IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA
REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76133 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/AIRPORT/KS/366-368/2024 dated 07.06.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Sagar Chakraborty **: Appellant**
S/o. Shri Badal Chakraborty,
4, Desarath Ghosh Lane, Salkia,
Howrah – 711 106

VERSUS

Commissioner of Customs (Airport & A.C.C.) **: Respondent**
2nd Floor, Custom House,
15/1, Strand Road,
Kolkata – 700 001

WITH

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Sunil Mahato **: Appellant**
S/o. Shri Tilanath Mahato,
Flat No. 4G, 3rd Floor, Ashirbad Apartment,
8/1, Monmohan Mukherjee Road, Bally,
Howrah – 711 201

VERSUS

Commissioner of Customs (Airport & A.C.C.) **: Respondent**
2nd Floor, Custom House,
15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Ms. Atika Sumran Ahmed, Advocate,
For the Appellant(s)

Shri Sourabh Chakravorty, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76286-76287 / 2026

DATE OF HEARING: 23.06.2026

DATE OF DECISION: 24.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeals arise out of Order-in-Appeal No. KOL/CUS/AIRPORT/KS/366-368/2024 dated 07.06.2024, which has upheld the Order-in-Original No. KOL/CUS/JC/AP/ADMN/37/2023 dated 12.07.2023, whereby foreign currencies comprising 710 pieces of Saudi Arabian Riyal of denomination 500 and 59 pieces of UAE Dirham of denomination 500, collectively valued at Rs. 73,17,300/-, were absolutely confiscated and penalties were imposed, inter alia, upon the present appellants under the provisions of the Customs Act, 1962.

2. The case of the Revenue originates from specific intelligence received by the officers of the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit, to the effect that two passengers, namely Shri Sagar Chakraborty and Shri Sunil Mahato, were scheduled to depart from Kolkata to Dubai by Flight No. FZ-460 on the intervening night of 01/02.10.2021 while carrying a substantial quantity of foreign currency in contravention of the applicable provisions of law. Acting upon such intelligence, the officers intercepted the aforesaid passengers in the departure area of the Netaji Subhas Chandra Bose International Airport, Kolkata.

2.1. Upon interception and examination of their baggage and personal effects in the presence of independent witnesses and after observance of the prescribed formalities, the officers recovered a total of 3,55,000 Saudi Arabian Riyals (710 pieces of denomination 500) and 29,500 UAE Dirhams (59 pieces of denomination 500), equivalent to Rs. 73,17,300/-, concealed in different bags and garments carried by the appellants. Out of the said

quantity, 3,15,000 Saudi Riyals and 29,500 UAE Dirhams were recovered from the possession and baggage of Shri Sunil Mahato, while 40,000 Saudi Riyals were recovered from the possession of Shri Sagar Chakraborty. Certain baggage items, mobile phones and travel documents were also seized as being connected with the attempted export of the foreign currencies.

3. Since neither of the appellants were able to produce any document evidencing lawful acquisition, possession, carriage or export of the foreign currencies, the same were seized under the reasonable belief that they were being exported in contravention of the provisions of the Customs Act, 1962 read with the Foreign Exchange Management Act, 1999 and the rules and regulations framed thereunder. The seized currencies were subsequently verified by officials of the State Bank of India, NSCBI Airport Branch, who confirmed their genuineness.

4. During the course of investigation, statements of both the appellants were recorded under Section 108 of the Customs Act, 1962. Inter alia, they stated that the currencies had been procured in cash from brokers operating in the grey market at Sudder Street, Esplanade, Kolkata, and that they intended to travel to Dubai for purchase of garments and related merchandise. The appellants further admitted that no documentary evidence was available with them in support of the acquisition of the foreign currencies. Statements were also recorded on subsequent occasions, wherein the appellants broadly reiterated their earlier versions.

5. Investigation by the DRI further extended to the examination of electronic evidence, including mobile phone data, text messages and CCTV footage. The investigation revealed alleged interactions between the appellants and Shri Rakesh Kumar Roshan, a Preventive Officer of Customs posted at the NSCBI Airport, Kolkata during the relevant time. According to the Revenue, the material collected during investigation disclosed an arrangement whereby the said Customs officer facilitated the appellants' movement through airport formalities despite knowledge of the foreign currencies being carried by them. The Revenue accordingly alleged active abetment on the part of the said officer in the attempted illegal export of the foreign currencies by the appellants.

6. Upon completion of investigation, a Show Cause Notice dated 23.03.2022 was issued proposing confiscation of the seized foreign currencies under the provisions of the Customs Act, 1962 and imposition of penalties upon Shri Sunil Mahato, Shri Sagar Chakraborty and Shri Rakesh Kumar Roshan. The said Show Cause Notice has thereby alleged contraventions of provisions of the Foreign Exchange Management Act, 1999 read with the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 as well as the provisions of the Customs Act, 1962 and the rules and regulations framed thereunder.

6.1. The noticees contested the allegations and participated in the adjudication proceedings.

7. Thereafter, vide Order-in-Original No. KOL/CUS/JC/AP/ADMN/37/2023 dated 12.07.2023, the adjudicating authority ordered absolute

confiscation of the seized foreign currencies under Sections 113(d) and 113(e) of the Customs Act, 1962 and, inter alia, imposed penalties of Rs. 5,00,000/- each upon Shri Sunil Mahato and Shri Sagar Chakraborty under Section 114 of the Act.

7.1. The aforesaid adjudication order dated 12.07.2023 was challenged by the appellants before the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata, who vide the Order-in-Appeal No. KOL/CUS/AIRPORT/KS/366-368/2024 dated 07.06.2024, has rejected the appeals so filed, thereby affirming the order passed by the lower authority.

7.2. Aggrieved by the order of absolute confiscation of the impugned foreign currency and the imposition of penalties on them under Section 114 of the Customs Act, 1962, Shri Sagar Chakraborty and Shri Sunil Mahato have filed the instant appeals.

8. The submissions advanced by the Ld. Counsel appearing on behalf of the appellants are as follows:-

(i) The Ld. Counsel vehemently disputed the allegation that the appellants had attempted to illegally export the seized foreign currencies. It was contended that the appellants were carrying the foreign currencies solely for the purpose of travelling to Dubai for procurement of garments, including burkhas, for their trading activities, and that no material had been brought on record to establish any mala fide intention beyond such stated purpose.

(ii) It was further submitted that foreign currency is not a notified item under Section 123 of the Customs Act, 1962; consequently, the burden of establishing that the seized currency was

liable to confiscation rested upon the Revenue and not upon the appellants

(iii) A specific grievance was raised that the adjudicating authority failed to properly consider the appellants' prayer for redemption of the seized foreign currency under Section 125 of the Customs Act, 1962. It was submitted that even assuming the confiscation to be sustainable, an option for redemption on payment of appropriate fine ought to have been granted. It was argued that the impugned order imposing absolute confiscation was disproportionate in the facts of the case, particularly when the seized goods were foreign currency and not prohibited goods per se In support of such contention, reliance was placed upon:

- *Felix Dores Fernandes v. Commissioner of Customs, ACC Mumbai [2000 SCC OnLine CEGAT 174 = 2000 (118) E.L.T. 639 (Tri.)];*
- *Prem Kumar v. Customs, 2016 (334) E.L.T. 498 (Del.);*
- *Raju Sharma v. Union of India [2020 (372) E.L.T. 249 (Del.)]*
- *Roshni Mathurdas Kothadia v. Commissioner of Customs, Hyderabad [2019 (369) E.L.T. 1784 (Tri.-Hyd.)];*
- *Commissioner of Customs, Lucknow v. Rajesh Jhamatmal Bhat [2023 (385) E.L.T. 657 (All.)].*

(iv) On the question of penalty, it was contended that the penalties imposed upon the appellants were hefty and disproportionate and thus a prayer was also made for reduction of the penalty imposed under Section 114 of the Customs Act, 1962.

8.1. In view of these submissions, the Ld. Counsel for the appellants challenged the findings recorded against them by the authorities below, praying that the seized foreign currencies be permitted to be redeemed on payment of an appropriate redemption fine under Section 125 of the Customs Act, 1962 and the penalties imposed on the appellants be set aside or reduced.

9. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us have opposed the above contentions and categorically submitted as follows: -

(i) It is submitted that the recovery of 3,55,000 Saudi Arabian Riyal and 29,500 UAE Dirham, collectively valued at Rs.73,17,300/-, from the possession of Shri Sunil Mahato and Shri Sagar Chakraborty is an admitted fact and remains undisputed throughout the proceedings. It was further emphasized that the appellants were unable to produce any documentary evidence whatsoever regarding the licit acquisition, possession or export of the said foreign currencies.

(ii) He specifically drew attention to the fact that the appellants themselves, in their statements recorded under Section 108 of the Customs Act, 1962, admitted that the foreign currencies had been procured from the grey market at Sudder Street, Esplanade through cash transactions and not from any authorized dealer or authorized person recognized under the Foreign Exchange Management Act, 1999. Such admissions, according to the Revenue, clearly establish violation of the statutory framework

governing acquisition, possession and export of foreign exchange.

(iii) It was further contended that the appellants neither possessed any permission from the Reserve Bank of India nor produced any evidence demonstrating compliance with the provisions of the Foreign Exchange Management Act, 1999, the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. In particular, the appellants failed to establish compliance with Regulation 3(iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2015, governing lawful possession and retention of foreign currency.

(iv) That in terms of Section 2(22) of the Customs Act, 1962, currency is included within the definition of "goods". Further, Section 2(33) defines "prohibited goods" to include goods whose import or export is subject to any prohibition under the Customs Act or any other law for the time being in force. Since the appellants admittedly failed to satisfy the statutory conditions prescribed under FEMA and the regulations framed thereunder, the seized foreign currency squarely falls within the ambit of prohibited goods. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Union of India v. Raj Grow Impex LLP & Ors. [Civil Appeal Nos. 2217-2218 of 2021 in SLP(C) No.14633-14634 of 2020 vide judgement dated 17.06.2021],* wherein it was held that the expression "any prohibition" occurring in the

Customs Act includes restrictions as well, and that non-fulfilment of statutory conditions governing import or export would render the goods liable to confiscation. Applying the ratio of the said judgment, the Revenue submitted that the seized foreign currencies were rightly treated as prohibited goods and confiscated under Section 113(d) of the Customs Act, 1962.

(v) It was additionally argued that the foreign currencies were not openly declared before Customs authorities as required under law and were found concealed inside handbags, trolley bags and garments carried by the appellants. Such conduct clearly demonstrated an attempt to export the currencies clandestinely, thereby attracting confiscation under Section 113(e) of the Customs Act, 1962 as well.

(vi) It is his further submission that the extensive investigation undertaken by the Revenue, including examination of mobile phone data, text messages, call records, CCTV footage and other contemporaneous evidence, revealed a deliberate and organized modus operandi adopted by the appellants for transporting foreign currency out of India. The investigation also disclosed active facilitation by co-noticee Shri Rakesh Roshan, Preventive Officer of Customs, whose role in assisting the movement of the appellants through the airport despite knowledge of the contraband nature of the currency further strengthens the Revenue's case and lends corroboration to the allegations contained in the Show Cause Notice.

9.1. In view of the above, it is the Revenue's stand that the order directing confiscation of the seized foreign currencies under Sections 113(d) and 113(e) of the Customs Act, 1962 is fully justified in law and further, that the appellants, having knowingly attempted to export foreign currency acquired through unauthorized channels and in contravention of FEMA and allied regulations, have rightly rendered themselves liable to penalty under Section 114 of the Customs Act, 1962. Accordingly, the Ld. Authorized Representative of the Revenue prayed for rejection of the appeals and for affirmation of the impugned orders.

10. Heard both sides and perused the documents placed on record before us.

11. We have carefully considered the rival submissions, perused the records of the case and examined the orders passed by the lower authorities. The principal controversy which falls for consideration at the present stage pertains to the confiscability of the impugned foreign currencies recovered from the appellants and the legal consequences flowing therefrom under the Customs Act, 1962 read with the provisions of the Foreign Exchange Management Act, 1999 and the regulations framed thereunder.

12. The facts, to the extent relevant, are largely undisputed. Acting upon specific intelligence, officers of the Directorate of Revenue Intelligence intercepted the appellants, namely Shri Sunil Mahato and Shri Sagar Chakraborty, in the departure lounge near Gate No. 10 of the NSCBI Airport, Kolkata on the intervening night of 01/02.10.2021 while they were scheduled to depart for Dubai by Flight No. FZ-460. Upon examination of their baggage and personal

effects, foreign currency comprising 3,55,000 Saudi Arabian Riyal and 29,500 UAE Dirham, collectively valued at Rs.73,17,300/-, was recovered from their possession. The recovery itself has not been disputed at any stage of the proceedings. Equally undisputed is the fact that the currencies were recovered in a concealed manner from different bags and garments carried by the appellants and that no declaration regarding the said currencies had been made before the Customs authorities.

12.1. It is further borne out from the records that upon being called upon to explain the source, acquisition and lawful possession of the impugned foreign currencies, the appellants failed to produce any documentary evidence whatsoever. The statements recorded during investigation reveal that the appellants themselves admitted to having procured the foreign currencies through brokers operating in the grey market at Sudder Street, Esplanade, Kolkata, and not from any authorised dealer or authorised person recognised under the statutory framework governing foreign exchange transactions. Significantly, despite repeated opportunities, no documentary trail in the nature of purchase invoices, authorised encashment certificates, banking records, RBI permissions or any other legally recognised instrument evidencing lawful acquisition of the foreign currencies could be produced either during investigation or during the course of adjudication.

12.2. At this juncture, it would be apposite to notice the statutory scheme governing possession and export of foreign currency. FEMA, 1999 is a self-contained legislation regulating foreign exchange transactions in India. The legislative framework

envisages that foreign exchange may be acquired, held, possessed or exported only in accordance with the provisions of the Act, the rules and regulations framed thereunder, and subject to the permissions granted by the Reserve Bank of India. The relevant regulations governing export and possession of foreign currency prescribe specific conditions and limitations regarding the acquisition, retention and export of foreign exchange. Such possession and export are not matters left to individual discretion but are statutorily regulated activities requiring strict compliance with the prescribed framework. In particular, Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 circumscribes the circumstances under which a person may export foreign exchange from India and contemplates such export only subject to the conditions, limits and permissions recognized under the FEMA regime and the directions issued by the Reserve Bank of India. The said provision reinforces the legislative intent that cross-border movement of foreign currency is permissible only through legally recognized channels and in strict conformity with the prescribed regulatory architecture. The said regulation is reproduced below for ease of reference: -

> *"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."***

12.3. The permissibility of taking foreign exchange out of India is governed by Regulation 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. To this extent, the relevant provision is reproduced below: -

> *"7. Export of foreign exchange and currency notes.*
> *... Any person may take or send out of India 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..."*

12.4. In the present case, the appellants have neither demonstrated that the impugned foreign currencies were acquired from an authorised person within the meaning of FEMA, 1999, nor have they established possession of any general or special permission issued by the Reserve Bank of India permitting export of such currency. Likewise, there is no material on record to indicate compliance with the applicable provisions governing possession and retention of foreign currency. The complete absence of documentary support assumes particular significance considering the sheer volume and value of the currencies involved. The explanation furnished by the appellants that the currencies were intended for procurement of garments and burkhas from Dubai remains a bald assertion unsupported by any contemporaneous material capable of inspiring confidence.

12.5. We further find that the investigative edifice built by the Revenue is not founded merely upon the recovery of the foreign currencies. The investigation proceeded substantially beyond the stage of seizure

and encompassed examination of electronic records, scrutiny of mobile-phone data, analysis of text-message exchanges, examination of travel-related circumstances and other corroborative material. The materials gathered during investigation were relied upon by the Revenue to establish a broader modus operandi involving facilitation of the attempted export of the impugned currencies through non-declaration and concealment. While the appeal of the said co-noticee is not before us, the fact remains that the investigation unearthed circumstances which lend considerable corroboration to the Revenue's allegations and substantially strengthen the case regarding the attempted illicit export of the impugned currencies.

12.6. Equally significant is the conduct of the appellants themselves. Not only were the currencies concealed in various bags and garments, but the appellants also admittedly failed to declare the same before the Customs authorities. The requirement of declaration is not a mere procedural formality; it constitutes an important component of the statutory mechanism designed to regulate and monitor cross-border movement of currency. Non-declaration, coupled with concealment and the absence of lawful acquisition documents, forms a chain of circumstances which cannot be lightly brushed aside.

12.7. The contention of the appellants that the Revenue has failed to establish the illicit nature of the currencies does not impress upon us since the issue in the present proceedings is not the genuineness of the currencies, which indeed stood verified by the State Bank of India authorities, but rather the legality of their possession and attempted export. Once the appellants admittedly failed to produce any evidence

demonstrating lawful acquisition from authorised channels and lawful entitlement to export the same in accordance with the governing statutory framework, the explanation offered by them remains wholly unsubstantiated.

13. Viewed cumulatively, therefore, the facts on record unmistakably disclose that the appellants were found in possession of substantial quantities of foreign currency intended for export; that the same were concealed and not declared before Customs; that no permission from the Reserve Bank of India or any supporting documentation evidencing lawful acquisition or lawful export was forthcoming; and that the investigation undertaken by the Revenue unearthed corroborative material pointing towards a deliberate attempt to circumvent the regulatory regime governing foreign exchange transactions. In such circumstances, we are unable to persuade ourselves to accept the contention that the impugned currencies were being carried in a lawful manner or that the proceedings initiated by the Revenue suffer from any fundamental infirmity.

14. In view of the foregoing discussion and for the reasons recorded hereinabove, we hold that the impugned foreign currencies, namely, 3,55,000 Saudi Arabian Riyals and 29,500 UAE Dirhams collectively valued at Rs.73,17,300/-, were sought to be exported in contravention of the provisions of the Foreign Exchange Management Act, 1999, the regulations framed thereunder and the provisions of the Customs Act, 1962, without any lawful authority, permission or documentary substantiation. Consequently, we find no infirmity in the conclusion reached by the lower authorities that the seized currencies were liable to confiscation under the provisions of Section 113(d)

and Section 113(e) of the Customs Act, 1962. Accordingly, the order of confiscation of the seized foreign currencies is upheld.

15. However, insofar as the question of absolute confiscation of the seized foreign currency is concerned, we are of the considered view that the same does not warrant absolute confiscation in the facts and circumstances of the present case. The issue is no longer res integra. In *Felix Dores Fernandes v. Commissioner of Customs, A.C.C., Mumbai [(2000) 118 E.L.T. 639 (Tri.)],* although foreign currency was found liable to confiscation under the provisions of the Customs Act, 1962 and ordered to be confiscated, the Tribunal observed that redemption of the same on payment of fine in lieu of confiscation is permissible. The relevant observation recorded by the Tribunal in the aforesaid decision is reproduced below: -

> *"8. Shri Deepak Kumar submits that the currency which is not lawfully acquired would become prohibited goods and therefore there is no need for offering a redemption. He however fairly concedes that to his knowledge these orders of the Government of India have not been challenged further. Shri Kantawala refers to order No. 298/97, dated 14 -3-1997. In this case undeclared currency on arrival was held to be liable to confiscation but was released on payment of fine of about 35%. Although the Government of India's orders do not have a binding effect on the Tribunal, as we have observed above, a radically different point of view taken by the Tribunal on the issue of redemption of foreign exchange would create an awkward situation where for lesser amounts, redemption is offered by the Government and for larger amounts, it would be denied by the Tribunal. We therefore, while upholding the orders of confiscation, permit redemption of the foreign exchange on payment of fine in lieu of confiscation of Rs. 4,00,000/-. No reduction is warranted in the quantum of penalty. On redemption the appellants would be required to follow the requirements of law in possessing and/or dealing with or disposing off the currency."*

15.1. In the case of *Pankaj Mittal & ors. v. Commissioner of Customs (Airport & Admn.), Kolkata decided vide Final Order No. 75458 of 2022 dated 10.08.2022 (CESTAT, Kolkata) [2022 SCC OnLine CESTAT 2655],* this Bench had the occasion to analyse an identical issue. In the said case, the Tribunal held the order of absolute confiscation of the seized currencies to be unwarranted and permitted redemption thereof, observing that all the facts and all the relevant surroundings factors as also the implication of exercise of discretion either are required to be properly weighed for taking a balanced decision. The relevant extract of the aforesaid order reads thus:-

> *"8. Coming to the Issue of allowing redemption of the confiscated goods, we find that the original authority as well as the appellate authority have ordered absolute confiscation of the currency and have Imposed penalty under Section 114. We find that learned Authorized Representative relied upon the cases, as cited above, and submits that the goods may not be released on payment of redemption fine. We find that the cases cited therein are not comparable. In the instant case, the Issue Involves an Individual who is travelling Abroad for his personal work. No business dealing are alleged or indicated. It is not the case of the Department that the appellant was aware of the provisions of the Rules and Regulations. Though by virtue of provisions of the customs act goods came to be liable for seizure, they cannot be equated with goods which were Impugned in the cases cited above. In this circumstances the observation of the Apex Court in the case of Rajgrow Impex LLP (supra) comes into play. It was held that the discretion has to be exercised judicially and, for that matter, all the facts and all the relevant surroundings factors as also the Implication of exercise of discretion either way have to be properly weighed and balanced decision is required to be taken. In the facts and circumstance of the case as discussed above we find that absolute confiscation is not warranted. Any punishment*

> *needs to be commensurate with the offence. Looking into the facts of the case and the submission of the appellants we are inclined to accept that the impugned currencies can be permitted to be redeemed on payment of suitable fine and penalty, further reason, should be reasonable."*

15.2. It may also be pertinent to refer to the ratio of the decision in the case of *Mohd. Ayaz v. Union of India [2003 (151) E.L.T. 39 (Del.)],* wherein the Hon'ble Delhi High Court has observed as follows: -

> *"7. In a case of this nature, where factual findings have been recorded about lack of bona fides, NRI status which we find to be unassailable, there is practically very little scope for interference with the conclusions arrived. But we find substance in the plea of the learned counsel for the petitioner about the quantum of fine being on the higher side. What would be the appropriate fine is to be decided on facts of each case. In the peculiar circumstances, we feel that redemption fine of Rs. 25,000/- would meet the ends of justice considering the value of currencies seized. Writ petition is accordingly disposed of."*

15.3. A similar view has also been expressed by the Hon'ble Delhi High Court in the case of *Raju Sharma v. Union of India [2020 (372) E.L.T. 249 (Del.)]* wherein the Hon'ble High Court observed that there was no illegality, much less perversity, in the decision to allow redemption of the seized currency on payment of redemption fine. The relevant paragraph of the above judgement is reproduced below for ease of reference:-

> *"18. At the same time, Mr. Amit Bansal sought to contend, the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was "prohibited", redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated.*

This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, In such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of ₹ 50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). 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 motives [Mangalam Organics Ltd. v. UOI (2017) 7 SCC 221 2017 (349) E.L.T. 369 (S.C.)). ***No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine*** *of 50,000/-. The Commissioner (Appeals) rightly refused to interfere with the said decision, and the Revisionary Authority, in an order which reflects total non-application of mind, chose to reverse the said decision."*

[Emphasis supplied]

15.4. Respectfully following the ratio laid down in the aforesaid decisions, while upholding the confiscability of the seized foreign currency, we are of the considered opinion that the ends of justice would be adequately served by permitting redemption of the same on payment of an appropriate redemption fine in lieu of confiscation. Having regard to the overall facts and circumstances of the case, the nature of the contravention and the value of the seized foreign currency and by relying on the decisions cited supra, we consider redemption fine equivalent to 10% of the value of the confiscated foreign currency to be fair, reasonable and commensurate with the gravity of the

offence. Accordingly, in lieu of confiscation, we permit redemption of the confiscated foreign currency on payment of redemption fine.

15.5. With regard to the aspect of quantification and apportionment of the redemption fine, it may however be relevant to take note of the respective roles and the distinct quantum of seizure attributable to each of the appellants herein. From an examination of the record, it is revealed that from the personal effects and possession of Shri Sunil Mahato (appellant no. 2), 3,15,000 Saudi Arabian Riyals (630 pieces of denomination 500) and 29,500 UAE Dirhams (59 pieces of denomination 500) were retrieved. The value of the currency recovered from him stands assessed at Rs.67,57,300/-, computed as on the date of seizure in alignment with the exchange rates prescribed under Notification No. 74/2021-Customs (NT) dated 16.09.2021, a fact explicitly codified at paragraph 21.1 of the Order-in-Original No. KOL/CUS/JC/AP/ADMN/37/2023 dated 12.07.2023. Further, the recovery effected from Shri Sagar Chakraborty (appellant no. 1), during the course of seizure, comprised 40,000 Saudi Arabian Riyals valued at Rs.7,60,000/-, which were assessed at Rs.7,60,000/- under the very same statutory notification and recorded in the paragraph 21.2 of the aforementioned Order-in-Original. Subsequently, in the voluntary statements recorded from the appellants, it was explicitly conceded by both of the aforesaid persons that a quantum of 1,50,000 Saudi Arabian Riyals recovered from the possession of Shri Sunil Mahato actually belonged to Shri Sagar Chakraborty. In the light of the above as well as the separate prayers preferred by the respective appellants for the release of their claimed currencies,

we deem it fit and proper to permit redemption of the seized currencies upon payment of segregated fines, as under: -

(a) The 1,65,000 Saudi Arabian Riyals and 29,500 UAE Dirhams claimed to be belonging to Shri Sunil Mahato / appellant no. 2 are permitted to be redeemed upon payment of a redemption fine of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) under Section 125 of the Customs Act, 1962.

(b) The 1,90,000 Saudi Arabian Riyals claimed to be belonging to Shri Sagar Chakraborty / appellant no. 1 are permitted to be redeemed upon payment of a redemption fine of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) under Section 125 of the Customs Act, 1962.

15.5.1. The order of confiscation thus stands modified to the aforementioned extent.

16. Having upheld the confiscability of the impugned foreign currencies to the extent indicated above and having found sufficient material on record to establish the involvement of the appellants in the attempted export thereof in contravention of the applicable statutory framework, we now proceed to examine the quantum of penalty imposed upon them under Section 114 of the Customs Act, 1962. As the appellants are involved in illegal export of the foreign currencies, the appellants are liable for imposition of penalties. However, considering the facts and circumstances of the case, we proceed to examine as to whether the quantum of penalties imposed thereof warrants any interference in this case.

16.1. In this regard, certain observations recorded by the Commissioner (Appeals) assume significance and merit reproduction:

> *"21. The ratio of judgments cited supra will be squarely apply to the facts and circumstances of present case. In the present case the impugned foreign currency was attempted to be take out India without a special or general permission of the Reserve Bank of India and without declaration before Customs as required under Section 77 of the Customs Act, 1962. Also the impugned currency was procured from persons other than authorized person as specified under The FEMA. The investigation and bank statement of the two intercepted person revealed that their economical condition did not justified the possession of huge foreign currency equivalent to INR 73,17,300/-. Shri Sunil Mahato and Shri Sagar Chakraborty had never filed Income tax returns, the two persons never had the financial wherewithal to deal with such high value foreign currencies and as such their submissions that they had purchased the seized foreign currencies by utilizing their savings amounting to Rs. 36 lakh and Rs38.09 lakh respectively to buy foreign currencies, has been nothing but an attempt on their part to mislead the investigating officer and hide the identity of the actual mastermind of the syndicate. Investigations into their financial status (moveable and immoveable properties) suggest that the two persons were never in a position to procure such huge amount of foreign currency by themselves. Investigation from the angle of finance also suggests that they were mere carriers rather than owner. Therefore, the impugned foreign currency is liable for absolute confiscation. Further Shri Mahato and Shri Sagar Chakraborty were served notice under section 150 of the Customs Act, 1962 asking them to state whether they had any objection to disposal of seized foreign currency. Both of them mentioned on the copy of the notice itself that they have no document to show the ownership of the foreign currency and as such have no objection to disposal of the same. In view of the fact that they have agreed for the disposal of the seized currency, I find that they have forfeited the option to redeem the seized currency under section 125 of the Customs Act, 1962."*

16.2. The aforesaid findings, which have not been effectively displaced before us, reveal an important facet of the matter. While the investigation unmistakably establishes the involvement of the appellants in the attempted export of the seized foreign currencies and consequently justifies both confiscation and penal consequences under the Customs Act, 1962, the same investigation simultaneously casts considerable doubt on the proposition that the appellants were themselves the actual financiers, owners or ultimate beneficiaries of the impugned foreign exchange. Indeed, the investigative exercise undertaken by the Revenue with respect to their financial status, movable and immovable assets, banking profile and economic capacity led to a conclusion that neither of the appellants possessed the financial wherewithal necessary to independently procure and deal with foreign currencies collectively valued at Rs.73,17,300/-. The Revenue itself has, at various stages, proceeded on the premise that the appellants were functioning as carriers in a larger arrangement rather than as the principal architects thereof. While such circumstance does not dilute the illegality attached to the attempted export, nor does it exonerate them from the consequences flowing therefrom, it nevertheless bears materially upon the question of proportionality of penalty. Penal provisions, though intended to deter contraventions, must also maintain a reasonable nexus with the nature and degree of participation established against the person proceeded against.

16.3. We further find that although the investigation conducted by the Revenue successfully establishes the attempted export of foreign currency acquired through unauthorized channels and transported in a concealed manner, the investigation has not conclusively identified the actual beneficiaries or masterminds behind the transaction. Equally, no evidence has been brought on record demonstrating that the appellants were the ultimate owners of the seized currency or stood to exclusively reap the financial gains arising from the proposed transaction. In such circumstances, and keeping in view the totality of the facts, the economic profile of the appellants as emerging from the investigation itself, and their apparently limited role in the larger chain of events, we are of the considered view that a measure of leniency is warranted on the question of quantum of penalty.

16.4. Accordingly, while we find no justification to interfere with the finding regarding liability to penalty under Section 114 of the Customs Act, 1962, we are of the considered opinion that the ends of justice would be adequately served by reducing the penalty imposed upon each of the appellants. Consequently, the penalty of Rs.5,00,000/- (Rupees Five Lakhs) each imposed upon Shri Sunil Mahato and Shri Sagar Chakraborty is reduced to Rs.2,00,000/- (Rupees Two Lakhs) each. The findings regarding liability to penalty are affirmed to this extent.

16.5. Thus, the penalties imposed upon Shri Sunil Mahato and Shri Sagar Chakraborty are reduced from Rs.5,00,000/- each to Rs.2,00,000/- each, as already observed supra.

17. In view of the above findings, we pass the following orders:

(i) The order of confiscation of the seized foreign currencies is upheld. However, we permit redemption of the said confiscated foreign currencies on payment of redemption fines of (i) Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) in respect of the 1,65,000 Saudi Arabian Riyals and 29,500 UAE Dirhams and (ii) Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) in respect of the 1,90,000 Saudi Arabian Riyals, in terms of the observations recorded at paragraph 15.5 of this Order. The order of confiscation is modified to the above extent.

(ii) The penalties imposed upon Shri Sunil Mahato (appellant no. 2) and Shri Sagar Chakraborty (appellant no. 1) under Section 114 of the Customs Act, 1962 are reduced from Rs.5,00,000/- (Rupees Five Lakh only) each to Rs.2,00,000/- (Rupees Two Lakh only) each.

18. The appeals are disposed of in the above manner.

(Order pronounced in the open court on **24.09.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd