

	<p>अपर आयुक्त, सीमा शुल्क कार्यालय OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE, SURAT 4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat - 395007 Tel. No.- 0261-2990051</p>	 आज़ादी का अमृत महोत्सव
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DIN: 20240571MN00007707AD

PREAMBLE

A	फ़ाइल संख्या / File No.	:	VIII/10-03/O&A/ADC/Manav Kumar/2023-24
B	कारण बताओ नोटिस संख्या और तारीख / Show cause Notice No. and date	:	VIII/10-03/O&A/ADC/Manav Kumar/2023-24 dated 07.06.2023
C	ऑर्डर-इन-ओरिजिनल नंबर / Order-in-Original No.	:	02/AB/ADC/SRT-AIRPT/2024-25
D	आदेश तारीख/ Date of Order-in-Original	:	30-05-2024
E	जारी करने की तिथि/ Date of Issue	:	30-05-2024
F	द्वारा पारित / Passed by	:	Anunay Bhati Additional Commissioner I/c of International Airport, Surat
G	आयातक/यात्री का नाम और पता/ Name and address of Importer/ Passenger	:	Shri Manav Kumar Rajeshkumar Sheth 8, Mahavir Society, Station Road, Vyara, Tapi-394650

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश से अपने को व्यथित महसूस करनेवाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, 1962 के अंतर्गत फार्मस सी. ए. 1 और 2 दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura,

Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

3. अपील के साथ निम्नलिखित चीजे संलग्न जाए |

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश यह प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोर्ट फी स्टाम्प लगा हो |

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

Brief facts of the case:-

Shri Manavkumar Rajeshkumar Sheth, aged 29 years, having address at 8, Mahavir Society, Station Road, Vyara, Tapi -394 650 (as per passport and as per Voter ID No. NHA1450980) holding passport bearing No. R8463572 (hereinafter referred to as "Passenger/Noticee") was departing to Sharjah vide Air India Flight No. IX-171 scheduled at 00:55 hrs on 13.04.2023 from Surat International Airport.

2. On the basis of intelligence analysis and passenger profiling suspected International passengers departing from Surat International Airport were kept under surveillance and their movement was closely watched by the Customs officers. During the baggage security Check, one such suspected passenger, Shri Manavkumar Rajeshkumar Sheth was intercepted by the Customs Air Intelligence Unit (AIU) officers and other Customs officers of the Airport (hereafter referred to as "the officers") in the presence of panch witnesses under Panchnama proceedings dated 12/13.04.2023. The Passenger was found carrying one sky-blue coloured hand bag alongwith grey-coloured trolley bag. The officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The officers then offered their personal search to the passenger, but the passenger denied saying that he has full trust on the officers. Then, the officers asked the passenger whether he wanted to be searched in presence of the Magistrate or the Superintendent (Gazetted Officer) of Customs, in reply to which the passenger gave his consent to be searched before the Superintendent of Customs. Thereafter, the passenger was requested to pass through the Door Frame Metal Detector (DFMD) located near the arrival gate after removing all the metallic objects on his body such as mobile, wallet, etc. The passenger then readily removed objects such as mobile, purse, belt etc., kept them on a table and passed through the DFMD (Door Frame Metal Detector) Machine, but no beep sound was heard. Thereafter, the Officers carried out physical search of his luggage i.e. sky-blue coloured hand bag and grey coloured trolley bag wherein it was noticed that UAE Dirhams were concealed in sky-blue colour hand bag. The entire stack of UAE Dirhams was taken out and counted and found to be 50,000/- UAE. On being asked about any legal document showing the purchase/ownership of these 50,000/- UAE, the passenger Shri Manavkumar Rajeshkumar Sheth informed that he has no receipt of these 50,000/- UAE. The detailed inventory of these 50,000/- UAE are as mentioned in Annexure AI to the notice.

3. Following documents were withdrawn from the passenger, Shri Manavkumar Rajeshkumar Sheth, for further investigations:

- i. Copy of Voter ID No. NHA1450980.
- ii. Copy of ticket bearing PNR No. T6B9GD from Surat to Sharjah by flight No. IX- 0171 on 13.04.2023.
- iii. Passport No. R8463572 dated 15.03.2018 valid upto 14.03.2028.

4. The foreign currency i.e. 50,000/- UAE (UAE Dirhams Fifty Thousand only) which were found concealed in the baggage and recovered from the passenger Shri Manavkumar Rajeshkumar Sheth were placed under seizure under Panchnama proceedings dated 12/13.04.2023, on a reasonable belief that the said 50,000/- UAE were attempted to be smuggled outside India without

declaring to Customs Authority and are liable to confiscation under provisions of the Customs Act, 1962.

5. A statement of Shri Manavkumar Rajeshkumar Sheth was recorded on 13.04.2023 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated that:-

- he is unmarried person residing at 8, Mahavir Society, Station Road, Vyara, Tapi, Pin - 394650 and he has business of Tours & Travels, has done B. Tech in Mechanical from Geetanjali Institute of Technical Studies, Udaipur.
- he has been shown Panchnama dated 12/13.04.2023 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.
- he was going to Sharjah today i.e. on 13.04.2023 by Air India Express Flight No. IX-171 departing time scheduled at 00:55 hrs. from Surat International Airport; he was stopped by the Customs Officers after clearing security check of Airlines, near airlines counters in departure hall of Surat International Airport, Surat; he was carrying one sky-blue colour hand bag and some foreign currency in UAE dirhams, the exact amount of which he was not knowing and during the course of thorough checks, the Customs officers have found foreign currency wrapped in silver coloured foil paper from sky blue coloured hand bag, amounting to UAE Dirhams 50,000/- (500*100 UAE notes), placed in sky blue coloured hand bag, which are equivalent to a total of Indian Rupees 10,82,500/- (As per Customs Rate of exchange Notification No. 26/2023-Cus (NT) dated 06.04.2023); he has nothing else to declare.
- the details of foreign currency so recovered from his possession are as given under:

Type of currency	Denomination	No. of notes	Total	Conversion Rate	Value in INR
UAE Dirhams	500	100	50000	21.65	10,82,500/-
TOTAL			50000 UAE Dirhams		10,82,500/-

- he had carried UAE 50,000 /- for the business purpose in Sharjah; he don't have any purchase voucher / legal documents of said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 12/13.04.2023.
- he has carried UAE Dirhams 50,000/- without declaring the same to Customs Authorities and therefore was smuggling the same out of India; he was aware that carrying the said forex concealed in baggage or on person without declaring the same is an offence under the Customs Act but he took a chance so as to gain some money.
- he had intentionally not declared the said forex being smuggled by him before the Customs Authorities at the time of departure from Surat International Airport as he wanted to smuggle out the same without declaring to Customs and he was aware that he had committed an offence

by not declaring the same to Customs for which he had to face the consequences as prescribed under the Customs Law.

6. 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. 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 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;
- k) 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;
- l) As per Section 119 of Customs Act 1962- any goods used for concealing smuggled goods shall also be liable for confiscation.
- m) 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.
- n) 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.

o) 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.

p) 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.

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

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

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

Import of foreign exchange into India: -

REGULATION 6: Import of foreign exchange into India:

A person may

- a. send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers' cheques;
- b. bring into India from any place outside India without limit foreign exchange (other than unissued notes),

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

provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousand) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousand) or its equivalent.

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.

r) **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.

CONTRAVENTION AND VIOLATION OF LAWS

7. It therefore appears that:

a. Regulation 5 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 states that no person shall, without the general or special permission of the Reserve Bank, export or send out of India, any foreign currency. Similarly, Regulation 7 *ibid* deals with export of foreign exchange and currency notes. Regulation *inter alia* states that "Any person may take or send out of India, foreign exchange obtained by him by drawl from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued there under. On the basis of Regulation 7 *ibid*, a person is entitled to take or send out foreign exchange drawn from an Authorized Person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder. Whereas, during the search in person and of the baggage of the passenger Shri Manavkumar Rajeshkumar Sheth no documents with respect to foreign currency whatsoever were found which could prove the legal purchase of foreign currency recovered from him from any authorized person in terms of Regulation 7 *ibid*.

b. Further, Shri Manavkumar Rajeshkumar Sheth was unable to produce any document evidencing a legitimate procurement of the said seized foreign currency. On the basis of the above it appears that Shri Manavkumar Rajeshkumar Sheth carried the foreign currencies illegally and with an intent to export the same illegally in violation of the rules/regulations in force from time to time. Regulation 7 (3) and (4) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 would come into force only when a proper declaration before the Customs Officer had been made.

c. By not declaring the contents of his baggage which included dutiable and prohibited goods to the proper officer of the Customs the passenger Shri Manavkumar Rajeshkumar Sheth has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

d. The seized foreign currencies cannot be cleared as a part of personal baggage without having proper legal and legitimate documents. Therefore, the attempt to carry foreign currencies in the baggage is considered as violation of the restrictions imposed under Foreign Exchange Management (Export and import of currency) Regulations, 2015, appears to fall under the ambit of "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 read with Regulation 5 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015. Further, Shri Manavkumar Rajeshkumar Sheth failed to produce any legitimate/legal document in support of purchase of foreign currency from an authorised person at the time of interception, seizure and during the course of investigation, thus this act again amounts to "Illegal export" of foreign currencies by him in terms of Section 11H (a) of the Customs Act, 1962. He had admitted in his statement recorded under Section 108 of the Customs Act, 1962 that he had attempted to export the seized foreign currencies. The seized foreign currency of UAE Dirham 50,000/- collectively equivalent to Rs. 10,82,500/- (Rupees Ten Lakh Eighty Two Thousand Five Hundred only) recovered from him are therefore, liable to confiscation under section 113(d) and 113 (e) of the Customs Act, 1962 read with Section 2(22), 2(33), 2(39) of the Customs Act, 1962, further read in conjunction with provisions of Section 11 of the Customs Act, 1962.

e. Shri Manavkumar Rajeshkumar Sheth, by his above-described acts of omission and commission has rendered himself liable to penalty under Section 114 (i) of the Customs Act, 1962.

8. Therefore, Shri Manavkumar Rajeshkumar Sheth was 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 5th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat 395007 within 30 days from the receipt of the notice as to why-

- (i) The foreign currency (UAE Dirham 50,000/-) equivalent to Indian Rs. 10,82,500/- (Rupees Ten Lakh Eighty Two Thousand Five Hundred only) seized from Shri Manavkumar Rajeshkumar Sheth under Panchnama proceedings dated 12/13.04.2023 should not be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon Shri Manavkumar Rajeshkumar Sheth under Section 114(i) of the Customs Act, 1962.

Defence reply

9.1 The noticee, Shri Manavkumar Rajeshkumar Sheth submitted his defence reply dated 29.02.2024, wherein he inter alia, submitted as under:-

- That he is having business of tours and travels and he makes tickets, customised packages for tourists, national as well as international and he is doing the business since 2019. He was carrying 50000 UAE Dirhams for which he did not have receipt at that time, however, he has hotel vouchers, tickets, tour packages etc to whom he had to pay the bills, so he carried the amount in advance for the purpose to clear the bill so that the customer could explore the country. There were 15 tourists who were supposed to travel to Dubai on that day i.e. 28.04.2023.
- that he was not doing any smuggling, for which he has already given his explanation.
- that he had carried 50000 UAE Dirhams to clear bills for tourist packages in UAE and not for smuggling. He agreed that he had not declared the amount.
- that he has all the purchase vouchers regarding seized currency.

9.2 Alongwith his defence reply he submitted copies of hotel vouchers, travel itinerary, visa of his customers and cash memo (Tax invoice) bearing Sr. No. SP/2324/5/72-PRIVATE VISIT dated 13.04.2023 issued by "relimoney", holding RBI Licence No. FE.DEL.FFMC/U155/2020 and GSTIN 24AAJCR6659J1ZU regarding sale of UAE Dirhams 10650/- equivalent to Indian Rs. 2,44,897/- to the noticee.

Personal hearing

10. The noticee was given an opportunity to appear in person to represent his case on 15.02.2024 and 29.02.2024. The noticee appeared for personal hearing on 29.02.2024 and reiterated his written submissions dated 29.02.2024.

Discussion and Findings:

11. I have carefully gone through the facts of this case, including the show cause notice, record of personal hearing and written submissions of the noticee.

12. In the instant case, I find that the main issues that are to be decided is whether the foreign currency (UAE Dirham 50,000/-) equivalent to Indian Rs. 10,82,500/- (As per Customs Rate of exchange Notification No. 26/2023-Cus (NT) dated 06.04.2023) recovered from Shri Manavkumar Rajeshkumar Sheth, which was seized vide Seizure Order/ Memo under Panchnama proceedings dated 12/13.04.2023 on the reasonable belief that the same was attempted to be smuggled outside India, are liable for confiscation under Section 113 of the Customs Act, 1962 (hereinafter referred to as 'the Act') and whether the noticee is liable for penalty under the provisions of Section 114 of the Act.

13. I find that the panchnama clearly draws out the fact that on the basis of intelligence analysis and passenger profiling, the noticee, Shri Manavkumar Rajeshkumar Sheth was intercepted during his baggage security check and found carrying foreign currency. I further find that, when asked by the Customs authorities at Surat Airport, the noticee could not produce any legal document/receipt evidencing legitimate procurement/ownership of the said 50,000/- UAE recovered from his baggage. I also find that the noticee had

attempted to illicitly export the same without any declaration to the Customs authorities.

14. I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor contested the facts detailed in the panchnama during the course of recording his statement. Every procedure conducted during the panchnama by the officers was well documented and made in the presence of the panchas as well as the noticee. In his written submissions/defence reply dated 29.02.2024, the noticee submitted that he is in the business of tours and travels and he was carrying the said foreign currency to pay the bills relating to hotel charges, tour charges, etc. of his customers who were travelling to Dubai. In support he has submitted copies of the travel itinerary, visa, hotel vouchers and cash memo (Tax invoice) bearing Sr. No. SP/2324/5/72-PRIVATE VISIT dated 13.04.2023 issued by "relimoney", holding RBI Licence No. FE.DEL.FFMC/ U155/2020 and GSTIN No. 24AAJCR6659J1ZU regarding sale of UAE Dirhams 10650/- equivalent to Indian Rs. 2,44,897/- to the noticee.

15. I find that the tax invoice regarding purchase of UAE Dirhams 10650/- equivalent to Indian Rs. 2,44,897/- submitted by the noticee is dated 13.04.2023, whereas the noticee was intercepted by the Customs officers carrying UAE Dirham 50,000/- at Surat International Airport on the night of 12.04.2023 at around 10.45 PM. This fact is clearly mentioned in the panchnama and has not been disputed by the noticee. This clearly proves that the said tax invoice dated 13.04.2023 does not pertain to the impugned foreign currency recovered and seized from the possession of the noticee during panchnama proceedings dated 12/13.04.2023. Rather it appears that the noticee, as an afterthought, purchased the said currency (UAE Dirhams 10650) on 13.04.2024 after the completion of the panchnama proceedings dated 12/13.04.2023, so as to lend legitimacy to at least some amount of foreign currency recovered from his possession. Thus, it is conclusively proved that the noticee does not possess any legal/valid documents evidencing legitimate purchase/acquisition of the impugned foreign currency (UAE Dirhams 50000) recovered and seized from him, and the copy of invoice dated 13.04.2023 submitted by him pertains to foreign currency purchased by him subsequently and not the impugned foreign currency so seized.

16. I find that the legal provision for taking foreign currency out of India is very clear and does not leave any scope for ambiguity. I also 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 noticee as he was primarily bound to follow Baggage Rules, 2016.

17. In terms of Regulation 7(1) of Foreign Exchange Management (Export and import of currency) Regulations, 2015, an **authorised person** may send out of India foreign currency acquired in normal course of business. I find that the noticee is not an authorized person who can send foreign currency out of India

in normal course of business. I further find that in terms of regulation 7(2)(b) of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, any person can take out of India foreign exchange obtained by him by drawl from an authorized person. In the case before me, the noticee has failed to produce any document which can establish that the said foreign currencies were drawn from an authorized source. This clearly proves that the said 50000/- UAE dirhams were acquired by illegitimate means/unauthorized source in contravention to the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

18. As per regulation 7(3) of Foreign Exchange Management (Export and import of currency) Regulations, 2015, a person may take out of India foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. As per Regulation 3(i) of Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, an **authorized person** can possess foreign currency and coins without limit. As per regulation 3(iii), retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding **US\$ 2000** or its equivalent in aggregate is allowed, 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.

I find from the records that the noticee could not produce any legal document required under the provisions of Foreign Exchange Management (Export and import of currency) Regulations, 2015 and Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 evidencing possession/ retention of the foreign currency. He is also not an authorized person who can send foreign currency out of India in normal course of business. Neither could he produce any documentary evidence regarding purchase/ acquisition of the impugned foreign currency.

19. I find that the 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, the 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 said noticee without fulfilment of prescribed conditions and hence, are to be treated as goods prohibited in nature. Thus, "mensrea" on part of the noticee is very much evident since he had not declared to the Customs Authorities in any manner about the foreign currency being carried by him for export and did not possess valid documents showing procurement of the said foreign currency from authorized person. I am therefore of the view that the foreign currencies amounting to UAE Dirham 50,000/- recovered from the noticee are liable for absolute confiscation. Hence, by the aforesaid acts of commission and omission,

the noticee has rendered the impugned seized foreign currency (USD 50,000) liable for confiscation under Section 113 (d) & 113 (e) of 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 Customs Act, 1962.

20. 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 Subsection (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....".

21. From the facts discussed above, it is evident that the noticee had carried foreign currency and attempted to export / smuggle the same out of India i.e., to Sharjah without having legitimate documents evidencing acquisition from authorized sources, as mandated in Regulations 5 & 7 of the Foreign Exchange Management Regulations. I further find that his act of carrying the foreign currency 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' which means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The 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 UAE Dirham 50,000 is liable for absolute confiscation.

22. Given the above findings, it is evident that Shri Manavkumar Rajeshkumar Sheth, in 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 attempted to improperly export/smuggle foreign currency, viz, UAE Dirham 50,000/- equivalent to a total of Indian Rupees 10,82,500/-. In the present case, "mens rea" on part of the noticee is very much evident since he had not declared to the Customs Authorities in any manner about the foreign currency being carried by him for export and did not possess valid documents showing

procurement of the said foreign currency from authorized person. By the aforesaid acts of commission and omission, Shri Manavkumar Rajeshkumar Sheth has rendered the impugned seized foreign currency liable for confiscation under Section 113 (d) & (e) of 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 Customs Act, 1962. I therefore find that Shri Manavkumar Rajeshkumar Sheth is also liable for penalty under Section 114 (i) of the Customs Act, 1962.

23. Accordingly, I pass the following Order:-

ORDER

- (i) I order absolute confiscation of foreign currency amounting to UAE Dirham 50,000/- equivalent to Indian Rs. 10,82,500/- (Rupees Ten Lakh Eighty Two Thousand Five Hundred only) seized from Shri Manavkumar Rajeshkumar Sheth under Panchnama proceedings dated 12/13.04.2023, under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) I impose a penalty of Rs. 10,82,500/- (Rupees Ten Lakh Eighty Two Thousand Five Hundred only) upon Shri Manavkumar Rajeshkumar Sheth under Section 114(i) of the Customs Act, 1962.



(Anunay Bhati)
Additional Commissioner

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

F.No. VIII/10-03/O&A/ADC/Manav Kumar/2023-24

DIN: 20240571MN00007707AD

Dated: 30.05.2024

To
Shri Manav Kumar Rajeshkumar Sheth
8, Mahavir Society, Station Road, Vyara, Tapi-394650

Copy to:

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