

OIO No:05/ADC/SRV/SRT-AIRPT/2025-26
F. No. VIII/26-13/AIU/CUS/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन", पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
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DIN: 20250771MN0000555F8B

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/26-13/AIU/CUS/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/26-13/AIU/CUS/2024-25 dated 27.11.2024 issued on 28.11.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	05/ADC/SRV/SRT-AIRPT/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	04.07.2025
E	जारी करने की तारीख/ Date of Issue	:	04.07.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs
G	आयातक/यात्री का नाम और पता / Name and Address of Importer / Passenger	:	1.Shri Jayantibhai Parshottambhai Pansuria, D-204, Krishna Park Apartment, Sudama Chowk, Surat City, Pin-394107, Gujarat, 2. Shri Nimit Kishorbhai Sojitra, 64, Thakodwar Society, Simada Gam, Saniya Hemad, Surat, Gujarat-395006
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ऊ्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

Shri Jayantibhai Parshottambhai Pansuria, aged 59 years (D.O.B. 11.02.1965), address: D-204, Krishna Park Apartment, Sudama Chowk, Surat Pin-394107, Gujarat, holding a valid Passport No. bearing P1862276 (hereinafter referred to as "Passenger/Noticee") was departing to Dubai via Air India Express Flight No. IX-173 scheduled on 04.06.2024 from Surat International Airport.

2. Whereas, during frisking and hand baggage scanning at the security check located in the International Departure Terminal of Surat Airport, the CISF unit ASG Surat detected some foreign currency from one passenger, namely Shri Jayantibhai Parshottambhai Pansuria, who was about to board flight No. IX-173 dated 04.06.2024 from Surat to Dubai. Accordingly, the CISF informed the Customs officers regarding the detection of foreign currency and requested them to come to the CISF security check area in the International Departure Terminal of Surat Airport. Thereafter, the CISF unit ASG Surat handed over Shri Jayantibhai Parshottambhai Pansuria, the passenger, along with his baggage, recovered foreign currency as well as the Seizure List drawn by them (CISF) to the Customs, Surat International Airport on 04.06.2024. According to the Seizure List drawn by CISF, foreign currency USD 29,500/- was recovered from the passenger. The passenger was then prevented from boarding the Dubai-bound flight and taken to the Customs office at the Arrival Area of Surat International Airport. The passenger was found to be carrying one piece of baggage, viz., one blue trolley bag of the brand "*Fashion*". The Customs officers asked the passenger whether he had declared the detained foreign currency to the Customs, which the passenger denied. The Customs officers further asked the passenger if he had anything else to declare, which the passenger denied.

3. The customs officers informed the passenger that they would be conducting a personal search and a detailed examination of his baggage. Before doing so, the Customs officers offered their personal search to the passenger, but the passenger politely denied it. The Customs officers asked the passenger whether he wanted to be searched before the Executive Magistrate or the Superintendent of Customs. In reply, the said passenger gave his consent to be searched in front of the Superintendent of Customs. Thereafter, the Customs Officers carried out a physical search of the passenger. Upon frisking and physical search, foreign currency, viz. US Dollars were found in his trousers pockets. The entire currency was taken out and counted and found to be USD 2000/-. Further, the Customs Officers asked the passenger about any legal

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document showing the purchase/ownership of the detained foreign currency, to which the passenger informed that he did not have any receipt.

4. Whereas, a summary of foreign currency recovered from the passenger by the CISF and the currency recovered by the Customs was as under:

TABLE-1

Name & Passport No. of passenger (Shri)	Type of currency	Denomina tion	No. of Notes	Total (USD)	Con Rate (Notfn. No. 36/2024- Customs (NT) dated 16.05.24	TOTAL Value in INR
Jayantibhai Parshottambhai Pansuria (P1862276)	US Dollars	100	315	31500	82.65	26,03,475/-

Thereafter, all the remaining baggage belonging to the said passenger was scanned; however, nothing else suspicious was found.

5. Further, the passenger produced the following travelling documents before the Customs officers:

TABLE-2

Name of passenger	Passport No.	Boarding Pass details
Shri Jayantibhai Parshottambhai Pansuria	P1862276	Air India Express flight No. IX 173 dated 04.06.2024 Seat No. 22E, PNR No. TYNZTX (Surat to Dubai)

6. Whereas, the foreign currencies i.e. USD 31,500/- (US Dollars Thirty-One Thousand Five Hundred only) and equivalent to INR Rs. 26,03,475/- (Rupees Twenty Six Lakh Three Thousand Four Hundred and Seventy Five Only) recovered from the passenger Shri Jayantibhai Parshottambhai Pansuria, was placed under seizure along with one blue colour trolley bag of brand “*Fashion*” vide *Panchnama* proceedings dated 04.06.2024 and subsequently seized vide seizure Order dated 04.06.2024, on a reasonable belief that the said foreign currency concealed in one blue colour trolley bag of brand “*Fashion*” was attempted to be smuggled outside India without declaring to Customs Authority by way of concealment and was liable for confiscation under provisions of the Customs Act, 1962.

7. Whereas, a statement of Jayantibhai Parshottambhai Pansuria was recorded on 04.06.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that his residential address was D-204, Krishna Park Apartment, Sudama Chowk, Surat City, Pin-394107, Gujarat, India; that he was married and staying with his wife and grandson in the house located at above mentioned address and his son and daughter-in-law had been staying in Australia; that he did not work anymore as he was old now; He was earlier used to work as a supervisor in an embroidery factory in Surat two years ago; that he had completed studies upto Class XII and can read, write and understand English, Hindi, and Gujarati language very well; that he had travelled thirteen times in past to UAE for some tour and travel work, which

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was being looked after by Shri Nimit Kishorbhai Sojitra, who was the brother-in-law of his son, Shri Nikunj Jayantibhai Pansuriya.

- that he was shown Panchnama dated 04.06.2024, drawn at Surat International Airport, Surat, and after perusing and understanding it, he put his dated signature on the panchnama in token of acceptance of the facts stated therein.
- that he was going to Dubai on 04.06.2024 by Air India Express Flight No.IX-173 from Surat International Airport; that he was stopped by the CISF unit ASG Surat after clearing security check of Airlines, in departure hall of Surat International Airport, Surat; During the hand bag checking by the CISF officers, they found foreign currency from my hand bag i.e. blue colour trolley bag of brand “Fashion”, amounting to USD 29,500/-; that during the frisking by the Customs officers, they recovered foreign currency amounting to USD 2000/- from pockets of his trousers; that he had not declared the same before Customs that he was carrying US Dollars with him to Dubai. The details of foreign currency so recovered from his possession are as given under:

Type of Currency	Denomination	No. of Notes	Total
US Dollar	100	315	31500

- that he did not have any forex exchange receipts of said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 04.06.2024, and Shri Nimit Kishorbhai Sojitra would provide the same.
- that the purpose for which he was carrying the foreign currency to Dubai was to hand over the said foreign currency recovered from his possession, to the person, whose details would be shared with him by Shri Nimit Kishorbhai Sojitra, who was the brother-in-law of his son, Shri Nikunj Jayantibhai Pansuriya.
- that he carried USD 31500 without declaring the same to Customs Authorities and therefore was smuggling the same out of India; that he was aware that carrying forex without declaring the same was an offence under the Customs Act; that he admitted 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.

8. Whereas, a statement of Shri Nimit Kishorbhai Sojitra was recorded on 05.06.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that his residential address was 64, Thakodwar Society, Simada Gam, Saniya Hemad, Surat,Gujarat-395006, India; that he was

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married and staying with his family comprising grandmother, parents, wife and son in the house located at above mentioned address; that he was in the business of tour and travels in the name of "Smile Holidays" and their services included Air ticket, passport, visa, foreign exchange, tour package, etc.; that he had completed studies up to B.Com 2nd year and could read, write and understand English, Hindi, and Gujarati language very well;

- that he was shown Panchnama dated 04.06.2024 drawn at Surat International Airport, Surat, and after perusing and understanding it, he put his dated signature on the panchnama in token of acceptance of the facts stated therein;
- that he was shown a statement dated 04.06.2024 of Shri Jayantibhai Parshottambhai Pansuria recorded under Section 108 of the Customs Act, 1962 and after perusing and understanding it, he stated that the facts mentioned therein were true and correct;
- that he agreed with the reply of Shri Jayantibhai Parshottambhai Pansuria, wherein he stated that the seized foreign currency viz. USD 31500/- belonged to him; that the source of said foreign currency was that he purchased about USD 12,500/- from Mr. Riyaz, who dealt in foreign currency and for the said transaction, he paid cash to Mr. Riyaz. On being asked where he got the cash for the said transaction, he stated that he got the cash from his clients, who booked tickets from his travel company "Smile Holidays" and he does not have details of these transactions. Regarding the details of the remaining amount of foreign currency, i.e. USD 19000/-, he stated that this amount was with him since long, as his clients had given him the said currency and he did not have details of these transaction; that he did not know the address of Mr. Riyaz and other details;
- that he did not possess any such valid legal documents regarding the acquisition of the said USD 31500/-, as he had paid cash for these transactions.
- that the purpose for which he was sending the said foreign currency to Dubai through Shri Jayantibhai Parshottambhai Pansuria, was that he was in the business of tour and travels and book hotels for his customers who visited Dubai; that hotels at Dubai asked for advance payment to provide best rate; that to get the best hotel rates for his customers, he was sending the foreign currency to Dubai as advance payment for his clients; that most of his clients were in the business of diamonds, who regularly visited Dubai for a short stay and he booked hotels for them; that as regards the name of the hotels to which payment was to be made, he stated that the hotels were to be contacted with the currency in hand, as they offered best deals at that time only;
- that this was the first time he had sent foreign currency to a foreign destination in cash through Shri Jayantibhai Parshottambhai

Pansuria; that he was not aware that carrying foreign currency required declaration before Customs.

9. 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-
 - i. vessels, aircrafts and vehicles;
 - ii. stores;
 - iii. baggage;
 - iv. currency and negotiable instruments; and
 - v. 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

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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 2023

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;

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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 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 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 drawable 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:-

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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.

10. CONTRAVENTION AND VIOLATION OF LAWS

Whereas, it therefore appeared that:

- (i) The passenger, Shri Jayantibhai Parshottambhai Pansuria, attempted to improperly export/smuggle foreign currency (US Dollar 31500) by not declaring the same before the Customs. He was unable to produce any document evidencing legitimate procurement of the said 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 with the provisions of Section 77 of the Customs Act, 1962. He violated Regulations 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 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 had thus contravened Sections 3 and 4 of the Foreign Exchange Management Act, 1999. The amount of foreign currency found in his possession exceeded the limits prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. The passenger had thus violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. It appeared that by virtue of restrictions on the export of foreign currency and non-compliance with the statutory requirements, the seized foreign currency appeared to be **“prohibited goods”** in terms of Section 2(33) of the Customs Act, 1962. Therefore, it appeared that the passenger had indulged in smuggling as defined under Section 2(39) of the Customs Act, 1962, and the attempted export constituted an act of **“illegal export”** as defined under Section

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11H(a) of the Customs Act, 1962. The passenger had thus violated Para 2.45 of the Foreign Trade Policy 2023, 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.

- (ii) The seized foreign currency (US Dollar 31,500) equivalent, in total, to INR **26,03,475/-** (Rupees Twenty Six Lakh Three Thousand Four Hundred Seventy Five only) as per Notification No. 36/2024-Customs (NT) dated 16.05.24, which was attempted to be improperly and illegally exported by the passenger by concealing it in his one blue colour trolley bag of brand “*Fashion*” and jeans pant in violation of the Customs Act, 1962, Baggage Rules, 2016 and other laws in force appeared liable for confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. The said act of the passenger appeared 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, had rendered the seized foreign currency liable for confiscation under Section 113 of the Customs Act, 1962, and therefore, he appeared liable for penalty under Section 114(i) of the Customs Act, 1962.

11. Whereas, it also appeared that:

- a. Mr. Nimit Kishorbhai Sojitra 64, Thakodwar Society, Simada Gam, Saniya Hemad, Surat, Sania Hemad, Gujarat-395006, attempted to get the foreign currency (US Dollar 31500) improperly exported/smuggled through Mr. Jayantibhai Parshottambhai Pansuria by not declaring the same before the Customs. Further, no documentary evidence was produced evidencing legitimate procurement of the said foreign currency in terms of Regulation 7(2) & 7(3) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015. He had violated Regulations 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 Mr. Jayantibhai Parshottambhai Pansuria’s possession. Mr. Nimit Kishorbhai Sojitra helped Mr. Jayantibhai Parshottambhai Pansuria to illegally deal with, acquire, hold and possess the seized foreign currency and attempted to get the said seized currency improperly exported or physically transferred to a place outside India through Mr. Jayantibhai Parshottambhai Pansuria. Thus, Mr. Nimit Kishorbhai Sojitra contravened Sections 3 and 4 of the Foreign Exchange Management Act, 1999. The amount of foreign currency found in possession of Mr. Jayantibhai Parshottambhai Pansuria was not eligible for export as prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. Mr. Nimit Kishorbhai Sojitra and Mr. Jayantibhai Parshottambhai Pansuria had thus violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. It appeared that by virtue of restrictions on the export of foreign currency and non-compliance with the statutory requirements, the seized foreign currency appeared to be “prohibited goods” in terms of Section 2(33) of the Customs Act, 1962. Therefore, it appeared that Mr. Nimit Kishorbhai Sojitra and Mr. Jayantibhai Parshottambhai Pansuria indulged in smuggling as defined under

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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. Mr. Nimit Kishorbhai Sojitra and Mr. Jayantibhai Parshottambhai Pansuria had thus violated Para 2.45 of the Foreign Trade Policy 2023, 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.** Mr. Nimit Kishorbhai Sojitra attempted to illegally export the seized foreign currency [i.e. US Dollar 31,500/- equivalent in total to Indian Rs. 26,03,475/- (Rupees Twenty Six Lakh Three Thousand Four Hundred Seventy-Five only) as per Notification No. 36/2024-Customs (NT) dated 16.05.24] through Mr. Jayantibhai Parshottambhai Pansuria, by concealing it in Mr. Jayantibhai Parshottambhai Pansuria's blue colour trolley bag of brand “*Fashion*” and in jeans pant in violation of the Customs Act, 1962, Baggage Rules, 2016 and other laws in force. The said act of Mr. Nimit Kishorbhai Sojitra and Mr. Jayantibhai Parshottambhai Pansuria appeared to be an act of “**smuggling**” as defined under Section 2(39) of the Customs Act, 1962. Mr. Nimit Kishorbhai Sojitra and Mr. Jayantibhai Parshottambhai Pansuria, by their above-described acts of omission and commission, had rendered the seized foreign currency liable for confiscation under Section 113 of the Customs Act, 1962, and therefore they appeared liable for penalty under Section 114(i) of the Customs Act, 1962.

12. Therefore, Mr. Jayantibhai Parshottambhai Pansuria, aged 59 years residing at D-204, Krishna Park Apartment, Sudama Chowk, Surat City, Pin-394107, Gujarat and Mr. Nimit Kishorbhai Sojitra, 64, Thakodwar Society, Simada Gam, Saniya Hemad, Surat, Sania Hemad, Gujarat-395006 were called upon to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated at the 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 within thirty days from the receipt of notice as to why:-

- (i)** The foreign currency (USD 31,500/- in total equivalent to Indian Rs. 26,03,475/- (Rupees Twenty-Six Lakh Three Thousand Four Hundred Seventy Five only) from Mr. Jayantibhai Parshottambhai Pansuria seized vide seizure order dated 04.06.2024 under *Panchnama* proceedings dated 04.06.2024 should not be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii)** The one blue colour trolley bag of brand “*Fashion*” carried by him, which was used for the concealment of foreign currency, should not be confiscated under Section 119 of the Customs Act, 1962;
- (iii)** Penalty should not be imposed upon Mr. Jayantibhai Parshottambhai Pansuria under Section 114(i) of the Customs Act, 1962.
- (iv)** Penalty should not be imposed upon Mr. Nimit Kishorbhai Sojitra under Section 114(i) of the Customs Act, 1962.

13. DEFENCE REPLY

In the Show Cause Notice dated 27.11.2024 issued to Mr. Jayantibhai Parshottambhai Pansuria and Mr. Nimit Kishorbhai Sojitra, it was asked to submit the written reply/defence submission within the stipulated time. However, no reply or defence submission to the Show Cause Notice was received from any of the two noticees within the stipulated time or thereafter.

14. RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, opportunities to be heard in person were granted to both the noticees to appear on 11.03.2025, 16.05.2025 and 13.06.2025. The letters for personal hearing were dispatched at the addresses provided by the noticees in their statement, and the same were also emailed to them at the email addresses they had provided during the recording of their respective statements. However, no one appeared for the personal hearing on any of the scheduled dates. In light of the foregoing, it is evident that both these noticees have exhibited a clear disregard for the ongoing adjudication proceedings and have failed to submit any representation or defence in response thereto. I am of the considered view that adequate and reasonable opportunities have been afforded to both the noticees in accordance with the principles of natural justice. Therefore, it would not be judicious or warranted to keep the matter pending indefinitely, and therefore, I proceed to adjudicate this case **ex parte** based on the merits of the available records.

14.2 Before proceeding further, it should be brought to attention that the Hon’ble Supreme Court, High Courts and Tribunals have held, in several judgments/decisions, that an ex-parte decision will not amount to a violation of the principles of Natural Justice. To fortify my stand, I rely upon the following case laws/observations made by the Hon’ble Courts and other legal fora:

a) The Hon’ble Supreme Court in the matter of **Jethmal Versus Union Of India Reported In 1999 (110) E.L.T. 379 (S.C.)**, the Hon’ble Court has observed as under;

“ Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of audi alteram partem, and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

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b) Hon'ble High Court of Kerala in the case of **United Oil Mills Vs. Collector Of Customs & C. Ex., Cochin Reported In 2000 (124) E.L.T. 53 (Ker.)**, the Hon'ble Court has observed that:

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated"

c) Hon'ble High Court of Calcutta in the case of **Kumar Jagdish Ch. Sinha Vs. Collector Of Central Excise, Calcutta Reported In 2000 (124) E.L.T. 118 (Cal.) In Civil Rule No. 128 (W) Of 1961**, decided on 13-9-1963, the Hon'ble Court has observed that:

" Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]"

d) Hon'ble High Court of Delhi in the case of **Saketh India Limited Vs. Union Of India Reported In 2002 (143) E.L.T. 274 (Del.)**. The Hon'ble Court has observed that:

" Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. "

e) The Hon'ble CESTAT, Mumbai in the case of **Gopinath Chem Tech. Ltd Vs. Commissioner Of Central Excise, Ahmedabad-II Reported In 2004 (171) E.L.T. 412 (Tri. - Mumbai)**, the Hon'ble CESTAT has observed that:

" Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]"

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f) The Hon'ble High Court of Jharkhand in **W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi** pronounced on 12.09.2023 wherein Hon'ble Court has held that-

“ Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed.”

15. DISCUSSION AND FINDINGS

I have carefully examined the facts of this case, the relied-upon documents, the relevant legal provisions, and other materials on record. Therefore, I proceed to decide the instant case based on the evidence and documents available on record.

16. In the instant case, I find that the main issues to be decided are whether:

- (i)** The foreign currency (USD 31500) equivalent to INR 26,03,475/- (Rupees Twenty-Six Lakh Three Thousand Four Hundred Seventy-Five only) recovered from Mr. Jayantibhai Parshottambhai Pansuria and seized vide seizure order dated 04.06.2024 under *Panchnama* proceedings dated 04.06.2024 should be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962 or otherwise;
- (ii)** The one blue colour trolley bag of brand “*Fashion*” carried by him, which was used for the concealment of foreign currency, should be confiscated under Section 119 of the Customs Act, 1962 or otherwise;
- (iii)** Penalty should be imposed upon Mr. Jayantibhai Parshottambhai Pansuria under Section 114(i) of the Customs Act, 1962 or otherwise;
- (iv)** Penalty should be imposed upon Mr. Nimit Kishorbhai Sojitra under Section 114(i) of the Customs Act, 1962 or otherwise.

17. I find that the *Panchnama* has drawn out the fact that Shri Jayantibhai Parshottambhai Pansuria, who was scheduled to depart for Dubai vide Air India Express Flight No. IX-173, scheduled on 04.06.2024 from Surat International Airport, was intercepted while in possession of foreign currency by the officers of the CISF unit ASG Surat. Accordingly, the Central Industrial Security Force (CISF) informed the Customs officers about the detection of foreign currency and requested their presence at the CISF security check area located at the

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International Departure Terminal of Surat Airport. Subsequently, on 04.06.2024, the CISF unit ASG Surat handed over Shri Jayantibhai Parshottambhai Pansuria, the passenger in question, along with his baggage, the recovered foreign currency, and the Seizure List prepared by the CISF, to the Customs authorities at Surat International Airport. The passenger was found to have carried one baggage, viz. one blue colour trolley bag of brand “*Fashion*”. Thereafter, upon frisking and physical search of the passenger, foreign currency, viz US Dollars, were found in his trouser pockets. The entire currency was taken out and counted and found to be USD 2000/-. Further, the Customs Officers asked the passenger about any legal document showing the purchase/ownership of the detained foreign currency, to which the passenger replied in negative. Thereafter, a summary of the currency recovered from the above-mentioned passenger was prepared and is furnished below:

TABLE-1

Name & Passport No. of passenger (Shri)	Type of currency	Denomina tion	No. of Notes	Total (USD)	Con Rate (Notfn. No. 36/2024-Customs (NT) dated 16.05.24	TOTAL Value in INR
Jayantibhai Parshottambhai Pansuria (P1862276)	US Dollars	100	315	31500	82.65	26,03,475/-

Subsequently, the foreign currency i.e. USD 31500/- (US Dollars Thirty-One Thousand Five Hundred only) and equivalent to INR Rs. 26,03,475/- (Rupees Twenty Six Lakh Three Thousand Four Hundred and Seventy Five Only) recovered from the passenger Jayantibhai Parshottambhai Pansuria, was placed under seizure along with one blue colour trolley bag of brand “*Fashion*” vide *Panchnama* proceedings dated 04.06.2024 and vide seizure Order dated 04.06.2024, under the reasonable belief that the said foreign currency was concealed in one blue colour trolley bag of brand “*Fashion*” and was attempted to be smuggled outside India, without making declaration before the Customs Authorities, by way of concealment and was hence liable for confiscation under provisions of the Customs Act, 1962.

18.1 Further, I find that a statement of the noticee, Shri Jayantibhai Parshottambhai Pansuria, was recorded on 04.06.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated that he, Jayantibhai Parshottambhai Pansuria, did not work anymore as he was old now. He admitted that he had travelled thirteen times in past to the UAE for some tour and travel work, which was being looked after by Shri Nimit Kishorbhai Sojitra, who is the brother-in-law of his son, Shri Nikunj Jayantibhai Pansuriya. He further stated that while boarding Air India Express Flight No. IX-173 from Surat International Airport, CISF officers stopped him after security clearance and found USD 29,500/- in his handbag, i.e. blue colour trolley bag of brand “*Fashion*” and USD 2000/- from the pockets of his trousers during his frisking. He acknowledged signing the *panchnama* dated 04.06.2024 and admitted that he lacked legal documents for the seized foreign currency. He further stated during his voluntary statement recorded under Section 108 of the Customs Act, 1962, that Shri Nimit Kishorbhai Sojitra, the brother-in-law of his son, Shri Nikunj Jayantibhai Pansuriya, would provide the necessary documents.

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18.2 I further find that Shri Pansuria confessed in his statement that the purpose of carrying the aforementioned foreign currency to Dubai was to hand it over to a person whose identity and contact details were to be subsequently communicated to him by Shri Nimit Kishorbhai Sojitra. He also confessed that he knowingly carried the said foreign currency without declaring it to the Customs authorities, despite being aware that such non-declaration constituted an offence under the Customs Act. Shri Pansuria also submitted that he was fully aware of the legal consequences of his conduct and acknowledged his liability under the law for committing an offence punishable under the provisions of the Customs Act, 1962.

18.3 Further, a statement of Shri Nimit Kishorbhai Sojitra was recorded on 05.06.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he had inter alia stated that that he was into the business of tour and travels in the name of "*Smile Holidays*" and their services included Air ticket, passport, visa, foreign exchange, tour package, etc. Further, Shri Nimit Kishorbhai Sojitra was shown the *panchnama* dated 04.06.2024, drawn at Surat International Airport, and upon perusal and understanding of its contents, he affixed his dated signature in token of acceptance of the facts recorded therein. He was also shown his voluntary statement dated 04.06.2024, recorded under Section 108 of the Customs Act, 1962, and after going through the same, he affirmed that the contents thereof were true and correct to the best of his knowledge and belief.

18.4 Further, I find that Shri Nimit, in his statement, concurred with the statement of Shri Jayantibhai Parshottambhai Pansuria, affirming that the seized foreign currency amounting to USD 31,500 belonged to him. He stated that USD 12,500 was purchased in cash from Mr. Riyaz, a person dealing in foreign currency, using cash from clients of his travel business, *Smile Holidays*, without maintaining any transaction records. As for the remaining USD 19,000, he claimed it was received from clients over time and retained by him, though he could not provide any supporting documents or details of those transactions. He further admitted that he had not possessed any valid legal documentation evidencing the lawful acquisition of the entire amount of USD 31,500, nor had he had the address or contact details of Mr. Riyaz.

18.5 Further, Shri Nimit stated that the purpose of sending the seized foreign currency to Dubai through Shri Jayantibhai Parshottambhai Pansuria was to make advance payments to hotels on behalf of his travel clients, in order to secure preferential rates. He claimed to be engaged in the tour and travel business, with most of his clients involved in the diamond trade and frequently traveling to Dubai for short stays. He stated that hotels in Dubai offered better rates when paid in cash up front, and that the specific hotel would be decided upon arrival, with the currency in hand to negotiate the best deal. He further stated that this was the first time foreign currency was sent abroad in this manner. He has admitted that he was unaware of the requirement to declare such currency before Customs authorities.

19.1 Further, I find that both the noticees, Shri Jayantibhai Parshottambhai Pansuria and Shri Nimit Kishorbhai Sojitra, have never retracted their aforesaid statements, recorded under Section 108 of the Customs Act, 1962. Therefore, I consider their statements to be material evidence in this case, and for that, I place my reliance on the following judgments/case laws:

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- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that the statement made before the Customs Officers though retracted within 6 days is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act, 1962;
- The confessional statement given before the Customs officers are admissible evidence as they are not the police officers. This view has been upheld by the Hon'ble Supreme Court in the case of **Badaku Joti Savant vs. State of Mysore [1978 (2) ELT J 323 (SC)]**;
- The decision of the Hon'ble Madras High Court in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Raghupathy 1998 (98) ELT 50 (Mad)**, in which the court held that the confessional statement under Section 108, even though later retracted is a voluntary statement and was not influenced by duress and is a true one.
- The Hon'ble Apex Court in **Naresh J Sukhawani vs UOI** held that the Statement before the Customs Officer is a material piece of evidence.

19.2. Further, I find that Shri Jayantibhai Parshottambhai Pansuria had neither questioned the manner of the *panchnama* proceedings at the material time nor contested the facts detailed in the *panchnama* during the recording of his statement. Further, Shri Nimit Sojitra has also not contested the facts detailed in the *panchnama* during the recording of his statement. It is essential to note that 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 fact, in his statement dated 04.06.2024, the noticee had admitted that he had carried the impugned foreign currency, i.e. USD 31,500/- in baggage and in his trousers and did not declare the same before the Customs and thereby, violated provisions of the Customs Act, the Baggage Rules, 2016, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and the Foreign Exchange Management Act, 1999. Further, Shri Jayantibhai Pansuria could not produce any document evidencing legitimate foreign currency procurement. Therefore, it is established that the noticee had neither voluntarily come forward to declare to the Customs about possession of the said foreign currency nor had any document evidencing a legitimate procurement of the said foreign currency despite being aware that carrying forex and Indian currency beyond permissible limit, without declaring the same was an offence under Customs Act, 1962. This act of Shri Jayantibhai undeniably establishes that he had attempted to smuggle the said foreign currency out of India in an illegal and mala-fide manner.

20.1 Further, 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 thereunder. Thus, I find that there cannot be any denial in respect of the fact that regulations and notifications framed under the said Foreign Exchange

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Management (Export and Import of Currency) Regulations, 2015, were applicable to the noticee as he was bound to follow Baggage Rules, 2016.

20.2 Further, I note that Regulation 5, read with Regulation 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, in very clear terms, "prohibits" the export and import of "any" foreign currency without general or special permission of the Reserve Bank of India. In the instant case, I find that the noticee has not come forward with any document issued by any authorized authority which can establish that the noticee was granted special permission by the Reserve Bank of India to carry foreign currency that he was carrying with them to take out of India. This means that the noticee was governed by general permission or, in case of non-applicability of general permission, was prohibited from carrying the foreign currency outside India. I find that regulation 7(2)(b) of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 is the general permission which applies to the noticee in the facts and circumstances of the case before me. According to this general permission, any person can take out of India foreign exchange obtained by him by drawl from an authorized person. In this case, the noticee has failed to produce any document that can establish that the foreign currency, viz., USD 31,500 found and recovered from him, was drawn from an authorized source. These acts of omission or commission of offence on his part were clear violations of Rules 7 of Baggage Rules read with regulations 5 and 7 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.

20.3. Further, I find that the noticee in his statement has admitted to having carried the impugned foreign currency without declaration to the Customs. In his written submission, he has not retracted his statement. I further find that the noticee in his statement stated that foreign currency amounting to USD 31,500 (315 notes of USD 100 denomination) was recovered from his possession, which he had not declared to Customs. Further, he has admitted that he had no purchase vouchers or legal documents for the currency at the time of seizure under *panchnama* dated 04.06.2024. He has also stated that the purpose for which he was carrying the foreign currency to Dubai was to hand over the said foreign currency recovered from his possession, to the person, whose details would be shared with him by Shri Nimit Kishorbhai Sojitra, who is the brother-in-law of his son, Shri Nikunj Jayantibhai Pansuriya. It is essential to highlight that he has admitted his awareness of the legal requirement to declare the currency and has acknowledged the offence under the Customs Act 1962, besides expressing his willingness to face the legal consequences. I further notice that the law does not permit the retention of such an amount of foreign currency, i.e., USD 31,500 in the instant case. I find that 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. **As per regulation 7(3), 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, 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 the unspent amount of foreign exchange acquired by him from an authorised person for travel abroad. Further, I find from the records that the noticee has failed to 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 for export/possession/retention of foreign currency. Based on the facts and records of this case, it can be reasonably inferred that the noticee is also not authorized to send foreign currency out of India in the normal course of business. Neither could he produce documentary evidence regarding the purchase/acquisition of the impugned foreign currency.

20.4 Given the discussion in the preceding paragraphs, I find that the noticee has violated the provisions governing the export of foreign currency as prescribed under the Baggage Rules, 2016, and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. The noticee attempted to export USD 31,500/- and has failed to provide any documentary evidence to establish that the foreign currency was lawfully acquired from an authorized source as required under Regulation 7(2)(b). Additionally, the noticee admitted to carrying the foreign currency without declaration to Customs, which constitutes a violation of the Customs Act, 1962. These acts of omission and commission collectively establish that the noticee has engaged in the unauthorized export/smuggling of foreign currency in violation of the applicable laws and regulations. Thus, the noticee, Shri Jayantibhai Parshottambhai Pansuria, has contravened the provisions of the following Act/Policy/Notification/Rules:

- Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015;
- Rule 7 of Baggage Rules, 2016
- Sections 3 and 4 of the Foreign Exchange Management Act, 1999;
- Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;
- Para 2.45 of the Foreign Trade Policy 2023, 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.

21. Further, I find that the issue related to the definition of prohibited goods has already been settled by various judicial pronouncements, as referenced below:

- The Hon'ble Supreme Court, in the case of **Om Prakash Bhatia reported in 2003 (155) ELT 423 (SC)**, held that if importation and exportation of goods are subject to certain prescribed conditions, which

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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.

- The Hon'ble Supreme Court in the case of **Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors [1971 AIR 293]** has held that for the purposes of Section 111(d) of the Customs Act, 1962, the term "**A prohibition' means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition.**"
- In one of its latest pronouncements dated 17.06.2021, in the case of **UOI & Ors vs M/s Raj Grow Impex LLP & Ors [CA Nos. 2217-2218 of 2021]**, the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia to hold "*any restriction on import or export is to an extend a prohibition*".
- In a case decided by the **Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS** in respect of **Malabar Diamond Gallery Pvt Ltd**, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

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

Notably, as per Section 2(33) of the Customs Act, 1962, "*prohibited goods*" is defined as *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*. In this case, the foreign currency attempted to be exported improperly by the passenger without following the due process of law and without adhering to the conditions and procedures of export and have thus acquired the nature of being prohibited goods given Section 2(33) of the Act. As the currencies were kept undeclared, concealed, and carried by the said noticee without fulfilment of prescribed conditions, they are to be treated as prohibited goods. Thus, "***mens rea***" on the part of the noticee is 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 attempting to export foreign currency without legitimate documents illicitly, it is established that the noticee had a clear intention to export/smuggle out the foreign currency undetected in contravention of Regulations 5 & 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. As per Section 2(39) of the Customs Act 1962 –“ 'smuggling' in relation to any goods means any act or

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omission, which will render such goods liable to confiscation under Section 111 or Section 113.” By the aforesaid act of commission and omission, the passenger has rendered the goods liable for confiscation under section 113 of the Customs Act 1962. Therefore, I believe that the foreign currency in the present case is liable for absolute confiscation. Hence, the passenger, by the aforesaid acts of commission and omission, has rendered the impugned seized foreign currency (USD 31,500) 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.

22.1 DETERMINATION OF CULPABILITY OF SHRI JAYANTIBHAI PARSHOTTAMBHAI PANSURIA IN THE INSTANT FOREIGN CURRENCY SMUGGLING SCHEME

After a detailed analysis of the foregoing, I find it irrefutably established that the noticee, Shri Jayantibhai Parshottambhai Pansuria, carried foreign currency amounting to USD 31,500 and attempted to export/smuggle the same out of India to Dubai without making any declaration to the Customs authorities. The noticee failed to produce any documentary evidence or legitimate purchase documents evidencing lawful procurement of the said foreign exchange from authorised sources, as mandated under Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Section 2(22) of the Customs Act, 1962 defines ‘goods’ to include currency, and hence, any attempt to export such currency without compliance with applicable statutory provisions falls within the purview of illicit export. The noticee’s admission, under Section 108 of the Customs Act, that he was aware of the requirement to declare the currency and still chose not to do so clearly establishes ‘***mens rea***’ and a deliberate attempt to circumvent the law. His act of carrying the foreign currency without supporting documents and in contravention of the FEMA regulations renders the said act an “***illegal export***” under Section 11H(a) of the Customs Act, 1962. Further, as per Section 2(33) of the Customs Act, the foreign currency in question qualifies as ‘***prohibited goods***’ since its export was attempted without fulfilment of the conditions prescribed by law. His conduct falls squarely within the definition of ‘***smuggling***’ as per Section 2(39) of the Customs Act, 1962. Therefore, I find that the said foreign currency is liable for absolute confiscation under the Customs law. Further, I believe that this action is necessary to uphold the regulatory framework governing the export of currency and to prevent unauthorized outward remittance, which may have wider implications on the financial security and economic stability of the country. To further fortify my standing in this matter, I draw support from the following judicial pronouncements:

- I find that the Hon’ble ***High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.)*** held-

“Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent- Tribunal had overlooked categorical finding of adjudicating authority that respondent had

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deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration- Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine – Discretion exercised by authority to deny release, is in accordance with law- Interference by Tribunal is against law and unjustified-

Redemption fine- Option- Confiscation of smuggled gold – Redemption cannot be allowed, as a matter of right- Discretion conferred on adjudicating authority to decide- Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.”

- In the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]**, **the High Court** upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samyanathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner’s order for absolute confiscation was upheld.

22.2 Further, in view of the foregoing findings, I find it evident that Shri Jayantibhai Parshottambhai Pansuria has blatantly violated the provisions of the Baggage Rules, 2016, framed under the Customs Act, 1962, and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued under the Foreign Exchange Management Act, 1999. He attempted to improperly export/smuggle foreign currency amounting to USD 31,500 equivalent to INR 26,03,475/-. I further find that the presence of ***mens rea*** is firmly established from his admission of deliberate non-declaration with the intent to avoid financial charges. He neither declared the currency as required under Section 77 of the Customs Act nor produced any documents in support of lawful acquisition, thereby rendering the act in clear contravention of the Customs Act, FEMA, and associated regulations. I find that by such acts of omission and commission, Jayantibhai Parshottambhai Pansuria has rendered the seized foreign and Indian currencies liable for confiscation under Sections 113(d) and 113(e) of the Customs Act, 1962, read with Regulation 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and Rule 7 of the Baggage Rules, 2016. I, therefore, hold the seized foreign currency USD 31,500/- liable for absolute confiscation under Sections 113 (d) and 113 (e) of the Customs Act, 1962. I further hold Shri Jayantibhai Parshottambhai Pansuria liable for imposition of penalty under Section 114(i) of the Customs Act, 1962.

23.1 DETERMINATION OF CULPABILITY OF SHRI NIMIT KISHORBHAI SOJITRA IN THE INSTANT FOREIGN CURRENCY SMUGGLING SCHEME

Further, from the conjoint reading of the statements recorded under Section 108 of the Customs Act, 1962, from Shri Jayantibhai Parshottambhai

Pansuria (dated 04.06.2024) and Shri Nimit Kishorbhai Sojitra (dated 05.06.2024), the involvement of Shri Nimit Kishorbhai Sojitra in the offence of attempted smuggling of foreign currency is conclusively established. Shri Jayantibhai Pansuria has unequivocally admitted in his statement that he was carrying USD 31,500 to Dubai, without declaring the same to Customs authorities, and that the said currency was to be handed over to a person in Dubai, the details of whom were to be provided by Shri Nimit Sojitra. He has also admitted that he was aware that carrying such currency without declaration constitutes an offence under Customs law. Notably, he has stated that he was not the owner of the said currency and that Shri Nimit Sojitra would be providing the necessary foreign exchange documentation, which was not available with him at the time of seizure. Further, in his own statement, Shri Nimit Sojitra has admitted that the foreign currency in question, seized from Shri Pansuria, belonged to him. He further admitted to having procured USD 12,500 in cash from one Mr. Riyaz, an unauthorised money changer, for which no receipts or documentary evidence were available, and the remaining USD 19,000 was purportedly received in foreign currency from his clients over a period of time without any supporting records.

23.2 Further, I find that Shri Nimit Sojitra has failed to furnish any legal documents or authorisation under the Foreign Exchange Management Act (FEMA) to justify the acquisition, possession, or intended export of the said currency. His explanation that the currency was meant for advance hotel bookings in Dubai is vague, unsubstantiated, and commercial in nature, which further demonstrates that the transaction was not personal but was conducted for business purposes. Furthermore, Shri Nimit Sojitra, by utilising Shri Pansuria as a carrier, and knowingly dispatching foreign currency out of India without declaration to Customs and in violation of prescribed FEMA regulations, has actively facilitated and orchestrated an act of unauthorised export of foreign exchange. The absence of valid acquisition documents, the use of an elderly individual as a carrier, and the cash-based dealings with untraceable individuals like Mr. Riyaz clearly indicate deliberate evasion of statutory regulations under the Foreign Exchange Management Act, 1999 and the Customs Act, 1962.

23.3 Consequently, upon an exhaustive review of the preceding, I am conclusively led to the determination that his actions constitute a clear contravention of Sections 3 and 4 of FEMA, 1999 and Regulations 5, and 7 of the Foreign Exchange Management Regulations, 2015, dealing with acquisition, possession, and export of foreign currency. Further, the non-declaration and illicit attempt to transfer the currency abroad, the seized foreign currency qualifies as '**prohibited goods**' under Section 2(33) of the Customs Act, 1962, and his conduct falls squarely within the definition of "smuggling" under Section 2(39) and "**illegal export**" under Section 11H(a) of the said Act. Accordingly, it is evident from the evidence on record that Shri Nimit Kishorbhai Sojitra has committed the offence of abetment and facilitation of smuggling and unauthorised export of foreign currency in violation of the Customs Act, 1962, the Foreign Exchange Management Act, 1999, and the Foreign Trade (Development and Regulation) Act, 1992, read with Para 2.45 of the Foreign Trade Policy, 2023. Therefore, after a thorough assessment, I am decisively led to the conclusion that Shri Nimit Kishorbhai Sojitra's deliberate concealment, use of unauthorised channels, and absence of legal documentation demonstrate his '**mens rea**' and clear intent to evade lawful export control mechanisms renders under Section 114(i) of the Customs Act, 1962. Therefore, I

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unequivocally find Shri Nimit Kishorbhai Sojitra liable for imposition of penalty under Section 114(i) of the Customs Act, 1962.

24. Also, I hold the baggage, i.e., one blue colour trolley bag of the brand “*Fashion*” which was used to conceal the said foreign currency, liable for absolute confiscation under Section 119 of the Customs Act, 1962.

25. Accordingly, in the exercise of the powers conferred upon me as the Adjudicating Authority, I pass the following order:

ORDER

- (i) I order the **absolute confiscation** of the foreign currency, i.e., **USD 31,500**, equivalent to **INR 26,03,475/- (Rupees Twenty-Six Lakh Three Thousand Four Hundred Seventy-Five only)** under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) I order the **absolute confiscation** of the baggage, i.e., one blue colour trolley bag of the brand “*Fashion*” which was used to conceal the currency, under Section 119 of the Customs Act, 1962;
- (iii) I impose a **penalty** of **Rs. 3,00,000/- (Rupees Three Lakh Only)** upon Shri Jayantibhai Parshottambhai Pansuria under Section 114(i) of the Customs Act, 1962.
- (iv) I impose a **penalty** of **Rs. 3,00,000/- (Rupees Three Lakh Only)** upon Nimit Kishorbhai Sojitra under Section 114(i) of the Customs Act, 1962.

26. Accordingly, the Show Cause Notice F. No. VIII/26-13/AIU/CUS/2023-24 dated 27.11.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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

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Date: 04.07.2025

DIN : 20250771MN0000555F8B

To,

1. Shri Jayantibhai Parshottambhai Pansuria,
D-204, Krishna Park Apartment,
Sudama Chowk, Surat City,
Pin-394107, Gujarat

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2. Shri Nimit Kishorbhai Sojitra,
64, Thakodwar Society,
Simada Gam, Saniya Hemad,
Surat, Gujarat-395006

Copy to:

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