सत्यमेव जयते

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20260171MN000051085A

क	फ़ाइल संख्या FILE NO.	S/49-230/CUS/AHD/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)	AHD-CUSTM-000-APP-521-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	21.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 14/AR/ADC/SRT/2023-24 dated 08.03.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	21.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Kailash Kumar, Proprietor of M/s Baba Traders, Nr. Hazrat Khwaja Madni Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat. 304, Arihant Appt. Nr. Jain Derasar Amroli Char Rasta, Amroli, Surat- 394107 Mobile- 9998241551

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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 है.**
	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)	**बैगेज़ 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.**
(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 दस्तावेज़ों 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 हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 सम्बंध 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय 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 ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**
(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 ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**
(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 ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**
(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 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.**
	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

The present appeal has been filed by Shri Kailash Kumar , Proprietor of M/s Baba Traders, Nr. Hazrat Khwaja Madni Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No.: 14/AR/ADC/SRT/2023-24 dated 08.03.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, briefly stated on the basis of the available records, are that specific intelligence was received by the DRI, Surat Regional Unit, Surat (hereinafter referred to as 'DRI') that 04 parcels of contraband / smuggled goods are coming to the premises of M/s Baba Traders, Nr. Hazrat Khwaja Madni Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat. The Officers of the DRI visited the said premises on 09.06.2023 and found that one person Shri Kalandar Khan, driver of the Tempo came to deliver 3 consignments viz. 02 consignment of lighter and 01 consignment of cigarettes. He informed 02 consignments were picked up from M/s Gujarat Transport, Parvat Patiya, Surat and 01 consignment was picked up from Shiv Shakti Roadlines Bharat Nagar, Bhatena, Surat as per the directions of Shri Kailash Kumar. Shri Kailash Kumar informed that 02 consignments of Lighter were already kept inside the shop premises and 01 consignment of cigarettes having two PP Bags were lying outside the shop premises.

2.1 The officers examined two big PP bags under Panchnama dated 09.06.2023 and found that each bag contained four corrugated brown carton boxes. On examination, each carton was found to contain 50 rims of "DJARUM BLACK" cigarettes. Each rim contained 10 small packets, and each packet contained 20 cigarettes. The packets bore the description "DJARUM BLACK 20 KRETEK CIGARETTES – Manufactured by PT Djarum, Kudus, Indonesia. Shri Kailash Kumar failed to produce any documents evidencing legal purchase or import and stated that the foreign-origin cigarettes were purchased from a supplier in Delhi without any legal documents. It was further noticed that none of the cigarette packets bore any retail sale price or maximum retail price. In total, 80,000 foreign-origin filter cigarettes (85 mm), valued at Rs. 16,00,000/- at a market value of Rs. 20 per stick, were found.

As no documents for legal import were available, the goods appeared to be smuggled and were detained under the provisions of the Customs Act, 1962, on a reasonable belief that they were liable to confiscation. Thereafter, the detained goods, i.e. eight cartons containing 80,000 cigarettes valued at Rs. 16,00,000/-, were taken over by the officers of the Directorate of Revenue Intelligence, Surat Regional Unit, for safe custody and further investigation.

2.2 The statement of Shri Kailash Kumar, Proprietor of M/s Baba Traders, Near Hazrat Khwaja Madni Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat, was recorded under Section 108 of the Customs Act, 1962 by the Senior Intelligence Officer, Directorate of Revenue Intelligence, Surat Regional Unit, on 09.06.2023.

In his statement, he inter alia stated that M/s Baba Traders is a GST-registered firm (GSTIN: 24CECPK1248A127) operating from rented premises at 9/2047, Ambaji Road, near Hazrat Khwaja Madni Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat. The firm is engaged in trading of lighters, chocolates, tobacco, etc., and he was also dealing in the purchase and sale of foreign-origin cigarettes.

He admitted that he was present during the Panchnama proceedings dated 09.06.2023 and that 80,000 sticks of imported "DJARUM BLACK" cigarettes were recovered from his premises. He agreed to the detention of the cigarettes, accepted that they were smuggled goods, and stated that he did not possess any legal documents for their procurement. He also accepted the valuation adopted by the officers, though he stated that wholesale rates were lower than retail market rates.

He confirmed the correctness of the statement dated 09.06.2023 of Shri Kalandar Khan, driver of Tempo No. GJ-05-BV-6623. He further stated that he had been dealing in cigarettes for the past 3–4 years and that the cigarettes were supplied for the last 3–4 months by one Shri Lalitbhai, also known as Gurubhai, based in New Delhi, against cash payments only, without any invoices or import documents.

He stated that the cigarettes were sold in cash to retail shop owners who visited his shop and that he did not maintain details of such buyers. He admitted that the cigarettes were of foreign origin, transported to Surat through M/s Shiv Shakti Roadlines, and were purchased without any legal documents such as invoices or Bills of Entry.

He further admitted that the seized cigarettes did not bear the mandatory pictorial health warnings as prescribed under the Cigarettes and Other Tobacco Products Act, 2003 and the Rules made thereunder, and accepted that the said statutory provisions had been contravened by him.

2.3 The statement of Shri Kalandar Khan, driver of Tempo No. GJ-05-BV-6623, was recorded under Section 108 of the Customs Act, 1962 by the Senior Intelligence Officer, Directorate of Revenue Intelligence, Surat Regional Unit, on 09.06.2023. In his statement, he inter alia stated that, on being asked about the two parcels of M/s Baba Traders, he received a call from Shri Kailash informing him that the goods had been booked in the name of "Guru" and providing him with the lorry receipt number and the name of the transporter. Thereafter, he went to the transporter's godown, informed them of the lorry receipt number, signed on the copy of the lorry receipt, and took delivery of the two parcels. The parcels were loaded onto his tempo bearing No. GJ-05-BV-6623 and, as per telephonic instructions, were to be delivered near M/s Baba Traders, Surat.

He stated that he was not aware of the contents of the parcels. After delivery, he obtained the signature of Shri Kailash and received payment in cash at the rate of Rs. 220 to Rs. 300 per parcel. He also stated that the mobile numbers of Shri Kailash were 9998241551 and 9978841551. He confirmed the Panchnama proceedings dated 09.06.2023 and admitted that the two parcels delivered by him contained foreign-origin cigarettes.

2.4 The detained goods, i.e. 80,000 foreign-origin "DJARUM BLACK" cigarette sticks valued at Rs. 16,00,000/- (market value), were examined at the office of the Directorate of Revenue Intelligence, Surat Regional Unit, under Panchnama dated 10.06.2023 . It was found that the cigarettes did not bear the mandatory pictorial health warnings as prescribed under the Cigarettes and Other Tobacco Products Act, 2003 and the Rules made thereunder, and bore foreign manufacturer details, namely "Manufactured by PT Djarum, Kudus, Indonesia". Accordingly, the said 80,000 sticks of foreign-origin cigarettes, valued at Rs. 16,00,000/-, were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 10.06.2023 , on a reasonable belief that the goods were smuggled and liable to confiscation.

2.5 The Joint Director (In-Situ), Directorate of Revenue Intelligence, Regional Unit, Surat, vide Letter F.No. DRI/AZU/SRU/B/ENQ-102/2023 dated 10.06.2023 transferred the Case to Custom Division, Surat for further investigation.

2.6 Subsequent to the transfer of the case, summons were issued to the transporter, M/s Shiv Shakti Roadlines, K-11, Bharat Nagar, Bhatena, Surat, on 21.06.2023 and 17.07.2023 . The statement of Shri Maniram Khimbhadur Kunwar was recorded under Section 108 of the Customs Act, 1962 on 17.07.2023 . He stated that

M/s Shiv Shakti Roadlines, established in 2021 and registered under GST (GSTIN: 24BOAPK7159H1ZX), is engaged in transportation of miscellaneous goods through owned and hired vehicles. The firm operates godowns at Vareli, Surat, and at K-11, Bharat Nagar, Bhatena, Surat, and has three branches in Delhi. The firm undertakes one-way transportation of goods from Delhi to Surat. He explained that consignments are booked at their Delhi godowns based on the description provided by clients, Goods Receipts (Bilties) are issued, and packed goods are transported to Surat without opening or scanning. On arrival at the Surat godown, goods are recorded, segregated area-wise, and delivered either through hired tempos or by direct pickup against cash memos. On verification of records, he stated that only two consignments of M/s Baba Traders were transported by them, vide GR No. 4177 dated 18.01.2023 and GR No. 13354 dated 06.06.2023, both booked in the name of "Guru" as consignor and consignee. The subject consignment, comprising two bundles under GR No. 13354 dated 06.06.2023, was picked up from their Surat godown by Shri Kalandar Khan on 09.06.2023. He confirmed that Shri Kalandar Khan, also known as Sikandar, had taken delivery of both consignments after signing the Bilties. He stated that the firm had no knowledge that the consignments contained cigarettes and that, as per their policy, they do not transport cigarettes or gutkha. He further stated that they rely solely on the declaration of goods made by clients, as they do not have scanning facilities at their godowns.

2.7 Shri Kailash Kumar, Proprietor of M/s Baba Traders, in his statement dated 09.06.2023, disclosed that Shri Lalitbhai, also known as Gurubhai, was using mobile number 8298299310. To ascertain the identity and address of the said person, the Deputy Director, DRI, Surat Regional Unit, vide letters dated 22.06.2023 and 20.07.2023 , sought Subscriber Detail Records (SDR) from the service provider. In response, the Deputy Director, DRI, Surat Regional Unit, vide letter dated 18.08.2023 , forwarded the reply dated 14.08.2023 received from M/s Reliance Jio Infocomm Ltd. As per the SDR, the said mobile number was registered in the name of Shri Anil Kumar Rana, S/o Shri Sher Singh Rana, resident of 739, Ward No. 4, Balol Khas, Post Office Balol, Tehsil Baroh, District Kangra, Himachal Pradesh–176037. Accordingly, summons dated 26.09.2023 were issued to Shri Anil Kumar Rana at the said address to record his statement. The speed post tracking shows that the summons were delivered on 12.10.2023; however, Shri Anil Kumar Rana did not appear before the office for recording of his statement.

2.8 In view of above discussion and available facts, the seized goods, namely 80,000 sticks of foreign-origin "DJARUM BLACK" cigarettes valued at Rs. 16,00,000/-, were found to be illegally imported into India without valid import documents, in contravention of Sections 46 and 47 of the Customs Act, 1962. The goods were transported to Surat under Lorry Receipt No. 13354 dated 06.06.2023 by misdeclaring both consignor and consignee as "Guru", with intent to evade customs duty and circumvent statutory restrictions. The seized cigarette packets did not bear the name of the importer, month of manufacture, MRP, or mandatory pictorial health warnings, in violation of the Foreign Trade (Development and Regulation) Act, 1992, Legal Metrology Rules, 2011, the Cigarettes and Other Tobacco Products Act, 2003, and the Rules made thereunder. Cigarettes being notified goods under Section 123 of the Customs Act, 1962, the burden to prove licit import lies on the claimant, which has not been discharged. Accordingly, the seized cigarettes are liable to confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962. Further, Shri Lalitbhai alias Gurubhai/Shri Anil Kumar Rana, as supplier, and Shri Kailash Kumar, Proprietor of M/s Baba Traders, as consignee, having knowingly dealt with smuggled goods, are liable to penalty under Section 112 of the Customs Act, 1962.

2.9 Accordingly, a SCN No.: VIII/09-04/SIIB/Baba Traders/2023-24 dtd. 06.12.2023 issued to Shri Kailash Kumar proprietor of M/s Baba Traders. Near Hazrat Khwaja Madnı Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat and Shri Lalitbhai also Known as Gurubhai/Shri Anil Kumar Rana, Balol Khas Kangra Tah Baroh, District Kangra. Himachal Pradesh 176037 as to why:

(1) the seized 80.000 sticks of imported foreign origin cigarettes of "DJRUM BLACK brand valued at Rs 16,00,000/ (Rs Sixteen Lakhs Only) (Market Value) placed under seizure vide seizure memo 10 06.2023 should not be confiscated under the provisions of Section 111(d) and 111(i) of the Customs Act. 1962,

(ii) Penalty should not be imposed upon them separately under the provisions of Section 112 of the Customs Act 1962 for the omissions and commissions mentioned hereinabove.

2.10 The adjudicating authority, after following the principles of natural justice and after due consideration of all relevant facts and records of the case, has passed the impugned order, the details of which are as under:

(i) He ordered for absolute confiscation of seized goods i.e. 80,000 sticks of imported foreign origin cigarettes of "DJARUM BLACK 20 KRETEK CIGARETTES" brand valued at Rs. 16,00,000/- under the provisions of Section 111(d) and 111(i) of the Customs Act, 1962,

(ii) He imposed penalty of Rs. 16,00.000/- imposed on Shri Kailash Kumar proprietor of M/s Baba Traders, Near Hazrat Khwaja Madni Dargah, Kotsafli Main Road, Bhagal Char Rasta, Surat under Section 112(i) of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal on 12.11.2024 wherein they have submitted grounds which are as under:-

- That during the period of appellant has no knowledge about this process & lost in business so appellant permanently closed my business with GST no. & after father lost job and now appellant is searching any job.
- That during that period Shri Lalitbhai also known as gurubhai [Anilkumar rana] get in touch with the appellant through his mobile phone: 8298299310 and asked to get his work done on commission basis to get parcel of lighter from Station to bhagal through unknown person: Shri kalandar khan driver of tempo no.GJ05BV6623 so he has come deliver 02 consignment of lighter which is kept beside appellant but Consignment of cigarette was not found in his custody & appellant was no doing any kind business of cigarette so no any cigarette found in his appellant custody or premises and to nor any deliver such kind of cigarette at nearby area. so that appellant is innocent and appellant not made any such kind of offence.
- That the ownership of the parcel lies with Shri Lalitbhai also known as gurubhai and the appellant just doing act of pickup and only lighter delivery based on the commission.
- That the appellant has co-operated in the proceedings going on against him.
- That the Learned Additional Commissioner is not justifying in imposing penalty of Rs.16,00,000/-(Rupees Sixteen Lakh Only) upon the appellant under section 112(b)(i) of the custom Act, 1962.
- That the Appellant prays to set aside penalty proceedings and for deletion of penalty pf Rs. 16,00,000/- (Rupees Sixteen Lakh Only)

PERSONAL HEARING:

4. In the matter, the appellant was granted opportunities of personal hearing on 13.08.2025, 06.01.2026, and 20.01.2026 to represent their case, in compliance with the principles of natural justice. However, the appellant neither appeared for personal hearing on given dates nor submitted any request for adjournment.

DISCUSSION AND FINDINGS:

5. Before going into the merits of the case, I find that from the Form C.A.-1, the date of communication of the Order-In-Original dated 08.03.2024 has been shown as 14.09.2024 and the date of filing Appeal shown as 12.11.2024. Therefore, it is observed that the present appeal has been filed within the statutory time limit of 60 days as prescribed under Section 128(1) of the Customs Act, 1962. One set of appeal filed on 12.11.2024 was forwarded to the adjudicating authority vide letter dated 04.12.2024 for comments. However, till date, no comments/reply have been received by this office. Therefore, in the absence of any response from the adjudicating authority, the present appeal is being decided on the basis of records available on file and the submissions made by the appellant.

5.1 It is observed that in Form C.A.-1 dated 11.11.2024, at Sr. No. 06, the appellant stated that a copy of the challan towards payment of the mandatory pre-deposit would be furnished. However, despite the lapse of more than one year, the appellant has not submitted any proof of payment of the mandatory pre-deposit to this office, as required under Section 129E of the Customs Act, 1962. The appellant vide letter dated 19.12.2025 and 05.01.2026 was requested to submit proof of pre-deposit amount as required under Section 129E of the Customs Act, 1962.

5.2 It is relevant to refer to the law pertaining to filing of appeals before the Commissioner (Appeals) and the law requiring the pre-deposit of certain amount in respect of filing an appeal before the Commissioner (Appeals) contained under Section 128 and Section 129 E of the Customs Act, 1962 respectively. The text of relevant sections is reproduced below for ease of reference.

> ***"SECTION 128. Appeals to [Commissioner (Appeals)].*** *— (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs*

or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :

*[**Provided** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]*

[(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

***Provided** that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]*

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

***SECTION 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.** — The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, —*

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs];

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty,

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

where such penalty is in dispute, in pursuance of the decision or order appealed against :

Provided *that the amount required to be deposited under this section shall not exceed rupees ten crores :*

Provided *further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.]"*

5.3 On perusal of the legal provision under the Section 128 and Section 129E of the Customs Act, 1962, it is observed that any person aggrieved by any decision or order passed under the Customs Act, 1962 may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order. However, such appeal filed by the appellant shall not be entertained unless the appellant has made a pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Thus, it is mandatory for an appellant to deposit the seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. The statutory provision pertaining to requirement of payment of pre-deposit does not grant any discretion to the Commissioner (Appeals) to waive the requirement of pre-deposit.

5.4 I rely upon the judgment of Hon'ble High Court of Madhya Pradesh in case of Ankit Mehta V. Commissioner of CGST, Indore, [2019 (368) E.L.T. 57 (M.P.)], wherein the Hon'ble High Court of Madhya Pradesh has observed that Section 129E of the Customs Act, 1962 does not empower the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit. The relevant para of the judgment is reproduced hereunder:

"13. This Court after careful consideration of the aforesaid judgments is of the opinion that Section 129E does not empower the Tribunal or the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit, this Court is also not inclined, keeping in view the aforesaid statutory provision of law to waive or reduce the pre-deposit and, therefore, no case for interference is made out in the matter."

5.5 I also rely upon the Order dated 06.12.2024 of Hon'ble High Court of Bombay in W.P. No. 476 of 2024 in the caser of Lalit Kulthia Vs. Commissioner of Customs (Appeals), Mumbai-III, which is reported as (2025) 28 Centax 135 (Bom.)/2025 (392) E.L.T. 436 (Bom.). Para 6 to 8 of the said Order are as under:

"6. The relief the Petitioners seek contradicts Section 129E of the Customs Act, which contemplates a pre-deposit. In Kotak Mahindra Bank Pvt Ltd. v. Ambuj A Kasliwal and Others (2021) 3 SCC 549, the Hon'ble Supreme Court has held that even the High Court should not direct the appellate authorities to admit and hear appeals unaccompanied by the minimum pre deposit requirement under the statute. The Hon'ble Supreme Court held that discretion under Article 226 of the Constitution of India cannot be exercised against the mandatory requirement of statutory provision.

7. In Manjit Singh v. Union of India 2023 (383) E.L.T. 308 (Bom.) = (2022) 1 Centax 91 (Bom.) (Writ Petition No. 673 of 2020), decided by the Coordinate Bench of this Court on 18 October 2022, relief of waiver of the minimum pre-deposit of 7.5% of the penalty under Section 129E of the Customs Act was declined. This decision considers all the contentions raised in this Petition and discusses earlier precedents on the subject.

8. Therefore, based on the decision of the Hon'ble Supreme Court and this Court, no case is made to grant any relief to the Petitioners."

5.6 I also rely upon the Judgment dated 14.03.2024 of Hon'ble High Court of Delhi in the case of G and S International Vs. Commissioner of Customs [(2024) 17 Centax 400 (Del.)], wherein it has been held, *"Unless Section 129E is complied with, the Appellate Authority cannot proceed to hear the appeal on merits. Therefore, the logical consequence of failure to comply with Section 129E, is the rejection of appeal on that ground. The law on the subject is not res integra."*

6. In the present case, the adjudicating authority has imposed a penalty of Rs. 16,00,000/- under Section 112(i) of the Customs Act, 1962 vide impugned order. Therefore, for filing appeal against the impugned order, the appellant was required to pay pre-deposit Rs. 1,20,000/-, as per the provisions of Section 129E and submit a proof thereof to this office. Whereas, in the present case, it is on records that the appellant was requested by writing letters to submit proof of payment of pre deposit, the appellant failed to produce the same. From this facts and figures, it is evident that the appellant has not deposited any amount towards pre-deposit as required for filing and entertaining appeal

under the Customs Act, 1962. Therefore, I am of the view that the present appeal cannot be entertained in absence of compliance of Section 129E of the Customs Act, 1962.

7. Since, the Appellant have not made pre-deposit as required under the Section 129E of the Customs Act, 1962, I am constrained to dismiss the appeal filed by the Appellant for failure to deposit the amount of pre-deposit.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-230/CUS/AHD/2024-25 Date: 21.01.2026

By Speed Post

To,

Shri Kailash Kumar ,
Proprietor of M/s Baba Traders,
Nr. Hazrat Khwaja Madni Dargah,
Kotsafli Main Road, Bhagal Char Rasta, Surat.

Shri Kailash Kumar ,
304, Arihant Appt. Nr. Jain Derasar
Amrol Char Rasta, Amroli, Surat- 394107
Mobile- 9998241551 .

Shri KAILASH KUMAR
Prop. of M/s. Baba Traders
9/2047, Ambaji Road,
Mohan Mithai Sweet Shop,
Bhagal, Surat, Surat, Gujarat, 395003

GSTIN/UIN : 24CECPK1248A1Z7

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

Copy to:

1. The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, Surat. (email: adjcus-surat@gov.in cus-ahmd-adj@gov.in patoadc-srtcust@gov.in)
4. The Deputy/Assistant Commissioner of Customs, Custom Division Surat. (Custech.surat@gov.in) .
5. Guard File.