

OIO No:31/AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

	<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 Email: customs-suratairport@gov.in</p>	 Skill India कौशल भारत-कुशल भारत
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PREAMBLE

A	डी आई ऐन/DIN	20250471MN000061576F
B	फ़ाइल संख्या /File No.	VIII/26-41/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-41/AIU/CUS/2023-24 dated 18.06.2024
D	ऑर्डर-इन-ओरिजिनलनंबर/ Order-In-Original No.	31/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख/ Date of Order-In-Original	31.03.2025
F	जारी करने की तिथि / Date of Issuance	31.03.2025
G	द्वारा पारित / Passed by	Anunay Bhati Additional Commissioner, Customs Surat International Airport, Surat
H	यात्री का नाम और पता Name and address of Passenger	1. Shri Tulsibhai Gordhanbhai Langadia, 252, Nilkanth Society, L. H. Road, Varachha, Surat City, PIN-395006, Gujarat. 2. Shri Ashokbhai Madhabhai Lathiya, 90, Gautam Park Society, At Post Punagam, Tal. Choriyasi, Surat City, PIN-394210, Gujarat.

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए यह 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.
२. इस आदेश से अपने को व्यथित महसूस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ 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, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट का स्टाम्प लगा होना चाहिए ।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhavan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed within sixty days of receipt of this order by the post or person. It should bear a court fee stamp of appropriate value.
३. अपील के साथ निम्नलिखित चीजे संलग्न की 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 की 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:

OIO No: 31 /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

Shri Tulsibhai Gordhanbhai Langadia, Age 50 years, having address at 252, Nilkanth Society, L. H. Road, Varachha, Surat City, PIN-395006, Gujarat (as per passport) holding passport bearing No. U1308349 (hereinafter referred to as “Passenger/Noticee No.1”) was departing for Dubai via Air India Flight No. IX 173 scheduled on 26.01.2024 from Surat International Airport.

2. During frisking and hand baggage scanning by the CISF unit ASG Surat, an international passenger, namely Shri Tulsibhai Gordhanbhai Langadia, was about to board Flight No. IX-173 dated 26.01.2024 from Surat to Dubai was found to be carrying foreign currency. The foreign currency recovered from the above passenger by the CISF is as follows:

S. N.	Name of the Passenger	Details of Foreign Currency recovered by CISF
1.	Shri Tulsibhai Gordhanbhai Langadia	14,855 USD

3. The CISF Unit, ASG Surat, handed over the passenger, along with his baggage, the above-mentioned recovered foreign currency, as well as the Seizure List drawn by them (CISF) to the Customs, Surat International Airport on 26.01.2024. The passenger was then brought to the Customs office at the Arrival Area of Surat International Airport. The Customs officer asked the passenger whether he had anything to declare to Customs, which the passenger denied. Thereafter, the customs officer informed the passenger that they would conduct a personal search and a detailed examination of his baggage. Then, the customs officers offered themselves for their search to the passenger. However, the passenger politely denied the same. The customs officers asked the passenger whether he wanted to be searched in front of the Executive Magistrate or Superintendent of Customs, and the passenger consented to be searched in front of the superintendent of customs. Thereafter, the Customs Officers carried out a physical search of the passenger. However, nothing suspicious was found. However, upon searching for a black backpack of the brand “Priority” carried by the passenger, it was noticed that foreign currency, viz, UAE Dirhams, was concealed in the bag. The said currency was taken out, counted, and found to be 615 UAE Dirhams. The details of the total foreign currency recovered from the passenger, including the currency detained by the CISF, ASG, are as in Table 1.

TABLE-1

Name & Passport No. of Pax & Annexure	Type of Currency	Denomination	No. of Notes	Total	Conversion Rate (Notfn. No. 04/2024- Customs (NT) dtd. 18.01.24	TOTAL Value in INR
Tulsibhai Gordhanbhai Langadia (U1308349) (Annexure-A)	US Dollars	100	148	14800	82.35	1218780
	US Dollars	50	01	50	82.35	4117.50
	US Dollars	5	01	05	82.35	411.75
	TOTAL USD			14855		12,23,309.25
	UAE Dirham	200	01	200	22.00	4400
	UAE Dirham	100	02	200	22.00	4400
	UAE Dirham	50	02	100	22.00	2200
	UAE Dirham	20	04	80	22.00	1760
	UAE Dirham	10	02	20	22.00	440
	UAE Dirham	05	03	15	22.00	330
	TOTAL AED			615		13,530
	GRAND TOTAL					12,36,839.25

When asked about any legal document showing the purchase/ownership of these foreign currencies, the passenger informed that he did not have a receipt for them at that moment.

4. The following documents were withdrawn from the passenger, Shri Tulsibhai Gordhanbhai Langadia, for further investigation:

- Copy of Aadhar Card bearing No. 8020 7166 2728.
- Copy of boarding pass indicating Seat No. 21C, PNR No. N5ZMRJ from Surat to Dubai by Flight No. IX- 173 on 26.01.2024.
- Passport No. U1308349, issued at Surat on 31.01.2020 and valid up to 30.01.2030.

5. The foreign currencies, i.e. 14855 US Dollars (USD Fourteen Thousand Eight Hundred Fifty-Five only) and 615 UAE Dirhams (AED Six Hundred Fifteen only), equivalent to INR 12,36,839.25 recovered from the passenger Shri Tulsibhai Gordhanbhai Langadia, were placed under seizure under Panchnama proceedings dated 26.01.2024, on a reasonable belief that the said foreign currencies were attempted to be smuggled outside India without declaring to Customs Authority by way of concealment and were liable for confiscation under provisions of the Customs Act, 1962. The black color backpack of the brand “Priority” carried by the passenger, which was used to conceal foreign currencies, was also placed under seizure.

6. A statement of Shri Tulsibhai Gordhanbhai Langadia was recorded on 26.01.2024 under provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was a married person staying with his family at 252, Nilkanth Society, L. H. Road, Varachha, Surat City, PIN-395006; his family consisted of his wife, Smt. Deepaben Tulsibhai Langadia, two daughters, namely Krupa Tulsibhai Langadia and Pooja Tulsibhai Langadia, and a son, Dhruv Tulsibhai Langadia; he was the owner of M/s Pooja Diamond & Jewellery, which was situated at 42, 1st floor, Thakor Dwar Society, Varacha Road, Opp. Princess Plaza, Surat; that M/s. Pooja Diamond & Jewellery was engaged in the manufacturing and sale of polished diamonds; he had studied up to 8th Std. and read, write, and understand Hindi, English, and Gujarati languages.
- that he was shown Panchnama dated 26.01.2024 drawn at International Airport, Surat, and after perusing and understanding it, he had put his dated signature on the panchnama in token of acceptance of the facts stated therein;
- that he was going to Dubai on 26.01.2024 via Air India Express Flight No. IX-173 from Surat International Airport; that the CISF unit ASG Surat stopped him after clearing security check of Airlines in the departure hall of Surat International Airport; that during the handbag checking by the CISF officers, they found foreign currency from his handbag, amounting to USD 14855/-; that he had not declared before Customs that he was carrying US Dollars with him to Dubai; that upon search of the black color backpack carried by him, UAE Dirham 615/- was found in the said bag by the Customs.
- the details of foreign currency so recovered from him are as follows:

Type of currency	Denomination	No. of Notes	Total
US DOLLAR	100	148	14800
US DOLLAR	50	1	50
US DOLLAR	5	1	5
UAE Dirham	200	1	200
UAE Dirham	100	2	200
UAE Dirham	50	2	100
UAE Dirham	20	4	80
UAE Dirham	10	2	20
UAE Dirham	05	3	15

- that at that time, he did not have any purchase vouchers or legal documents for said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 26.01.2024; that the said

OIO No: 31 /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

foreign currency belonged to him and he would submit the valid legal documents for the exchange of currency recovered from his possession within ten days;

- that the money belonged to him and he had earned the same from his profession of being diamond manufacturer & merchant and that he got it exchanged from the approved money exchanger; that he would produce the bank statement and other relevant details within ten days; that he was carrying the US Dollar for advance payment of rough diamonds and UAE Dirham for expenditure; that he had carried USD 14855 & UAE Dirham 615 without declaring the same to Customs Authorities.
- that he was aware that carrying forex without declaring the same is an offence under the Customs Act; that he admitted that he was aware that he had committed an offence by not declaring the same to Customs, for which he would have to face the consequences prescribed under Customs law.

7. The passenger, Shri Tulsibhai Gordhanbhai Langadia, vide his letter dated 02.02.2024, inter alia, stated that his friend, Shri Ashokbhai Madhabhai Lathiya, who was an Indian national residing in Dubai, visited him from time to time in Surat. He used to give him (Shri Tulsibhai) small amounts in dollars. The passenger submitted copies of the 'Guarantee letter' dated 27.01.2024 of Shri Ashokbhai Madhabhai Lathiya, professional license of his company M/s Smart Fintech IT Solutions, copy of his passport (bearing No. B7675362) and UAE Resident Identity Card (bearing No. 784-7981-5006304-2). In the said 'Guarantee letter' dated 27.01.2024, Shri Ashokbhai Madhabhai Lathiya stated as under:

*"I guarantee Ashokbhai Madhabhai Lathiya that Tulsibhai Gordhanbhai Langadia is my friend; So I travel from India to Dubai frequently for business; so I have some cash money with me in dollars then some dollars I have loaned to my friend Tulsibhai from time-to-time which amount is about 14855 dollars; So this cash dollar I had given to Tulsibhai as an invitation to visit Dubai which was a gift to my friend on loan; So Tulsibhai left for Dubai with those cash dollars, but he did not know how much cash to keep, so the Surat airport customs department seized this cash from Tulsibhai; **So I warrant that this cash money is mine.**"*

8. During the investigation, a summons dated 03.02.2024 was issued to Shri Ashokbhai Madhabhai Lathiya, holding Passport No. B7675362 and residing at 90, Gautam Park Society, At Post Punagam, Tal. Choriyasi, Surat City, PIN-394210, Gujarat, and his statement under Section 108 of the Customs Act, 1962 was recorded on 13.02.2024, wherein he inter alia stated as under:

- that he was a married person then living at 90, Gautam Park Society, At Post Punagam, Tal. Choriyasi, Surat City, PIN-394210, Gujarat, with his family comprising his mother, wife, and three sons; he was a partner in Aloud Commercial Brokers, a real estate broker company, and a partner in Smart Finetech IT Solution, a website developer company.
- that he had completed studies up to Class VIII and could read, write, and understand English, Hindi, and Gujarati languages; that he was shown Panchnama dated 26.01.2024 drawn at International Airport, Surat, and after perusing and understanding it, he had put his dated signature on it;
- that he was shown the Guarantee letter dated 27.01.2024, submitted by the passenger, Shri Tulsibhai Gordhanbhai Langadia, and after perusing it, he stated that the facts narrated in the Guarantee letter were true and correct and in token of the same, he put his dated signature on it;

- that he knew Shri Tulsibhai Gordhanbhai Langadia for the past 10-11 years, as both of them were earlier in the diamond industry; that the daughter of Shri Tulsibhai Gordhanbhai Langadia, Miss Krupa Tulsibhai Langadia, resided at his residence in Dubai as a cook for him;
- that the foreign currency viz., 14855 USD seized from Shri Tulsibhai Gordhanbhai Langadia belonged to Shri Tulsibhai Gordhanbhai Langadia; that he had paid Shri Tulsibhai Gordhanbhai Langadia this amount for the cooking work done by his daughter, Miss Krupa Tulsibhai Langadia for him at Dubai; that in the Guarantee letter dated 27.01.2024 he had mistakenly mentioned that he had lent the seized USD 14855 to Shri Tulsibhai Gordhanbhai Langadia; that in actual the seized currency belonged to Shri Tulsibhai Gordhanbhai Langadia only;
- that he did not possess any valid legal documents regarding the acquisition of the said 14855 USD; that he had collected it from his customers of real estate in Dubai; that he had handed over the said amount to Shri Tulsibhai Gordhanbhai Langadia on the occasions when Shri Tulsibhai Gordhanbhai Langadia visited Dubai.
- that Shri Tulsibhai Gordhanbhai Langadia had informed him that he was going to purchase some rough foreign currency from this amount; that he knew that Shri Tulsibhai Gordhanbhai Langadia was carrying foreign currency but he did not know the specific amount being carried by him; that he did not possess any legal documents regarding the said seized foreign currency (14855 USD).

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-

OIO No:31/AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

- a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and
 - e. any other kind of movable property;
- g)** As per Section 2(33) of Customs Act 1962, “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- h)** As per Section 2(39) of the Customs Act 1962- 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- i)** As per Section 11H (a) of the Customs Act 1962- “illegal export” means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- j)** As per Section 77 of the Customs Act 1962, the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- k)** As per Section 113 of the Customs Act 1962, the following export goods shall be liable to confiscation:-
(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
(e) any goods found concealed in a package which brought within the limits of a Customs area for the purpose of exportation;
- l)** As per Section 114 of the Customs Act 1962, any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-
(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;
- m)** As per Section 119 of Customs Act 1962- “any goods used for concealing smuggled goods shall also be liable for confiscation.”
- n)** As per Section 110 of Customs Act, 1962- “if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.”
- o)** As per Rule 7 of the Baggage Rules, 2016,- “the import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.”
- p) FOREIGN TRADE POLICY 2015-20**
Para 2.45- Export of Passenger Baggage
(a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of

OIO No: 31 /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.

q) THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999;

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

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

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

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

REGULATION 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, -

OIO No: 31 /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

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

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

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

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

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

CONTRAVENTION AND VIOLATION OF LAWS

10. It therefore appeared that:

- a) The passenger, Shri Tulsibhai Gordhanbhai Langadia, attempted to improperly export/smuggle the seized foreign currencies (USD 14855 and UAE Dirham 615) by concealing it in his baggage. He was unable to produce any document evidencing legitimate procurement of the said seized foreign

currency in terms of Regulation 7(2) & 7(3) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015. He also failed to produce any declaration, if any, made in compliance with the provisions of Section 77 of the Customs Act, 1962. 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 his possession. The passenger had 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 Section 3 and Section 4 of the Foreign Exchange Management Act, 1999. The amount of foreign currency found in his possession exceeds the limits prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. The passenger 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 currencies appeared to be “prohibited goods” in terms of Section 2(33) of the Customs Act, 1962. Therefore, it appeared that the passenger 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 11H(a) of the Customs Act, 1962. The passenger had thus violated Para 2.45 of the Foreign Trade Policy 2015-20, read with Section 3(2), 3(3), and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, further read in conjunction with Section 11(3) of the Customs Act, 1962.

- b)** The seized foreign currencies (US Dollar 14855 and AED 615) in total, equivalent to Indian Rs. 12,36,839/- (Rupees Twelve Lakh Thirty-Six Thousand Eight Hundred Thirty-Nine only) as per Notification No. 04/2024-Customs (NT) dated 18.01.2024, which was attempted to be improperly and illegally exported by the passenger by concealing it in his baggage in violation of the Customs Act, 1962, Baggage Rules, 2016 and other laws in force 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.
- c)** The baggage, i.e., the black color backpack of the brand “Priority” used for concealing the impugned foreign currency, also appeared liable for confiscation under Sections 118 & 119 of the Customs Act, 1962.
- d)** Shri Ashokbhai Madhabhai Lathiya appeared to have been concerned in smuggling of foreign currency from Surat to Dubai. In the ‘Guarantee letter’ dated 27.01.2024, he stated that he had loaned his friend, Shri Tulsibhai, 14855 Dollars. He further said that he had given these Dollars in cash to Shri Tulsibhai as an invitation to visit Dubai. In his statement dated 13.02.2024 recorded under Section 108 of the Customs Act, 1962, Shri Ashokbhai Madhabhai Lathiya had sought to retract the facts mentioned in the said ‘Guarantee letter’ dated 27.01.2024 and instead stated that he had paid Shri Tulsibhai Gordhanbhai Langadia this amount for the cooking work done by his daughter, Miss Krupa Tulsibhai Langadia for him at Dubai. From the above, it appeared that Shri Ashokbhai Madhabhai

Lathiya, with a view to misleading the investigation, gave a statement that contradicted his own undertaking given in the 'Guarantee letter' dated 27.01.2024 issued by him in favour of his friend, Shri Tulsibhai Gordhanbhai Langadia. In the Guarantee letter, he stated that the cash money belonged to him. In contrast, in the statement, he stated that the cash belonged to Shri Tulsibhai Gordhanbhai Langadia only, thereby contradicting his own version mentioned in the guarantee letter. In his statement dated 13.02.2024, he also agreed that he was aware that Shri Tulsibhai Gordhanbhai Langadia was carrying foreign currency with him from Surat to Dubai. Moreover, Shri Ashokbhai Madhabhai Lathiya did not possess any legal document regarding the said foreign currency. From the above facts, it appeared that Shri Ashokbhai Madhabhai Lathiya willingly connived and contributed to the commission of the above-said attempt of smuggling of foreign currency by Shri Tulsibhai Gordhanbhai Langadia, which had rendered the said goods liable for confiscation under Section 113 (d) and (e) of the Customs Act, 1962. It appeared that the impugned foreign currency belonged to Shri Ashokbhai Madhabhai Lathiya, and he connived with Shri Tulsibhai Gordhanbhai Langadia to illicitly smuggle the same out of India to Dubai. Thus, he appeared to have knowingly and willingly aided and abetted in the smuggling of foreign currency and thereby contravened the provisions of Para 2.45 of the Foreign Trade Policy 2015-20 read with Section 3(2), 3(3) and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962. Thus, by his above acts of omission and commission, Shri Ashokbhai Madhabhai Lathiya had rendered himself liable for penalty under Section 114 of the Customs Act, 1962.

11. Accordingly, a Show Cause Notice bearing F. No. VIII/26-41/AIU/CUS/2023-24 dated 18.06.2024 was issued to Shri Tulsibhai Gordhanbhai Langadia calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on the 4th Floor, Customs House, beside SMC Ward office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:

- (i)** The foreign currencies (US Dollar 14855/- and UAE Dirham 615/-) equivalent, in total, to Indian Rs. **12,36,839/-** (Rupees Twelve Lakh Thirty-Six Thousand Eight Hundred Thirty-Nine only) seized from him vide seizure order dated 26.01.2024 under Panchnama proceedings dated 26.01.2024 should not be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii)** The baggage, i.e., one black colour backpack of brand "Priority" seized vide Seizure Memo dated 26.01.2024, should not be confiscated under Section 118 and Section 119 of the Customs Act, 1962;
- (iii)** Penalty should not be imposed upon him under Section 114(i) of the Customs Act, 1962.

12. Accordingly, a Show Cause Notice bearing F. No. VIII/26-41/AIU/CUS/2023-24 dated 18.06.2024 was issued to Shri Ashokbhai Madhabhai Lathiya calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on the 4th Floor, Customs House, beside SMC Ward office, Althan-Bhimrad Road, Althan, Surat – 395007 within thirty days from the receipt of notice as to why:

- (i) Penalty should not be imposed upon him under Section 114(i) of the Customs Act, 1962.

DEFENCE REPLY

13. In the Show Cause Notice, the noticees were asked to submit their written reply/defence submission to the notice within the stipulated time. The noticee, Shri Tulsibhai Gordhanbhai Langadia, submitted his defence reply dated 01.07.2024 in response to the Show Cause Notice dated 18.06.2024, wherein he inter alia submitted as under:

- His friend Shri Ashokbhai Madhabhai Lathiya (Noticee No. 2 in the instant case), living in Dubai, who is a native of India, used to come to his house every now and then and gave him 650 AED and 2855 USD for retail expenses. Further, with the defense submission, he submitted four invoices in his name, reflecting the conversion of INR to USD, a total of 12,000, through three money exchanges. The details whereof are as follows:

S. N.	Name of Exchange	Invoice/CIN No.	Date	INR to USD Converted
1	Prime Co-Op Bank Limited	FC2324SC00302	09.05.2023	3,000
2	Relimoney	Illegible	17.07.2023	3,000
3	Zenith Leisure Holidays Limited	U55101WB2001PLC093294	12.08.2023	3,000
4	Relimoney	Illegible	01.09.2023	3,000

RECORD OF PERSONAL HEARING

14. “Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, the opportunity to be heard in person was granted to both the noticees to appear on 27.09.2024 vide letter of even No. dated 20.09.2024. Both the noticees, Shri Tulsibhai Gordhanbhai Langadia and Shri Ashokbhai Madhabhai Lathiya attended the personal hearing on the scheduled date and reiterated the defense submission dated 01.07.2024 during the personal hearing.

DISCUSSION AND FINDINGS

15. I have carefully examined the facts of this case, the relied-upon documents, the defense submission dated 01.07.2024, the relevant legal provisions, and other materials on record of this case. I, therefore, proceed to decide the instant case based on 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 currencies (USD 14855 and AED 615 in total, equivalent to Indian Rs. **12,36,839/-** (Rupees Twelve Lakh Thirty-Six Thousand Eight Hundred Thirty-Nine only) should be confiscated under section 113 (d) and 113 (e) of the Customs Act, 1962 or otherwise;
- (ii) The baggage, i.e., one black colour backpack of brand “Priority” seized vide Seizure Memo dated 26.01.2024, should be confiscated under Section 118 and Section 119 of the Customs Act, 1962 or otherwise;
- (iii) Penalty should be imposed upon **Shri Tulsibhai Gordhanbhai Langadia** under Section 114(i) of the Customs Act, 1962 or otherwise;
- (iv) Penalty should be imposed upon **Shri Ashokbhai Madhabhai Lathiya** under Section 114(i) of the Customs Act, 1962 or otherwise.

17. I find that the Panchnama has documented that, based on suspicion, a passenger, Shri Tulsibhai Gordhanbhai Langadia, was set to depart for Dubai via Air India Flight No. IX-173 scheduled for 26.01.2024 from Surat International Airport. During the frisking and scanning of the passenger's hand baggage by the CISF unit ASG Surat, a foreign currency amounting to USD 14,855 was recovered. The passenger was then handed over to the Customs Authorities of Surat International Airport, who, upon searching the passenger's baggage, specifically a black backpack of the brand "Priority," discovered 615 AED. The total amount of foreign currency recovered from the passenger, including the currency detained by CISF and ASG in Surat, was as follows: 1) USD 14,855, equivalent to Rs. 12,23,309.25, and 2) 615 UAE Dirhams, equivalent to Rs. 13,530. In total, Rs. 12,36,839.25 worth of foreign currency was recovered from the passenger. Furthermore, he failed to present any such evidence when asked to provide any legal document or receipt to substantiate the legitimate procurement or ownership of the foreign currency recovered from his baggage. I also find that Noticee No. 1 attempted to illicitly export the currency without any declaration to the Customs authorities. I further find that Noticee No. 1 agreed in his statement dated 26.01.2024, recorded under Section 108 of the Customs Act, 1962, that he was aware that carrying the mentioned forex concealed in baggage or on his person without a declaration to the Customs Authorities constituted an offense under the Customs Act. The foreign currencies, i.e. 14855 USD and 615 AED, equivalent to INR 12,36,839.25 recovered from the passenger were placed under seizure under Panchnama proceedings dated 26.01.2024, on a reasonable belief that the said foreign currencies were attempted to be smuggled outside India without declaring to Customs Authority by way of concealment and were liable for confiscation under provisions of the Customs Act, 1962. The black color backpack of the brand "Priority" carried by the passenger, which was used to conceal foreign currencies, was also placed under seizure.

18. I also find that a voluntary statement of Shri Tulsibhai Gordhanbhai Langadia was recorded on 26.01.2024 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that he, the noticee No. 1, a married individual residing with his family at 252, Nilkanth Society, L.H. Road, Varachha, Surat, was the proprietor of M/s Pooja Diamond & Jewellery, Surat, engaged in the manufacturing and sale of polished diamonds. He studied up to 8th standard and was conversant in Hindi, English, and Gujarati. On 26.01.2024, while scheduled to travel to Dubai via Air India Express Flight No. IX-173 from Surat International Airport, he was intercepted by CISF personnel post-security clearance and foreign currency amounting to USD 14,855 was recovered from the passenger. Further, upon examination of his hand baggage by the Customs, AED 615 was also recovered. I find that he admitted that he had not declared the said currencies to Customs and was aware that non-declaration constituted an offense under the Customs Act. He further stated that the foreign currency belonged to him, earned through his diamond business, and was acquired from an authorized money changer. He undertook to submit the supporting legal documents and bank records within ten days. He also acknowledged the contents of the panchnama dated 26.01.2024, signed in token of acceptance, and admitted his awareness of the legal consequences of his actions.

19. I find that Shri Tulsibhai Gordhanbhai Langadia, vide his letter dated 02.02.2024, inter alia, stated that his friend, Shri Ashokbhai Madhabhai Lathiya, who was an Indian national residing in Dubai, frequently visited India and his home at Surat. He used to give him (Shri Tulsibhai) small amounts in Dollars. The passenger vide referred letter submitted a copy of the 'Guarantee letter' dated 27.01.2024 of Shri Ashokbhai Madhabhai Lathiya, professional license of his company M/s Smart Fintech IT Solutions, a copy of his passport (bearing No. B7675362) and UAE Resident Identity Card (bearing No. 784-7981-5006304-2) along with the referred

OIO No: 31 /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

letter dated 02.02.2024. In the said 'Guarantee letter' dated 27.01.2024, Shri Ashokbhai Madhabhai Lathiya stated as under-

*"I guarantee Ashokbhai Madhabhai Lathiya that Tulsibhai Gordhanbhai Langadia is my friend. So I travel from India to Dubai frequently for business, so I have some cash money with me in dollars and then some dollars I have loaned to my friend Tulsibhai from time to time, which amount is about 14855 dollars. So this cash dollar I had given to Tulsibhai as an invitation to visit Dubai which was a gift to my friend on loan. So Tulsibhai left for Dubai with those cash dollars, but he did not know how much cash to keep, so the Surat airport customs department seized this cash from Tulsibhai. **So I warrant that this cash money is mine.**"*

20. Further, during the investigation, a summons dated 03.02.2024 was issued to Shri Ashokbhai Madhabhai Lathiya, and accordingly, his statement was recorded on 13.02.2024 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that he was a married person residing at 90, Gautam Park Society, At Post Punagam, Taluka Choriyasi, Surat City, Gujarat, along with his mother, wife, and three sons. He was a partner in Aloud Commercial Brokers, a real estate firm, and Smart Finetech IT Solution, an IT services company. He had studied up to Class VIII and was proficient in English, Hindi, and Gujarati. He confirmed having read and signed the panchnama dated 26.01.2024 prepared at Surat International Airport, as well as a Guarantee Letter dated 27.01.2024 submitted by passenger Shri Tulsibhai Gordhanbhai Langadia, stating that its contents were true. He had known Shri Tulsibhai for 10-11 years due to their earlier association in the diamond industry. He mentioned that Shri Tulsibhai's daughter, Miss Krupa Langadia, worked as a cook at his residence in Dubai. He asserted that the foreign currency amounting to USD 14,855 seized from Shri Tulsibhai belonged to Shri Tulsibhai and was paid to him in return for Miss Krupa's services. He clarified that the earlier reference to having "lent" the amount was an error and reiterated that the money belonged to Shri Tulsibhai. He admitted to not possessing any legal documents evidencing the acquisition of the said amount, which he claimed to have collected from his real estate customers in Dubai and handed over to Shri Tulsibhai during his visits. He knew that Shri Tulsibhai intended to use the amount to purchase rough diamonds but was unaware of the exact sum being carried. He reaffirmed that he possessed no valid legal documentation relating to the seized amount.

21. I find that both the noticees, viz., Shri Tulsibhai Gordhanbhai Langadia and Shri Ashokbhai Madhabhai Lathiya, 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;

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that 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.

22. 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 fact, in his statement, the noticee had admitted that he had carried the impugned foreign currency (USD 14855 and AED 615) and did not declare the same before the Customs and, thereby, violated provisions of the Customs Act, the Baggage Rules, 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, noticee No. 1 could not produce any document evidencing legitimate procurement of the said foreign currency. Therefore, it is conclusively 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 carry forex without declaring the same was an offence under Customs Act, 1962. This act of noticee No. 1 establishes his mens rea beyond doubt that he tried to smuggle the said foreign currency out of India in an illegal and mala fide manner

23. After carefully reviewing the statements of both noticees, I find it is an admitted position that noticee No. 1 was in possession of the impugned foreign currencies, namely USD 14,855 and AED 615. Furthermore, upon examining the statement dated 26.01.2024 of Shri Tulsibhai, along with the Guarantee letter, the referred letter, the statement of Shri Ashokbhai, and the defence submission dated 01.07.2024, I observe that the statements and documentary evidence provided by the noticee and his associate are rife with inconsistencies and contradictions, failing to inspire any evidentiary confidence. For instance, Shri Tulsibhai claimed in his statement that the foreign currency recovered from him was earned through the diamond business and belonged to him. Later, in the defence response, he stated that 2,855 USD was provided to him by his friend Ashokbhai for expenses, while a balance of 12,000 USD remains from currency conversion. Tulsibhai admitted in his statement that he had no documents at the time and would submit them later. However, in his defence reply, he provided old invoices unrelated to the journey and a Bank Statement, which, according to his statement, was to be submitted within ten days, has not been submitted to date. Additionally, in the statement, Shri Tulsibhai indicated that the foreign currency was intended for payment towards the purchase of rough diamonds. In contrast, the defence submission did not specify the purpose of the foreign currency, with claims including gifting and retail expenses. Furthermore, I note that noticee No. 1 has made approximately six visits between the first invoice dated 09.05.2023 (out of four invoices) regarding the conversion of INR to USD amounting to 12,000, leading up to the impugned trip dated 26.01.2024. However, it is illogical that all 12,000 USD remains unused despite these repeated foreign travels.

24. I further find that an apparent contradiction emerges between the Guarantee Letter dated 27.01.2024 and the statement of Shri Ashokbhai Madhabhai Lathiya recorded under Section 108 of the Customs Act, 1962 on 13.02.2024, reflecting inconsistency and lack of coherence in the narrative put forth by Shri Ashokbhai. In the Guarantee Letter, Shri Ashokbhai unequivocally claimed that the seized amount of USD 14,855 belonged to him and had been loaned/gifted to Shri Tulsibhai

Gordhanbhai Langadia as an invitation to visit Dubai. However, in his subsequent statement under summons, he retracted this claim, stating that the seized foreign currency actually belonged to Shri Tulsibhai and was, in fact, a payment for the domestic services rendered by Shri Tulsibhai's daughter, Miss Krupa Langadia, who was allegedly working as a cook at his Dubai residence. Further, while the Guarantee Letter is silent on the origin of the funds, Shri Ashokbhai claimed to have collected the currency from his real estate customers in his statement. However, no evidence or documentation was submitted to corroborate this claim. In his statement dated 13.02.2024, he also agreed that he was aware that Shri Tulsibhai Gordhanbhai Langadia was carrying foreign currency with him from Surat to Dubai. These materially divergent explanations, coupled with the absence of any supporting proof, render the submissions of Shri Ashokbhai highly unreliable and reinforce the Department's contention that the narrative advanced is an afterthought, lacking consistency, authenticity, and probative value. The recovery of foreign currency in a concealed manner, coupled with the non-declaration thereof and the absence of any lawful documentation evidencing its acquisition, clearly indicates an attempt at smuggling. The explanations subsequently put forth appear to be mere afterthoughts, devoid of credibility and lacking in substantive proof.

25. I find that the so-called "Guarantee Letter" dated 27.01.2024 submitted by Shri Ashokbhai Madhabhai Lathiya, and relied upon by both Noticee No. 1 (Shri Tulsibhai Gordhanbhai Langadia) and Noticee No. 2 (Shri Ashokbhai himself), is nothing but a deliberate attempt to mislead and obstruct the course of investigation. The letter makes a categorical assertion that the seized foreign currency amounting to USD 14,855 was the personal money of Shri Ashokbhai, allegedly loaned or gifted to Shri Tulsibhai to facilitate his visit to Dubai. I further note that this narrative was projected with the clear intent of creating a post-facto justification for the unauthorised possession and attempted smuggling of foreign currency. However, during the investigation, under the rigour of a summons issued under Section 108 of the Customs Act, 1962, Shri Ashokbhai completely contradicted the contents of the Guarantee Letter. He later claimed that the money was a form of payment for domestic services rendered by Shri Tulsibhai's daughter and even admitted that the earlier claim of a loan/gift was a mistake. He further stated that the currency was collected from his customers, though he failed to furnish a single document supporting such a claim. This blatant inconsistency between the written Guarantee Letter and the sworn statement recorded under Section 108 is not a mere lapse but a clear indication of intentional falsehood and fabricated justification aimed at circumventing the provisions of Customs law. The actions of both noticees show a concerted effort to project a false ownership narrative and conceal the source and intent of the seized foreign currency. Such conduct undermines the integrity of the investigation and exposes their malicious intent. The claim by Shri Ashokbhai that Shri Tulsibhai was unaware of the permissible currency limit is untenable, as Shri Tulsibhai had undertaken multiple foreign visits. His repeated international travel experience negates any presumption of ignorance and strongly suggests a conscious violation of customs regulations, reinforcing the case of wilful non-compliance. I believe that the Guarantee Letter deserves to be discarded in toto as a concocted and misleading document, and this deliberate attempt to misguide the authority warrants strict penal action under the Customs Act of 1962.

26. I find that the passenger, during the personal hearing on 27.09.2024, both noticees Shri Tulsibhai Gordhanbhai Langadia and Shri Ashokbhai Madhabhai Lathiya appeared and reiterated the defence submission dated 01.07.2024 in defence in the instant case. I find that the noticee's submission that he received 2855 USD and 650 AED from his friend, Shri Ashokbhai Madhabhai Lathiya (Noticee No. 2), lacks evidentiary support. I note that no documentary evidence is furnished to substantiate such transfer of foreign exchange, no money transfer receipts, bank

OIO No: 31/AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

records, gift deeds, or affidavits from the said individual have been placed on record. In the absence of credible and corroborative documentation, such mere averments remain unsubstantiated, self-serving, and inadmissible in law. I further observe that the passenger has also produced four invoices in support of his claim of lawful procurement of 12,000 USD through three authorised money changers. The details of these invoices indicate that the conversions were made on:

- 09.05.2023 (INR to USD 3,000) – Prime Co-Op Bank Ltd
- 17.07.2023 (INR to USD 3,000) – Relimoney
- 12.08.2023 (INR to USD 3,000) – Zenith Leisure Holidays Ltd
- 01.09.2023 (INR to USD 3,000) – Relimoney

Notably, these transactions were conducted several months prior to the impugned journey dated 26.01.2024 and do not bear any direct linkage to the foreign currency seized on that date. No evidence has been adduced to show that the currency obtained under these invoices was retained and remained unutilised through multiple prior foreign travels. Further, I have examined the immigration records derived from Passport No. U1308349, the passenger had undertaken six (06) international trips between 09.05.2023 and 31.12.2023, prior to the journey of 26.01.2024, namely:

- Departures: 09.05.2023, 18.07.2023, 14.08.2023, 02.09.2023, 21.11.2023 and 29.11.2023
- Arrivals: 12.05.2023, 19.07.2023, 15.08.2023, 06.09.2023, 26.11.2023 and 31.12.2023

I believe that the foreign currency purchased through the said invoices must reasonably be presumed to have been used during those previous trips, especially in the absence of any proof to the contrary. Thus, the passenger has failed to establish any proximate or plausible connection between the said invoices and the foreign currency found in his possession on 26.01.2024. I further observe that the contention that the exact foreign exchange was carried over and remained intact through multiple international trips defies logic, reason, and commercial prudence. Therefore, the contention made by the passenger does not hold water.

27. I find that no declaration under Section 77 of the Customs Act, 1962 or the Baggage Rules, 2016, was made for carrying such currency abroad or bringing it back into India. The total value of foreign exchange allegedly acquired (USD 12,000) is disproportionate when viewed against the noticee's high frequency of international travel within a relatively short span. Notably, It is a settled legal position that the burden of proving lawful acquisition and possession of seized foreign currency lies squarely with the person from whom the currency is recovered. In the instant case, the passenger has entirely failed to discharge this burden. His explanation is not supported by credible evidence and does not even satisfy the threshold of preponderance of probability as required in adjudication proceedings under the Customs Act, 1962. I consider that the invoices submitted by the passenger are unrelated to the journey dated 26.01.2024 and stand disassociated due to intervening foreign travels. No evidentiary relation exists between the invoices and the seized currency. I believe that the passenger has failed to provide any declaration or legal justification under the Customs Act or FEMA, 1999. The claim of receipt from a friend is unsubstantiated and an afterthought. Accordingly, the defence reply dated 01.07.2024 lacks merit. The seized foreign currency is liable for absolute confiscation under the relevant provisions of the Customs Act, 1962, and penalty under Section 114 is clearly attracted for attempted unauthorised export.

28. Further, I find that the legal provision for taking foreign currency out of India is unambiguous and does not leave any scope for ambiguity. I also find that Rule 7 of the Baggage Rules, 2016, is about currency. 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 Management (Export and Import of Currency) Regulations, 2015, were applicable to Noticee No. 1 as he was bound to follow Baggage Rules, 2016. 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. I find that both the noticee No. 1 has not come forward with any document issued by any authorised 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, in other words, means that the noticees were governed by general permission, or in case of non-applicability of general permission, he was prohibited from carrying the foreign currencies outside India. I further 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 drawal from an authorised person. In the case before me, noticee No. 1 has produced legal documents, namely four invoices of money exchange, for the purchase of 12,000 USD (the said four invoices unrelated to the noticee's trip on 26.01.2024, as discussed above). Thus, he has failed to produce any substantial documents or concrete evidence for all 14,855 USD and 615 AED, which can establish that the foreign currencies found and recovered from him were drawn from an authorised source. These acts of omission or commission constitute a clear violation of Rule 7 of the Baggage Rules, read with Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations 2015.

29. I find that the explanation tendered by the noticee, Shri Tulsibhai Gordhanbhai Langadia, that the seized foreign currencies, i.e. USD 14855 and AED 615, were either a gift or a loan from his friend, Shri Ashokbhai Madhabhai Lathiya, lacks credibility and evidentiary support. Further, neither the noticee nor Shri Ashokbhai has produced any contemporaneous legal or financial documents, such as remittance records, bank transfers, gift deeds, or declarations, to substantiate the alleged transactions. I find his explanation self-contradictory, inconsistent, and a post-facto justification devoid of legal merit. Also, Neither is the retention of such an amount of foreign currency i.e., USD 14855, permitted under the law. I find that in terms of Regulation 7(1) of Foreign Exchange Management (Export and import of currency) Regulations, 2015, an authorized person may send out of India foreign currency acquired in the 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 the 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 her from an authorised person for travel abroad. I find from the records that the noticee has failed to produce any credible, concrete 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 which can conclusively prove the lawful procurement of the foreign currency recovered. Further, I find he is also not authorized to send foreign currency out of India during the normal course of business. Thus, the passenger has contravened the provisions of the following Act/Policy/Notification/Rules:

- Regulation 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015;
- Rule 7 of Baggage Rules, 2016
- Section 3 and Section 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 2015-20/2023 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.

30. The Hon'ble Supreme Court, in the case of Om Prakash Bhatia reported in 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 carried by Noticee No.1 without fulfilment of prescribed conditions and, hence, are to be treated as goods prohibited in nature. Thus, "mens rea" on the part of the noticee is very much evident since he had not declared to the Customs Authorities in any manner about the foreign currencies being carried by him for export and did not possess valid documents showing the acquisition of the said foreign currencies from authorized person. By attempting to illicitly export foreign currency without legitimate documents, it is established that Noticee No.1 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. Vide his defence submission, the noticee has failed to convince the adjudicating authority regarding the evidentiary value and authenticity of the documents and explanations furnished. The foreign exchange conversion invoices are unrelated to the impugned journey dated 26.01.2024 and stand disassociated due to multiple intervening foreign visits. Further, the contradictory and inconsistent statements made by Shri Tulsibhai Gordhanbhai Langadia and his associate, Shri Ashokbhai Madhabhai Lathiya, particularly concerning the ownership and source of the seized currency, lack credibility and appear to be afterthoughts aimed at misleading the investigation. No declaration under Section 77 of the Customs Act, 1962, or any valid documentary evidence under FEMA, 1999 has been produced to justify lawful possession of the foreign currency. The plea of ignorance regarding permissible currency limits is untenable, especially considering the noticee's extensive history of foreign travel. I am therefore of the considered view that the foreign currency recovered in the present case, namely 14,855 USD and 615 AED, was attempted to be exported in contravention of the statutory provisions and is liable for absolute confiscation under Sections 113(d), 113(e), and 113(h) of the Customs Act, 1962, read with the relevant FEMA guidelines and notifications.

31. Given the discussions in the foregoing paragraphs, the impugned Foreign currency, valued at INR **12,36,839/-** attempted to be improperly exported without declaration to the Customs are, therefore, liable for confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. I find that the said Foreign currencies were being carried by the passenger with an intention to export/smuggle the same illicitly from Customs Airport without declaration and are liable for confiscation. In the

OIO No: 31/AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

instant case, I am, therefore, not inclined to use my discretion to give an option to redeem the total foreign currency on payment of the redemption fine, as envisaged under Section 125 of the Act. To fortify my stand, I place reliance upon the following case laws/judgments of the Hon'ble Courts and other forums:

31.1 In this context, 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 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.”

31.2 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.

31.3 Further I find that 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).*

CULPABILITY OF NOTICEE NO. 1, SHRI TULSIBHAI GORDHANBHAI LANGADIA:

32. Given the above findings, it is evident that Shri Tulsibhai Gordhanbhai Langadia, in blatant violation of Baggage Rules, 2016, framed under the Customs Act, 1962 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, framed under the Foreign Exchange Management Act attempted to improperly export/smuggle foreign currency (USD 14855 and AED 615) equivalent to Indian Rs. **12,36,839.25/-** (As per Customs Rate of Exchange Notification No. 04/2024-Cus (NT) dated 18.01.2024). An act of smuggling out foreign currency results in serious repercussions on the Indian economy. The noticee has shown his

apparent and utter disregard for the law of the land. In the instant case, the presence of ***mens rea*** is evident from the deliberate concealment of foreign currency in the passenger's hand baggage, his failure to declare the same to Customs despite being aware of the legal requirement, failure to show the procurement of the foreign currency from authorized person, and the subsequent attempt to justify possession through inconsistent and contradictory explanations. The Noticee, being a frequent international traveller, cannot plead ignorance of customs regulations. The submission of a fabricated guarantee letter reflects a conscious effort to mislead the authorities. These facts collectively establish the existence of *mens rea*, justifying strict action under the Customs Act, 1962. By the aforesaid acts of commission and omission, the noticee No. 1 has rendered the said goods liable for confiscation under Section 113 of the Customs Act, 1962 and accordingly I hold the seized foreign currency, i.e. **USD 14855 and AED 615**, 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 read with Customs Act, 1962. I further hold Shri Tulsibhai Gordhanbhai Langadia liable for penalty under Section 114 (i) of the Customs Act, 1962.

33. Also, I hold the one black backpack of the brand "Priority" carried by the passenger to conceal foreign currency in an attempt to smuggle the same is liable for confiscation under Section 119 of the Customs Act, 1962.

CULPABILITY OF NOTICEE NO. 2, SHRI ASHOKBHAIR MADHABHAI LATHIYA:

34. Shri Ashokbhai Madhabhai Lathiya has played a significant and active role in the present case by attempting to fabricate a justification for the foreign currency seized from Noticee No. 1, Shri Tulsibhai Gordhanbhai Langadia. His involvement became evident through the submission of a "Guarantee Letter" dated 27.01.2024, wherein he claimed ownership of the seized foreign currency amounting to USD 14,855. In this letter, he asserted that he had loaned or gifted the amount to Shri Tulsibhai as an invitation for his travel to Dubai. This letter was submitted by the noticee as part of his defence to falsely portray lawful possession of the seized currency. The Guarantee Letter was evidently drafted and submitted after the seizure had taken place and is conspicuously devoid of any documentary evidence supporting the claim of a genuine loan or gift. It fails to mention the mode of transfer, the date(s) of such transaction(s), or any banking trail. Furthermore, the amount mentioned coincides precisely with the amount seized, pointing towards a post-facto and tailored explanation. This act of providing a false ownership claim, intended to mislead the adjudicating authority, reflects a clear attempt by Shri Ashokbhai to interfere with and obstruct the lawful customs proceedings.

35. Shri Ashokbhai's role in misleading the investigation is further substantiated by the stark contradictions between his Guarantee Letter and the statement recorded under Section 108 of the Customs Act, 1962. While the Guarantee Letter claimed that the seized foreign currency was his and had been loaned or gifted to Shri Tulsibhai, during his sworn statement on 13.02.2024, he took an entirely different position, stating that the USD 14,855 belonged to Shri Tulsibhai and was given to him in consideration of domestic services rendered by Shri Tulsibhai's daughter, who allegedly worked as a cook in Dubai. He also stated that the money was collected from real estate clients but failed to produce documentary evidence to support this assertion. This retraction and a complete shift in version demonstrate a conscious effort to misrepresent facts with the intent to provide a post-hoc legal cover for the unauthorised possession of foreign currency. The inconsistent and unsubstantiated explanations severely diminish the credibility of both noticees and expose a collusive attempt to evade customs law. I believe that Shri Ashokbhai exhibits clear ***mens rea***

OIO No: 31 /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

by knowingly providing inconsistent and contradictory explanations regarding ownership of the seized foreign currency, deliberately misleading the investigation, and admitting awareness of Shri Tulsibhai carrying the currency, thereby indicating his conscious involvement and intent to abet the attempted smuggling of foreign currency. Thus, Shri Ashokbhai's actions fall within the ambit of abetment and false representation, thereby justifying his inclusion as a co-noticee and attracting penal consequences under the Customs Act, 1962. From the above facts, I believe that he has knowingly and willingly aided and abetted in the smuggling of foreign currency that commission and omission have rendered the goods liable to confiscation under Section 113 of the Customs Act, 1962. Further, the noticee No. 2 has contravened the provisions of Para 2.45 of the Foreign Trade Policy 2015-20/2023 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. Thus, the acts of omission and commission on the part of Shri Ashokbhai Madhabhai Lathiya squarely fall within the ambit of Section 114(i) of the Customs Act, 1962, attracting penal liability. Accordingly, I hold the noticee liable for a penalty under the said provision.

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

ORDER

- (i) I order **absolute confiscation** of the foreign currencies (**USD 14855 and AED 615**) equivalent to INR **12,36,839/- (Rupees Twelve Lakh Thirty-Six Thousand Eight Hundred Thirty-Nine only)** under section 113 (d) and 113 (e) of the Customs Act, 1962;
- (ii) I order **absolute confiscation** of the **one black colour backpack** of the brand "Priority" used by Shri Tulsibhai Gordhanbhai Langadia for concealing foreign currency under Section 119 of the Customs Act, 1962;
- (iii) I impose a **penalty** of Rs. **3,00,000/- (Rupees Three Lakhs only)** upon Shri Tulsibhai Gordhanbhai Langadia under Section 114(i) of the Customs Act, 1962.
- (iv) I impose a **penalty** of Rs. **2,50,000/- (Rupees Two Lakhs Fifty Thousand only)** upon Shri Ashokbhai Madhabhai Lathiya under Section 114(i) of the Customs Act, 1962.

37. This order is issued without prejudice to any other action that may be taken against the noticee(s) under the provisions of the Customs Act, 1962, as amended or rules made thereunder or under any law for the time being in force.

(Anunay Bhati)
Additional Commissioner,
Surat International Airport,
Customs, Surat

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

F. No. VIII/26-41/AIU/CUS/2023-24

Date: 31.03.2025

OIO No: /AB/ADC/SRT-AIRPT/2024-25
F.No. VIII/26-41/AIU/CUS/2023-24

DIN: 20250471MN000061576F

To,

1. Shri Tulsibhai Gordhanbhai Langadia,
252, Nilkanth Society, L. H. Road,
Varachha, Surat City, PIN-395006, Gujarat
2. Shri Ashokbhai Madhabhai Lathiya,
90, Gautam Park Society, At Post Punagam,
Tal. Choriyasi, Surat City, PIN-394210, Gujarat.

Copy to:

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