



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
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DIN – 20251071MN0000808404

क	फ़ाइलसंख्या FILE NO.	S/49-86/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-318-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.10.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	04/ADC/2023-24 dated 13.07.2023
च	अपीलआदेशजारीकरनेकीदिनांकORDE R- IN-APPEAL ISSUED ON:	16.10.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Kalpen Mukundbhai Pabari (Proprietor of Yash Mobile), Street No. 21, Jagnath Plot, Rajkot - 360001.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं. Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.

	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उस से कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016

5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER IN APPEAL

Shri Kalpen Mukundbhai Pabari , proprietor of M/s Yash Mobile (PAN No. BGEPP0287K), having its place of business located at Near Jay and Sons, Street No. 21, Jagnath Plot, Rajkot, Gujarat – 36000 (hereinafter referred to as “the Appellant”) have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-in-Original No. 04/Additional Commissioner/2023-24, dated 13.07.2023 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated the facts of the case are that the Appellant is engaged in the trading of mobile phones and accessories and operates from its place of business located near Jay and Sons, Street No. 21, Jagnath Plot, Rajkot, Gujarat – 360001. Based on intelligence inputs received by the Customs authorities, it was revealed that several mobile phone dealers and retailers operating in the regions of Rajkot, Jamnagar, and Morbi were allegedly involved in the sale of mobile phones and accessories of foreign origin primarily Apple products without issuance of any bills or invoices. These products were reportedly smuggled into India, and their sale was resulting in evasion of customs duty and Integrated Goods and Services Tax (IGST).

2.1 Acting upon the said intelligence, a search was conducted at the premises of the Appellant on 12.01.2022 under the authority of a Search Warrant (DIN-20220171MM000000E710) dated 11.01.2022. During the course of the search, the proprietor, Shri Kalpen Mukundbhai Pabari, was asked to produce stock records and supporting purchase documents, invoices, or import papers relating to the mobile phones and accessories present at the premises. However, Shri Pabari failed to furnish any documents or evidence supporting the legal acquisition or import of Apple-branded mobile phones, accessories, and watches of foreign origin that were found during the search. Upon further questioning, Shri Pabari voluntarily admitted that the mobile phones and accessories were imported items purchased from different suppliers without any invoices or import-related documents. Incriminating documents, including two diaries and a red-coloured register, were also recovered from the premises. The red coloured register, as stated by the proprietor, contained details of transactions relating to new mobile phones, including smuggled Apple products. The other two diaries recorded transactions of used and second-hand mobile phones.

2.2 In light of the proprietor's failure to produce any documentation validating the import and legal possession of the goods found, the officers seized Apple-

branded mobile phones, accessories, and watches of foreign origin having a total approximate market value of ₹17,83,000/-. The seizure was made under Section 110 of the Customs Act, 1962, under the reasonable belief that the said goods were liable to confiscation under Sections 111(d), 111(j), and 111(l) of the Act. The seizure was documented through a Seizure Memo (DIN-20220171MM0000712137) dated 12.01.2022, and a detailed Panchnama was prepared listing the seized items in Annexure-A. Subsequently, statements of Shri Kalpen Mukundbhai Pabari were recorded under Section 108 of the Customs Act on 12.01.2022 and again on 25.01.2022. In these statements, Shri Pabari confessed to dealing in smuggled mobile phones and accessories since the inception of the Appellant's business in November 2019. He admitted to purchasing Apple-branded foreign-origin mobile phones and accessories from individuals identified as Shri Dilip from Chennai and Shri Manoj Kaka from Mumbai. He stated that the transactions were conducted via WhatsApp and phone calls, and the goods were received through courier services. He did not possess any details or addresses of these individuals and had never met them in person. Payments for such purchases were made in cash through angadia services including M/s Purnima Angadiya and M/s R.K. Angadiya, Rajkot. All sales to retail customers were also made in cash without issuance of invoices.

2.3 As part of the investigation, entries from the seized red-colour register and two challan books were examined. The red register contained 410 entries related to the sale of all types of mobile phones and accessories, including smuggled Apple products. The two challan books recorded 77 and 38 entries respectively, pertaining to the sale of second-hand or old mobile phones. The total sale value of items listed in these records was computed at ₹65,82,300/-, which Shri Pabari admitted was the cumulative sale value of smuggled and second-hand goods over the preceding two years.

2.4 Statements of third parties were also recorded during the investigation. Shri Kalavadiya Hozefa, Manager of M/s R.K. Enterprise (Angadia service), Rajkot, stated on 29.07.2022 that although he could not confirm specific transactions, he may have made payments on behalf of the Appellant and generally charged a commission of ₹20 per ₹20,000 transactions. Similarly, Shri Prajapati Tulsibhai Kaluji, Partner of M/s Purnima Angadiya Service, stated on 10.08.2022 that he had received amounts on behalf of the Appellant but maintained no records beyond the last three months. Further, at the request of the investigating officers, a search was conducted at the Chennai address of Shri Dilip by officers from the Office of the Principal Commissioner of Customs, Chennai-III. The search took place on 21.06.2022 under a Search Warrant (DIN-20220673MY0000333EA2) dated 20.06.2022. During the search, four Samsung

mobile phones (Made in India) and certain local accessories were found. Invoices from S.V. Traders and a GST registration certificate were produced. No smuggled goods or incriminating materials were recovered, and a NIL Mahazar was issued.

2.5 Based on the investigation, the Customs duty liability on the seized goods as well as those already sold was calculated using reverse calculation from their approximate market value. The total customs duty evaded was estimated at ₹25,78,988/-. During the course of investigation, the Appellant voluntarily deposited ₹5,17,691/- towards duty and ₹77,654/- as penalty via TR-6 Challan No. 73 dated 15.02.2022 (payment made on 16.02.2022). Lastly, the Additional Commissioner of Customs (Preventive), Jamnagar, granted permission for provisional release of the seized goods, subject to the execution of a bond equivalent to the full value of the goods and submission of a bank guarantee or security deposit of ₹1,25,000/-.

2.6 The investigation in the matter culminated into issuance of Show Cause Notice No. ADC-11/2022-23 dated 22.03.2023 from F. No. CUS/1193/2023-Adjn issued by the Additional Commissioner, Customs (Preventive), Jamnagar wherein M/s. Yash Mobile, Rajkot was called upon to show cause as to why:-

(i) The smuggled / illegally imported mobile phones and accessories of Apple brand of foreign origin seized from the office premises of M/s. Yash Mobile, Rajkot vide Seizure Memo dated 12.01.2022 valued at Rs. 17,83,000/- (Rupees: Seventeen Lakhs Eighty-Three Thousand only) should not be confiscated under Section 111(d), Section 111 (j) & Section 111(1) of the Customs Act, 1962.

(ii) The smuggled / illegally imported mobile phones & accessories of Apple brand of foreign origin already sold by the appellant valued at Rs.65,82,300/- (Rupees: Sixty-Five Lakhs Eighty-Two Thousand Three Hundred only) should not be held liable for confiscation under Section 111(d), Section 111 (j) & Section 111(1) of the Customs Act, 1962. However, the goods are not available for confiscation.

(iii) The duty (Custom Duty + SWS + IGST) amounting to Rs.25,78,988/- (Rupees Twenty-Five Lakhs Seventy-Eight Thousand Nine Hundred Eighty-Eight only) as per the Calculation Sheet attached to the Show Cause Notice as Annexure-A should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962. The duty of Rs.5,17,691/- (Rupees: Five Lakhs Seventeen Thousand Six Hundred Ninety-One only) already paid voluntarily during the investigation by the appellant should not be appropriated against the duty demand.



(iv) Interest under Section 28AA of the Customs Act, 1962 on the duty demand amount of Rs.25,78,988/- should not be charged and recovered from them.

(v) Penalty under Section 114A of the Customs Act, 1962 should not be imposed upon them. The penalty amount of Rs.77,654/- already paid during investigation by the appellant should not be appropriated.

2.7 The adjudicating authority vide the impugned Order dated 06.07.2023 held as under:

a) Confiscated the smuggled / illegally imported foreign made Mobile Phones and accessories of Apple brand valued at Rs.17,83,000/- seized under Seizure Memo dated 12.01.2022 under Section 111 (l) of the Customs Act, 1962 and imposed fine of Rs.2,50,000/- in lieu of confiscation under Section 125 (1) of the Customs Act, 1962 in addition to any charges payable and ordered for encashment of bank guarantee of Rs.1,25,000/- furnished at the time of provisional release of the goods and appropriated the same towards fine in lieu of confiscation.

b) The smuggled / illegally imported foreign made Mobile Phones and accessories of Apple brand valued at Rs.65,82,300/- already sold by the appellant are liable to confiscation under Section 111 (l) of the Customs Act, 1962. However, in view of non-availability of the goods for confiscation, refrained from imposing any fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

c) Confirmed the demand of customs duty of Rs.25,78,988/- under Section 28(4) of the Customs Act, 1962 in respect of smuggled /illegally imported foreign made mobile phones, accessories and watches of Apple brand seized from the premises of the appellant vide Seizure Memo dated 12.01.2022 and those already sold by the appellant. Further, appropriated the amount of Customs duty of Rs.5,17,691/- already paid by the appellant vide TR-6 Challan No. 73 dated 15.02.2022 against the Customs duty demand.

d) Ordered to charge and recover applicable interest under Section 28AA of the Customs Act, 1962 on the demand of duty of Rs.25,78,988/-.

e) Imposed penalty of Rs.25,78,988/- plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above under Section 114A of the Customs Act, 1962 and appropriated the



amount of penalty of Rs. 77654/- already paid by the appellant vide TR-6 Challan No. 73 dated 15.02.2022 against the penalty imposed herein.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal and mainly contended that:

- The impugned order is liable to be quashed and set aside on the following amongst other grounds which are taken independent of and without prejudice to each other.
- The Ld. Adjudicating Authority has nowhere held that the goods under consideration, i.e. Mobile phones, Smart Watches and Air pods bearing Apple brand were actually (i) foreign made and (ii) were smuggled into India without payment of duty, by the appellant or any other person.
- The goods under consideration are not among the notified goods under Section 123 of Customs Act, 1962. Hence, repeated use of pre-fix foreign made in the impugned order per se is not sufficient to discharge the onus cast upon department to establish with cogent evidence that the goods were smuggled into India and not import duty was paid on the same. On this basis, they contended that in the absence of any positive evidence showing that goods were smuggled into India by them or any other person, the onus cast upon the department under Section 123 of Customs Act, 1962 is not discharged. Consequently, the impugned order is not tenable in the eyes of law.
- It was informed by the Appellant to the officers that he had purchased the goods from Shri Dilip of Chennai and had made payment in cash through angadiyas. Shri Kalavadiya Hozefa of M/s. R. K. Enterprise and Shri Prajapati Tulsibhai Kaluji of M/s. Poonima angadiya have not denied having made payment on the instructions of appellant.
- Adjudicating Authority has erred in failing to appreciate that Shri Prajapati Tulsibhai Kaluji have categorically admitted to have received money from the Appellant for making onward payment. Moreover, it is also established from record in the form of panchamana (Mahazar) dated 22.06.2022 drawn at the premises of M/s. The Mobile Galleria at Chennai that Shri Dilip was dealing in mobile phones. Despite this, the officers did not record the statement of Shri Dilip so as to corroborate (or controvert) the facts stated by Appellant in his statement regarding source of mobile phones, accessories and watches found from his shop. It is not the case of department that it was Appellant who had brought the goods into India. Since the goods are non-notified goods, it was incumbent upon the department to establish its foreign origin and illicit entry into India.



However, the impugned order does not satisfy these critical legal requirements. Hence, the same is not tenable in the eyes of law.

- The demand of duty under Section 28 (4) of Customs Act, 1962 is without authority of law in the facts and circumstances where the appellant is not the importer of the goods. Reliance is placed on the decision of Hon'ble Tribunal in the case of Sagar Texo Fab, 2008 (223) ELT 667 (Tri. Ahmd.). Consequently, demand of interest under Section 28AA of Customs Act, 1962 and levy of penalty on the appellant under Section 114AA of Customs Act, 1962 is also not tenable in the eyes of law.

4. Personal hearing in the matter was held on 15.10.2025 which was attended by Shri Vikas Mehta, Advocate on behalf of the appellant. During the personal hearing, he reiterated the submission made in appeal memorandum and relied upon the Order in Appeal No JMN-CUSTOM-000-APP-53-25-26 dated 30.06.2025 requested to allow the appeal.

5. I have carefully considered the submissions made by the appellant along with relevant case laws, relied upon documents, additional submission and the impugned order. The main issues to be determined in the present matter are:

- a) Whether the impugned order confiscating the Mobile Phones and accessories of Apple brand having foreign origin seized from the premises of the appellant under Section 111 (l) of the Customs Act, 1962 and allowing its redemption on payment of redemption fine in lieu of confiscation of goods under Section 125(1) of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.
- b) Whether the impugned order confiscating the Mobile Phones and accessories of Apple brand already sold by the appellant under Section 111 (l) of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.
- c) Whether the impugned order confirming the demand of duty under Section 28 (4) of the Customs Act, 1962 on the Mobile Phones, Apple watches and accessories of Apple brand having foreign origin seized from the premises of the appellant and those already sold by the appellant along with interest under Section 28 AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.
- d) Whether the impugned order imposing penalty on the appellant under Section 114A of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.



5.1 In respect of the first issue i.e., confiscation of seized Mobile Phones, Apple Watches, and Apple-branded accessories under Section 111(l) of the Customs Act, 1962, and redemption fine under Section 125(1) of the Customs Act, 1962, in lieu of confiscation, it is essential to determine whether the goods seized from the premises of the appellant can be considered as smuggled goods. This determination is crucial for the applicability of Section 111(l) and the question of liability for redemption fine under Section 125(1).

5.2 I have carefully gone through the Panchnama dated 12.01.2022, the Seizure Memo dated 12.01.2022, and the statement of the Appellant. It is observed that during the course of the Panchnama, the Appellant stated that he had purchased the seized goods from different suppliers. Further, in his statement dated 12.01.2022 and 25.01.2022 the Appellant stated that he has purchased the said goods from Shri Dileep of Chennai and payment in respect of the said items was made in cash through Angadiya named M/s. Purnima Angadiya and RK Angadiya, Rajkot. He further stated that the said items were received through courier services named M/s. Maruti Courier Rajkot and M/s. Tirupati Courier Rajkot. Further, Shri Kalavadiya Hozefa, Manager of M/s RK Enterprise, Jamnagar in his statement dated 29.07.2022 stated that he does not remember about the amount made for payment in Mumbai, Ahmedabad and Surat on behalf of Shri Kalpen M Pabari, Proprietor of M/s Yash Mobile, Rajkot on three Occasion. Further Shri Prajapati Tulsibhai Kaluji of M/s Purnima Angadiya Service in his statement dated 10.08.2022 agreed to the fact that he has received amount on some occasions before one year and have not kept any record more than three months therefore he cannot state how much transaction have been made. Further, I have also carefully gone through the investigation report submitted by Additional Commissioner, Customs (Preventive), Chennai wherein it is stated that no incriminating documents/things were recovered/seized during the search proceedings conducted at shop run by Shri Deelip of Chennai.

5.3 The adjudicating authority, at Para 32 and 33 and 34 of the impugned order, concluded that the department had discharged its initial burden of proving that the appellant had procured the goods through smuggling. This conclusion was based on the fact that the appellant was not having any invoices or valid import documents for the goods, and the appellant had not retracted his admission and confession made in his statement. The adjudicating authority considered the appellant's statement to be legally significant in proving that the goods were procured through smuggling. In support of this, reliance was placed on the decision of the Hon'ble Madras High Court in the case of Stalin Joseph v. Commissioner of Customs (Airport), Chennai (2021 (337) E.L.T. 13 (Mad.)),

wherein it was held that when statement is not retracted the same is binding as per law, and subsequently rejected the appellant's contention that he was not the importer, solely on the basis of the aforementioned findings.

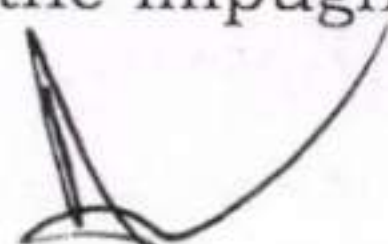
5.4 I find that the findings rendered by the Adjudicating Authority in para 32,33 and 34 of the impugned order are neither legally sustainable nor in the factual matrix of the present case. The Adjudicating authority materially erred in evaluating the evidences placed on record and rendered the findings in complete disregard of the judicial precedent set via catena of judgements in the cases of Town seizure in respect of goods which are not notified under Section 123 of the Customs Act, 1962. Further, from the statement dated 25.01.2022 of the Appellant it appears that the Investigating Officer has failed to make a reasonable effort to establish that the seized goods are indeed smuggled. Instead, the Investigating Officer prematurely concluded that the Appellant was involved in the trade of smuggled goods, as evident by the question posed to the appellant: "Since how long you are dealing in smuggled Mobile Phones and Accessories?". In my considered view, it is essential that the Investigating Officer first establish the smuggled nature of the goods before concluding the Appellant's involvement in smuggling activities, especially when the goods were seized from the Appellant's premises, and not from any Customs-controlled area. Mere absence of invoices or other import documents is insufficient to conclusively prove that the goods are smuggled. Further, the Adjudicating authority wrongly treated the appellant's statement as a critical piece of evidence, despite the fact that the investigation conducted by the department in context to the deposition made by the Appellant regarding purchase of the said goods from shri Deelip of Chennai and payment made through Angadiyas failed to establish that the Appellant has procured the goods by way of smuggling. In fact, the investigation conducted by the department favours the version of the statement deposed by the Appellant that he has purchased the said goods from Shri Deelip Chennai and the payment in respect of the same was made through Angadiyas. Moreover, non-recording of statement from Shri Deelip of Chennai further undermines the stand taken by the department that the appellant has procured the said goods by smuggling.

5.5 It is observed that the adjudicating authority relied upon the decision of the Madras High Court in Stalin Joseph v. Commissioner of Customs (Airport), Chennai (reported at 2021 (337) E.L.T. 13 (Mad.)) wherein it was held that when statement is not retracted the same is binding as per law. However, it is observed that this decision is not applicable to the factual matrix of the present case. The statement deposed by the Appellant per se does not conclusively prove that the Appellant has procured the smuggled goods. It merely states that the Appellant was dealing in foreign made Mobile Phones and Accessories without any

purchase Invoice and Bill. Even if the Appellant's statements were to be accepted as gospel truth, they will not serve any purpose as far as allegations of procurement via smuggling are concerned. Therefore, in either scenario, the allegations set forth in the show cause notice cannot stand.

5.6 The adjudicating authority also erred in concluding that the department had fulfilled its initial burden of proof to establish that the appellant procured the goods through smuggling. This is particularly significant as the show cause notice does not allege that the Appellant procured the goods through smuggling or that the Appellant imported the goods into India without paying the applicable customs duties. Instead, the show cause notice merely allege that the Appellant procured smuggled goods based on his own statement and his failure to produce invoices for the seized goods, which were of foreign origin. It is important to emphasize that the mere unavailability of invoices is insufficient evidence to establish that goods of foreign origin, which can be freely imported under a general license, are smuggled goods. It is also observed that no investigation was conducted in respect of the buyers of the said goods. Thus, the appellant's statement, not confronted by the statement of seller, cannot be considered for holding that the goods are smuggled, as previously discussed. Consequently, the findings of the adjudicating authority regarding the smuggled nature of the goods are not substantiated and are, therefore, unjustifiable.

5.7 Further, I have perused Para 35 of the impugned order, wherein the adjudicating authority has provided explanations regarding the non-applicability of the case laws cited by the appellant. The appellant had cited certain case laws to support their contention that the goods in question were not notified under sub-section (2) of Section 123 of the Customs Act, 1962, thereby placing the burden of proving that the goods were smuggled on the department. Upon careful consideration, it is observed that the findings rendered by the adjudicating authority in Para 35 are neither proper nor justifiable. I have gone through the case laws relied upon by the appellant, and the facts in common of these cases were that the seizure of the goods was a town seizure, the goods were not notified under Section 123 of the Customs Act, 1962, and the smuggled nature of the goods was not proven by the department. The facts of the present case bear a striking similarity to those in the case laws cited by the Appellant. The findings of the Adjudicating Authority in context to the relied upon case laws that the department has discharged its burden to prove smuggled nature of goods are not supported by any material evidence but rather based on assumption and presumptions. Moreover, in support of the findings rendered by the Adjudicating Authority regarding burden of proof reliance is placed on several case laws as discussed in para 37 of the impugned order. I find that the reliance placed on



case laws at para 37 is totally mis placed and has no relevance to the issue of smuggling under Customs Act, 1962. The Adjudicating Authority failed to realise that Section pertaining to Clandestine removal of goods under Central Excise Act and Section pertaining to smuggling under Customs Act, 1962 are not pre materia and therefore the judgements relied upon in this regards are not applicable to factual matrix of the present case.

5.8 In light of the above findings, it is in my considered view that the department has failed to establish that the goods in question are smuggled goods. Therefore, it is not justifiable to classify these goods as smuggled goods.

5.9 With regard to the confiscation of goods under Section 111(l) of the Customs Act, 1962, it is observed that Section 111(l) provides for the confiscation of any dutiable or prohibited goods that are either not included or are in excess of those included in the entry made under the Customs Act, 1962, or, in the case of baggage, in the declaration made under Section 77 of the Customs Act, 1962.

5.10 Since, the act of smuggling has not been proved by the department, nor is it alleged in the show cause notice that the Appellant imported the goods by way of smuggling, therefore as discussed in the preceding paragraphs, the goods cannot be considered as smuggled goods. Hence, the confiscation of goods under these circumstances is not sustainable. Furthermore, for confiscation to be valid under Section 111(l) of the Customs Act, 1962, there must be a bill of entry filed by the importer, or in the case of baggage, a declaration made under Section 77 of the Customs Act, 1962. In the present case, neither of these conditions has been fulfilled. Therefore, the confiscation of goods by the adjudicating authority is not legally justified under the facts and circumstances of this case, nor in accordance with the provisions of Section 111(l) of the Customs Act, 1962. In view of the above, I hereby set aside the confiscation of goods under Section 111(l) of the Customs Act, 1962 and consequently, no redemption fine is imposable under Section 125(1) of the Customs Act, 1962.

5.11 With regard to the liability to pay duty under Section 28(4) of the Customs Act, 1962, on the Mobile Phones, Apple Watches, and Apple-branded accessories of foreign origin seized from the appellant's premises, and those already sold by the appellant, the adjudicating authority at Para 38 of the impugned order concluded that the Appellant has imported the said goods by way of smuggling and therefore the duty in respect of the said goods is required to be confirmed under Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962.



5.12 In this regard I find that the findings of the Adjudicating Authority are not legally sustainable since the smuggled nature of the goods and the act of smuggling by the appellant has not been established, as discussed earlier. Additionally, I also find that, in accordance with the provisions of the Customs Act, 1962, the valuation of goods should only be determined in compliance with Section 14 of the Customs Act, 1962 and the Valuation Rules, 2017. The adjudicating authority has made a material error in accepting the valuation provided by the department, and the same cannot be sustained.

5.13 Further, the decision of Hon'ble Tribunal in the matter of Commissioner of Central Excise, Surat-II v. Mahadev Enterprise (2014 (301) E.L.T. 150 (Tri-Ahmd)) is directly applicable to the present case. The relevant portion of the judgment, reproduced below, highlights the following:

"From the above definition of 'importer', it is evident that in relation to any goods, only between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer. So, the word 'importer' has to be read in the context of the time between their importation and till they are cleared for home consumption, which is the time when the imported goods are in the Customs area. Accordingly, it is held that Customs duty cannot be demanded in town seizures in addition to the redemption fine from the person from whose possession the smuggled goods are seized, because the value/price of the seized/confiscated goods is deemed to include the duty element levied/leviable with respect to such goods, and the officer adjudicating the case has considered the same while imposing the redemption fine."

This decision was relied in the case of Vijay Kumar Chaudhary v. Commissioner of Customs, Patna (2015 (325) E.L.T. 788 (Tri Kolkata)).

5.14 In view of the above, and following the decision of Hon'ble Tribunal Ahmedabad and Kolkata, I am of the considered view that demand for Customs duty from the appellant does not survive in the facts and circumstances of this case. Accordingly, the demand for duty under Section 28(4) and consequently, interest under Section 28AA of the Customs Act, 1962, is hereby set aside.

5.15 Further, since the confiscation of goods and the demand for duty have already been set aside in the preceding paragraphs, the penalty imposed under Section 114A of the Customs Act, 1962, cannot be sustained. Consequently, the penalty under Section 114A is also hereby set aside.



6. In view of above, the appeal filed by the appellant is allowed with consequential reliefs, if any.



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COMMISSIONER (APPEALS)
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F.Nos. S/49-86/CUS/JMN/2023-24
To, 3977

Dated -16.10.2025

Shri Kalpen Mukundbhai Pabari
(Proprietor of Yash Mobile),
Street No. 21, Jagnath Plot, Rajkot - 360001

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