**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 76811 of 2025**

(Arising out of Order-in-Appeal No. 345/GHY(A)/COM/CUS/SH/2025 dated 13.03.2025 passed by Commissioner of CGST, Central Excise & Customs (Appeals), Guwahati)

**Sri Masud Chowdhury,**
Ward No. 2, Nabadwip Chandra Nagar,
West Tripura-799181.

**Appellant**

*VERSUS*

**Commissioner of CGST, Central Excise & Customs(Appeals), Guwahati**
Guwahati-781001.

**Respondent**

**APPERANCE :**
Shri Pranab Shikdar, Advocate for the Appellant
Shri S.Debnath, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)**

**FINAL ORDER NO…76563…./2026..**

DATE OF HEARING : 08.10.2026
DATE OF DECISION :29.10.2026

**Per R.Muralidhar :**

The appellant Sri Masud Chowdhury was travelling on his motorcycle within Sonamura town, Tripura, he was intercepted during checking by the BSF, and Indian currency amounting to ₹9,50,000/- found in his possession was seized. The seized currency along with the motorcycle was thereafter handed over by the BSF to the Customs authorities for further proceedings. A Show Cause Notice came to be issued. After due process the lower authorities have confiscated the cash, vehicle and imposed penalty. Hence, the appellant is before the Tribunal.

2. The Ld. Consultant, appearing for the appellant makes the following submissions:

3. Para 1.1 of the Show cause Noticestates the BSF seizure report describing the circumstances of seizure, read:

*On 23.09.2023 at about 17:40 hours, BSF received specific information that an old motorcycle (red colour) was roaming near the Sonamura town area with the suspected currency of illegal transaction fitted in the cavity of the said bike. Acting on the said information, at about 1800 hours, the BSF party detained one Glamour bike bearing No. TR-07-6082, but the driver ran away, stopping the bike towards Sonamura's side and taking advantage of the public and some darkness. When the BSF party searched the detained Glamour bike in the new cover of the mudguard of the bike and the air filter, a bundle of Indian currency was found. The Up-Pradhan of Village N.C. Nagar was called by the BSF party on the spot and asked for the details of the bike and its owner. On verification from the Up-Pradhan, the owner of the said bike was Shri Mashook Mia, S/o Kadir Mia, R/o Ward No. 04, Village N.C. Nagar. Subsequently, the BSF party seized the goods as detailed below.*

*Indian Currency : 500/-x1900= 9,50,000/-*

*Hero Glamour Motorcycle bearing registration no Tr-07-6082: 01 No*

4. It is submitted that this is a case of Inland seizure by BSF and not any seizure by the Customs officials during any operation of smuggling.The report states that the motorcycle was "roaming near the Sonamura town area"; it does not state that the seizure was made at the international border.

5. This report contains no allegation or fact showing that the currency was being taken across the border or that any attempt to cross the customs frontier was made. No border crossing point, unauthorised route, destination, or intended export to Bangladesh is mentioned. The information was only regarding "suspected currency of illegal transaction", not currency intended for export.

6. It is submitted that mere concealment is not sufficient to pin the contravention on the appellant. Recovery of currency from the

motorcycle's cavity may raise suspicion, but does not establish an attempt to export.

7. The BSF report does not disclose any factual foundation for Section 113(b); the allegation of attempted export appears to have been subsequently inferred by the Customs authority rather than established from the contemporaneous seizure report.

8. That Para 1.3 of the SCN itself shows that the seizure was based merely on the allegation that the Indian currency was *"meant to be smuggled out of India through the international border."*Such an assumption of intended smuggling, without any actual or proximate act of attempted export, does not satisfy the statutory ingredients of Section 113(b) of the Customs Act, 1962. The BSF report records recovery of the currency within the Sonamura town area and does not disclose any crossing or attempted crossing of the international border or any act towards export. Thus, the seizure was founded on mere presumption and suspicion, without any lawful basis for treating the currency as goods liable to confiscation under Section 113(b).

9. That the impugned Order-in-Original is perverse, travels beyond the BSF seizure report and the allegations contained in the SCN, and proceeds on facts and circumstances which were never established against the Petitioner. The Original Authority, in paragraphs 4.4, 4.4.1, 4.4.2 and 4.4.3, has sought to justify confiscation under Section 113(b) merely on the basis that the Indian currency was concealed in the motorcycle, that the Petitioner allegedly fled from the spot, that no documents were available at the time of seizure, and that the place of seizure fell within an area declared vulnerable to smuggling under Notification No. 31/2008-Customs (N.T.).However, none of these circumstances, individually or cumulatively, establishes the essential ingredient of Section 113(b), namely, that the currency was actually being brought to a place for the purpose of being exported contrary to any prohibition/restriction under the Customs Act or any other law for the time being in force. More importantly, the BSF seizure report does

not record any such attempted export, while the SCN merely alleges that the currency was "meant to be smuggled out of India." The Original Authority has therefore travelled beyond the foundational facts in the seizure report and the SCN and has converted suspicion and inference into a finding of attempted export, thereby rendering the impugned order perverse and unsustainable in law.

10. Carrying Indian currency by itself is not prohibited under the Customs Act 1962.

11. The Ld Consultant relies on the case law of Manir Hossain Vs CCP Shillong – Final Order No.77412/2025 dated 15.09.2025 [Appeal No.C/75730 of 2022] on similar issue.

12. He also relies on the case law of **Sudarsan Jana** Versus Commissioner Of Customs (P), Kolkata, Final Order No. A/75852/KOL/2016, dated 9-8-2016 on similar facts.

13. Accordingly, it is prayed that the appeal may be allowed.

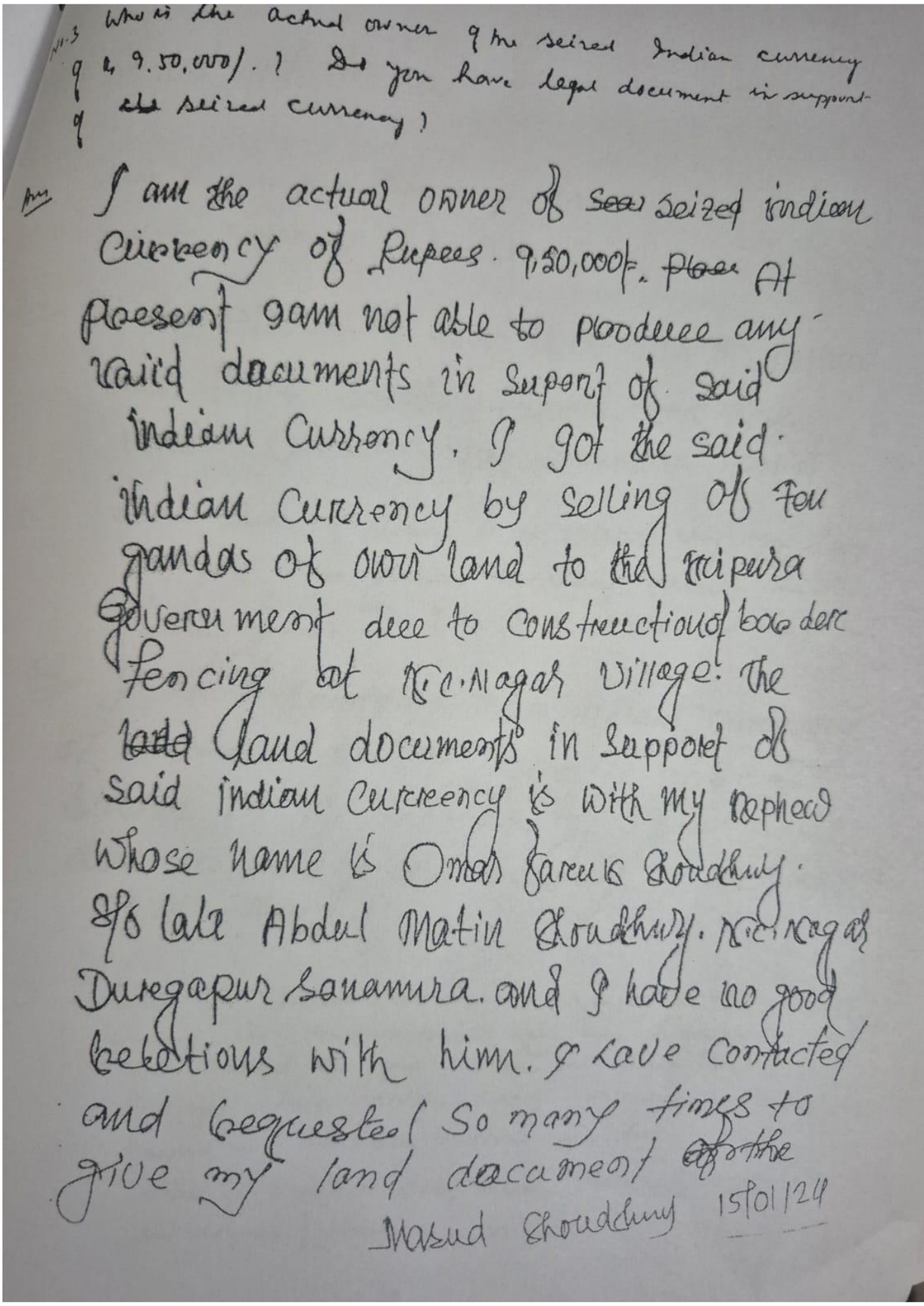
14. The Ld AR appearing for the Revenue reiterates with findings of the lower authorities. He submits that the appellant was suspiciously moving in the border area in the Hero Honda Motorcycle. On checking his vehicle it was found the Indian Rs.9,50,000 was concealed. Instead of offering any explanation for carrying such a huge amount of cash, the appellant ran away from the spot. This shows the guilty mind of the appellant. Hence, the Ld AR justifies the impugned order.

15. Heard both the sides.

16. Admittedly, the appellant was carrying Indian Currency in the motor cycle being driven by him. From the report given by the BSF, it is does not come out anywhere that he was trying to cross the border, or he was going near the border to deliver the same across the border. The

words used ‘meant to be smuggled’ are too generalized version, without any specific recording as to who was supposed to receive the cash, where it was to be delivered etc. So far as the appellant running away is concerned, naturally when someone is caught with such an amount of cash, he would be required to explain the source. This may also amount to offence under the Income Tax Act. But in the recorded statement, he has given his version of the source of cash. Here the issue involved is as to whether it was actually being smuggled out of India are not. We are not concerned with the legality of carrying the same in cash form under any other statute. Under the Customs Act 1962, it is required to be brought in clearly that there was an attempt to smuggle out this cash to the other side of the border, which is not coming out anywhere in the entire proceedings.

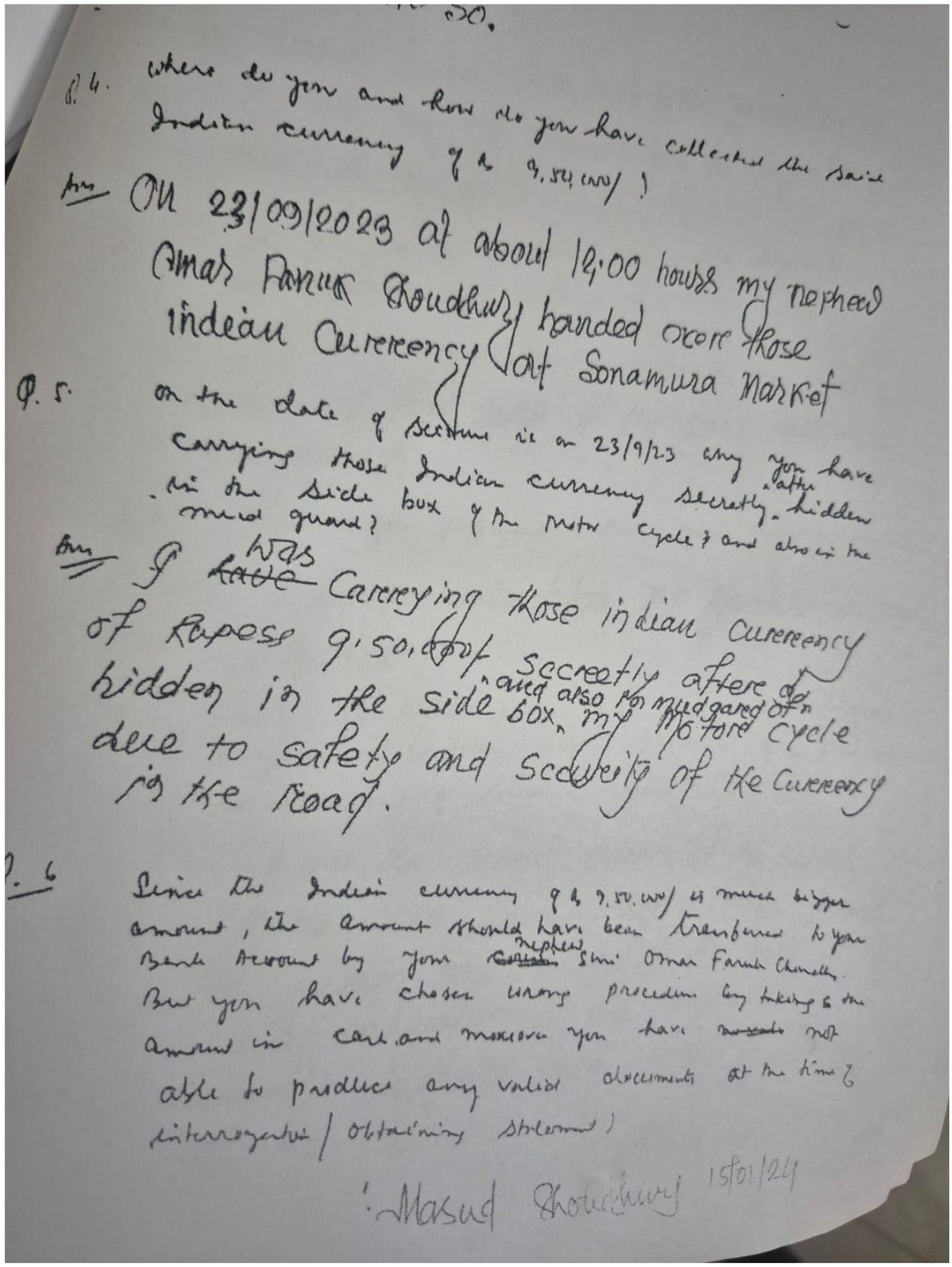
17. In the Interrogatory statement recorded on 15.01.2024, the appellant has stated as under:



Q.3 Who is the actual owner of the seized Indian currency of ₹ 9,50,000/-? Do you have legal document in support of the seized currency?

Ans I am the actual owner of ~~seen~~ seized indian Currency of Rupees 9,50,000/-. ~~Plase~~ At present I am not able to produce any valid documents in Support of said Indian Currency. I got the said Indian Currency by selling of few ganda of our land to the Tripura Government dure to Construction of boarder fencing at N.C. Nagar Village. The ~~land~~ land documents in Support of said indian Currency is with my nephew whose name is Omar Faruk Choudhury. S/o late Abdul Matin Choudhury. N.C. Nagar Durgapur Sonamura. and I have no good relations with him. I have contacted and requested so many times to give my land document of the

Masud Choudhury 15/01/24



Q.4. where do you and how do you have collected the said Indian currency of Rs 9,50,000/-?

Ans. On 23/09/2023 at about 12:00 hours my nephew Omar Faruk Choudhury handed over those Indian Currency at Sonamura Market

Q.5. on the date of seizure i.e on 23/9/23 why you have carrying those Indian currency secretly, hidden in the side box of the motor cycle and also in the mud guard?

Ans. I was carrying those indian currency of Rupees 9,50,000/- secretly, hidden in the side box, and also in mudgard of my motor cycle due to safety and security of the currency in the road.

Q.6 Since the Indian currency of Rs 9,50,000/- is more bigger amount, the amount should have been transferred to your Bank account by your nephew Shri Omar Faruk Choudhury. But you have chosen wrong procedure by taking the amount in cash and moreover you have not able to produce any valid documents at the time of interrogation / obtaining statement.

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18. It is seen that in his statement, he is giving the purported source of the cash and also has given explanation towards his keeping the same in a concealed way. This factual detail, combined with the fact the

Revenue has not come across any other person trying to receive the cash from across the border, makes the case of the Revenue difficult.It boils down to the carrying of cash only to the extent of 'attempt to smuggle' without any evidence to back up this claim of the Revenue.

19. Hon'ble High Court of Meghalaya in **Samir Saha Vs CCP, Shllong, 2020 (371) E.L.T. 189 (Meghalaya),** has held as under:

> ***13.*** *On perusal of sub-section (1), it is explicit that when any goods to which the Section applies are seized under the Act under a reasonable belief that they were smuggled goods, the burden of establishing that they were not smuggled goods, shall lie upon the person from whose possession the goods were seized. Sub-section (2) has applicability insofar as gold and manufactures thereof are concerned and to watches as well. However, the Central Government has been empowered to extend its applicability to any other class of goods by issuance of notification in the Official Gazette in that behalf.*
>
> ***14.*** *The Indian currency seized in the present case falls outside the ambit of Section 123 of the Act not being a notified item. However, by virtue of Section 121 of the Act, it is still liable to be confiscated provided it is as a result of sale proceeds of smuggled goods. In such a situation, the presumption contained in Section 123 of the Act would not be available to the Revenue which can be relied upon. Even though the provisions of the Evidence Act, 1872 (In short, the 1872 Act) are not applicable to proceedings under the Act, yet the broad principles and rule of evidence contained in Section 101 of the 1872 Act regarding 'Burden of proof' would place the initial burden on the Department to establish by producing material evidence that the Indian currency or the asset sought to be confiscated was a result of sale proceeds of smuggled goods. In other words, as per law governing onus to prove, it would lie on the Revenue to establish by producing cogent, material and convincing evidence that the Indian currency in possession of a person is on account of sale proceeds of smuggled goods and thus, liable to confiscation under Section 121 of the Act.*
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> ***15.*** *The question that requires determination in this appeal is whether the appellant from whose possession Indian currency amounting to 18,23,100/- was seized was as a result of sale proceeds of smuggled goods.*
>
> ***16.*** *It was incumbent upon the Revenue to have proved that the possession of Indian currency amounting to 18,23,100/- with the appellant was as a result of sale proceeds of smuggled goods. The Department has sought to proceed on the assumption that ordinarily, when Bangladeshi taka 3,32,335/- valued at 12,32,635/- was seized from the appellant, a normal inference would be to*

*presume that the possession of Indian currency of 18,23,100/- was as a result of sale proceeds of some smuggled goods or on account of dealings in Bangladeshi currency.*

***17.*** *However, the law nowhere envisages or raises any presumption in favour of the Department. The Revenue was required to produce material to have a reasonable belief that the Indian currency was on account of sale proceeds of smuggled goods. The Revenue respondent has not placed any material to substantiate that the seized amount of 18,23,100/- was on account of sale proceeds of any smuggled goods except to plead that inference ought to have been drawn against the appellant as there was admission on his part. The burden on the Revenue was required to be discharged by cogent material/evidence.*

***22.*** *In the present case, the appellant from whose possession cash of 18,23,100/- was seized had by preponderance of evidence shown that partly the amount was for the purpose of discharging the loan which was taken by him from his father-in-law.*

***23.*** *In the absence of any material to substantiate the allegation of the Revenue, the Additional Commissioner of Customs (Preventive), the Commissioner (Appeals) and the CESTAT were not justified in upholding the order of confiscation of the amount of 18,23,100/- and imposition of the penalty in respect thereof.*

***24.*** *In view of the above, the substantial question of law referred to and reproduced in para 5 is answered in favour of the appellant and against the Revenue relating to seizure of Indian currency of 18,23,100/-. The appeal stands disposed of accordingly.*

20. In another case the Kolkata Tribunal, in **Sudarsan Jana Versus Commissioner Of Customs (P), Kolkata**, **Final Order No. A/75852/KOL/2016, dated 9-8-2016 in Appeal No. C/75084/2016-DB, 2017 (357) E.L.T. 656 (Tri. - Kolkata)**, it is held as under:

**4.** *Heard both sides & perused the case records. The issues involved in the present proceeding are.*

*(i) Whether absolute confiscation of Rs. 59,41,550/- Indian currency has been correctly made by the Adjudicating authority under Sec. 113 of the Customs Act, 1962, by rejecting the claim of the appellant?*

*(ii) whether penalty has been correctly imposed upon the appellant under Sec. 114AA of the Customs Act, 1962 for making a false claim & submitting forged documents.?*

***4.1*** *So far as point at Para 4(i) above is concerned it is observed from the contents of the show cause notice dated 28-11-2014 that no evidence is existing in the body of the show cause notice as to why seized currency is liable to confiscation under Sec. 113 of the Customs Act, 1962. If the appellant is not the owner of the seized currency then how this currency was attempted to be exported out of India and by whom Adjudicating authority in his entire discussion & finding portion of the OIO dated 1-10-2015 has been justifying that claim of the appellant & the documents furnished by the appellant are faulty. In Para-Xi, on internal Page 11 of the OIO dated 7-10-2015, it is mentioned that confiscation of seized currency is proposed for 'illegal exportation of goods' when such a wording is not used at all in the charging paragraph on internal Page-5 of the show cause notice dated 28-11-2014. Another dimension added by learned AR appearing on behalf of the Revenue, is that currency brought into a 'specified area' notified under a notification is prohibited, when such an aspect has not been even touched by the Adjudicating authority. 'Specified area' specified and notified in Notification No. 31/2008-Cus. (N.T.), dated 25-3-2008 has to be read with Sec. 11H(C), Sec. 11H(e) & Sec. 123 of the Customs Act, 1962 before burden of proof can be said be lying on the appellant or any other person. As Indian currency has not been notified as specified goods under Sec. 11H(e) or notified under Sec. 123 of the Customs Act, 1962, it cannot be said that bringing of goods into a specified area are liable to confiscation. If the interpretation given by learned AR is accepted then each & everything brought into 'specified area' will be liable to confiscation. There is no evidence on record at all in the show cause notice as well as in the Adjudicating order as to how seized currency is liable to confiscation under Sec. 113 of the Customs Act, 1962. No subsection of Sec. 113 has been specified in the show cause notice under which Indian currency seized is charged to be liable to confiscation. Under the circumstances confiscation of seized Indian currency is not justified and order to that extent passed by the Adjudicating authority is liable to be set aside.*

***4.1.1*** *So for as ownership claim of the appellant is concerned it is observed that appellant has claimed the ownership of seized Indian currency, though belatedly, along with the source of licit acquisition of the same. Adjudicating authority in the last Para of discussion & finding also held that since no claimant has come forward the seized goods were designed to be illegally exported out of the country. Such an allegation is not contained in the show cause notice. It has been held by this Bench in the case of Md. Bellal Hossain v. CC (Prev.),*

*WB (supra) and Ekram S.K. v. CC (Prev.), WB (supra) that late filing of ownership claim does not affect the case of the person claiming ownership. Once no other claimant came forward then the claim of the present appellant can not be rejected and seized Indian currency cannot be held to be unclaimed. Adjudicating authority may be right in his observations that documents furnished by the appellant are not sufficient to establish licit acquisition of seized currency but that does not take away the right of the appellant to claim the ownership. In the absence of any other claimant there is no basis denying the ownership title of seized currency to the appellant. Customs Act, 1962 is not the statute for confiscation of seized currency only on the reason that legal acquisition of currency is not established by the appellant. Appellant in his statement dated 1-9-2014 during investigation stated the reasons for delay in staking his claim and also the source of the seized Indian currency. The version of the appellant was corroborated by other statements recorded and documents furnished by the appellant, except minor variations. In the light of above observations legal proposition of law & absence of any other claimant it is held that appellant is the rightful owner of the seized Indian currency. There is no evidence on record that seized currency was meant to be exported out of India. Only finding regarding confiscation of Indian currency; given by the Adjudicating authority in Para-xi on internal Page 11 of the OIO dated 7-10-2015, also does not throw any light as to why seized Indian currency is liable to confiscation. It is not established by the department that documents produced by appellant are forged & fabricated when the persons giving these evidences have confirmed the authenticity of the documents by giving Sec. 108 statements before the investigation. Further, there is no evidence on record that seized Indian currency was attempted to be exported out of India by the appellant as per case laws relied upon by appellant is Para 2.1 above. Accordingly absolute confiscation of the seized currency of Rs. 59,41,550/ is set aside and is ordered to be released to the appellant.*

***5.*** *So for as imposition of penalty under Sec. 114AA of the Customs Act, 1962 is concerned there is no evidence of forged nature of documents produced by the appellant except the analysis made by the Adjudicating authority. Customs Act, 1962 is not an enactment to penalise a person for forgery, if any. Secondly, it is already held above that claim of the appellant was not false in the absence of any other claimant. It is observed from the show cause notice dated 28-11-2014 that allegation of forging of documents was not at all made in the show cause notice. Adjudication order is thus also required to be set aside, as per Apex Court observations in Para-16 of case law CC, Mumbai v. Toyo Engineering India Limited (supra), on the grounds that Adjudicating authority has gone beyond the scope of show cause notice.*

> ***6.*** *In view of the above observations and settled proposition of law appeal filed by the appellant is allowed with consequential relief, If any.*

21. In the case law of **Manir Hossain** cited supra, this Bench has held as under:

> *3. Further it is recorded in the Show Cause Notice that on 20.11.2019 at about 17.30 hours specific information was received by the officers of the Custom Preventive for Sonamura from a reliable source that an Indian National who is actively involved in dealing in illicit conversion/Exchange of Bangladesh Currency (BD Taka) and other illegal activities would be carrying Indian currency notes valued at about Rs. 15,00,000/- only for the purpose of illegally exporting to Bangladesh through Rabindranagar unfenced border area at about 18.30 hours on 20.11.2019. Accordingly, an immediate interception team led to seizure of Indian currency notes valued at Rs. 15,00,000/- only.*
>
> *17. Admittedly the Rabindranagar is 3 km away from the border of Bangladesh border. In that circumstances, also the benefit of doubt goes in favour of the appellant.*
>
> *18. In view of this I hold that the Revenue has failed to prove that the appellant were involved in the activity of transportation of Indian currency illegally to Bangladesh. Therefore, the Indian currency seized from Shri Ali Hossain is not liable for confiscation as the Indian currency seized is not liable for confiscation, therefore, no penalty can be imposed on the appellant.*
>
> *19. In view of this the impugned order qua absolute confiscation of Indian currency and imposing penalty under Section 114 of the Customs Act, 1962 on the appellant is set aside.*
>
> *20. Therefore, I order to release the Indian currency of Rs. 15,00,000/- which is deposited to SBI seized from Shri Ali Hossain to the appellant as 6 Appeal No.: C/75730/202 Shri Ali Hossain in his statement stated that the impugned Indian currency belongs to the appellant.*

22. I find that the ratio laid down in the above case laws are squarely applicable to the facts of the present case.

23. Accordingly, I set aside the confiscation of the Indian Currency, Motor Cycle and penalty imposed in the impugned order and allow the appeal.

24. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on 29.10.2026 )

**(R.Muralidhar)**
**Member (Judicial)**

RG