



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
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DIN - 20250771MN000000D2B9

क्र	फाइल संख्या FILE NO.	S/49-38/CUS/JMN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTM-000-APP-064-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	04.07.2025
	उद्भूत अपील आदेश की सं: व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 25/ADC/2023-24 dated 21.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	04.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Yasin Habib Salat, Proprietor of M/s Taj Maxi Ghar, Behind Suryodyay Petrol Pump, Dhoraji Road, Upleta - 360490, District - Rajkot.



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 exported
(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।
(ब)	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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष 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 उससे 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(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 रुपए.</p> <p>(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;</p> <p>(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, पाँच हजार रुपए</p> <p>(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 :</p> <p>(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 रुपए.</p> <p>(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.</p> <p>(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।</p> <p>(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 alone is in dispute.</p> <p>6. उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या 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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

ORDER-IN-APPEAL

The present appeal has been filed by Shri Yasin Habib Salat, Proprietor of M/s Taj Maxi Ghar, Behind Suryodaya Petrol Pump, Dhoraji Road, Upleta - 360490, District – Rajkot (hereinafter referred to as the 'Appellant'), in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 25/Additional Commissioner/2023-24 dated 21.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Hon'ble CESTAT, Ahmedabad vide Order No. A/11322-11328/2022 dated 31.10.2022 in the matter of M/s Taj Maxi Ghar, Upleta owned by Shri Yasin Salat has set aside the Order-in-Appeal-JMN-CUSTM-000-APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses.

2.1 Brief facts of the case are that, the case arises from an intelligence input received by the Preventive Section, Headquarters, Customs (Preventive), Jamnagar, indicating that M/s. Taj Mexi Ghar, located behind Suryodaya Petrol Pump, Dhoraji Road, Upleta, District Rajkot, was involved in the illegal procurement and sale of imported worn clothing. As per the intelligence, the firm was dealing in restricted goods specifically, worn clothing and other worn articles falling under Chapter Heading 63090000 of the Customs Tariff Act, 1975 (CTA). These goods are classified as "restricted" for import under the ITC (HS) policy, pursuant to DGFT Notification No. 7/2004-09 dated 27.10.2004, read with Para 2.17 of the Foreign Trade Policy, and thus can be imported only against a valid import license or authorization from the DGFT.

2.2 It was further gathered that M/s. Taj Mexi Ghar, under the proprietorship of Shri Yasin Habib Salat, was allegedly misclassifying these imported worn garments as "old and used cut wipers, rags, mutilated fabrics," which fall under Chapter Heading 63100000 of the CTA, in order to evade customs duty. Acting on the said intelligence, officers of the Customs (Preventive) conducted searches on 09.12.2016 at two godowns belonging to the firm one located on Vadla Road, Upleta, and the other situated behind Suryodaya Petrol Pump.

2.3 During the search at the first godown, the officers discovered a substantial quantity of foreign-labelled worn clothing bearing labels such as "MADE IN CHINA," "MADE IN USA," and "MADE IN CAMBODIA"—stacked in bales. The goods were uncut and in a reusable condition, contrary to the requirements for classification as rags. The appellant, who was present during the search, admitted that the goods were imported and in wearable condition, although he claimed to have purchased them from local markets in India and not directly imported them himself. A few purchase invoices were recovered, but they did not indicate that the goods were of foreign origin.

2.4 A second search was carried out on the same day at the firm's second godown, where similar goods were found. Some garments were found cut along the seams; however, these cuts were minimal and not sufficient to render the garments unserviceable. The nature of these cuts indicated that the clothing could be easily stitched and reused, again failing the threshold of mutilation required for classification as rags. In total, 341 bales weighing 35715 Kgs of imported worn clothing were found across both godowns, valued at Rs. 16,69,825/- Since the Appellant could not produce any documents evidencing legal import or duty payment, the goods were detained under a Panchnama dated 09.12.2016 and handed over to him under Supratnama for safe custody.



2.5 Subsequently, on 04.01.2017, the goods were seized under Section 110 of the Customs Act, 1962, based on the reasonable belief that they were smuggled goods. During the seizure, sample photographs of the goods were taken, which were acknowledged and signed by the Appellant. In his voluntary statement recorded under Section 108 of the Customs Act on 30.12.2016, the Appellant confirmed that the goods were purchased in bales from Delhi and Panipat and sold as such in local markets in Gujarat. He admitted that he did not possess any import-related documents such as Bills of Entry, and that the purchase invoices submitted by him did not mention the imported nature or foreign origin of the goods. He also acknowledged that the seized goods fell under Chapter Heading 63090000 and were restricted for import.

2.6 Investigation was extended to the suppliers listed in the purchase invoices submitted by the Appellant, including M/s. Jawala Trading Co., Panipat; M/s. Var Impex, Delhi; M/s. Panch Murti, Delhi; and M/s. P.M. Enterprises, Delhi. The statements and documents provided by these parties revealed that either

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the goods sold were procured from local markets or, in the case of M/s. P.M. Enterprises, while an import through Kolkata Port was claimed, no conclusive link could be established between the imported goods and the ones seized from M/s. Taj Mexi Ghar. The invoices lacked any correlation with the seized goods and failed to establish legitimate import or customs duty payment.

2.7 Further, a reference was made to the Directorate General of Foreign Trade (DGFT) seeking clarification on the import status of such goods. The DGFT, via its communication dated 26.05.2017, confirmed that no authorization had been granted to M/s. Taj Mexi Ghar for import of worn clothing and reiterated that such imports are restricted under Heading 63090000. Accordingly, the DGFT advised the Customs authorities to take appropriate action under the provisions of the Customs Act, 1962.

2.8 It was observed that the seized goods, comprising cut and uncut worn garments, were in wearable and reusable condition and were classifiable under Heading 63090000, as clarified by CBEC Circular No. 36/2000-Cus dated 08.05.2000. This circular prescribes that only goods with three or more cuts in a crisscross manner, rendering them completely unserviceable, may be classified as rags (CTH 63100000). In the present case, the goods did not meet this condition and were thus not eligible for clearance without a valid import license.

2.9 In the absence of valid import documentation or any evidence of duty payment, the goods were held to be smuggled into India in violation of the provisions of the Customs Act, 1962. The worn garments, being restricted goods under the Foreign Trade Policy, were liable to confiscation under Section 111(d) of the Act.

2.10 The Investigation into the matter culminated into issuance of Show Cause Notice No. VIII/10-145/JC/O&A/2017 dated 07.06.2017 to the Appellant calling him as to why:

- (i) the imported worn clothing falling under Chapter Heading 630900 of the CTA, weighing 35.715 MT valued at Rs. 16,69,825/- seized from the godown of M/s. Taj Mexi Ghar, Upleta should not be confiscated under section 111 (d) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon Shri Yasin Habib Salat, Proprietor

of M/s Taj Mexi Ghar, Upleta under Section 112(a) and Section 112(b) of the Customs Act, 1962.

2.11 During the first round of litigation matter was adjudicated vide the Order-in-Original No. 21/Joint Commissioner/2017-18 dated 28.02.2018/ 28.03.2018 issued by the Joint Commissioner, Customs (Prev), Jamnagar which was upheld vide Order-in-Appeal No. 'Order-in-Appeal-JMN-CUSTM000-APP-74-80-19-20 dated 30.05.2019' and in subsequent litigation the Hon'ble CESTAT vide its common Order No. A/11322-11328/2022 dated 31.10.2022 has set aside the Impugned Order-in-Appeal-JMN-CUSTM-000APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses.

2.12 The Appellant, initially, vide their reply dated 14/08/2017 has requested for cross examination of Panch witnesses as well as other persons including officers of the department. However, during the remand proceedings, the Appellant through their Advocate Shri Amal Dave's letter no. NIL dated 26.10.2023 and dated 01.11.2023 submitted that they wish to Cross Examination only two Panch witnesses in connection with the Panchnama Proceedings of 09.12.2016 and they did not want to cross examine other persons. Accordingly, by following the Hon'ble CESTAT's directions, the Cross Examination of both the Panchas (1) Shri Sarfaraz Razaqbhai Abla (2) Shri Shivani Shakil Siddiqbhai by Shri Amal dave Advocate and Shri Sudhanshu Bissa on behalf of Shri Yasin Habib Salat, Proprietor of M/s. Taj Mexi Ghar, Upleta was conducted on 04/01/2024. During the Cross Examination, Shri Sarfaraz Razaqbhai Abla and Shri Shivani Shakil Siddiqbhai on being asked about their presence during stock taking from 11:30 A.M. to 6:00 PM on 09.12.2016, they stated that "*they were called for the procedure at 11:00 Am and they presented at the government work and attended proceedings*"; that they left the place and again visited the place for signature; that they attended marriage of a person whose name was as mentioned in 'invitation card' during "Morning to Evening"; that they were called for by the officer in the evening at "6:00 O'clock"; that marriage was continued up to 9:00 PM; that they were not present at the time of stock taking and not witnessed weighment of goods on 09.12.2016; that they did not see the goods and also labels of 'foreign make' on it. On being asked about why they signed the documents, both the Panchas stated that they signed as it was pertaining to government work. On being asked both of them



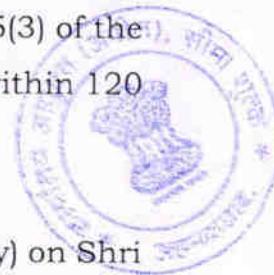
stated that S/Shri Mori Vasim Ibrahim, Shri Rajab Jiva Makwana, Shri Shakil Ghanchi, Shri Sadiq Ghanchi, Shri Javedbhai Patel, Shri Rafikbhai Hakka and Shri Mustak Yunusbhai Sharif, were present at a place where they were attending marriage ceremony.

2.13 The adjudicating authority after granting personal hearing and considering the outcome of Cross examination and further submission made by the Appellant in the matter passed the impugned Order as under:

(i) He confiscate the seized foreign origin goods viz. old & worn clothing falling under CTH 63090000, weighing 35715 kgs valued at Rs. 16,69,825/- (Rupees Sixteen Lakhs Sixty-Nine Thousand Eight Hundred Twenty Five only), seized from the godown premises of Shri Yasin Habib Salat, Proprietor of M/s. Taj Mexi Ghar, Upleta, under Section 111(d) of the Customs Act, 1962.

(ii) he offered the goods, ordered for confiscation as per (i) above, for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of Rs.2,75,000/- (Rupees Two Lakh Seventy-Five Thousand only) in addition to duties and charges payable under Section 125(2) of the Customs Act, 1962. Further, as per the provisions of Section 125(3) of the Customs Act, 1962, if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.

(iii) he imposed penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on Shri Yasin Habib Salat, Proprietor of M/s. Taj Mexi Ghar, Upleta, under Section 112 (a) & Section 112(b) of the Customs Act, 1962.



3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:

- The impugned order passed by the Additional Commissioner is ex-facie illegal and unsustainable, as the adjudicating authority has not considered the substantial arguments raised by the appellant in the preliminary reply dated 28.08.2017 and in the final reply.
- The adjudicating authority has wrongly relied upon the panchnama dated

09.12.2016, even though it was recorded that the panch witnesses denied any knowledge about its contents. This reliance is illegal and bad in law.

- The authority has ignored the appellant's submission that there was no evidence on record to suggest that the seized goods were foreign brand uncut old and used clothing. It was accepted that the bales were merely counted and not examined individually.
- The evidence submitted by the appellant showing legal purchase of goods from local suppliers was discarded without assigning any findings, which is arbitrary and unjust.
- As this is a case of town seizure, the burden to prove the goods are smuggled lies on the revenue, which has failed to discharge the same. Hence, the impugned order is devoid of merits.
- The adjudicating authority erred in holding that the panchnama proceedings cannot be vitiated merely because the panch witnesses signed the panchnama. However, during cross-examination dated 04.01.2024, both panch witnesses—Shri Sarfaraz Razakbhai Abla and Shri Shivani Shakil Siddiqbhai—deposed that they were at a marriage on 09.12.2016 and had signed the panchnama only on request of the officers, without being present for the search.

- The appellant submits that signature alone is not conclusive proof of proper panchnama proceedings. The depositions of the independent panchas clearly taint the sanctity of the panchnama, and hence no reliance can be placed on it.
- The adjudicating authority could not have upheld the correctness of the panchnama merely because the panchas signed it, especially when the panchas themselves denied knowledge of its contents and affirmed they did not witness any stocktaking or examination of goods.
- The finding that the panchas ought to have objected at the time of drawing the panchnama is misconceived, as the panchas are not parties to the proceedings and were unaware of what they were signing.

The appellant relies on settled judicial precedents:

- B.D. Goel v. Ebrahim Essa Sodha, 2014 (306) E.L.T. 337 (Bom.)
- CCE & ST, Lucknow v. Anand Kumar @ Babu, 2015 (325) E.L.T. 609 (Tri.-Del.)
- CCE, Ahmedabad-III v. Baroda Rolling Works, 2009 (238) E.L.T. 495 (Tri.-Ahmd.)
- Ashok Kumar v. Commissioner of Customs, 2003 (158) E.L.T. 441 (Tri.-Del.)

All of which affirm that when panchas deny presence during seizure and contradict the contents of panchnama, no evidentiary value can be attached to such panchnama, and charges cannot be sustained.

- Since the adjudicating authority has heavily relied upon a tainted panchnama, and the case of the department is not supported by any cogent or corroborative evidence, the impugned order deserves to be set aside in the interest of justice.
- The Adjudicating Authority erred in holding that the panchnama proceedings are valid merely because Shri Yasin Habib Salat (proprietor) was present and signed the panchnama dated 09.12.2016. The appellant had categorically stated in its reply dated 28.08.2017 that the proprietor was attending a marriage and was not present during the drawing of panchnama. Moreover, no physical examination of bales was conducted to determine whether they contained foreign-brand uncut clothing. Therefore, the findings are ex-facie illegal and unsustainable.
- The officers failed to examine each bale to ascertain the foreign brand nature of the goods. The panch witnesses deposed during cross-examination that they were not present during stock taking and did not see any foreign labels. The methodology adopted—counting the bales and multiplying by average weight—lacks evidentiary value. It contradicts judicial precedent including:
 - ❖ Commr. of C. Ex., Haldia v. Shri Badri Narayan Alloys & Steels Ltd., 2018 (8) G.S.T.L. 79 (Tri. - Kolkata)
 - ❖ Raika Ispat Udyog Pvt. Ltd. v. CCE, Raipur, 2016 (340) E.L.T. 598

(Tri.-Del.)

- ❖ Surya Wires Pvt. Ltd. v. CCE, Raipur, 2021 (376) E.L.T. 550 (Tri. - Del.)
- ❖ Shree Rolling Mill v. Commr., Central Tax, C. Ex. & Cus., Raipur, 2021 (377) E.L.T. 883 (Tri. - Del.)
- ❖ Shree Nakoda Ispat Ltd. v. CCE, Raipur, 2017 (348) E.L.T. 313 (Tri. - Del.)
- ❖ Unique International Ltd. v. CCE, Chandigarh, 2016 (344) E.L.T. 555 (Tri. - Chan.)
- The finding that the panchnama was not vitiated due to different officer groups being involved is irrelevant. Neither the panchnama nor the supratnama record physical verification of goods. The assumption that goods were foreign-labeled and uncut based on mere bale count is flawed. Judicial precedents make it clear that eye-estimation is not a valid method of stock verification.
- The Authority wrongly held that the appellant admitted the quantity of 35.715 MTs. The appellant never admitted the goods were imported or uncut but only stated they were purchased from local suppliers in Delhi and Panipat. Documentary evidence, including invoices and supplier confirmations, was ignored. One supplier, M/s. P.M. Enterprises, confirmed sale of goods and produced evidence of duty-paid imports.
- The foundation of the show cause notice that there were no import documents is misplaced. The appellant never imported the goods but purchased them locally from suppliers who confirmed such transactions. Thus, the burden to prove smuggled nature rests on the department.
- Since the goods were found outside the customs area, the presumption is that they are duty-paid. The burden of proof lies on the department in case of town seizure. Judicial precedents support this:

- A.K. Hamsa Mohideen v. CCE, Chennai, 2004 (171) E.L.T. 327 (Tri. - Chennai)
- Affirmed in CCE, Chennai v. A.K. Hamsa Mohideen, 2012 (276) E.L.T. 503 (Mad.)
- Sadbhavana v. CCE, Indore, 2003 (158) E.L.T. 652 (Tri. - Del.)

- V. Muniyandi v. CCE, Chennai, 2004 (167) E.L.T. 215 (Tri. - Chennai)
- Ashok Premji Patel v. CCE, Mumbai, 2003 (157) E.L.T. 568 (Tri. - Mumbai)

- The rejection of panch witness depositions (Shri Sarfaraz Razakhbhai Abla and Shri Shivani Shakil Siddiqbhai) is erroneous. These witnesses confirmed under cross-examination that they were not present during panchnama. The Authority wrongly presumed their presence and dismissed their testimony as an afterthought. The requirement to cross-examine investigating officers is misplaced when departmental panchas themselves contradict the panchnama.
- The finding of liability for confiscation and penalty under Section 111(d) and Section 112 is erroneous. The appellant never imported the goods, possessed valid local purchase bills, and there is no evidence of smuggling. The burden of proof has not been discharged by the department.
- Penalty under Section 112(a) is unjustified since the appellant has not committed or omitted any act rendering the goods liable to confiscation. When Section 111 is not invoked validly, penalty under Section 112(a) automatically fails.
- Penalty under Section 112(b) also fails as the department failed to establish that the appellant knowingly dealt with smuggled goods. There is no evidence showing knowledge or belief that the goods were liable to confiscation.
- As held in Hindustan Steel Ltd., 1978 E.L.T. (J159) (SC), penalty should not be imposed merely because it is lawful. It must be shown that the appellant acted dishonestly or contumaciously, which is not the case here.
- The invocation of Section 125(2) to demand duty along with redemption fine is without jurisdiction as the show cause notice did not propose any such demand. The Adjudicating Authority exceeded the scope of the notice, rendering the order unsustainable in law.



PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.06.2025, following the principles of natural justice wherein Shri Shudanshu Bissa and Shri Amal Dave, Advocate, appeared for the hearing and re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs (Preventive), Jamnagar and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(i) Whether the adjudicating authority, in the remand proceedings, correctly appreciated the evidence adduced during cross-examination of the Panchas and whether its findings are sustainable in light of the CESTAT's specific directions.

(ii) Whether the department has successfully discharged its burden of proving the alleged illegal import/smuggling of goods.

(iii) Whether the confiscation of goods and imposition of penalties under Section 112(a) and (b) of the Customs Act, 1962, are justified.

(iv) Whether the impugned order suffers from a violation of the principles of natural justice and is a non-speaking order.

5.2 I find that the Hon'ble CESTAT, Ahmedabad, in its Final Order No. A/11322-11328/2022 dated 31.10.2022, explicitly remanded the matter, specifically directing the adjudicating authority to allow cross-examination of witnesses and to decide the case afresh. This remand was based on the observation that the department's case relied solely on the Panchnama and statements of witnesses whose cross-examination was crucial. The cross-examination of Panchas (Shri Sarfaraz Razaqbhai Abla and Shri Shivani Shakil Siddiqbhai) on 04.01.2024 yielded critical information:

- Both Panchas stated they were not present when the Panchnama was drawn, and were elsewhere.

- They admitted to signing the Panchnama only because they were asked to do so by Customs Officers, without knowing its contents or the quantities involved.
- They denied seeing the seized goods physically.

5.3 These depositions directly contradict the evidentiary value and sanctity of the Panchnama. A Panchnama drawn in the absence of independent witnesses, or where the witnesses have no knowledge of its contents, loses its evidentiary value. The Hon'ble Bombay High Court in B.D. Goel vs Ebrahim Essa Sodha [2014 (306) E.L.T. 337 (Bom.)] held that the assessee cannot be charged with smuggling solely based on a Panchnama where cross-examination reveals contradictions. Similarly, in Anand Kumar vs Commissioner of C. Ex. & S.T., Lucknow [2015 (325) E.L.T. 609 (Tri. - Del.)], it was held that if Panchas were not present during the proceedings, no sanctity can be attributed to such Panchnama.

5.4 The adjudicating authority, in the impugned order, dismisses these critical depositions by merely stating they are "insufficient to prove that the Panchnama proceeding was incorrect". This is a clear misappreciation of evidence and a failure to adhere to the spirit of the CESTAT's remand order. When the very foundation of the department's case (the Panchnama) is shaken by the direct testimony of the Panchas themselves, the burden shifts back squarely to the department to provide irrefutable evidence of illegal import. The adjudicating authority cannot simply discard such crucial evidence.

5.5 In cases of seizure of goods outside the Customs area, the initial burden is on the department to prove that the goods are smuggled/illegally imported. Once a credible Panchnama is drawn, the burden may shift to the Appellant. However, when the Panchnama itself is rendered unreliable by cross-examination, the primary burden remains with the department.

5.6 The department's only other assertion is that the goods had "foreign labels" and were "uncut/unmutilated," which indicates imported nature. However, the Appellants claimed to have purchased these goods locally and even provided purchase bills. The department's bald assertion that these local purchase bills are "not in the nature of import documents, and therefore, the invoices cannot be accepted" without providing any evidence of their falsity or contradiction, is insufficient. The Hon'ble Madras High Court in Commissioner of Customs, Chennai Vs. A.K. Hamsa Mohideen [2004 (171) E.L.T. 327 (Tri. - Chennai)] held that if the department fails to produce any evidence to prove

smuggling, the order of confiscation and penalty cannot be sustained. Since the Panchnama is discredited, and the department has not provided any other concrete evidence (such as import documents, foreign suppliers, or intelligence reports) to prove that these specific goods were illegally imported, it has failed to discharge its burden of proof.

5.7 Confiscation under Section 111 and penalties under Section 112 of the Customs Act, 1962 are contingent upon the goods being illegally imported or smuggled. If the department fails to prove the fundamental allegation of illegal import/smuggling, then the goods cannot be held liable for confiscation, and consequently, no penalties can be imposed.

5.8 Given the infirmities in the Panchnama and the department's failure to independently prove the imported or smuggled nature of the goods, the very basis for confiscation and penalties collapses. There can be no question of mens rea (intentionality) for smuggling when smuggling itself has not been proven.

5.9 The CESTAT remanded the matter specifically to allow cross-examination and to decide the case afresh. While cross-examination was conducted, the impugned order, by summarily dismissing the crucial evidence from cross-examination without a proper reasoned analysis of why the Panchas' statements are unreliable, fails to comply with the spirit of a "speaking and reasoned order." The adjudicating authority was bound to give proper weight and reasoning to the cross-examination evidence, especially when it directly impeaches the primary evidence. This amounts to a failure to follow the remand directions adequately and consequently a violation of natural justice.

6. In view of the detailed discussions and findings above, I find that the impugned order passed by the adjudicating authority is legally unsustainable. The adjudicating authority has failed to correctly appreciate the crucial evidence that emerged during the cross-examination of the Panch witnesses, which significantly weakened the evidentiary value of the Panchnama. Consequently, the department has failed to discharge its burden of proving the illegal import/smuggling of goods.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) I hereby set aside the Order-in-Original No. 25/Additional Commissioner/2023-24 dated 21.02.2024.

(ii) I hold that the department has failed to establish that the seized goods were illegally imported or smuggled into India.

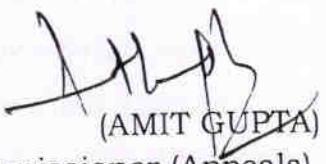
(iii) Consequently, the confiscation of 35715 kgs of old and worn clothing valued at Rs. 16,69,825/- and redemption fine of Rs 2,75,000/- are hereby set aside.

(iv) The penalty of Rs. 2,00,000/- imposed on Shri Yasin Habib Salat, Proprietor of M/s Taj Maxi Ghar, Upleta under Section 112(a) and (b) of the Customs Act, 1962, is hereby set aside.

(v) Any amounts deposited by the Appellants towards redemption fine or penalties shall be refunded to them with applicable interest, in accordance with law.

The appeal filed by the appellant is hereby allowed.




 (AMIT GUPTA)
 Commissioner (Appeals),
 Customs, Ahmedabad

F. No. S/49-38/CUS/JMN/2024-25

Date: 04.07.2025

By Registered post A.D/E-Mail

9029

To,

Shri Yasin Habib Salat, Proprietor of M/s Taj Maxi Ghar,
 Behind Suryodaya Petrol Pump, Dhoraji Road,
 Upleta - 360490, District – Rajkot.

सत्यापित/ATTESTED


 अधीक्षक SUPERINTENDENT
 सीमा शुल्क (अपील), अहमदाबाद.
 CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs (Preventive), Jamnagar.
4. Guard File.