CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

CUSTOMS APPEAL NO: 51745 OF 2025

[Arising out of Order-in-Appeal No: CC(A)CUS/D-1/Airport/915-923/2025-26 dated 26th August 2025 passed by the Commissioner of Customs (Appeals), New Delhi.]

Salt Experiences & Management Pvt Ltd
Plot no. 2A, First Floor, KH. No. 294, Kehar Singh Estate
Saidulajab Village, Lane No. 2, New Delhi - 110030 … ***Appellant***

versus

Commissioner of Customs (NS-V)
New Custom House, Near IGI Airport
New Delhi- 110037 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 51746 OF 2025

[Arising out of Order-in-Appeal No: CC(A)CUS/D-1/Airport/915-923/2025-26 dated 26th August 2025 passed by the Commissioner of Customs (Appeals), New Delhi.]

Hemant Dahiya
A-61 The Pinnacle, Horizon Drive
DLF 5, Gurugram, Haryana - 122002 … ***Appellant***

versus

Commissioner of Customs (NS-V)
New Custom House, Near IGI Airport
New Delhi – 110037 ***…Respondent***

APPEARANCE:

Shri Prakash Shah, Senior Counsel with Shri Vishnu Kant, Advocate for the appellants

Shri Ranjan Prakash, Commissioner (AR) and Shri Nikhil Mohan Goyal, Joint Commissioner (AR) for the respondent

WITH

CUSTOMS APPEAL NO: 51752 OF 2025

[Arising out of Order-in-Appeal No: CC(A)CUS/D-1/Airport/915-923/2025-26 dated 26th August 2025 passed by the Commissioner of Customs (Appeals), New Delhi.]

Amit Bali
K-806 Sheeshpal Vihar, South City-II
Sector – 49, Gurugram, Haryana - 122018 … ***Appellant***

versus

Commissioner of Customs (NS-V)
New Custom House, Near IGI Airport
New Delhi – 110037 ***…Respondent***

APPEARANCE:

Shri Karan Luthera and Shri Piyush Thanvi, Advocates for the appellant

Shri Ranjan Prakash, Commissioner (AR) and Shri Nikhil Mohan Goyal, Joint Commissioner (AR) for the respondent

AND

CUSTOMS APPEAL NO: 51807 OF 2025

[Arising out of Order-in-Appeal No: CC(A)CUS/D-1/Airport/915-923/2025-26 dated 26th August 2025 passed by the Commissioner of Customs (Appeals), New Delhi.]

Kumar Rajesh Raman
R/o G-362A Florence Villa, Sushant Lok-11
Sector –57, Gurugram, Haryana - 122001 … ***Appellant***

versus

Commissioner of Customs (NS-V)
New Custom House, Near IGI Airport
New Delhi – 110037 ***…Respondent***

APPEARANCE:

Shri Mohammad Faraz, Advocate for the appellant

Shri Ranjan Prakash, Commissioner (AR) and Shri Nikhil Mohan Goyal, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 50149-50152/2026

DATE OF HEARING: 15/12/2025
DATE OF DECISION: 21/01/2026

PER: C J MATHEW

Don't spend a dollar's worth of time on a ten cent decision'

said Peter Turla and, while that, for all purposes, may well be the urging of the appellants with their submission that proceedings under customs law is extra-jurisdictional, we can hardly luxuriate in that simple a thesis to dispose off complexity wrought not just by extant law but also from the torturous contours of regulating the primary form of money. From the factual matrix on record, we perceive an elaborate tapestry woven by the investigation into foreign currency (equivalent of ₹ 81,01,421 comprising 50409 US$, 30745 € and 25030 £) intercepted by security operatives on 20th August 2018 at the international departure terminal while screening Shri Amit Bali, one of the appellants herein and an employee of M/s Salt Experiences and Management Pvt Ltd, another of the appellants herein, as he was about to embark on a British Airways flight from IGI Airport, New Delhi.

2. It is a tapestry so ornate and striking that, leaving aside the legal warp, more than a mere glance is attracted. Apparently, at the behest of his company, he had been tasked with handling the travel, stay and business programme of another passenger on the same flight, Shri Pawan Kant Munjal, Chairman & Managing Director (CMD) of M/s Hero MotoCorp Ltd, which had a standing arrangement with M/s Salt Experience & Management Pvt Ltd for organizing travel and events outside India for promotion of automotive products to be billed 'all inclusively' in India; the contractual responsibility, obligating, *inter alia*, procurement of foreign currency to be carried as notes and other permitted instruments, had been ongoing for several years and not just for this client. As summarized in the impugned order[1] of Commissioner of Customs (Appeals), New Delhi, in addition to seized notes and another ₹ 51,77,564 equivalent of foreign currency, purportedly of similar transaction of the past recorded as scribblings found on his person, currency equivalent of ₹ 27,89,23,327 had allegedly been carried by seven employees[2], all noticees in the proceedings, including Shri Amit Bali and Shri Hemant Dahiya, Director in M/s Salt Enterprise & Management Pvt Ltd, over the years between 2014-15 and 2018-19, travel cards valued at ₹ 21,35,25,172 in the names of several employees that had been carried by Shri Bali in the past as also expending of currency equivalent of ₹ 3,72,64,700 recorded in a 'pen-drive'

[1] [order-in-appeal no. CC(A)/CUS/D-i/Airport/915-923/2025-26 dated 26th August 2025]
[2] [S/shri Mudit Agrawal, Amit Makker, Gautam Kumar, Vikram Bajaj and Ketan Kakkar]

recovered from the office of M/s Salt Enterprise & Management Pvt Ltd that were not reflected in the accounts, were dealt with in the show cause notice for contravention bearing liability to confiscation on the back of having violated instructions of the Reserve Bank of India (RBI) on carrying of currency in notes and travel cards out of the country.

3. The seized currency was confiscated absolutely in proceedings initiated by notice under section 124 of Customs Act, 1962, issued to the above as also to the aforesaid Shri Munjal and Shri Kumar Rajesh Raman, Chief Finance Officer (CFO) of M/s Salt Enterprise & Management Pvt Ltd, besides holding the alleged exports of the past, both from records as also from the 'pen-drive', to be liable to confiscation but, owing to non-availability, charging on M/s Salt Enterprise & Management Pvt Ltd, and individuals, 'fine in lieu' under section 125 of Customs Act, 1962. Penalties were also imposed under section 114 of Customs Act, 1962. Oddly, Shri Munjal was drawn in as 'beneficial owner' but, with the adjudicating authority opining to be superfluous owing to availability of 'owner', not found deserving of further continuation of proceedings against him. Oddly, too, the liability to confiscation, proposed in show cause notice, was invoked without demur by the adjudicating authority. Oddly, again, fine in lieu of confiscation has been imposed on persons and, that too, on several of them.

4. Insofar as the first oddity is concerned, the dropping of proceedings by the adjudicating authority was challenged before first appellate authority by the jurisdictional Commissioner of Customs which, on reversal to fasten detriments, was carried in appeal to the Tribunal by the individual and the setting aside thereof in *Pawan Munjal v. Commissioner of Customs [(2024) 20 Centax 318 (Tri.-Del)]* found approval in order[3] of the Hon'ble High Court of Delhi in *Commissioner of Customs, New Delhi v. Pawan Kant* and further affirmation of the Hon'ble Supreme Court as rightly dismissed for lack of point of law to be determined. The second and third lies before us to adjudge legal perspective in factual context. The first appellate authority took note of prohibition by regulation 5 and restriction by regulation 7 in Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, of the limit for retention in regulation 3 of Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, of provision in master circular[4] for surrender[5] of unspent foreign exchange and for drawal for private[6] and business trips[7] and ceiling on purchase and carriage of notes[8] to conclude that

> *'5.2.7 From the aforesaid provisions, I find that in the case of business trip where an employee is deputed by the company*

[3] [final order dated 5th October 2023 in CUSAA 3/2023]
[4] [6/2015-16 dated 1st July 2015]
[5] [A.14 *ibid*]
[6] [A.4 *ibid*]
[7] [A.9 *ibid*]
[8] [paragraph 2.3 *ibid*]

and expenses are borne by the company, ***there is no limit of obtaining foreign exchange;*** *however foreign exchange in the form of 'foreign currency note' can be obtained and taken out from India* ***upto the maximum limit of USD 3000 or equivalent*** *only.'*

and justified upholding of the confiscation thus

'5.2.8 I further observe that foreign currency even though is not specifically notified as prohibited item under the Customs Act, 1962, can be exported only subject to fulfillment of several conditions. I note that the export of foreign currency above the limit is per se restricted by virtue of Section 11 of the Customs Act, 1962. It cannot be argued that one of the main objectives of the Customs Act, 1962 is to prohibit the smuggling of goods. I find that Section 2(33) of Customs Act, 1962 while defining prohibited goods firstly brings within its dragnet all goods in respect of which a prohibitory notification or order which may have been issued either under Section 11 of the Customs Act, 1962 or any other law for the time being in force. However, a reading of the latter part of Section 2(33) clearly concludes that goods that were to be exported in violation of conditions under various laws in force would also fall within its ambit. I observe that foreign currency even though is not notified as a prohibited item under Section 11 of the Customs Act, 1962, can be exported only subject to fulfillment of several conditions. Export of foreign currency per se therefore is restricted and failure to fulfill these conditions while exporting makes such foreign currency prohibited goods.

5.2.9 From the harmonious reading of the aforesaid provisions, I note that without general or specific permission of RBI, export of 'foreign currency notes' exceeding limit of USD 3000 or equivalent is prohibited.'

before affirming absolute confiscation of currency equivalent of ₹81,01,421. We may note, for caution here, that

> *'(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…..'*

in section 2 of Customs Act, 1962, of itself, does not empower or confer power to confiscate absolutely even if goods have been imported contrary to any prohibition; the definition *supra* has not qualified the expression by 'with its grammatical variations and cognate expressions' and, therefore, assigns such meaning to be superimposed only where 'prohibited goods', in its entirety, is emplaced in the statute. Consequently, while such finding may enable discretion to confiscate absolutely, it cannot be hinged on or hung with 'prohibition' enabling confiscation to arrogate that alternative.

5. While setting aside the confiscability of ₹ 27,89,23,327, as obtained from records of appellant-company, on ground of unsustainability, as well as the confiscability of ₹ 3,72,64,700, ascertained from information on seized 'pen-drive', for want of tenable evidence on illegality of sourcing or export out of India, the impugned order has affirmed confiscability of ₹ 21,35,25,172, for having been carried as 'travel cards' by Shri Amit Bali, though issued to several other employees of M/s Salt Enterprise & Management Pvt Ltd, and by drawing upon

> *'A.23 ....Certain Authorised Dealer banks are also issuing Store Value Card/Charge Card/Smart Card to residents travelling on private/business visit abroad which are used for making payments at overseas merchant establishments and also for drawing cash from ATM terminals. No prior permission from the Reserve Bank is required for issue of such cards. However, the use of such cards is limited to permissible current account transactions and subject to the prescribed limits under FEM (CAT) Rules, 2000 as amended from time.'*

as restrict utilization only by persons to whom these were issued. Nonetheless, by drawing upon several judicial decisions, the fastening of fine on several persons was set aside to erase the third of the oddities *supra*. Some relief was granted insofar as penalties under section 114 of Customs Act, 1962 was concerned.

6. In sum, the detriments that remain are absolute confiscation of foreign currency equivalent of ₹ 81,01,421 and attendant penalties of ₹ 21,00,000 and ₹ 3,20,00,000 each on S/Shri Hemant Dahiya, KR Raman and Amit Bali under section 114 of Customs Act, 1962. And these are in appeal before us on the first and foremost ground that the proceedings initiated by the impugned show cause notice did not conform to the pre-requisite in section 124 of Customs Act, 1962 animadverting that the law, as it stands, has excluded competence of customs authorities to deal with purported offences under the Foreign Exchange Management Act, 1999.

7. Learned Authorized Representative set the ball rolling with

preliminary objections, some unarguably frivolous and others seemingly legal. It was contented that impugned foreign currency was handled by travelling outbound passengers as ‘baggage’ and, therefore, excluding purview of appellate jurisdiction under section 129A of Customs Act, 1962 by operation of first *proviso* therein. It was further contended that the prerogative of the respondent-Commissioner to file ‘memorandum of cross-objections’, as set out in section 129A (4) of Customs Act, 1962, would be jeopardized unless disposal of these appeals was deferred. Learned Senior Counsel for appellants urged us to discard both the propositions as attempt to re-visit settled law. He relied upon the decision of the Tribunal, in *re Pawan Munjal,* in which, and all through to the Hon’ble Supreme Court, objection to disposal other than under revision authority had been raised only to be invalidated.

8. The jurisdiction of customs authorities, enacted to be ‘proper officers’ in relation to ‘goods’ at the land, sea and air frontier, is claimed from ‘goods’ being inclusive of ‘currency’ and it is normal for passengers crossing ‘customs area’, in either direction, to carry ‘foreign currency’ for use or as unused respectively. There is no doubt that section 2(22) defines goods, and without any further elaboration thereto save as including

> *‘(a) vessels, aircraft and vehicles*
> *(b) stores*
> *(c) baggage*

(d) currency and negotiable instruments; and
(e) any other kind of moveable property;'

and, in so doing, has expanded from the common perception to articles intended to be accorded special treatment in the statute; at least, as far as the first three are concerned. It needs noting that 'inclusive' definitions are intended to offer clarity, even where propensity to be misconstrued is nearly improbable, that there is no cause for entertaining such misdoubt. 'Conveyances', 'stores' and 'baggage' are exempted from duties under Customs Act, 1962 which is enabled by first deeming these articles as 'goods'; the statute predates the enactment of Customs Tariff Act, 1975 with its exhaustive First Schedule and, with the then limited enumeration in predecessor tariff, uncompromised oversight of non-dutiable goods, necessary in the interests of integrity of customs control over customs areas, was enabled by the generality of the last of the enumerations. 'Currency' is not subject to duties; indeed, nowhere in the body of Customs Act, 1962 is 'currency' – Indian or foreign – alluded to and its deemed status as goods is attributable to legislative wisdom for furtherance of a purpose. We shall touch upon the purpose in a while but we are left in no room for doubt that 'currency' is not 'baggage' inasmuch as these have been independently enumerated with no provisioning elsewhere for 'baggage' to include currency. We may, therefore, fairly posit that 'currency', and not excluding all its surrogate forms, is not 'goods' and, while deemed to be so, is not 'baggage' certainly.

9. In *re Pawan Munjal*, it was held that

'35. The issue as to whether an appeal would be maintainable or not before the Tribunal came up for examination before the Tribunal in Commissioner of Customs, Kolkata vs. Vinod KR. Shaw [2003 (154) E.L.T. 205 (Tri.- Kolkata)]. The revenue had filed an application for rectification of mistake in the final order dated 15.05.2002 passed by the Tribunal for the reason that the Tribunal had no jurisdiction to decide a matter relating to confiscation of currency seized in view of the provisions of section 129A (1) of the Customs Act. This contention of the revenue was not accepted by the Tribunal and the relevant portion of the order is reproduced below:

> *"2. xxxxxxxxx. I agree with the appellants" contention that the provisions of Section 2(22) of the Customs Act which defines the goods makes a clear distinction between the baggage and currency. If the Indian Currency is included in the expression „baggage", there was no need to define the currency separately. I also find force in the appellants" contention that the charges against the appellants are under the provisions of Section 113(d) i.e. for misdeclaration. As such, I hold that the Tribunal was having jurisdiction to decide the matter. No merits are found in the Revenue's application and miscellaneous application is accordingly rejected."*

36. Thereafter, the matter was carried to the High Court by the Revenue and the Calcutta High Court in Commissioner of Customs vs. Vinod Kumar Shaw & Anr. [CUSTA No. 12 of 2003 decided on 14.12.2010] accepted the contention that the appeal would be maintainable before the Tribunal. The observations of the Calcutta High Court are as follows:

> *"Having heard the respective contentions, the point which has fallen for consideration in this matter is whether the learned Tribunal was competent to entertain, hear and decide the appeal under section 129A when the currency notes were seized and on the ground that the said currency notes were in baggage. Therefore, we set out the definition of goods as contained in section 2(22)(d) of the Act as being "currency and negotiable instruments". From a plain reading of the said section, it appears that the goods include varieties of items. Currency and negotiable instrument are two of the items and*

baggage is another separate item. Therefore, if any of the items is sought to be exported, then the application of the said proviso is possible. No doubt, here the question of jurisdiction is relatable to the question of fact. Factually in the miscellaneous application, it is mentioned that the baggage contained currency. According to us, the baggage and currency are different and when we read the definition of baggage separately, it would appear that the baggage includes unaccompanied baggage but does not include motor vehicles. Here, this baggage is completely different from the currency notes. Therefore, the learned Tribunal has not decided wrongly that baggage can be synonymous with the currency notes though Smt. Sarkar wants to persuade in other way. When the case proceeds on the basis of baggage it has to be understood whether the subject matter was baggage or not. The subject matter was Indian currency. We therefore uphold the decision of the learned Tribunal."

37. The Ahmedabad Bench of the Tribunal in Rajesh Kumar Ishwar Parikh vs. C.C.- Ahmedabad [Customs Appeal No. 10501 of 2019 decided on 11.12.2020] also examined this issue relating to maintainability of the appeal before the Tribunal and held that that the appeal would be maintainable. The observations are as follows:

"(A) As regard the maintainability of appeal before this tribunal I find that this tribunal has considered the very issue in the following judgments:-

- *Shambhunath Rana vs. Commissioner of Customs, Kolkata, 2003 Taxman 1152 (Kolkata-Cestat);*
- *Pankaj Kumar Tripathi vs. Commissioner of Customs, Mumbai, 2005*
- *Vijay Hemandas Java vs. Commissioner of Customs, Mumbai, 2005 (9) TMI 361 (Cestat-Mumbai); and*
- *Commissioner of Customs, Kolkata vs. Vinod Kr. Shaw, 2002 (12) TMI 390 (Cestat-Kolkata)*

9.1 In view of the above judgment there is no doubt that since the issue is of export of currency which is nothing but goods, this tribunal does have jurisdiction to entertain the present appeals."

38. There is, therefore, no force in the contention advanced by the learned authorised representative appearing for the

department that this appeal would not be maintainable before this Tribunal.'

which was affirmed by the Hon'ble High Court of Delhi in, *re Pawan Kant,* on appeal of jurisdictional Commissioner of Customs for deciding upon maintainability before the Tribunal and on conformity of respondent therein with 'beneficial owner', thus

'13. Assailing the aforesaid decision, Mr. Ojha, learned counsel for the appellant has firstly questioned the assumption of jurisdiction by CESTAT and submitted that since the subject matter of the appeal pertained to goods imported or exported as baggage, the same could not have been entertained by CESTAT in light of the Proviso to Section 129A.

xxxxx

15. We find ourselves unable to sustain the aforesaid submission bearing in mind the clear import and tenor of the SCN. The SCN did not affect the seizure of the foreign currency on the ground of a violation of the Baggage Rules or the declarations that are liable to be made by a traveler. The SCN itself invoked Section 113(d) of the Act as opposed to clause (h) of that provision. Clauses (d) and (h) of Section 113 read as follows: -

"113. Confiscation of goods attempted to be improperly exported, etc.

The following export goods shall be liable to confiscation:

xxxxxxxxxxxx

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

xxxxxxxxxxxx

(h) any [xxx] 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;"

16. Apart from the above, we are of the considered opinion that while the expression 'goods' as contained in Section 2(22) of the Act, includes baggage as well as currency, the exclusion contemplated under Section 129A clearly appears to be restricted to a seizure of goods which are sought to be imported as baggage. The expression 'baggage' as appearing in that provision would necessarily have to draw color from the provisions contained in Chapter XI of the Act.

17. The clear intent of clause (a) of the Proviso appearing in Section 129A(1) would appear to be intended to remove from the jurisdiction of the CESTAT only such matters which may pertain to violations of the Baggage Rules and declarations that are liable to be made in connection therewith. In any case and once the respondent themselves had asserted that the goods in question were liable to be confiscated in terms of Section 113(d), the objection taken to the maintainability of the appeal would not sustain.'

10. Our attention was also drawn to the order[9] of the Tribunal, in *Vicky Ramchand Asrani v. Commissioner of Customs, Mumbai* disposing of appeal[10] against affirmation of absolute confiscation in order[11] of Commissioner of Customs (Appeals-III), Mumbai, expounding upon the legal foundation for restrictive circumscribing of the excluded jurisdiction, owing to which coverage within tariff item 9803 0000 of First Schedule to Customs Tariff Act, 1975 offered only

[9] [final order no. 87527/2024 dated 19th December 2024]
[10] [customs appeal no. 87030 of 2024]
[11] [order-in-appeal no. MUM-CUSTM-PAX-637/2024-25 dated 16th August 2024]

jurisdiction in the Central Government to deal with cavil against orders of Commissioner of Customs (Appeals). We may safely hold that whipping up a storm over maintainability is, in the context and circumstances, nothing but flogging of a dead horse.

11. The plea for deferment of the proceedings till the deadline for filing 'memorandum of cross-objections' has passed appears to be hedge on a possibility that may not even be probable. Learned Authorized Representative was unable to furnish any correspondence on such contingency being under contemplation for the claim to have any credibility. The impugned order of 26th August 2025 had held two of the components of the detriments against the appellants to be indefensible with consequent manumission from fine under section 125 of Customs Act, 1962 besides reducing penalties; the competent Committee of Commissioners has not exercised its prerogative empowerment under section 129D of Customs Act, 1962 to direct challenge to this outcome as not being legal and proper. Doubtlessly, 'memorandum of cross-objections' offers 'kiss of life' but, without expanding the scope for cavil, merely lengthens the period of limitation. However, from

> *'(4) On receipt of notice that an appeal has been preferred under this section,* ***the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof****, file, within forty-five days of the receipt of the notice, a memorandum of*

> *cross-objections verified in such manner as may be specified by rules made in this behalf* ***against any part of the order appealed against*** *and such memorandum shall be* ***disposed of by the Appellate Tribunal as if it were an appeal*** *presented within the time specified in sub-section (3).' (emphasis supplied)*

in section 129A of Customs Act, 1962, it is unarguably clear that, should such response occur, the two are not to be bound to disposed off together. Be that as it may, such memorandum is limited to the extent that the impugned order allowed the plea of the appellant herein and, should that ever be filed, takes on the hue of an appeal which is amenable to disposal without referencing the decision emanating from this proceeding. Furthermore, there is no contest on the facts in the present proceedings; only that the acts of commission were within the ambit of law and that contravention of the law is beyond attendance by customs law. We are of the considered view that, in the context and the circumstances, plea for deferment has not been made in good faith.

12. It is common ground that M/s Salt Experiences & Management Pvt Ltd acted as 'third party' service provider to M/s Hero MotoCorp Ltd for arranging travel in connection with business as well events and meets outside the country for promoting the products of the latter. Naturally, such logistics involves expenditure that, as an entity in India, could be met only by payment in cash or having sufficient funds at their disposal. It would appear that their business model was hinged on

detailing employees to accompany the representatives of the client with sufficient access to funds for disbursement and for the client to be billed locally. The legality of sourcing of funds in ‘foreign currency’ from authorized dealers in India and being within the limits prescribed by Reserve Bank of India is not in dispute; concomitantly, that such expenditure on behalf of M/s Hero MotoCorp Ltd is in conformity with the laws of the land is also not in contention. The confiscation, and liability to confiscation, of ‘foreign currency’ seized from Shri Amit Bali, and ‘foreign currency’ pre-stored in ‘travel cards’ carried by Shri Amit Bali, respectively under section 113(d) of Customs Act, 1962 rest upon carriage of notes in excess of the prescribed ceiling of US$ 3000 in a single passage and upon the travel cards, with total currency represented therein not being contrary to any law notwithstanding, having been used by an employee other than employees of M/s Salt Experiences & Management Pvt Ltd to whom these had been issued.

13. Learned Senior Counsel, Mr Prakash Shah, contended that Shri Amit Bali had deposed that the ‘foreign currency’ handed to him with instructions to do so had not been converted into approved instruments owing to paucity of time and that it was clear that failure to do so was but a technical and condonable oversight. According to him, the amount involved was not in excess of total entitlement and that absolute confiscation coupled with harsh penalties was unwarranted. He further contended that there was no prescription mandating use of travel cards,

drawn for business purpose, only by persons named in the corresponding application. According to him, with restrictions on currency notes that could be carried and lack of wherewithal for issue of ‘travel cards’ except to individuals, travel cards could not be bound by such constraints as posited in the impugned order.

14. He further submitted that conformity with the Regulations issued under Foreign Exchange Management Act (FEMA), 1999 and master circular of Reserve Bank of India was academic as, in the scheme of regulation of foreign exchange after repeal of the erstwhile Foreign Exchange Regulation Act, 1973, customs officers were no longer empowered to exercise powers relating to accounting and oversight of ‘foreign exchange’ though appearance of continued competence to arrogate action as empowerment under Customs Act, 1962 did not appear to have been abdicated after de-criminalization of transactions. He asserted that, with legislative wisdom having restricted punitive action within the substituting statute that did not extend to empower customs authorities or proffer for prosecution under section 135 of Customs Act, 1962, such action by customs authorities was illegal, arbitrary and outright breach of rule of law. He relied upon the decision of the Hon’ble Supreme Court in *Machindranath Kernath Kesar v. DS Mylarappa & ors [AIR 2008 SC 2545]* holding that

> *‘16. When a law is enacted to consolidate and amend the law, the Legislature not only takes into consideration the law as it*

> *has then been existing but also the law which was prevailing prior thereto…..'*

15. Referring to decision of a Constitution Bench of the Hon'ble Supreme Court in *Ashoka Marketing Ltd v. Punjab National Bank [1990 (4) SCC 406]*, holding that

> *'One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary laws.). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34)'*

Learned Senior Counsel contended that the proposition therein, of Public Premises Act, 1971 prevailing over Rent Control Act, 1958 merely because of the former being in exercise of authority under Union List and the latter under Concurrent List, was disapproved by the Hon'ble Supreme Court but, having accorded the same source yardstick to both, accorded precedence to the former on the principle *supra* by which the claim of customs authorities of provision for invoking section 113 (d) of Customs Act, 1962 must fail.

16. That the power vested, by delegation[12] under Foreign Exchange Management Act, 1999, in customs officers to inquire, seize and adjudicate on the spot in airports in relation to 'foreign currency' in the hands of passengers, did not flow from Customs Act, 1962 and only for a limited purpose was, according to Learned Senior Counsel, clear reflection of legislative intent in enacting the Foreign Exchange Management Act (FEMA), 1999 as a comprehensive, self-sufficient legislation and in support of which he placed the record of correspondence[13] from Enforcement Directorate as below:

> *'SUB : EMPOWERING OFFICERS OF CUSTOMS AND CENTRL EXCISE UNDER SECTION 38 OF FOREIGN EXCHANGE MANAGEMENT CT, 1999-REGARDING.*
>
> *Sir,*
>
> *The FERA, 1973 stands repealed w. e. f. 1.8.2000. However, certain restrictions were imposed on import and export of currencies and bullion by virtue of Section 13 and 67 of the repealed Act. The restriction were imposed by or under Section 13, 18 (1) (a), 18 (A) and 19 (1) (a) of the repealed Act. In regard to these sections, it was stipulated that Section 11 of the Customs Act, 1962 and all provision is of that Act shall have effect. Application of the Customs Act was provided on the grounds that the Customs Act, 1962 and FERA, 1973 were in parameter with each other in terms of criminal liability. Since the concept of criminal liability has changed into civil liability there is no provision analogous to Section 13 and 67 of the repealed Act under the new law i.e. FEMA, 1999.*

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[12] [standing order no. 1155(E) dated 26th December 2000]
[13] [letter dated 12th July 2000 from F No. DLA1 (S)/FEMA/Circular/2000]

In regard to import, export and holding of currency at the airports etc. Offences are defected on day to day basis and it requires on the sport investigation and adjudication. It would be desirable if the Central Govt may, by order and subject to such conditiond and limitations as it things fit to impose, authorize officers of Customs and Central Excise at an appropriate level to exercise such of the powers and discharge of the duties as may be stated in the order. This may be done in exercise of powers under section 38 of FER by authorizing officers of the Customs and Central Excise to take up investigation and adjudication for the contravention referred to in Sections ...(g) and 7 (1) (a) of the said Act. For this purpose draft orders ...are enclosed for consideration.

There seems to be some inconsistency within the provisions of the FEMA. For instance, an appeal to the Special Director (Appeals) lies under Section 17 against the orders made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement. However, there is no redress provided for orders passed by the officers of Customs and Central Excise. Section 17 (2) may therefore, be amended as under:

> *(2) "Any person aggrieved by an order made by the Adjudicating Authority, being Assistant Director of Enforcement or a Deputy Director of Enforcement or an Assistant Commissioner of Customs and Central Excise or a Deputy Commissioner Of Customs and Central Excise or Joint Commissioner of Customs and Central Excise may prefer an appeal to the Special Director (Appeals)"*

It is further suggested that till section 17 of FEMA is suitably amended, the Central Govt my remove the difficulty by under Section 45 of FEMA.

It is further noticed that the Central Govt is to issue order under Section 16 (3) of FEM authorizing every Assistant Director of Enforcement to file complaint before the Adjudicating Authority.

(Copy of the draft order D-III is enclosed). The said order may please be issued in order to give effect to the provisions of FEMA. Identical order will also be required for the Assistant Commissioner of Customs and Central Excise as well as for the Assistant Directors of the Director rule of Revenue Intelligence.

Yours faithfully,
(K.R.BHARGAVA)
SPECIAL DIRECTOR OF ENFORCEMENT
ENCL : AS ABOVE

to Additional Secretary in Department of Revenue, Government of India as genesis of note of discussion below

xxxxx

Subject: Authorisation of Customs and Central Excise Officers under Foreign Exchange Management Act, 1999,

2. This is; with reference to note above of AS(Admn.) and Chairman, CBEC regarding empowerment of Customs and Central Excise officers under the Foreign Exchange Management Act, 1999 (42 of 1999).

2. The note of Under Secretary (Ad.IC) refers has been made of the letter of Shri K.R. Bhargava, Special Director of Enforcement addressed to Shri G.C. Srivastava, Addl. Secretary (Admn.), Department of Revenue, Ministry of Finance, in which certain, recommendations have been made. These recommendations are as follows:-

1. The Special Director of Enforcement, in his note has pointed out that with the repeal of the Foreign Exchange Regulation Act, 1973 with effect from 1.6.2000 certain problems had arisen due to the fact that the concept of criminal liability has changed into civil liability under the new enactment. Particularly there was no provision analogous to Section 13 and Section 67 of the Repealed Act under the new enactment. The recommendation made was that the Central Government may subject to certain conditions and limitations authorize officers of Customs and Central Excise at an appropriate level to exercise some of the powers and discharge, some of the duties. For this purpose Special Director, Enforcement

has also put up two draft orders, one with regard to investigation work and one with regard to adjudication.

2. Another recommendation is that Section 17(2) may be amended making the provision that appeals may be filed against adjudication orders passed by Assistant Commissioner of Customs/Deputy Commissioner of Customs/Joint Commissioner of Customs and Central Excise to the Special Director of Enforcement (Appeals).

3. In the last para of his letter, the Special Director has recommended issuing of orders under Section 16(3) of FEMA authorizing every Assistant Director of Enforcement to file complaint before the Adjudication Authority and he has further recommended that identical orders will also be required for the Assistant Commissioner of Customs and Central Excise as well as for the Assistant Directors of the Directorate of Revenue Intelligence. The above recommendations have been submitted with the approval of Director of Enforcement

4. Under Secretary (Ad.IC), in his observations has stated that the matter with regard to point No. 1 of his note could pend because necessary orders have not been issued in respect of the officers of the Enforcement Directorate also.

5. He has also further said that the proposals have been deferred till a consolidated proposal about likely changes in the Act is considered.

6. Member (L&J) is requested to see portion sidelined 'X' in the letter of Special Director, Enforcement. These offences keep occurring on a day-to-day basis if not hourly basis at all exit points like Air Ports, Land Borders, Sea Ports etc. The observation at N.S. 1 that the matter should pend can have extremely dangerous consequences not only from the point of view of the economy but also from the point of National Security. It is an established fact as stated by our own Intelligence and National Security Agencies but also corroborated by Foreign Intelligence Organisations that large scale crimes pertaining to currency matters as well as

Foreign Exchange racketeering are being indulged in by forces inimical to the country's security. Foreign Exchange manipulation and crimes are today not limited only to the big metropolitan cities but are well spread out through out the country even in mofussil towns and remote villages. It is also well established feet that the Directorate of Enforcement does not have the 'necessary manpower resources/organization to maintain stringent supervision '(which is a dire necessity) over the whole country - and as such necessary provisions were there in the Repealed Act to give powers to agencies like Customs and Central Excise, Revenue Intelligence, etc. who have their persons throughout [he length and breadth of the country and were in a position to deal with crimes pertaining to Foreign Exchange even in remote areas. Any delay to issue necessary orders under the relevant Section i.e Section 38 of the Foreign Exchange Management Act could be fraught with- very negative consequences from a point of view of the National Security and National Interest.

7. To create the enactment without providing it with the necessary instruments/powers for its enforcement will only result in rendering the enactment totally ineffectual. This also deals with proposals No.2 & 3 which are an adjunct of the proposal No.1 of the Under Secretary's note. With regard to the points raised in points No. 4 & 5 of (he Under Secretary's, note also keeping in view the facts given above giving the necessary authorization under Section 16(3) of FEMA by the Central Government need not also be delayed unless there is a legal impediment for which, of course, the Ministry of Law can be consulted. There is however, little chance that a legal impediment may exist.

8. Submitted please.

(LAKHINDER SINGH
JS (LEGAL)
11.08.2000

MEMBER (L&J)

Chairman may kindly see his remarks at page 2 of the file F.No. 1/2/2000-Ad.IC received from the Hqrs. Admn. The matter has been examine. In this regard, notes at page 3 & 4 above may also be seen. The issue in brief is authorisation of the Customs officers under relevant sections of FEMA.*

2. It has been brought to our notice that after FEMA had come to force, in certain cases of seizure of currency at the airport, the Customs officers could not seize the currency as they had not been notified as the proper officers under FEMA. Unless these powers are given to the Customs officers both for the purpose of seizure and investigation and also adjudication, every single case will have to be referred to the Enforcement Directorate which may not be a very convenient way of dealing with the situation.

3. Under FERA, the Customs officers were exercising powers, mainly with regard to import, and export of currency, declaration of value for export consignments transfer of security and export of goods, on hire and lease. While all the four activities mentioned are still covered under FEMA, the last two activities are not much important in the context of liberalisation and the Customs officers will be concerned with such transactions in no very rare cases. It is, therefore, felt that the Customs officers can be authorised under the FEMA in respect of import and export of foreign exchange and export of goods. These two are covered under the provisions of sections 6(3)(g) and 7(l)(a) of FEMA [F 'A' & 'B'].

4. The proposal received from the Enforcement Directorate also concerns these sections. The powers necessary for the Customs officers will be those of investigation of the offences, reference of these cases by complaint to the adjudicating authority and adjudication of these cases. For this notifications will have to be issued under sections 16(1) [for appointment of the

adjudicating authorities], 37(2) [for giving powers of investigation] and [for making a complaint to the adjudicating authority].

5. We may accordingly, communicate our concurrence about the issue of the proposed notification to Ad.I Section. As the matter concerns Member (Anti-Smuggling) and Member (Customs) also, they may also see before the file goes to the Chairman.

(A.K.Pande)
Member (L&J)
11-8-2000

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F.No. 1/2/2000-Ad.I-C(Pt)
Government of India
Ministry of Finance
Department of Revenue

Subject : Notifications under the Foreign Exchange Management Act, 2000.

Consequent on coming into force the new legislation, viz., FEMA, certain notifications and orders were issue to give effect to the provisions of the said Act. The Directorate of Enforcement has sent a letter requesting for issue of orders/mooting amendments in the Act on the following points:-

1) *Orders under Section 38 (a) of FEM authorizing officers of Customs and Central Excise to take up investigations of cases of contravention as referred to Section 6 (3) (g) and Section 7 (1) of the Act.*

2) *Authorizing officers of Customs and Central Excise (Joint Commissioners, Additional Commissioners and Commissioners) and officers of Directorate General of Revenue Intelligence, under Section 16 (1) of FEMA to adjudicate cases on the lines of orders issued in respect of officers of Enforcement Directorate.*

3) *Amendment in Section 17 (2) of FEMA making provision that appeal maybe filed against the adjudication order passed by an Assistant Commissioner of Customs/Deputy Commissioner/Joint Commissioner of Customs and Central Excise in their capacity as Adjudicating Authority under FEMA.*

4) *Issue of an order under Section 16 (3) of FEMA authorizing every Assistant Director of Enforcement to file complaint before the Adjudicating Authority.*

5) *Issue of an identical order (as proposed at 4 above) in respect of Assistant Commissioners of Customs and Central Excise and Assistant Directors in the Directorate General of Revenue Intelligence.*

2. Section 38 authorizes the Central Government to issue orders subject to such conditions and limitations as the Government thinks fit to impose, authorizing the officers of Customs and Central Excise to exercise such of the powers of Director of Enforcement or any other officer of Enforcement as may be stated in the Order. In this connection it m be stated that even in respect of the officers of the Enforcement Directorate, such an order has not been issue and the proposal has been deferred till a consolidated proposal about likely changes in the Act is considered. It is, therefore, submitted for consideration whether this proposal may also be taken up along with the said proposal.

3. As regards proposal at S.No.2 and 3 is concerned, it is proposed that this may also be taken up along with the consolidated proposal.

4. Regarding proposal at 4 and 5 above, it may be stated that at present the Adjudicating Authorities are adjudicating cases which have been investigated for offences under FERA. As such, authorizing Assistant Directors of Enforcement to file complaints,

may not be required because the existing provisions under FERA will be in force for a period of two years. Such an authorization would be required where the cases are to be adjudicated for offences under FEMA. That stage has not yet come as offences under FEMA should first be investigated and then a complaint is to be filed before the Adjudicating Authority. Therefore, this proposal may also wait for some time and may be taken up for consideration along with the consolidated proposal.

5. A.S.(A) may kindly see for consideration and further orders.

(V.P.Arora)
U.S.(Ad..I-C)

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F.No.l/2/2000-Adj-C(Pt)

Subject:- Notifications under the Foreign Exchange Management Act, 1999.

This is a proposal of the Directorate of Enforcement to authorise certain officers of the Directorate as also the officers of Customs & Central Excise/DRI to exercise powers/perform functions under the provisions of Foreign Exchange Management Act, 1999. The Directorate has sent a letter requesting for issue of orders/mooting amendments in the Act on the following points:-

1) Orders under Section 38(1) of FEMA authorising officers of Custom and Central Excise/DRI to take up investigations of cases of contravention as referred to in Section 6(3)(g) and Section 7(])(a) of the Act.

2) Authorising officers of Customs and Centra! Excise (Joint Commissioners, Additional Commissioners and Commissioners) under Section 16(1) of FEMA, to

adjudicate cases on the lines of orders issued in respect of officers of Enforcement Directorate,

3) Amendment in Section 17(2) of FEMA making a provision that appeal may be filed against the adjudication order passed by an Assistant Commissioner of Customs/Deputy Commissioner/Joint Commissioner of Customs and Central Excise in their capacity as Adjudicating Authority under FEMA.

4) Issue of an order under Section 16(3) of FEMA authorising every Assistant Director of Enforcement to file complaint before the Adjudicating Authority.

5) Issue of an identical order (as proposed at 4 above) in respect of Assistant Commissioners of Customs and Central Excise and Assistant Directors in the Directorate General of Revenue Intelligence.

2. Section 38 of FEMA authorises the Central Government to issue orders, subject to such conditions and limitations as the Government thinks fit to impose, authorising the officers of Customs and Central Excise to exercise such of the powers of Director of Enforcement or any other officer of Enforcement as may be stated in the Order. The E.D. has stated that with the repeal of FERA, certain problems had arisen due to the fact that the concept of criminal liability has changed into civil liability under the new enactment. There is no provision analogous to Section 13 and Section 61 of FERA under the new Act. It has been added that in regard to import, export and holding of currency at the airports etc. offences are detected on day-to-day basis and it requires on the spot investigation and adjudication, Since the Directorate does not have the necessary manpower resources/organisation to maintain supervision over the whole country, it has been proposed to authorise the officers of Customs and Central Excise at an

appropriate level to exercise such of the powers and discharge such of the duties as may be stated in the order.

3. The second proposal is to amend Section 17(2) of FEMA authorising Assistant Commissioners/Deputy Commissioners/Joint Commissioners of Customs and Central Excise to exercise the powers of adjudication against whose orders appeal would lie to the Special Director (Appeals). The E.D. has mentioned that till Section 17 of FEMA is suitably amended, the difficulty may be removed by an order to be issued under Section 45 of FEMA. Section 45 (1) is reproduced below ;-

> *If any difficulty arises in giving effect to the. provisions of this Act, the Central ; Government may, by order, do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty.*

4. Section 16(3) of FEMA, which is reproduced below, stipulates that -

> *No Adjudicating A uthority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.*

5. Accordingly, the Directorate has proposed to authorise Assistant Directors of Enforcement to file complaints before the Adjudicating Authorities. Identical order is also required to be issued in respect of officers of the Customs and Central Excise/DRI.

6. The file was shown to the Chairman, CBEC, for his advice about empowering their officers. The matter was placed before the Board. The views expressed by them are contained in the note on pages 6-9/cor. The CBEC has concurred with the proposed authorisation and has stated that issue of necessary notifications should not be delayed.

7. While notifications on the lines of the drafts submitted by the E.D. may be issued after vetting by the Law Ministry/approval

of MOS(R), it may be pointed out that the designations of officers in the Customs & Central Excise were changed during the last year. The then existing Assistant Commissioners (pay scale Rs.10,000-15,200) were designated as Deputy Commissioners and the then Deputy Commissioners (pay scale Rs.12,000-16,500) are called Joint Commissioners. The present Assistant Commissioners are in the pay scale of Rs.8,000-13,500. In the Enforcement Directorate, the designations have not been changed and the lowest

post in the executive side in Group 'A' is that of Assistant Director (pay scale Rs.10,000-15,200). As such, the powers of adjudication have been proposed to be given to the Joint Commissioners of Customs & Central Excise (who are equivalent to Deputy Director of Enforcement) and above.

9. So far as filing of complaints before the Adjudicating Authorities in terms of Section 17(2) is concerned, the Assistant Directors of Enforcement and Deputy Commissioners of Customs & Central Excise/Deputy Director of Revenue Intelligence (who are equivalent to Assistant Director of Enforcement) may be authorized.

10. Accordingly, draft orders are submitted for consideration and approval of MOS(R). These will also be shown to the Law Ministry for vetting.

V.P.Arora)
U.S.(Ad.I-C)'

17. Learned Senior Counsel submitted that, on facts, the appellant-company had drawn 'foreign currency' for meeting business expenditure abroad and that such drawals were without limit. He submitted that, even individuals, were permitted to transfer US$ 250,000 every financial year and, hence, there was no contravention of

instructions, regulations or orders under Foreign Exchange Management Act (FEMA), 1999. According to him, technical errors that do not infringe upon the purpose and intent of enabled transfer of funds are condonable and have been improperly used for harsh consequences. He submitted that the confiscation be vacated and penalties set aside.

18. Learned Authorized Representative narrated the facts and the focus of investigation which was the foundation on which the adjudicating authority held the several episodes of transfer of 'foreign currency' outside the country in a manner contrary to the intent of the law. Besides hearkening for us the relevant provisions of Foreign Exchange Management Act, 1999, attention was drawn to Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and regulation 3 of Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 as well as the master circular that were relied upon by the lower authorities. In particular, we were urged to uphold the order for carriage of more than US$ 3000 in cash by Shri Amit Bali and for misuse of 'travel cards' by Shri Amit Bali. Reliance was placed on the decision in *Fayaz Gulam Godil v. Commissioner of Customs (CSI Airport), Mumbai [2015 (2) TMI 176 –CESTAT MUMBAI]*. We have considered the impugned order in detail and draw upon the referred portions at the relevant places.

19. Learned Senior Counsel has alluded to the conformity of the drawals with extant instructions and that, being drawn for business purpose, such sourcing is without limit. The procurement of foreign currency has not been faulted by the lower authorities and, in absence of allegations thereto, must be accepted as in the clear. It is only the excess cash carried by Shri Amit Bali on the one occasion that appears to be the bone of contention. The use of 'travel cards' have been held to be prohibited but it is moot if these can be held as liable to confiscation merely relying upon statements and without reference to the Reserve Bank of India (RBI) on the flexibility or inflexibility of use insofar as business expenditure is concerned. However, considering that the jurisdiction of Customs Act, 1962 in 'foreign currency' transfers has been raised, it would be premature for us to decide on the factual aspects at this stage.

20. We are confronted with antipodal asseverations here. The impugned order, resting on empowerment to confiscate

> *'(d) any goods attempted to be exported or brought within 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;'*

in section 113 of Customs Act, 1962, is, according to the appellants, not in consonance with the delegation in the standing order *supra* that has truncated the expansive jurisdiction that once vested with the

customs authorities. The prohibitions that prompted affirmation of confiscation in the impugned order is, unabashedly, found only in the instruments notified or issued by the Reserve Bank of India under the authority of the Foreign Exchange Management Act, 1999 which, unquestionably, is law for the time being in force. ‘Goods’, in terms of section 2(22) of Customs Act, 1962, doubtlessly, includes ‘currency’ and the case against the noticees had its nascence in the ‘customs area’ of an international airport. It appears all wrapped up and ready for presentation; and, yet there is the artlessly asserted counter of want of facility in Customs Act, 1962 to proceed against the appellants for any consequence, including prosecution. Concomitantly, it is implied that conformity within the broad compass of the Foreign Exchange Management Act (FEMA), 1999 - largely purged off criminalizing deterrent in the predecessor statute - precludes drawal of legitimacy therefrom to attach taint to the impugned transactions.

21. For a start, ‘currency’, for purposes of Customs Act, 1962, is goods but the context of its inclusion in the definition of ‘goods’ is mystifying for, unlike the other ‘deemed goods’, ‘currency’ is neither defined nor accorded special provisioning in Customs Act, 1962. There is no deployment of the expression anywhere in Customs Act, 1962 except for ‘foreign currency’ in section 14 therein where it is anything but goods. More particularly, ‘currency’ was never the target of prohibitory notification under section 11 of Customs Act, 1962. Indeed,

there is no scope for appreciation of its significance here from Sea Customs Act, 1878 either which did not even venture to define 'goods' – an expression liberally strewed in several of the provisions therein – the 'core' of customs charter until incorporation of section 195B therein by amending legislation[14]. Section 19 of Sea Customs Act, 1878 too did not find recourse to for prohibiting 'currency' before 1963. Nonetheless, about four decades ago, a fledgling Tribunal, called upon in *Meghraj Gordhandas Gehi and Mani v. Collector of Customs [1984 (18) ELT 375 (Tri-Mumbai)]* to consider the question of jurisdiction over goods extending to 'foreign currency' seized from a departing passenger at the then Bombay airport, adjudged the resolution thereof, in separate but concurring opinions, that the enablement in section 67 of Foreign Exchange Regulation Act, 1973 conferred jurisdiction exclusively on customs officers precluded action by officers of Enforcement Directorate, and as held by Member (Judicial), thus

> *'14. There is no dispute that no notification has been issued under Section 11 of the Customs Act prohibiting or restricting the export of foreign currency. The Additional Collector has relied on the provisions of Section 67 of the FERA for confiscation of the seized currency and also for imposition of personal penalty.*
>
> *15. Section 67 of the FERA reads "The restrictions imposed by or under Section 13, Clause (a) of Sub-section (1) of Section 18 and Clause (a) of Sub- section (1) of Section 19 shall be*

[14] [The Sea Customs (Amendment) Act, 1958 (39 of 19580]

deemed to have been imposed under Section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly".

16. The head note of this section reads "Application of the Customs Act, 1962". The plain reading of this section makes it clear that the restrictions imposed under Section 13, Clause (a) of Sub- section (1) of Section 18 and Clause (a) of Sub-section (1) of Section 19 shall be deemed to have been imposed under Section 11 of the Customs Act. This section confers jurisdiction on the Customs Authorities to deal with the contraventions of Sections 13,18 (1)(a) and 19 (1) (a) of the FERA. Since the Customs Authorities have been given exclusive jurisdiction to deal with the contraventions of Sections 13, 18 (1) (a) and 19 (1) (a) the Officers of the Enforcement Directorate will have no jurisdiction to deal with the contraventions of the aforesaid sections. Investigation, adjudication and prosecution in respect of contraventions of the aforesaid section can be handled only by Customs Department and the same shall have to be done under the provisions of the Customs Act. By reasons of the provisions contained in Section 67 of the FERA the Customs Officer gets jurisdiction to deal with the persons who have contravened the provisions of Section 13, Section 18 (1) (a) and Section 19 (1) (a) of the FERA under the Customs Act. If the Customs Authorities initiate proceedings for contravention of the aforesaid Sections then all other provisions of the Customs Act becomes applicable for the with the contraventions. In the said circumstances, the contention… that the action taken under the Customs Act in the absence of notification under Section 11 of the Customs Act is illegal has no force.'

the scope and extent of empowerment was made abundantly unambiguous; in the absence of prohibition on 'foreign currency'

transactions by section 11 of Customs Act, 1962, authority to determine violation of Foreign Exchange Regulation Act, 1973 - in cross-border movement of ‘currency’ (and, bullion then) without permission of Reserve Bank of India (RBI), in export of goods without furnishing ‘full export value of goods’ and in taking or sending ‘security’ to any place outside India without permission of Reserve Bank of India (RBI) - stems solely from specific deeming of applicability of Customs Act, 1962, section 11 and everything besides, by conferment of sweeping powers in

> *‘67. Application of the Customs Act, 1962 – The restrictions imposed by or under section 13, clause (a) of sub-section (1) of section 18, section 18A and clause (a) of sub-section (1) of section 19 shall be deemed to have been imposed under section 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly.’*

in Foreign Exchange Regulation Act, 1973; conversely, the lack of such empowerment deprives jurisdiction in entirety. It is of significance that even when legislating in 1973, a good decade after the customs law was enacted, Parliament did not consider direct empowerment in cross-border transactions, and despite the deeming enlargement of ‘goods’ from the very beginning, of customs officers. Thereby hangs the tale.

22. Going back further, the Hon’ble Supreme Court in *Agrawal Trading Corporation & others v. Collector of Customs & others [1972 AIR 648]*, in a matter of shipment of Indian currency in a cargo

consignment on 25th October 1958 and notice issued under Sea Customs Act, 1878 on 2nd April 1959 by Collector of Customs, for production of permit from Reserve Bank of India as demonstration of conformity with section 8(2) of Foreign Exchange Regulation Act, 1947 read with notification dated 27th February 1951 of Reserve Bank of India (RBI), failing which prosecution under section 23(1) of Foreign Exchange Regulation Act, 1947 was to be initiated as also penalty proceedings under Sea Customs Act,1878, had, in appeal against dismissal of writ proceedings by Hon'ble High Court of Calcutta, to deal with challenge to 'currency notes' being goods for the purposes of customs legislation. After considering the several provisions of Foreign Exchange Regulation Act, 1947 and Sea Customs Act, 1878, it was held that

> *'A perusal of these provisions would show that no gold or silver or any currency notes or Bank notes or coin, whether Indian or foreign, can be sent to or brought into India, nor can any gold, precious stones or Indian currency or foreign-exchange other than foreign exchange obtained from an authorised dealer can be sent out of India without the general or special permission of the Reserve Bank of India. These restrictions by virtue of section 23A of the Foreign Exchange Regulation Act are deemed to have been imposed under section 19 of the Sea Customs Act and all the provisions of the latter Act shall have effect accordingly except section 183 thereof shall have effect as if for the word 'shall' therein the word 'may' were substituted. What section 23A does is to incorporate by reference the provisions of the Sea Customs Act*

by deeming the restrictions under section 8 of the Foreign Exchange Regulation Act to be prohibitions and restrictions under section 19 of the Sea Customs Act. The contention is that since section 19 restricts the bringing or taking by sea or by land goods of any specified description into or out of India, these restrictions are not applicable to the bringing in or taking out the currency notes which are not goods within the meaning of that section, and, therefore, the appellant is not guilty of any contravention of section 19 of the Sea Customs Act and cannot be subjected to the penal provisions of the said Act. This argument, in our view, is misconceived, because firstly, it is a well accepted Legislative practice to incorporate by reference, if the Legislature so chooses, the provisions of some other Act in so far as they are relevant for the purposes of and in furtherance of the scheme and objects of that Act and secondly, that merely because the restrictions specified in section 8 of the Foreign Exchange Regulation Act are deemed to be prohibitions and restrictions under section 19 of the Sea Customs Act, those prohibitions and restrictions are not necessarily confined to goods alone but must be deemed for the purposes of the Foreign Exchange, Regulation Act to include therein restrictions in respect of the articles specified in section 8 thereof, including currency notes as well. The High Court thought that there is no definition of goods in the General Clauses Act and that contained in the Sale of Goods Act which excludes money is inapplicable inasmuch as that Act was much later statute than the Sea Customs Act. It is, however, unnecessary to consider this aspect because even if the currency notes are not goods, the restrictions prescribed in section 8 of the Foreign Exchange Act cannot be nullified by section 23A thereof which incorporates section 19 of the Sea Customs Act. We cannot attribute the legislature the intention to obliterate one provision by another provision of the same Act. On the other hand, we construe it as furthering die (sic) of

> *the Act which is to restrict the import into or export out of India currency notes and to punish contravention of such restrictions.'*

thus laying out, in identical legal context, the consistent declaration of law on empowerment, in relation to 'currency', of customs authorities to proceed under the authority of prevailing customs statutes.

23. In the erstwhile enactment for regulation of 'foreign exchange', section 8 (1) was *pari materia* section 13 of the successor law, and

> *'23A Without prejudice to the provisions of section 23 or any other provision contained in this Act, the restrictions imposed by sub-sections (1) and (2) of section 8, sub-section (1) of section 12 and clause (a) of subsection (1) of section 13 shall be deemed to have been imposed under section 19 of the Sea Customs Act, 1878 (8 of 1878), and all the provisions of that Act shall have effect accordingly except that section 183 thereof shall have effect as if for the word 'shall', therein the word 'may' were substituted.'*

pari materia section 67 of the successor law with section 19 of Sea Customs Act, 1878 *pari materia* section 11 of Customs Act, 1962 with section 12 (1) *pari materia* section 18(i) of the successor law and section 13 (1) (a) *pari materia* section 19 (1) (a) of the successor law. Obviously, that the evolved version of the 1947 statute was adopted in the 1973 statute is all that is relevant for the dispute before us. It is in such context of the template that we draw upon the decisions of the Hon'ble Supreme Court *supra.*

24. Sea Customs Act, 1878 did not provide a definition of ‘goods’ even though ‘currency’, along with ‘goods’, were deployed therein. Customs Act, 1962 did not provide a definition of ‘currency’, though included in the new infusion of definition for ‘goods’, even as that expression was not considered necessary for inclusion as warranting special treatment. The lower authorities made free to draw upon definition in Foreign Exchange Management Act (FEMA), 1999 without being afforded such contingency specified in section 2 itself of Customs Act, 1962. That they were compelled to is more than loud whisper of the lack in Customs Act, 1962 and that they did so tellingly demonstrates regression to a past that no longer was reality. Ensconcing of ‘currency’ in ‘goods’ in Customs Act, 1962 has as much, or as little significance, as the lack of definition of ‘goods’ and, thereby, of acknowledgement of ‘currency’ in Sea Customs Act, 1878. We may, therefore, enunciate that the ‘free floating and apparently aimless’ inclusion of ‘currency’ was intended merely to afford parity with ‘goods’ insofar as procedures and enablement in Customs Act, 1962 in the event of legislative wisdom impelling call upon customs officials to be empowered for interdiction of ‘currency’ and ‘securities’ that, otherwise, are not ‘goods’ as well as to oversee undertaking to repatriate full export value of goods. A peep into the history of legislative control of foreign exchange may only be of help in defining the boundaries that appear to have surprisingly sprung up.

25. In the run up to dismantling of colonial governance, control over

'foreign exchange' transactions, also a matter that was of sufficient concern in British India as to warrant sanction of oversight through the Defence of India Rules (DIR), 1942, the need for a firm hand on the till was acknowledged by enactment of Foreign Exchange Regulation Act (FERA), 1947 (introduced in the Central Assembly, incidentally, by Liaquat Ali Khan who held the Finance portfolio in the Interim Government born from the Cabinet Mission led by Lord Pethick Lawrence and comprising Sir Stafford Cripps and Mr AV Alexander) which, conceived in limited experience and burdened by political compulsions of the time, was but a rough ashlar. To begin with, it was conceived of as a temporary statute intended to last only in the short forseeable future for a designated period, though extended from time to time till 1957 when it was permanently enshrined in the statute books. Under that law, the same three[15], *viz.*, cross-border currency transactions only to the extent permitted by Reserve Bank of India, export of goods subject only upon declaration of and undertaking to repatriate full export value and cross- border transfer of securities only to the extent permitted by Reserve Bank of India, along with other restrictions, were punishable, upon contravention by prosecution. There was neither dedicated 'creatures of the statute' to enforce nor was an adjudicatory empowerment provided for as deterrent owing to which Reserve Bank of India had had to launch criminal prosecution for

[15] [section 8, section 12 (1) and section 13 (1) (a) of FERA, 1947]

breach and, not unnaturally, not worthwhile in ‘low value’ breaches.

26. That ‘no mans land’ was, to some extent, narrowed by incorporation of section 23A *supra* by amendment[16] to Foreign Exchange Regulations Act, 1947 in 1952 affording empowerment under Sea Customs Act, 1878 and, probably, considering the extended life of that law till December 1957 for adjudication of offences. Sea Customs Act, 1878 was amended on several occasions thereafter and, when concerning procedure, incorporated ‘currency’ whenever warranted. Thus, it was under Customs Act, 1962 that adjudication for breach of violations under Foreign Exchange Regulation Act (FERA), 1947 had its formative growth, even as prosecution under that statute was taken up by both Collectors of Customs and Reserve Bank of India in their respective domains, from 1952. A beginning was also made to enable formal enquiry by summoning of information, record and books in amendment to section 19 therein.

27. The next major tectonic shift was the vesting of powers in the newly established Director of Enforcement to adjudicate, as well as to launch prosecution, for contraventions of, and offences under, Foreign Exchange Regulation Act (FERA), 1947, the constitution of Appellate Board under section 23E[17] of Foreign Exchange Regulation Act (FERA), 1947, conferment of powers to search and inspect by insertion

[16] [section 9 of Foreign Exchange Regulation (Amendment) Act, 1952 9Act VIII of 1952]
[17] [section 17 of FERA (Amendment) Act, 1957 (39 of 57)]

of section 19A and 19B[18] in Foreign Exchange Regulation Act (FERA), 1947, and providing for penalties on adjudication by Director of Enforcement and punishment on conviction by court in section 23[19] of Foreign Exchange Regulation Act (FERA), 1947. Significantly, with the omission[20] of sub-section 4 of section 1 of Foreign Exchange Regulation Act (FERA), 1947, the 'self-destruct' timer was deactivated a few months before it was set to go off..

28. Introducing the bill in the Rajya Sabha, the Hon'ble Deputy Minister of Finance observed that

> *'... I see no reason why this Act should not be extended without specifying a time limit. This object is sought to be achieved by deleting the duration clause from section 1 of the principal Act.*
>
> *...One such amendment relates to the enforcement of foreign exchange offences. As in the Sea Customs Act, my idea in the present Bill is to create an adjudicating machinery to deal with some of the major offences arising out of the Foreign Exchange Regulation Act. The machinery of adjudication is detailed in clauses 16 and 17 of the Bill which provide for a Director of Enforcement for initial adjudication and an Appellate Board to hear cases of appeals against orders of the Director.*
>
> *...There is already an Enforcement Unit functioning under Government with a Director[21] at its head. The Bill seeks to invest him with the authority to adjudge some of the major*

[18] [section 14 of FERA (Amendment) Act, 1957 (39 of 57)]
[19] [section 16 of FERA (Amendment) Act, 1957 (39 of 57)]
[20] [section 2 of FERA (Amendment) Act, 1957 (39 of 57)]
[21] [Department of Economic Affairs since 1st May 1956]

offences and impose penalties…he may launch a prosecution instead of dealing with the offence himself…'

Exchange control regulation, now bearing its own administrative mechanism and permanence, ready to be of age on its own.

29. Further consolidation of regulatory institution and its strengthening was paved with enlarging control[22] over overseas operations of corporates registered in India and the establishment of a structured Enforcement Directorate under the Director by incorporating section 2A[23] in Foreign Exchange Regulation Act (FERA), 1947.

30. We may, therefore, posit that circumstances prior to enactment of the present customs statute warranted so and, hence, the natural corollary of altered circumstances having rendered that inclusion to be redundant is cause for pause. As 'currency' finds definition only in statutes regulating 'foreign exchange', it is in that direction that our minds must traverse. By renumbering the existing section 19A and 19B and with further incorporation[24], of those, and alongside, 19A to section 19J, the proposed Enforcement Directorate acquired teeth. Taking note of enactment of Customs Act, 1962 and repeal of Sea Customs Act, 1878, the erstwhile arrangement for deeming prohibition[25] of certain 'foreign exchange transactions' save for compliance with conditions

[22] [section 2 of FERA (Amendment) Act, 1964 (55 of 1964)]
[23] [section 4 of FERA (Amendment) Act, 1964 (55 of 1964)]
[24] [section 15 of FERA (Amendment) Act, 1964 (55 of 1964)]
[25] [section 18 of FERA (Amendment) Act, 1964 (55 of 1964)]

prescribed was continued by suitable substitutions in section 23A of Foreign Exchange Regulation Act, 1947. The Appellate Board was subordinated to jurisdictional High Court by incorporating section 23EE[26] in Foreign Exchange Regulation Act (FERA), 1947.

31. As far as the dual jurisdiction of customs officers and enforcement officials are concerned, it is the thus revised Foreign Exchange Regulation Act (FERA), 1947 that, by and large, was transposed in the corresponding sections of Foreign Exchange Regulation Act (FERA), 1973 and which came up for judicial resolution before the Tribunal in *re Meghraj Gordhandas Gehi.* That decision, as well as that in *re Agrawal Trading Corporation* of the Hon'ble Supreme Court on the applicability under Foreign Exchange Regulation Act (FERA), 1973 are at one, setting out the legal position that it is only by the deeming prohibition in the Foreign Exchange Regulation Act (FERA)[27], 1973 and Foreign Exchange Regulation Act (FERA)[28], 1947 respectively that customs authorities may invoke their powers under Customs Act, 1962 for contravention of the specified provisions in those statutes for any consequence whatsoever. It is clear that the empowerment flowed, and floated, only upon such cross-statute prohibition and, thereby, rendering 'prohibition' in 'other law for the time being in force' acknowledged for the purpose of section 113(d) of Customs Act, 1962; conversely, without it, there was no provision or

[26] [section 20 of FERA (Amendment) Act, 1964 (55 of 1964)]
[27] [section 67 of FERA, 1947]
[28] [section 23A of FERA, 1947]

prohibition in Customs Act, 1962 that afforded primary empowerment to proceed in the three circumstances of regulation by the Reserve Bank of India, *viz*., cross-border movement of currency, export of goods without prescribed declaration of value to be repatriated and cross-border movement of securities. That further explains the reference to prosecution by recourse to Foreign Exchange Regulation Act (FERA), 1947 in *re Agrawal Trading Corporation* and, in accordance with procedure set out in Foreign Exchange Regulation Act (FERA), 1947 and without being empowered as Director of Enforcement, by issue of notice for adjudication that could, instead of conclusion thereto, be substituted as complaint to initiate criminal prosecution. Thus, without exception, any action against contravention leading to confiscation and penalty or offence leading to conviction and imprisonment, provisioned in Customs Act, 1962 in relation to prohibitions under Foreign Exchange Regulation Act (FERA) of either vintage rested, wholly and solely, on the deeming provision therein; in its absence, such authority ceases.

32. This is takeaway, too, from the evolution of the foreign exchange control statutes set out *supra*. From an enactment that provisioned only for prosecution and, that too, by Reserve Bank of India (RBI), customs officials were harnessed for, in relation to specific prohibitions, through amending act of 1952 for adjudication under the aegis of Sea Customs Act, 1878, tertiary empowerment through deemed prohibition prompted by lack of official machinery in Foreign Exchange Regulation Act

(FERA), 1947. It was only with the empowerment of Director of Enforcement by, and upon statutory acknowledgement in, the amending act of 1957 that the Reserve Bank of India (RBI) was manumitted of its agency function but, considering the infancy, it was not in public interest to withdraw the authority entrusted in customs officials. The elevation of that nascent agency into the structured Enforcement Directorate and the sweeping upgradation of enforcing powers vested in the new structure by the amending act of 1965 was also legislatively intended to continue the dual machinery by ensconcing deeming prohibition through section 11 of Customs Act, 1962. The newly minted Foreign Exchange Regulation Act (FERA), 1973 saw no displacement of the dual machinery which is attributable to legislative intent.

33. It is common ground that the substituting Foreign Exchange Management Act (FEMA), 1999 had been repurposed, owing to altered circumstances of transformation of the domestic economy, and the existence, in the meanwhile, of the Enforcement Directorate for over three decades prompted *minutiae* in the new legislation with altered outlook. As set out thus

> *'The Foreign Exchange Regulation Act, 1973 was reviewed in 1993 and several amendments were enacted as part of the on-going process of economic liberalisation relating to foreign investment and foreign trade for close interaction with the world economy. At that stage, the Central Government decided that a further review of the Foreign Exchange Regulation Act*

would be undertaken in the light of subsequent developments and experience in relation to foreign trade and investment. It was subsequently felt that a better course would be to repeal the existing Foreign Exchange Regulation Act and enact a new legislation. Reserve Bank of India was accordingly asked to undertake a fresh exercise and suggest a new legislation. A Task Force constituted for this purpose submitted its report in 1994 recommended substantial changes in the existing Act.

2. Significant developments of taken place since 1993 such as substantial increase in our foreign exchange reserves, growth in foreign trade, rationalisation of tariffs, current account convertibility, liberalisation of Indian investments abroad, increased access to external commercial borrowings by Indian corporates and participation of foreign institutional investors in our stock markets.

3. Taking into consideration the above facts a Bill to repeal and replace the Foreign Exchange Regulation Act, 1973 was introduced in Lok Sabha on 4th August, 1998.…

4. … The provisions of the Bill aim at consolidating amending the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange markets in India.'

in Statement of Objects and Reasons, sets the tone for the new legislation. In these circumstances of total overhaul and re-design, the deliberate omission of deeming one or more prohibitions in the new statute as prohibition under Customs Act, 1962, as intended to rescind the dual machinery in the erstwhile scheme of statutory control, whether it be for inquire, investigate, adjudicate or prosecute, is

inevitable conclusion.

34. While the dual machinery of oversight under the erstwhile statutes may have had its origins in the lack of exclusive agency, as in Enforcement Directorate, and retained, thereafter, by continuation of the deeming provision, as provisioning for added support while the new agency stabilised, the benefit of such arrangement especially at the frontiers and points of order control may not be minimised. The correspondence initiated within the Central Government, recorded *supra*, amply evidences that evaluation; that such restoration, albeit without resort to the deeming provision, was contemplated is also evidence of deliberate contemplation and intended exclusion of those functions, except under the sole and exclusive empowerment in Foreign Exchange Management Act (FEMA), 1999; thus any action to confiscate and initiate prosecutions are required to be consistent with the foreign exchange regulating statute. Indeed, there is no cause for discriminatory treatment as would, inevitably, occur should recourse be had to customs law permitting redemption on payment of fine and penalty as multiples of amounts involved with corresponding consequences under Foreign Exchange Management Act (FEMA), 1999 being harsher. Rule of law militates against that possibility and Customs Act, 1962 cannot be medium for such discrimination.

35. It is anything but clear that not one of the prohibitions in Foreign

Exchange Management Act (FEMA), 1999, such as they are, have been deemed to have been prohibited under section 11 of Customs Act, 1962. The empowerment, and not taken refuge under by the lower authorities expressly, is delegation by subordinate legislation and prompted, by all appearances, from administrative conveniencing; it was to be taken recourse to for invoking provisions of Foreign Exchange Management Act (FEMA), 1999 and, in the strictest sense, independent of Customs Act, 1962 in its entirety, whether it be for procedure or substantive consequences – under section 111, section 112, section 113, section 114 or section 135 of Customs Act, 1962.

36. At all events and even by the remotest of logic can a statute claim to prevail, to the exclusion of all others, in a particularized geographical construct in the face of precedence of statutes having been enunciated by the Hon'ble Supreme Court in *re Ashoka Marketing Ltd*. That Foreign Exchange Management Act (FEMA), 1999 is the later law is not in doubt and it is manifest that Parliament, in deliberating the enactment of the later law, did so fully knowing the scope and extent to which Customs Act, 1962 had authority over 'currency' transactions and required deeming by the erstwhile legislation to enlarge the jurisdiction. That such enlargement was not provisioned in the successor law does not only have a direct consequence of exclusion but also, in the absence of demonstration of the sole exception, noted in the decision *supra*, in the impugned proceedings renders the adjudicatory

exercise to be beyond human redemption.

37. Learned Authorized Representatives placed reliance on the decision of the Tribunal in *re Fayaz Gulam Godil* as precedent for adjudicating confiscation of seized 'foreign currency' under section 113 of Customs Act, 1962 and imposition of penalty under section 114 of Customs Act, 1962. It is seen from the narration of facts therein that the issue of competence was not raised on behalf of the appellants; the challenge therein was mounted only on the narrow fact of interception on entry into India as a returning resident and that discretion empowered by section 125 of Customs Act, 1962 had not been exercised properly. With acceptance of coverage of the impugned activity by Customs Act, 1962, the Tribunal, perforce, was not required to test the established facts within the frame of Customs Act, 1962. The Tribunal rendered its considered findings only on the exercise of discretion to confiscate absolutely. That nature of confiscatory consequence is irrelevant in circumstances of jeopardized exercise of confiscation. The cited decision is no precedent for affirmation of authority under Customs Act, 1962.

38. That the adjudicating, and first appellate authority, have chosen to revive a rescinded authority under a repealed law cannot be validated as emanating from an alternative statutory authorization from mere narration of facts as would suffice for 'goods', in its pristine sense and

excluding ‘currency’, over which the border control agency has its remit. There is no competence under Customs Act, 1962 to consider any of the instructions, circulars or orders of the Reserve Bank of India for ascertainment of compliance thereto by the travelling public. That lack of competence extends throughout the several silos within with which lie administrative, enforcing and appellate authorities created and empowered by Customs Act, 1962. We, too, are not competent to test the facts; no more competent were the lower authorities unless in exercise as a delegate by competent authority under Foreign Exchange Management Act, 1999.

39. No significance attaches to the continued retention of ‘currency’ as ‘deemed goods’ in section 2 of Customs Act, 1962 in the absence of overt or deemed reference to that expression in the provisions of Customs Act, 1962. The deliberate discard of delegated authority to exercise empowerment under Foreign Exchange Management Act (FEMA), 1999 is perverse defiance of law by the lower authorities. The decision of the Tribunal in re *Fayaz Gulam Godil* is no support for such overreach.

40. The impugned proceedings, leading to confiscation of foreign currency and liability to confiscation of amounts embedded in ‘travel cards’ with attendant penalties under section 114 of Customs Act, 1962, commenced and concluded with recourse to

> *'under section 113(d) of Customs Act, 1962 read with of Foreign Exchange Management Act, 1999'*

which is vastly at variance with empowerment under section 113 (d) of Customs Act, 1962 to only confiscate

> *'...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****;' (emphasis supplied)*

and it is incontrovertibly clear from the proposals in the notice, and findings in the order, that carriage of 'foreign currency' or 'travel card' is not subject to any prohibition imposed by or under Customs Act, 1962; 'read with' is to be invoked when such prohibition in 'any other law for the time being in force' is deemed as 'prohibition imposed by or under Customs Act, 1962' which is not in conformity with the present factual matrix. Invoking authority under any other law for the time being in force for recourse to detriment under any other law is valid only under proper authorization within that law and are proceedings within the framework of that law with no recourse required through, or under, the provisions of Customs Act, 1962. The Standing Order *supra* has been issued under enabling provisions in Foreign Exchange Management Act (FEMA), 1999 to exercise authority, to such extent specified therein, under Foreign Exchange Management Act (FEMA), 1999. The present proceedings, by relying on provisions

of Customs Act, 1962 that do not proffer valid empowerment to do so are not proceedings under Foreign Exchange Management Act (FEMA), 1991. The confiscation of 'foreign currency' and liability to confiscation of 'foreign currency' embedded in 'travel cards' by recourse to section 113(d) of Customs Act, 1962 and imposition of consequential penalty under section 114 of Customs Act, 1962 is extra-legal and egregious exercise of power. The confiscation and penalties affirmed in the impugned order are set aside to allow the appeals.

(Order pronounced in the open court on 21/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*