM to 2.00 PM. It is to mention that it is the same grey colour suitcase which were carried by Shri Hardik Shah while going to Dubai, wherein 12 bundles of USD (Denomination-100USD) were

kept, which were recovered/ seized by the DRI officer. Thereby the appellant has played the role as abettor in the said illegal export of foreign currency.

2.7 Shri Jayesh Patel urf JP of Dubai, Shri Prakashbhai Desai @Dubai, Shri Lalbhai, the appellant& Shri Jayesh Desai have knowingly concerned themselves in the attempt of illegal export of foreign currency by Shri Hardik Rohitbhai Shah through SVPI Airport, in violation of the various provisions of Baggage Rules, 2016, Customs Notifications and Foreign Exchange Management (Export and import of currency) Regulations, 2015. Thus, by their act of omission and commission have rendered the above said foreign currency liable to confiscation under Section 113(d) of the Customs Act, 1962. Hence, all the above said four persons namely Shri Jayesh Patel urf JP of Dubai, Shri Prakashbhai Desai @Dubai, Shri Lalbhai, the appellant& Shri Jayesh Desai (Rabari) have knowingly concern themselves in illegal export of foreign currency and rendered themselves liable to penalty under section 114 of the Customs Act, 1962.

2.8 A Show Cause Notice was issued to the appellant for imposition of penalty under Section 114(i) of the Customs Act, 1962.

2.7 The adjudicating authority has imposed penalty of Rs 5,00,000/- on the appellant under Section 114(i) of the Customs Act, 1962.

3. No appeal has been filed by the other noticees against the impugned order. Further, being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;

- The appellant had gone Dubai to earn a better-quality life by doing meagre jobs like a dabeli karigar. He got a job of sweeper and since the job he could secure was below dignity it didn't suit him and his family/personal status, he returned to Ahmedabad and falsely got implicated in the entire case/smuggling scandal.
- Role of present appellant is only limited to handing over an empty bag to Shri Hardik Shah. It is pertinent to mention that present appellant is not been involved in illegal activities by being a member if any such syndicate as alleged in the present case.
- Nothing objectionable/ prohibited goods have been recovered from present appellant as under section 2(33) the Customs Act, 1962 or any other law. Present appellant has given a complete cooperation to the authorities whenever he has been called for.
- That present appellant is not personally known to Shri Hardik Rohitbhai Shah. That present appellant had made a phone call to Shri Hardik in morning of 29.11.2022 and they decided to meet at

Gita Mandir, ST Bus Stand, Ahmedabad to hand over the empty bag which present appellant was asked to purchase and hand it over to Shri Hardik by Shri Jayesh Patel @ Dubai @ JP.

- The appellant happens to contact JP via one of his trusted friends Shri Harshadbhai who helped present appellant secure small job at Dubai. Other than this JP is not connected/known present appellant.
- The appellant has not benefitted from the transaction as is mentioned in the present case, therefore he has not abetted by aiding other accused persons in the said illegal export of foreign currency.
- The appellant was not aware, if that bag purchased by him was going to be used for illegal export of foreign currency and that he had bonafidely purchased and handed that bag in a good faith.
- The appellant was not known/aware of any particulars/whereabouts of the illegal export/ smuggling of foreign currency as it was in present case. That appellant has never met Shri Jayesh Patel regarding transaction as enumerated in this case. Therefore, present appellant is not an abettor in reference of present case and has wrongly been implicated as an abettor.
- It is clearly evident in the order passed by the Customs Authority, Ahmedabad that present appellant has played no role except just handing over a new empty bag to Shri Hardik Shah prior to this incident and interception, the same is also recorded and appreciated evidence in the order.
- It is submitted that present appellant is not a member of any syndicate involved in smuggling of foreign currency as alleged in the impugned order and is not importer or exporter. The appellant is completely innocent and is not involved neither directly nor indirectly in the present case as alleged in the order passed against him. That nothing objectionable much less prohibited goods have been recovered from present appellant as per the Customs Act, 1962.
- None of the other persons have appeared or replied to the show-cause notice issued by the adjudicating authority. That the adjudicating authority at para 20 at page no.21 of the impugned order has passed order with a prejudiced mindset to implicate present appellant. Present appellant has fully cooperated to the investigating agency. The appellant is firm on statement, written statement/reply and oral submissions made before the adjudicating

Ail

authority in personal hearing. That the present appellant is not involved at all in the alleged smuggling.

- In the present case there was complete lack of knowledge if the bag handed over to Shri Hardik Shah was going to be used for any illegal purpose. Thereby, present case is factually identical to the caselaw Gian Mahtani and Ors. V/s. State of Maharashtra AIR 1971 SC 1898 in favour of present appellant. Moreover, Shri JP lied to present appellant that Shri Hardik Shah happens to be his cousin; had it have been known to present appellant that Shri Hardik is not Shri JP's cousin, present appellant would not have agreed to do this favour (to hand over new bag to Shri Hardik at Ahmedabad) only to end up in trouble himself.
- The appellant relied upon the following case laws:
 - (i) AIR 1972 SC 716 Dr. S.L. Goswami V/s. The State of M.P.
 - (ii) AIR 2022 SC 5273 Ramanand alias Nandlal Bharti V/s. State of Uttar Pradesh
 - (iii) AIR 2020 SC 5592 Tofan Singh V/s. State of Tamil Nadu
 - (iv) AIR 1952 SC 159 Kashmira Singh V/s. The State of M.P
 - (v) AIRONLINE 2023 SC 351 Harbhajan Singh V/s. State of Haryana
 - (vi) AIRONLINE 2023 SC 339 Bothilal V/s. Intelligence Officer Narcotic Control Bureau
- In the present case the disputed fact in issue has not been proved through any independent evidence by which involvement of present appellant can be shown for the alleged smuggling of foreign currency. Therefore, while making presumption for the facts presented in relation to the disputed facts, the factual presumptions and legal defence taken by the accused regarding the disputed facts have to be contested or rebutted in law. The conclusive evidence is brought on record by cross-examination by rebutting one fact with another fact to rebut the conclusive presumptions, it has to be believed. And in this way the facts alleged in the impugned order are not proved.
- The appellant further submitted that the applicant is absolutely innocent person and if the impugned order of penalty is not set aside/ modified, the appellant would be put to irreparable loss and illegal suffering. Therefore, since the learned Additional Commissioner while passing the impugned order has completely gone out of the basic principles of law and natural justice though he has miserably failed to prove its case against present appellant beyond reasonable doubt, the appellant has been levied with heavy

penalty of Rs. 5,00,000/- (Rupees five lakh only) for the aforesaid offence and hence the appellant seeks justice.

- The appellant finally submitted that the appellant has a strong *prima facie* case in appeal and is likely to succeed. Therefore, this is a fit case, where in the present appeal may be allowed by this Hon'ble Appellate Authority.

PERSONAL HEARING

4. Shri Yash V Gupta, Advocate, appeared for personal hearing on 05.06.2025 on behalf of the appellant in virtual mode. He reiterated the submissions made in the appeal memorandum and also relied upon the case laws as mentioned in the appeal memorandum.

DISCUSSION & FINDINGS

5. I have gone through the facts of the case available on record, grounds of appeal. It is observed that the issues to be decided in the present appeal is Whether the impugned order imposing penalty amounting to Rs. 5,00,000/- on the appellant under Section 114(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that on the basis of Intelligence received by the Directorate of Revenue Intelligence, Ahmedabad (hereinafter referred to as "DRI") indicated that a passenger namely Shri Hardik Rohitbhai Shah, holding Indian Passport bearing number M4721794, would be departing for Dubai by Spice Jet Flight SG 15 on 29.11.2022 from Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad and would be smuggling foreign currency by concealing the same in the baggage. Shri Hardik Rohitbhai Shah found carrying 60,000 USA Dollar concealed in the grey coloured suitcase. These notes were hidden inside the both packet of trouser which were kept in the said suitcase. The value of the foreign currency in Indian Rupee comes to Rs.48,54,000/-. Shri Hardik Rohitbhai Shah could not produce any legitimate documents for the foreign currency and has not declared the same to the Customs authorities and hence the same were seized under the provisions of the Customs Act, 1962. Statement of Shri Hardik Rohitbhai Shah was recorded on 29.11.2022 under Section 108 of the Customs Act, 1962 wherein he accepted the smuggling foreign currency by concealing the same in the baggage. Statement of the appellant was recorded on 26.04.2023 and 20.05.2023 under Section 108 of the Customs Act, 1962 wherein he confessed to have handed over a one grey coloured empty suitcase to Shri Hardik Rohitbhai Shah who came on white colour Activa and also conveyed the message given by person namely

Jayesh Patel that Shri Hardik may have to keep two three pairs of clothes in the said bag and may reached at the RTO around 1.30 to 2.00 PM to collect money.

5.2 It is observed that Shri Hardik Rohitbhai Shah and others have not filed any appeal against the impugned order. Therefore, the impugned order in respect of Shri Hardik Rohitbhai Shah and others has attained finality. My findings are restricted to the extent of the appeal filed by the appellant for imposition of penalty of Rs 5,00,000/- under Section 114(i) of the Customs Act, 1962.

5.3 In respect of penalty imposed on the appellant, it is observed that the adjudicating authority, after considering facts and circumstances of the case, at Para 30 and 43 of the impugned order has held that:

30. "On carefully going through the evidences available on record in the form of Panchnama dated 29.11.2022 and statements of concerned persons recorded under Section 108 of the Customs Act, 1962 etc., I find that Shri Sahil Patel is involved in the illegal export of foreign currency. Shri Sahil Patel brought grey colour suitcase from Dubai; handed over the same to Shri Hardik Shah; also passed on the message given by Shri Jayesh Patel @ Dubai Urf JP to Shri Hardik Shah for keeping some pairs of clothes in the said suitcase and to reach at the RTO circle around 1.30 PM to 2.00 PM. It is to mention that it is the same grey colour suitcase which was carried by Shri Hardik Shah while going to Dubai; wherein 12 bundles of USD (Denomination 100 USD) were kept, which were recovered/ seized by the DRI, thereby it revealed that he has played the role as abettor in the said illegal export of foreign currency.

Therefore, Shri Sahil Patel has concerned himself knowingly, in the act of smuggling of foreign currency out of India contrary to the prohibition imposed in terms of Notification No. FEMA - 6 (R)/RB-2015 dated 29/12/2015 (Foreign Exchange Management (Export and import of currency) Regulations, 2015), (as amended), [(Earlier Notification No. FEMA 6/RB-2000 dated 3rd May 2000) (Foreign Exchange Management (Export and Import of Currency) Regulations, 2000)] read with Customs Act, 1962, which were recovered/seized under the Panchnama dated 29.11.2022 and Seizure Memo dated 29.11.2022 is liable to confiscation under Section 113(d) of the Customs Act, 1962 and also rendered himself liable for penalty under Section 114(i) of the Customs Act, 1962.

43. I further find that the all Noticees had involved themselves and abetted the act of smuggling/export of foreign currency seized under Panchnama dated 29.11.2022. They have agreed and admitted in their statements that despite their knowledge and belief that the smuggling/export of foreign currency is an offence as per the prohibition imposed in terms of Notification No. FEMA 6 (R)/RB-2015 dated 29/12/2015 (Foreign Exchange Management (Export and import of currency) Regulations, 2015), (as amended), [(Earlier Notification No. FEMA 6/RB-2000 dated 3rd May 2000) (Foreign Exchange Management

(Export and Import of Currency) Regulations, 2000] read with the Customs Act, 1962. Therefore, I find that all the Noticees are liable for penal action under Section 114(i) of the Customs Act, 1962 and I hold accordingly.

From the above facts, I find that it has been re-confirmed that Shri Hardik Rohitbhai Shah, Shri Jayesh Patel @ Dubai Urf JP and Shri Prakashbhai Desai were the owner of the said seized foreign currency and mastermind/kingpin of the said syndicate through which they had managed clearance of seized foreign currency from Ahmedabad Airport in connivance and association with Shri Lalbhai, Shri Sahil Patel and Shri Jayesh Desai (Rabari). Therefore, I find that all the above persons are liable for penal action under Sections 114(i) and I hold accordingly."

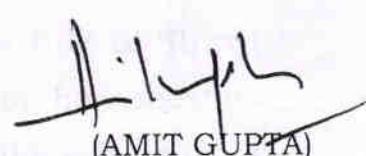
5.4 From the finding of the adjudicating authority for imposing penalty on the appellant under Section 112(a)(i) of the Customs Act, 1962, it is observed that the adjudicating authority has found that the appellant is involved in the illegal export of foreign currency. The appellant brought grey colour suitcase from Dubai and handed over the same to Shri Hardik Shah. He also passed on the message given by Shri Jayesh Patel @ Dubai Urf JP to Shri Hardik Shah for keeping some pairs of clothes in the said suitcase and to reach at the RTO circle around 1.30 PM to 2.00 PM. Further, the adjudicating authority also found that the same grey colour suitcase which was carried by Shri Hardik Shah while going to Dubai, wherein 12 bundles of USD (Denomination 100 USD) were kept, which were recovered/ seized by the DRI. The adjudicating authority with this observation held that the appellant has played the role as abettor in the said illegal export of foreign currency.

5.6 It is observed that the appellant, in his statements recorded under Section 108 of the Customs Act, 1962, on 26.04.2023 and 20.05.2023, clearly admitted to having handed over a grey-coloured empty suitcase to Shri Hardik Rohitbhai Shah. He also conveyed a message from one Jayesh Patel, instructing that Shri Hardik may be required to place two to three pairs of clothes in the said suitcase and proceed to the RTO circle between 1:30 PM and 2:00 PM to collect money. Further, it is noted that the same grey-coloured suitcase, which was handed over by the appellant to Shri Hardik Shah, was later found to contain 12 bundles of US Dollars (each of 100 USD denomination), which were recovered and seized by the Directorate of Revenue Intelligence (DRI). It is also evident from the record that the appellant explicitly instructed Shri Hardik Rohitbhai Shah to reach the RTO circle between 1:30 PM and 2:00 PM to collect the money. In corroboration, Shri Hardik Rohitbhai Shah, in his statement dated 29.11.2022, affirmed that the appellant handed him an empty grey suitcase, advised him to place some clothes in it, and directed him to go to

the RTO circle at the aforementioned time to collect the dollars. These facts clearly establish that the appellant had full knowledge that foreign currency (US Dollars) would be concealed and carried in the said suitcase. The sequence of events confirms his active involvement and abetment in the attempted illegal export of foreign currency. Accordingly, the appellant is liable for penalty under Section 114(i) of the Customs Act, 1962. It is also observed that the appellant has not advanced any specific or substantial grounds seeking reduction or waiver of the penalty imposed.

5.7 Thus, I am of the considered view that the penalty of ₹5,00,000/- imposed on the appellant under Section 114(i) of the Customs Act, 1962, by the adjudicating authority in the impugned order, is appropriate and justified in view of the provisions of the said section. The penalty is commensurate with the acts of omission and commission on the part of the appellant. Accordingly, I find no infirmity in the impugned order with respect to the imposition of penalty, and the same is hereby upheld.

6. In view of above, the appeal filed by the appellant is rejected


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F. No. S/49-415/CUS/AHD/2023-24
1408
To,

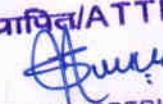
Dated -16.06.2025

- (i) Ms Sahil Patel, A-202,
Pancha Ratna Gruh, Yojna Nagar,
Near Hathijan Circle, Ahmedabad - 382445,
- (ii) Yash V Gupta, Advocate,
402, Sarthak Appartment, Opposite Dwarkesh Tower,
B/h AIS School, Off Judges Bunglow Road,
Bodakdev, Ahmedabad - 380015,



Copy to:

- The Chief Commissioner of Customs Gujarat, Customs House,
Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Additional/Joint Commissioner of Customs, Customs, Ahmedabad.
4. Guard File

सत्यापिता/ATTESTED

अधीक्षक/SUPERINTENDENT
सीમા ચુંક (અપીલસ), અહુમાદાવાદ.
CUSTOMS (APPEALS), AHMEDABAD