सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

DIN - 20251071MN000000C0A5

क	फ़ाइलसंख्या FILE NO.	S/49-05/CUS/AHD/24-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-288-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.10.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	10/AB/ADC/SRT-AIRPT/2023-24 dated 15.02.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	27.10.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Krunal Pareshkumar Mistry 33, Ranchhodji Park Society-1, Near Lalita Chowkdi, Katargam, Surat City-395004.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन) ,वित्तमंत्रालय, (राजस्वविभाग)

	संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाव्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

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

ORDER-IN-APPEAL

Shri Krunal Pareshkumar Mistry 33, Ranchhodji Park Society-1, Near Lalita Chowkdi, Katargam, Surat City-395004 (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 10/AB/ADC/SRT-AIRPT/2023-24 dated 15.02.2024 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner of Customs, Surat (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that on the basis of the specific intelligence and profiling the appellant holding Indian Passport No. V6814896, was kept under surveillance and his movement was closely watched by the Customs officers. During the baggage security check, the appellant was intercepted by the Customs Air Intelligence Unit (AIU) officer in presence of panch witnesses under Panchnama proceedings dated 24/25.02.2023. The appellant was found carrying one Black colour hand bag. Thereafter, the Officers carried out physical search of the black coloured hand bag wherein it was noticed that US Dollar were concealed in the black coloured handbag. The entire stack of US Dollar was taken out and counted and found to be 38,900 USD. On being asked about any legal document showing the purchase/ownership of these 38,900 USD, the appellant informed that he has no receipt of these 38,900 USD. Detailed inventory of foreign currency i.e. USD recovered by officers in the presence of panchas and the appellant, is as under:

Type of Foreign Currency	Denomination of Foreign Currency	Number of Notes	Total	Conversion Rate	Value equivalent to Indian Currency
US Dollar	100	389	38,900	81.90	31,85,910
				Total	31,85,910

2.1 The foreign currency i.e. USD 38,900/- which were found concealed in the baggage and recovered from the appellant were placed under seizure vide seizure order dated 25.02.2023 under Panchnama proceedings dated 24/25.02.2023, on a reasonable belief that the said USD 38,900/-, were attempted to be smuggled outside India without declaring to Customs Authority and were Liable to confiscation under provisions of the Customs Act, 1962.

2.2 Statement of the appellant was recorded under Section 108 of the Customs Act, 1962 on 25.02.2023 wherein he, on being shown Panchnama dated 24/25.09.2002 accepted the facts narrated therein as true and correct. He further stated that he was going to Shariah on 25.09.2022 by Air India Express Flight No. IX-171, from Surat International Airport; that he was stopped by the Customs Officers after clearing security check of Airlines, near airlines counters in departure hall of Surat International Airport, Surat, that he was carrying one black colour bag and some foreign Currency in USD, the exact amount of which he was not knowing and during the course of thorough checks, the Customs officer have found foreign currency from his black coloured bag, amounting to USD 38,900 (389 USD 100 notes), placed in black color bag, which are equivalent to a total of Indian Rupees 31,85,910/- (As per Customs Rate of exchange Notification No. 10/2023 Cus (NT) dated 16.02.2023). He further stated that the bag was handed over to him by one person who was not known to him but he had offered him an amount of Rs. 10,000/- for delivery at Sharjah to person who would contact him once he landed at Sharjah Airport. He stated that he don't have any purchase vouchers/ legal documents of said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 24/25.02.2023. He further stated that he had carried USD 38,900/- without declaring the same to Customs Authorities and therefore was smuggling the same out of India; that he was aware that carrying the said forex concealed in baggage or on person without declaring the same is an offence under the Customs Act but he took a chance so as to gain some money. He further confessed that he had intentionally not declared the said forex being smuggled by him before the Customs Authorities at the time of departure from Surat International Airport as he wanted to smuggle out the same without declaring to Customs and that he was aware that he had committed an offence by not declaring the same to Customs for which he had to face the consequences as prescribed under the Customs Law.

2.3 The appellant had attempted to improperly export/smuggle the seized foreign currency (USD 38,900/-) by concealing it in his baggage. He was unable to produce any document evidencing legitimate procurement of the said seized foreign currency in accordance to the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder. Thus the appellant has violated Rule 7 of the Baggage Rules 2016. He has violated Regulation 5 and 7 read with Regulation 6 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 appellant has illegally dealt,

acquired, held, possessed the seized foreign currency and attempted to improperly export or physically transfer the same to an unauthorised person situated at a place outside India. He has thus contravened Section 3 and Section 4 of the Foreign Exchange Management Act, 1999. The amount of foreign currency found in his possession exceeds the limits prescribed for a resident in India under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. The appellant has thus violated Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015.

2.4 The appellant has stated in his statement dated 25.02.2023 that the bag in which the seized foreign currency was found concealed was given to him by another person to deliver it to some other person in Sharjah for a monetary consideration of Rs.10,000/-. Thus the baggage carried by him cannot be treated as a bonafide baggage. Further, the seized foreign currency (USD 38,900/-) which was concealed and carried in the said baggage was not in accordance to the Foreign Management Exchange (Export and Import of Currency) Regulations, 2015 and thereby in violation of Rule 7 of the Baggage Rules, 2016. The appellant has thus violated Para 2.45 of the Foreign Trade Policy 2015-20 read with Section 3(2), 3(3) and 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 2(33), 2(39), 11 and 11H(a) of the Customs Act, 1962 The seized foreign currency thus appears to have assumed the nature of "prohibited goods as defined under Section 2(33) of the Customs Act, 1962 and its attempted improper export an act of "illegal export" as defined under Section 11H(a) of the Customs Act, 1962. The seized foreign currency (USD 38,900/-) which was attempted to be improperly and illegally exported by the appellant by concealing it in his baggage in violation of the Customs Act, 1962, Baggage Rules, 2016 and other laws in force appeared liable to confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. The said act of the appellant appears to be an act of "smuggling as defined under Section 2(39) of the Customs Act, 1962. The appellant by his above described acts of omission and commission have rendered the seized foreign currency (USD 38,900/-) liable to confiscation under Section 113 of the Customs Act, 1962 and therefore he appears liable for penalty under Section 114 of the Customs Act, 1962.

2.5 A SCN was issued to the appellants proposing confiscation of Foreign Currency, i.e. 38,900 USD equivalent to Indian Rupees 31,85,910/- attempted to be smuggled/improperly exported out of India in

contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 read with Rule 7 of the Baggage Rules, 2016, recovered and seized from the appellant under Panchnama proceedings dated 25.02.2023 under the provisions of section 113(d) and 113(e) of the Customs Act, 1962 and for imposition of penalty upon the appellants under Section 114 of the Customs Act, 1962.

2.6 The Adjudicating authority, vide the impugned order, has ordered for absolute confiscation of the impugned foreign currency i.e. 38,900 USD equivalent to Indian Rupees 31,85,910/- attempted to be improperly exported and seized under panchnama dated 24/25.02.2023, under Section 113 (d) and 113(e) of the Customs Act, 1962. The adjudicating authority has also imposed penalty of Rs. 31,85,910/- on the appellant under Section 114(i) of the Customs Act,1962.

3. Being aggrieved with the impugned order, the appellant has preferred the present appeal wherein it has been mainly contended that;

- The adjudicating authority has passed ex-parte, the impugned order with biased mind and the Ld. Adjudicating Authority failed to appreciate and without application of mind or explaining how they are distinguishable or not applicable in the instant case, simply accepted the material on record of alleged blatant violation of Customs and allied Laws, and opined that the appellant concealed and not declared the impugned currencies. The Ld. Adjudicating Authority has not considered any request to give some more opportunity to file or to appear before the AA to submits the defence reply and case laws as well as during the course of personal hearing and simply confirmed the order.
- In any case the Hon. Apex Court has already held that even in cases of "ingenious" concealment goods confiscated can be redeemed on payment of suitable fine. The Ld. Adjudicating Authority have gone overboard and rejected the Application. The appellant says and submit that from the fact narrated above, it is clear Case that there was no moto or intention of appellant in smuggling the said foreign currencies. The appellant is doing the Business at Dubai which was not taken on record during entire investigation. It was the first time appellant carried the foreign currency with him for business purpose. The appellant says and submits that there is no violation of Baggage Rules by the appellant, the appellant was not given Customs Declaration Form by anybody when the appellant arrived at the departure counter where the appellant could have declared the currencies as there was no

customs officers was present. There is no violation of any of the provisions of Baggage Rules by the appellant.

- The Ld. Adjudicating Authority has failed to consider that the case of the appellant is covered by Rule 7(3) (b) which allows the applicant to carry unspent foreign currency brought from last foreign visits as well as RBI/2015-16/91 Master Circular No. 6/2015-16 July 1, 2015 to, All Authorised Persons in Foreign Exchange para no.

A.4 Private Visits 4.1 For private visits abroad, other than to Nepal and Bhutan, any resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorised Dealer or FFMC, in any one financial year, irrespective of the number of visits undertaken during the year. This limit has been subsumed under the Liberalised Remittance Scheme w.e.f. May 26, 2015. If an individual has already remitted any amount under the Liberalised Remittance Scheme in a financial year, then the applicable limit for travelling purpose for such individual would be reduced from USD 250,000 by the amount so remitted.

A.9 Business Trip 9.1 For business trips to foreign countries, resident individuals/ individuals having proprietorship firms can avail of foreign exchange up to USD 2,50,000 in a financial year irrespective of the number of visits undertaken during the year. This limit has been subsumed under the Liberalised Remittance Scheme w.e.f. May 26, 2015. 9.2 Visits in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. Release of foreign exchange exceeding USD 2,50,000 for business travel abroad, irrespective of the period of stay, by residents require prior permission from the Reserve Bank. 9.3 However, if an employee is being deputed by a company and the expenses are borne by the company, then such expenses shall be treated as residual current account transactions and may be permitted by the AD bank without any limit, subject to verifying the bonafides of the transaction.

- As per either the Customs Act, 1962 or FEMA, 2000, the export of Foreign currency is not prohibited, but only restricted. As such, penalty cannot be imposed under Section 114 of the Customs Act, 1962. In present there is a genuine mistake.
- There is no contumacious conduct on the part of the Applicant, but the conduct of a person who was ignorant of the law.

Moreover, there is no obligation on the out outgoing passengers to file any declaration with customs for any goods being taken by them. Considering all these aspects, the social status and fact that the appellant herself is a victim of the machinations of the job agents, it is humbly prayed that lenient view may kind be taken in the matter.

- The Ld. Adjudicating Authority has erred in finding that the appellant wanted to illegal export the foreign currency from Surat to Sharjah. The appellant already submitted that this currency is from their personal for purchase of dutiable goods. The appellant travelled along with foreign currency to Sharjah first time and due to ignorance of customs laws appellant was unable to declare the foreign currency which was alleged to attempt to smuggle foreign currency from India, whereas he stated clearly that the said currency is his own.
- The learned authority has nowhere show how the foreign currency falls under the category of prohibited goods. The authority has simply referred to the definition of prohibited goods without showing where the foreign currency falls under the said category of goods. The applicant says and submits that the foreign currency falls under the restricted category and not prohibited category of the goods, the Ld. Authority himself has held that the said goods "foreign currency" is restricted goods not prohibited goods. As per Foreign Exchange Management (Export and Import of Currency) Regulation, 2000, Notification No. FEMA 6/RB-2000 dated 03/05/2000, and Notification No. FEMA 6(R) RB-2015 dated 29/12/2015. As per Regulation 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 wherein Reserve Bank of India may by regulations, prohibit, restrict of regulate the export, import or holding of currency notes. The said Regulation 5 reads as under:

  "Except as otherwise provide in these regulations no person shall without the general or special permission of the Reserve Bank of India import or send out of India, any Foreign Currency". The export and import of foreign currency is not prohibited in the sense that it can be done only with the "general or special permission of the RBI". Similarly, even under Customs Act 1962, the export and import of foreign currency is not prohibited but only restricted. As the applicant was ignorant of the law, he could not take the necessary permission."

- 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$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US$ 5,000 (US Dollars five thousands) or its equivalent.

- The appellant placed reliance on the decision which are as follows:-
  a. Kishan Shewaram Loungani reported in 2002(140) ELT-225(Tri-Mum).
  b. Government of India in Re. Chellani Mukesh reported in 2012(276)ELT 129 (GOI).
  c. Suresh Gangaram Hole reported in 2015(327) ELT 555. (Tri-Mum).
  d. Philip Frenandes reported in 2002(146) ELT 180 (Tri- Mum).
  e. Government of India in Re. Kanwaljit Singh Bala reported in 2012(275) ELT 272 (GOI).
  f. High Court of New Delhi PremKumar V/s. Customs. CRL. M.C. 1990/2010 ORDER DATED 8TH FEB.2016.
- The appellant also relied upon some orders issued by the Competent Authorities of Delhi and Mumbai.

The foreign currency taken over by the Customs Authorities on 25.02.2023 from the Appellants may be handed over to them. Penalty imposed may please be dropped /reduced to a reasonable level commensurate with the misdemeanor

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 04.06.2024 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have gone through the facts of the case available on record, grounds of appeal and submission advanced by the appellant at the time of personal hearing. It is observed that the issues to be decided in the present appeal are whether the impugned order passed by the adjudicating authority ordering for absolute confiscation of the seized foreign currency i.e. 38,900 USD, having value equivalent to Indian currency at Rs. 31,85,910/- under Section 113(d) and 113(e) of the Customs Act, 1962 and imposing penalty of Rs 31,85,910/- on the appellant under Section 114(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the facts and circumstances relating to interception of the appellant and subsequent recovery of seized foreign currency i.e. 38,900 USD, having value equivalent to Indian currency at Rs. 31,85,910/- is not disputed. on the basis of the specific intelligence and profiling the appellant holding Indian Passport No. V6814896, was kept under surveillance and his movement was closely watched by the Customs officers. During the baggage security check, the appellant was intercepted by the Customs Air Intelligence Unit (AIU) officer in presence of panch witnesses under Panchnama proceedings dated 24/25.02.2023. The appellant was found carrying one Black colour hand bag. Thereafter, the Officers carried out physical search of the black coloured hand bag wherein it was noticed that US Dollar were concealed in the black coloured handbag. The entire stack of US Dollar was taken out and counted and found to be 38,900 USD. On being asked about any legal document showing the purchase/ownership of these 38,900 USD, the appellant informed that he has no receipt of these 38,900 USD. Detailed inventory of foreign currency recovered by officers in the presence of panchas and the appellant. The value of foreign currency in Indian rupees as per exchange rate Notification No. 10/2023 Cus (NT) dated 16.02.2023 is equivalent to Rs.31,85,910/-. The appellant was not having any documents for purchase/acquisition of the Foreign Currency which was recovered from him. The Foreign Currency, 38,900 USD, having value equivalent to Indian currency at Rs. 31,85,910/- carried by the appellant appeared to be smuggled goods as defined under Section 2(39) of Customs Act, 1962, and was placed under seizure vide Seizure Memo/Order under Panchnama proceedings both dated 24/25.02.2023 by the AIU officers on a reasonable belief that the said Foreign Currency was attempted to be smuggled out of India and hence it was liable for confiscation for violation of the provisions of the Customs Act, 1962 and FEMA (Export and Import of Currency) Regulations, 2015. Statement of the appellant was recorded on 25.02.2023 under Section 108 of the Customs Act,1962, wherein he, inter-alia, stated

that the Customs officer have found foreign currency from his black coloured bag, amounting to USD 38,900 (389 USD 100 notes), placed in black color bag, which are equivalent to a total of Indian Rupees 31,85,910/- (As per Customs Rate of exchange Notification No. 10/2023 Cus (NT) dated 16.02.2023). He further stated that the bag was handed over to him by one person who was not known to him but he had offered him an amount of Rs. 10,000/- for delivery at Sharjah to person who would contact him once he landed at Sharjah Airport. He stated that he don't have any purchase vouchers/ legal documents of said foreign currency recovered from his possession and subsequently placed under seizure under panchnama dated 24/25.02.2023. He further stated that he had carried USD 38,900/- without declaring the same to Customs Authorities and therefore was smuggling the same out of India; that he was aware that carrying the said forex concealed in baggage or on person without declaring the same is an offence under the Customs Act but he took a chance so as to gain some money. He further confessed that he had intentionally not declared the said forex being smuggled by him before the Customs Authorities at the time of departure from Surat International Airport as he wanted to smuggle out the same without declaring to Customs and that he was aware that he had committed an offence by not declaring the same to Customs for which he had to face the consequences as prescribed under the Customs Law.

5.2 I find that there is no dispute regarding the fact that the appellant had not declared the seized foreign currency to the Customs at the point of departure. Further, in his statement recorded on 25.02.2023 under Section 108 of the Customs Act, 1962, the appellant had admitted the possession, carriage, non-declaration and recovery of the foreign currency. The appellant had not been able to give the documents for licit acquisition and possession of the foreign currency before the seizing officer. The fact remains undisputed that the appellant had not disclosed the impugned foreign currency kept in hand bag before the Customs Authorities while departure to Sharjah. The appellant had in his confessional statement recorded during seizure accepted that the foreign Currency of 38,900 USD recovered under panchnama dated 24/25.02.2023, equivalent to Rs. 31,85,910/- was carried by him illegally to smuggle out of India in Violation of the provisions of Customs Act, 1962. It is observed that the appellant has not been able to show that the impugned foreign currency in his possession was procured from authorized persons as specified under FEMA at the time of his departure during Panchnama dated 24/25.02.2023. Hence, I am in concurrence with the finding of the adjudicating authority that the appellant had attempted to smuggle foreign

Currency of 38,900 USD equivalent to Indian Rs. 31,85,910/- by concealing in hand bag and could not submit any documents to prove that the impugned foreign currency notes carried by him were procured from legitimate sources/ Legally. Further, the said foreign currency concealed in hand bag was handed over to him by one person who was not known to him but he had offered him an amount of Rs. 10,000/- for delivery at Sharjah to person who would contact him once he landed at Sharjah Airport. Thus, in absence of any valid document for the possession of the foreign currency, it is held that the same had been procured from persons other than authorized persons as specified under FEMA, which makes the goods liable for confiscation in view of the prohibition imposed under the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency in such a quantity without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified as the appellant could not account for the legal procurement of the foreign currency and that no declaration as required under Section 77 of the Customs Act, 1962 was filed with the Customs authorities at Surat International Airport while his departure.

5.3 It is observed that the appellants had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. Hence, I am of the considered view that the conclusions arrived at by the adjudicating authority that the restrictions imposed under the Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 have been violated by the applicant is correct, and therefore, the confiscation of the seized foreign currency ordered under Section 113(d) and 113(e) of the Customs Act, 1962 is justified.

5.4 In this regard, I rely upon the decision of Hon'ble High Court of Madras in the case of Commissioner of Customs (AIR), Chennai Versus Veeracchi Vithayaphalert [2014 (303) ELT 49 (Mad.)] wherein the decision of Hon'ble Tribunal, reported at [2005 (186) E.L.T. 296 (Tri Chennai)], that confiscation of the currency is not justified when found in possession of a Thailand citizen amounting to USD 20,000/- not declared before Customs was reversed. The relevant paras are reproduced hereunder:

"13. *Section 5 of the Regulations imposes a prohibition on export and import of foreign currency. As per Regulation No. 6, a person may import foreign exchange in India without limit in any form other than*

currency note, bank notes and travellers cheques. Similarly, a person may bring into India from any place outside India without any limit of foreign exchange (other than unissued notes). The first proviso to Regulation 6 provides that bringing of foreign exchange into India under the second contingency shall be subject to the condition that such person makes, on arrival in India, a declaration to the Customs authorities in the Currency Declaration Form, format of which has been annexed in the Regulation. The second proviso to Regulation 6 provides 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 anyone time does not exceed US$ 10,000 (US Dollars ten thousand) or its equivalent or its aggregate value any one time does not exceed US$ 5,000 (US Dollars five thousand) or its equivalent. Regulation 7 deals with "Export of foreign exchange and currency notes", and the Regulations 5, 6 & 7 are quoted herein below :-

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.

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 travellerscheques;

(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

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 :-

(i) cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person Resident in India) Regulations, 2000;

(ii) foreign exchange obtained by him by drawl from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder;

(iii) 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 :-

(i) foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000;

(ii) unspent foreign exchange brought back by him to India while returning from travel abroad and retrained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000.

(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.

14. *Thus on a cumulative reading of the above referred Regulations, it is clear that there is a stringent condition is imposed under the Regulations with regard to export or import of foreign currency and in terms of Regulation 5, a prohibition of export and import of foreign currency except as provided under the Regulations. Therefore, the first respondent, as a matter of right, is not entitled to import or export in the manner as he wishes without complying with the provisions of the Regulations.*

15. *Section 113 of the Customs Act deals with "Confiscation of goods attempted to be improperly exported or imported" etc. The goods, which are liable for confiscation have been listed out in clauses of Section 113.*

Clause (d) of Section 113 states that any goods attempted to be exported or brought within the limits of the customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force, is liable for confiscation. The Regulation framed under the FEMA makes a clear definition as regards the import and export of currency. Section 2(22)(d)

of the Customs Act defines 'goods' to include currency and negotiable instruments.

16. *Reading of the definition of "goods" as stated in Section 2(22) along with the definition of "currency" stated in Section 2(h) of FEMA, make it clear that export of currency contrary to prohibition imposed under any other law is liable for confiscation. Therefore, the contention of the learned counsel for the first respondent that there is no power to confiscate the currency under Section 113(d) of the Customs Act, is liable to be rejected.*

17. *In the back ground of the above provisions, the order of the Tribunal holding that there is no provision to declare the foreign currency in hand, cannot be sustainable. The currency possessed by the first respondent, was contrary to the Regulation, particularly Regulation No. 5 which clearly states that as per Regulation, no person shall, without the general or special permission of the Reserve Bank, export or send out of India or bring into India, any foreign currency. The goods attempted to be exported being foreign exchange, as defined under the FEMA.*

18. *For all the above reasons, we do not accept the order of the Tribunal, the order of the Tribunal is set aside and the order of the adjudicating authority is hereby confirmed. The learned counsel for the assessee sought for liberty to approach the authorities concerned under the provisions of FEMA. It is always open to the first respondent to avail remedies available under the FEMA Act. No costs. Consequently, connected miscellaneous petition is closed."*

5.5 I have also perused the recent decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India. It is observed from Order No. 152/2023-CUS (WZ)/ASRA/MUMBAI, dated 31.01.2023 passed in the case of Shri Rajkumar Nandlal Sukhwani that the Revisionary Authority had held that the undeclared foreign currency to the Customs at the point of departure without any valid document for possession of the same are liable for confiscation. The relevant paras are reproduced here under:

"7. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign currency was not declared by the Applicant to the Customs at the point of departure. Further, in his statement the applicant had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of the foreign currency.

The applicant was unable to give the documents for licit acquisition and possession of the foreign currency. The fact remains that the applicant had not disclosed the impugned foreign currency and the source of the foreign currency had remained unaccounted. In his confessional statement, he stated that he was given the currency by one Mr. Bunty Bhai and asked to handed over the same to his (Bunty's) cousin in Bangkok for monetary consideration of Rs. 8,000/- and expenses of his Air Ticket from Mumbai to Delhi and further Delhi to Bangkok. Subsequently, he retracted the same which was rebutted by the department. The Applicant was unable to show that the impugned foreign currency in his possession was procured from authorized persons as specified under FEMA. Thus, it has been rightly held by the lower adjudicating authority that in the absence of any valid document for the possession of the foreign currency, the same had been procured from persons other than authorized persons as specified under FEMA, which makes the goods liable for confiscation in view of the prohibition imposed in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified as the applicant could not account for the legal procurement of the currency and that no declaration as required under section 77 of the Customs Act, 1962 was filed.

8. The Government finds that the applicant had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 have been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified."

5.6 I have also perused the other decisions of the Government of India passed by the Principal Commissioner & ex officio Additional Secretary to the Government of India. In all the decisions, the undeclared foreign currency to the Customs at the point of departure, without any valid document for possession of the same, are held to be liable for confiscation. In view of above, it is held that the undeclared seized foreign currency i.e., 38,900 USD equivalent to Indian Rs. 31,85,910/-, carried by the appellant

for which there was no document for legitimate procurement are liable for confiscation under Section 113(d) and 113(e) of the Customs Act, 1962. Accordingly, it is also held that the appellant is also liable for imposition of penalty under Section 114(i) of the Customs Act, 1962.

6. It is also observed that the adjudicating authority in the impugned order, at Para 21, had held that:

> *"The noticee has cited some case laws and requested for relief in the case. I find that it is a settled legal position that ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori tobacco products (2004 (170) ELT 135 (SC)) has stressed the need to discuss how the facts of decision relied upon applies to the factual situation of a given case. I find that the noticee has not discussed as to how the cited case laws are applicable to the facts of his case. In the case before me, I find that the source of the foreign currencies has not been clearly brought out by the noticee with any documentary evidence. Moreover, the said foreign currency was attempted to be smuggled out in clear violation of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, which required the noticee to obtain foreign currencies from authorized dealers only. The condition contained in the regulation itself has thus been violated by the noticee in the case before me which in turn makes the foreign currency very much prohibited. I am therefore of the view that the foreign currencies seized are liable for absolute confiscation and not fit for redemption. The case laws cited by the noticee are not relevant in the facts and circumstances of the present case and hence not tenable."*

6.1 Further, the adjudicating authority at Para 23 of the impugned order had relied upon the decision of Samynathan Murugesan [2009(247) E.L.T. 21 (Mad)] wherein the Hon'ble High Court had upheld the absolute confiscation ordered by the adjudicating authority.

6.2 It is observed that the appellant has contended that the foreign currency is not prohibited goods and absolute confiscation is not justified. In this regard, I rely upon the decision in the case of Commissioner of Customs, Chennai Vs Savier Poonolly [2014 (310) E.L.T. 231 (Mad)] wherein the Hon'ble High Court of Madras held that the key word in Regulation 5 is prohibition of import and export of foreign currency and the exception is that special or general permission should be obtained from the Reserve Bank of India, which the passenger has not obtained and therefore, the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency. The relevant paras are as under:

"8. Heard learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

9. *The dispute raised in this case involves the following substantial questions of law :*

"(i) Whether the Tribunal was justified in allowing the redemption of the foreign currency attempted to be exported in violation of the provisions of law?

(ii) Whether the Tribunal was justified in reducing the quantum of penalty?"

10. *On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.*

11. *Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :*

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.

7. Export of foreign exchange and currency notes. -

(1) An authorized person may send out of India foreign currency acquired in normal course of business.

(2) any person may take or send out of India, -

(i) cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) foreign exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

....."

12. *Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is*

corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

13. *In view of the above, the Original Authority has ordered absolute confiscation. We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to be taken out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency. The exception is that special or general permission should be obtained from the Reserve Bank of India, which the passenger has not obtained and therefore, the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency.*

14. *It is of no avail to plead that the foreign currency upto certain limit is permissible. The Tribunal has misguided itself in holding that upto 25,000 US $ is permitted to be carried by a passenger while going abroad. This error arose from a misreading of Clause 8 of Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. Rule 5 of the said Rules, speaks about prior approval of the Reserve Bank of India for transaction included in Schedule III. Clause 8 of Schedule III speaks about release of foreign exchange, exceeding US $ 25,000 to a person irrespective of period of stay, for business travel, or attending a conference or specialized training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up. We find that this provision is made under the Foreign Exchange Management (Current Account Transactions) Rules, 2000, which imposes prohibition in respect of Schedule I, restriction in Schedule II transaction, which are to be done on prior approval and Schedule III also come with the rider that prior approval of the Reserve Bank of India should be obtained. Assuming that a person is permitted to carry 25,000 US $ for business purpose, the fact remains, that the said drawal of the foreign currency should be only from an authorized person in terms of Rule 2(b) of the Foreign Exchange Management (Current Account Transactions) Rules, 2000. The passenger, in this case, attempted to take the money out of India without a proper declaration and has not obtained from an authorized person, thereby, he has violated the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. Therefore, the Department was justified in rightly invoking the said provision. The Tribunal, without adverting to the prohibition imposed under Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 has come to the erroneous conclusion that the amount not exceeding 25,000 US $ may be freely*

taken out of India. If both the Rules and Regulations are properly applied to the facts of the present case, it will be evident that the first respondent - passenger in this case has clearly violated the provisions of the FEMA, more particularly Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 read with Section 113 of the Customs Act. Therefore, the Tribunal fell into error by setting aside the order of absolute confiscation. Accordingly, we answer the first question in favour of the Revenue."

In the present case also the appellant had attempted to take the foreign currency out of India without a proper declaration, without proper document, has not obtained it from an authorized person, not having any general or special permission of the Reserve Bank of India, thereby, he has violated the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. Further, the appellant has concealed the same in hand bag. Therefore, the adjudicating authority was justified in ordering for absolute confiscation of the foreign currency i.e. 38,900 USD equivalent to Indian Rs. 31,85,910/-.

6.3 Further, I also rely upon the decision in the case of Suresh Gangaram Hole Vs Commissioner of Cus., Airport, Mumbai [2015 (327) E.L.T. 555 (Tri. - Mumbai)] wherein the Hon'ble Tribunal, Mumbai has upheld the absolute confiscation of foreign currency which was being taken out of India without any permission from RBI and without declaring the same to the customs and concealed in the baggage which could not have been detected but for the information received by the authorities. The relevant paras of the decision are as under:

"7.4 *As per the provisions of section 2 (22) of the Customs Act, "goods" includes currency. Further as per section 2(33) "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 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 the present case, the appellant did not have permission from the RBI for export of foreign currency nor did he declare the foreign currency when he came to India on 28-12-2005. Therefore, the currency under seizure are "prohibited goods" as per the provisions of the Customs Act and therefore, liable to confiscation under Section 113(d) as "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" as well as under section 113(h) as "any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77".*

7.5 *The liability to absolute confiscation of Indian currency attempted to be illegally exported was considered by a larger bench of this*

Tribunal in the case of Peringattil Hamza (supra) and after considering extensively the various decisions of the Hon'ble apex court, it was held by this Tribunal that- "In case a person attempted to export Indian currency outside India without the permission of the RBI more-than Rs. 5000/- or Rs. 10,00d/- as the case may be, in that case the Indian currency can be absolutely confiscated and it is the discretion of the proper officer in the facts and circumstances of the case to allow redemption on payment of fine and imposition of penalty." The ratio of the said decision applies equally well in the case of attempted illegal export of foreign currency also. An identical issue came up for consideration before the Hon'ble Madras High Court in the case of CC, Chennai v. Shri Savier Poonolly [2014-TIOL-1662-HC-MAD-CUS = 2014 (310) E.L.T. 231 (Mad.) wherein foreign currency was attempted to be exported by a passenger without declaring the same to the Customs Department' and therefore, it resulted in seizure. The Hon'ble High Court held as follows :-

"12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In- the present case, the jurisdiction Authority has invoked Section 113 (d),-(e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines 'goods' to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to the exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

13. In view of the above, the Original Authority has ordered absolute confiscation. We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to be take it out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said' prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency. The exception is that special or general permission should be obtained from the Reserve Bank of India, which' the passenger has not obtained and therefore the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency."

7.6 *The ratio of the above decision was followed by this Tribunal in the case of M K S Mohammed Rafi v. Commissioner of Customs (Airport & ACC), Chennai [2014-TIOL-1681-CESTAT-MAD] wherein it was held that- "Under Section 3 of the Foreign Exchange Management Act, 1999 read with Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulation, 2000, no person shall without the general or special permission of the Reserve Bank export/send out of*

India or import/bring into India any foreign exchange currency- admittedly, the appellant was carrying foreign currency without the permission of RBI - adjudicating authority had already examined as to whether in the facts and circumstances of the case, the goods may be released on payment of redemption fine and negatived the claim of the appellant, a habitual offender, who admitted that they have purchased the electronic goods in Singapore and brought the foreign currencies acquired through sale in the grey market and passing through green channel." Similarly in another case, recently decided by the Bangalore Bench of this Tribunal in the case of Joseph Sebastian Prekash v. Commissioner of Central Excise, Customs and Service Tax [2014-TIOL-2457-CESTAT-BANG], foreign exchange being carried by appellant was confiscated since the same was not declared and was in excess of the permitted limit and the appellant's submission that absolute confiscation was not proper in the absence of mala fide and law does not require any passenger to make declaration, was found not acceptable. Since the currency was not declared and was concealed in the baggage and could not have been detected but for the information received by authorities, absolute confiscation was upheld. ' In our considered view, the ratio of the above decisions apply squarely to the facts of the present case before us.

7.7 *The appellants have, given two versions about the nature of the transaction. Sri Suresh Gangaram Hole in his statements recorded on 8-1-2006 (prior to his arrest) and on 10th, 16th and 17th January, 2006 and 2-2-2006 (when he was in judicial custody) had admitted that the seized foreign currency was given to him for smuggling to Dubai by Sri. Rajendra Butada and he agreed to do the act for a monetary consideration. These statements were retracted on 23-2-2006 through an affidavit, after he was released from jail. In his affidavit dated 23-2-2006, he has claimed that the seized currency was sourced in Dubai and belonged to M/s. Tycoon General Trading LLC, Dubai, a company owned by Sri. Rajendra Butada, where Sri. Hole was working as a salesman. It has been contended by the appellants that the origin of the foreign, currency was genuine and was given by Shri. Rajendra Butada to Sri. Suresh Gangaram Hole in Dubai for transfer of the same to M/s. a3 Holdings Ltd., Hongkong, towards purchase of laptops. If that was so, there was no need for Mr. Suresh Hole to bring the same to India without declaration to the Customs and again take it back to Dubai without any permission from RBI and without declaration to the Customs. No evidence worth the name has been produced by the appellants to show that the foreign currency was meant for purchase of laptops by way of purchase orders or otherwise to M/s. a3 Holdings Ltd., Hongkong. Further, there is no evidence led by Sri. Hole showing that he was employed as a salesman in the Tycoon General Trading LLC, Dubai and no appointment letter employing him as" a salesman was produced by Sri. Hole to support his claim in this regard. This is also contrary to the initial statements of Sri Suresh Hole that the money was given to him by Smt. Bharati Butada in Pune for handing over the same to Mr. Rajendra Butada in Dubai. Further, there are contradictions in the statements of Sri. Rajendra Butada and Sri Suresh Gagaram Hole which has been discussed at length in the impugned order in paras 23 to 23.17 thereof. Further, the conduct of Sri. Rajendra Butada, immediately after the interception of Sri. Suresh Gangaram Hole on 8-1-*

2006 and his subsequent arrest is also very strange. If the money belonged to Sri. Butada and its source was genuine, there was no need for him not to respond to the various summons issued by the investigating officer during January to April, 2006, when he was very much in India at the relevant time and when he was very much aware that Sri. Suresh Gangaram Hole was intercepted by the Custom Authorities. The department had to approach the Addl. CMM, Mumbai for issue of summons to secure the presence of Sri. Rajendra Butada. It is also on record that during the said period Mr. Rajendra Butada was seeking legal advice on the matter and he was busy preparing documents for the illicit procurement of the seized foreign currency as per the statements given by Smt. Bharati Butada and various others. If the source of the currency was legal, there was no need to take such a long time to present the evidence before the investigating authority in this regard. Thus the whole conduct of Sri. Rajendra Butada leads to the inevitable conclusion that he was busy manipulating the records and fabricating evidences so as to show that the seized foreign currency was legally sourced. Thus the whole story of illicit procurement of the foreign currency is far from convincing and appears a concocted story to mislead the investigation. Be that as it may, even going by the versions of the appellants, the foreign currency was brought into India in violation of the provisions of FEMA, 1999 and without declaration to the Customs and was sought to be taken out of India illicitly. Thus the illicit nature. of the transactions is manifest and amounts to 'smuggling' in and out foreign currency. Thus the tainted nature of the seized currency and the transaction' is established beyond any doubt. Consequently, absolute confiscation of the seized foreign currency under Sections 113 (d) and (h) of the Customs Act is beyond any legal challenge and we hold accordingly."

6.4 Further, I also rely upon the decision in the case of FAYAZ GULAM GODIL Vs UNION OF INDIA, [2016 (338) E.L.T. 42 (Bom)] wherein the Hon'ble High Court, Mumbai has upheld the absolute confiscation of foreign currency which was being taken out of India without any permission from RBI and without declaring the same to the customs and concealed in the baggage and also upheld the penalty imposed. The relevant para is reproduced as under:

8. *We find that they have indeed been considered. In the present case, what was attributed to the persons was an act clearly within the meaning of Section 113 of the Customs Act, 1962. The foreign currency in this case was attempted to be improperly exported. It is one thing to say that the currency may have been taken without complying with FEMA and the Rules thereunder, but on reaching the foreign country, these persons were deported. On deportation, they boarded a flight to return to India, but with the currency with them. It is these goods which were taken away without the above compliance. They were confiscated. The definition of the term 'prohibited goods' has been understood and applied in the above circumstances. The question was how they should be dealt with in the discretionary power of the authority. Whether there should be absolute confiscation or a redemption permitted. We do not find either in the order of admission of the Customs Appeal No. 107 of 2012 or in the*

Division Bench order relied upon by Mr. Kantawala anything which would enable us to entertain the present appeals. Before the Division Bench in Rostam Parvaresh (supra), the argument was that the Revisional Authority failed to consider a specific contention raised by the petitioner based on various judgments of the appellate as well that of the Revisional authority wherein the entire confiscated currencies have been ordered to be released on payment of redemption fine. It is that contention and non-examination of which led the Division Bench to interfere in its discretionary and equitable jurisdiction under Article 226 of the Constitution of India to direct the Revisional Authority to consider it and pass a fresh order.

9. *On the other hand, in this case we find that the contentions as raised before us were specifically raised duly noted and considered by the Tribunal. The Tribunal found that once this is an admitted case of illegal export of foreign currency from India by concealing the same in baggage and considering the substantial quantum of currency seized, the discretion ought not be exercised so as to allow release of the same by paying redemption fine, then, this is not a case of any perversity or an error of law apparent on the face of the record. Rather, this is a case where the prohibited act was rightly dealt with. This is not a case where any other provision but Section 113 could be applied. In the facts peculiar to this case, the invocation and application of Section 113 also was permissible. The other appeal, namely, Central Excise Appeal No. 75 of 2015 impugns only the imposition of penalty. For the reasons indicated above, that also fails. Additionally we find that the penalties were rightly imposed on the appellants. Their complicity and involvement in the illegal act is established.*

6.5 Further, I also rely upon the decision in the case of ABUBAKER HAJI QASIM Vs COMMISSIONER OF CUSTOMS (AIRPORT), MUMBAI [2015 (316) E.L.T. 97 (Tri. – Mumbai)] wherein the Hon'ble Tribunal, Mumbai has upheld the absolute confiscation of foreign currency i.e., 75,000 US$ in his checked-in baggage and the same was not declared before Customs and penalty imposed was also upheld. The relevant paras are reproduced as under:

"6. *I have carefully gone through the facts of the case and the rival contentions of both sides. Certain facts are not in dispute particularly the seizure of large amount of foreign currency from the checked in baggage of the appellant which was not declared by him to the Customs. The ld. Counsel has tried to pass the act of smuggling as a bona fide mistake due to lack of knowledge and has called it a technical and procedural lapse. I note that Sections 113(d) and 113(e) of the Customs Act render those goods involved in such lapses, liable to confiscation when they are attempted to be exported or brought within the limitation of any Customs area for the purpose of being exported contrary to any prohibition imposed by or under this Act or under any other law for the time being in force. The undisputed facts of this case are that the goods had not only been brought into the Customs area for being exported but had also been checked in as checked in baggage. And the goods had to be off loaded on the basis of information/intelligence with DRI. This cannot be anything*

but a case of attempt to export goods contrary to any prohibition under a law and in this case the prohibition is laid down in the Foreign Exchange Management Act (FEMA), 1999 read with the Foreign Exchange Management (Export and Import of Currency) Regulations 2000. Regulations 5 and 7 are as under :

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.

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, -

(i) .....

(ii) 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;

(3) any person may take out of India, -

(i) foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000;

(ii) 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, 2000;

(4) Any per resident outside India may take out of India unspent foreign exchange no exceedingly the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

No evidence has been brought forth by the appellant to establish that the foreign exchange possessed by him was obtained in accordance with Regulation 7(3)(i) or that it was obtained by him as unspent foreign exchange in terms of Regulation 7(3)(ii) or any other provisions of the said Act or the Regulations. Further, Regulation 7(4) provides that any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared. The appellant is not resident outside India. Therefore, this provision does not help him. The facts read with the law stated above clearly point to a deliberate act of attempt to smuggle foreign currency for export. This conclusion is strengthened by the fact that the currency was contained in one brown colour sealed envelope placed in the checked in baggage which is a trolley bag. That is, the passenger attempted to export currency concealed

in baggage and had brought it into the limitation of the Customs area in violation of Section 113(e) of the Customs Act.

6.1 *The plea of the ld. Counsel that the currency belongs to appellant's brother in US turns out to be a rather weak defense. Firstly, there is no convincing explanation as to how this currency said to be given by his brother was brought into the country by the appellant in such large amount i.e. more than 70,000 US$. The affidavit is dated 1-7-2014 i.e. more than 9 years after the date of the incidence. The question arises why claimant did not turn up to claim the currency in these 9 years. Even assuming the Affidavit to be true, although such affidavits cannot be accepted at face value without backing of the any legal supporting document in India, it still does not help the applicant. If he had brought in 75,000$, into the country the same was not declared at the time of import, thereby again making the same liable to confiscation under Section 113 of the Customs Act read with provisions of FEMA. Moreover, the appellant has now changed, his story after taking the defense under his statements, dated 4-5-2003 that the money was raised by him from his savings and various other sources. In his statements he also confessed to the fact that he was making trips abroad and indulging in smuggling during these trips. The independent statement of Shri Virendra Mehta, Jt. Managing Director to M/s. Arcadia Travel Pvt. Ltd. also provides proof that one person namely Shri Wali Mohammed was purchasing the tickets for the appellant as well as towards the purchase of foreign currency. The fact that the appellant kept giving confessional statements after retracting them only strengthen my view that his was a deliberate act of commission. In this statements he claimed the ownership of the foreign currency. The affidavit of his brother after 9 years is not credible evidence. In any case as stated above, even if the statement of the brother is true, an equally serious act of violation of Customs Act read with FEMA is committed by the appellant by import of such huge amount of currency of more than 70,000 US$ brought into India illegally and the same would be liable to confiscation. From the circumstances and the legal provisions there is no doubt that the appellant indulged in the act of smuggling of foreign currency making it liable to confiscation under Section 113 of the Customs Act.*

6.2 *A plea has been taken that since currency is not a prohibited item, an option must be given under Section 125 of the Customs Act to pay fine in lieu of confiscation. Section 125(1) is extracted below for convenience :*

125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit".

Whether, the currency can be absolutely confiscated has already been decided by the Larger Bench in the case of Peringatil Hamza - 2014 (306)

E.L.T. 332 (Tri.-LB) Vide order No. M/1280/14/CSTB/C-I, dated 23-6-2014 wherein it held that

"In case a person attempted to export Indian Currency outside India without permission of RBI more than Rs. 5,000/- or Rs. 10,000/- (as the case may be) in that case the Indian currency can be absolutely confiscated and it is discretion of the proper officer in the facts and circumstances of the case be allowed to redeem on payment of redemption fine and imposition of penalty".

Even otherwise an appreciation of Section 125 leads me to this very conclusion. The Section states that where the importation or exportation is prohibited under the Act or any other law, the officer adjudicating the case may give to the owner of the goods an option to pay fine in lieu of confiscation. The para 6 of Foreign Exchange Regulations (supra) only permit an amount of 5,000$ to be brought into the country without making any declaration. And at the time of export unspent foreign exchange may be taken out of India. Any amount exceeding 5,000$ which is attempted to be taken out of India has to be possessed in accordance with paras 7(3)(i) and 3(ii) of FEMA Regulations. It has not even been proved by the appellant that he was in legal position of 5,000$ what to talk about 70,000$. Thus, the possession of such huge amount of foreign currency is prohibited under FEMA Regulations and the, option to redeem the same under Section 125 is not there. Even if one extends the argument that the verdict of the larger bench related to a case of Indian currency, I find that in the present case the appellant does not deserve my discretion to give an option to pay fine in lieu of confiscation.

6.3 *The case laws of 2012 (276) E.L.T. 129 (GOI), MD Kalim Ansari v. Commissioner of Customs (Prev.), Calcutta - 2004 (178) E.L.T. 573 (Tri.-Kolkata), Azizur Rahaman v. Commissioner of Customs (Prev.), Kolkata - 2012 (285) E.L.T. 401 (Tri.-Kolkata) cited during the hearing do not come to the aid of the appellant. In the last cited case above it was held that*

"I find that the common principle runsthrough the aforesaid decisions is that when astatement furnished under Section 108 of theCustoms Act before the Customs Authorities, thesaid statements no doubt is admissible asevidence, but when there is a subsequentretraction of the said statements then the weightof the said evidence is considerably reduced andthere is a necessity for looking at corroboration ofthe said evidences. In other words, thestatement furnished by the persons may not lose its evidentiary value but a conclusion cannot be arrived at solely based on the said statements unless corroborated by other material particulars".

In the present case, the act of smuggling is not established through statements only. It is established through a series of facts and events namely non declaration, detection of currency in a packet contained in a suitcase already checked in, repeated statements of appellant, the circumstantial evidence in the form of statement of M/s. Arcadia etc. The case is also established strictly within the parameters of law laid down under the FEMA Regulation and the export attempt of currency exceeding 70,000$ cannot be explained by way of a the trivial argument of bona fide mistake. In view of the totality of circumstances and the evidentiary

value of facts, the appellant does not deserve an option to release the goods on payment of redemption fine. His clear active role in the act of smuggling also does not deserve mitigation of the penalty imposed.

7. *Order is disposed of in the above terms. The appeal is rejected and Order-in-Original is upheld."*

6.6 Further, I also rely upon a recent decision of the Government of India passed by the Additional Secretary to the Government of India vide Order No. 193/24-Cus, dated 12.09.2024 passed in the case of Shri Mohamed Saleem, Chennai wherein absolute confiscation of foreign currency equivalent to Indian Rs 32,95,715/- concealed between 14 kg of Shark Fins was upheld. The penalty of Rs 8,00,000/- imposed by the adjudicating authority and confirmed by the Commissioner (Appeal) was also upheld. The relevant para is reproduced as under:

12. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods', is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)). In the case of UOI &Ors vs. M/s Raj Grow Impex LLP & Ors (supra), the Hon'ble Supreme Court has held "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations". Hon'ble Delhi High Court has, in the case of Raju Sharma (2020 (372) ELT 249 (Del)), relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." In the present case, the absolute confiscation has been ordered as the Applicant, acting as a carrier, was smuggling large amount of foreign currency by ingenious concealment, while also attempting to smuggle out Shark fins which are also prohibited item. Thus, no case for interference with the discretion exercised by the lower authorities is made out. The case laws relied upon by the Applicant are not applicable in the facts and circumstances of the present case as the redemption has been denied for reasonable and relevant considerations and, as such, fulfils the test laid down by Raj Grow Impex. As such, the Commissioner (Appeals) has rightly upheld the Order-in-Original.

13. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

14. In view of the above, the revision application is rejected.

6.7 Further, I also rely upon a recent decision of the Government of India passed by the Additional Secretary to the Government of India vide Order No. 03-04/25-Cus, dated 07.01.2025 passed in the case of Shri Meenakshi Sundaram, Madurai and Smt Vetrikodo, Thiruvarur wherein absolute confiscation of foreign currency equivalent to Indian Rs

8,59,004/- recovered from hand luggage was upheld. The penalty imposed by the adjudicating authority and confirmed by the Commissioner (Appeal) was also upheld.

6.8 Further, I also rely upon a recent decision of the Government of India passed by the Additional Secretary to the Government of India vide Order No. 34/25-Cus, dated 28.03.2025 passed in the case of Shri Kumar, Thiruvarur wherein absolute confiscation of foreign currency equivalent to Indian Rs 17,17,582/- was upheld. The penalty of Rs 9,00,000/- imposed by the adjudicating authority and confirmed by the Commissioner (Appeal) was also upheld.

6.9 It is observed that in the present case, the appellant had attempted to smuggle foreign currency i.e. 38,900 USD equivalent to Indian Rs. 31,85,910/- by concealing in hand bag. Further, he could not submit any documents to prove that the impugned foreign currency notes carried by him was procured from legitimate sources i.e. authorised dealers. The appellant does not have any special or general permission from the Reserve Bank of India. The said foreign currency concealed in hand bag was handed over to him by one person who was not known to him but he had offered him an amount of Rs. 10,000/- for delivery at Sharjah to person who would contact him once he landed at Sharjah Airport. He further stated that the said foreign Currency was not purchase by him and he has not any receipt of purchase of foreign Currency. He confessed that the said foreign Currency i.e. 38,900 USD recovered under panchnama dated 24/25.02.2023, equivalent to Rs. 31,85,910/- was carried by him illegally to smuggle out of India in Violation of the provisions of Customs Act, 1962. Thus, the appellant was not owner of the said foreign currency. Therefore, following the decisions of Hon'ble High Court of Madras, Hon'ble High Court of Mumbai, Hon'ble Tribunal, Mumbai and Order of Hon'ble Revisionary Authority, I am of the considered view that the adjudicating authority has correctly, legally and judiciously ordered for absolute confiscation of foreign currency i.e. 38,900 USD equivalent to Indian Rs. 31,85,910/- under Section 113(d) and 113(e) of the Customs Act, 1962.

6.5 Further, in respect of imposition of penalty amounting to Rs 31,85,910/- on the appellant for non-declaration of foreign currency i.e., 38,900 USD equivalent to Indian Rs. 31,85,910/-, the appellant has not raised any ground or made any submission for reduction in penalty. It is observed that the appellant was acting as a carrier had attempted to smuggle out substantial quantum of foreign currency out of India by way of concealing the same in hand bag without any legal documents showing

legitimate procurement of the same. The appellant has subsequently claimed ownership of the foreign currency in the appeal filed before me without submitting any document for legitimate procurement. Thus, it appears to be an afterthought and cannot be considered. Therefore, I am not inclined to intervene in the aspect of penalty which has been rightly imposed by the adjudicating authority on the appellant for his act of violation. Therefore, I am of the considered view that the penalty of Rs 31,85,910/- imposed on the appellant under Section 114(i) of the Customs Act,1962, in the impugned order by the adjudicating authority, is appropriate and commensurate to the omissions and commissions of the appellant.

7. In view of the above, I am of the considered view that there is no infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

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

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(i) Shri Krunal Pareshkumar Mistry,
33, Ranchhodji Park Society-1,
Near Lalita Chowkdi, Katargam, Surat City-395004,

(ii) Rishikesh Mehra, Advocate
B- 1103, Dev Vihaan,
B/h Third Eye Redidency, Motera Stadium Road,
Sabarmati, Ahmedabad – 380005.

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