



## सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20250771MN0000333A5C

क	फ़ाइल संख्या FILE NO.	S/49-36/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-065-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.07.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. 22/Additional Commissioner/2023-24 dated 20.02.2024
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 Hanif Sale mohmad Talu, Proprietor of M/s Apollo Traders, Near Nilkanth Petrol Pump, Dhoraji Road, NH - 8A, Upleta.





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.
(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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए 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> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2<sup>nd</sup> 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	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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 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 Hanif Salemohmad Talu, Proprietor of M/s Apollo Traders, Near Nilkanth Petrol Pump, Dhoraji Road, NH – 8A, Upleta, in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 22/Additional Commissioner/2023-24 dated 20.02.2024 (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 Shri Hanif Salemohmad Talu, proprietor of M/s Apollo Traders, near Nilkanth Petrol Pump, Dhoraji Road, NH – 8A, Upleta, has set aside the Order-in-Appeal-JMN-CUSTOM-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, Preventive Section, Headquarters, Customs (P), Jamnagar gathered intelligence indicating smuggling of huge quantities of imported worn clothing/garments by Shri Hanif Salemohmad Talu, Proprietor of M/s. Apollo Traders, Near Nilkanth Petrol Pump, Dhoraji Road, NH-8A, Upleta, District- Rajkot. The import of "Worn clothing and other worn articles" falling under Chapter Heading 63090000 of the Customs Tariff Act, 1975 (hereinafter referred to as 'the CTA' for the sake of brevity) is restricted under ITC (HS) vide DGFT Notification No. 7/2004-09, with effect from 27.10.2004, read with para 2.17 of the Foreign Trade Policy, and such goods can be imported only against a license/authorization/permission granted by the DGFT. It was also gathered that M/s. Apollo Traders, Upleta was engaged in selling these illegally procured goods under the guise of old and used cut, wipers, rags, mutilated fabrics etc. falling under Chapter Heading 6310 of the Customs Tariff Act, 1975 in order to evade customs duty.

2.2 Acting upon the specific intelligence input, the officers of Customs (P), Jamnagar carried out searches in the godown premises of M/s. Apollo Traders owned by Shri Hanif Salemohmad Talu on 09.12.2016. During the course of the search under Panchnama dated 09.12.2016, it was found that one building





premises was having 5 godowns and another building was having 2 godowns. A huge stock of imported worn clothing (hereinafter referred to as 'the said goods') was found stacked in bales in all these godowns. Shri Hanif Salemohmad Talu was present at the time of commencement of the search on 09.12.2016, and on being asked about supporting invoices towards purchase of the said goods, explained that paperwork is being looked after by his accountant Shri Riyaz Rafik Babla and the documents related to the goods were available at their office premises situated at Apollo Traders, Patanval Road, Upleta. The documents were then brought to the godown premises from the office premises.

2.3 During the search operation under Panchnama dated 09.12.2016, the proprietor Shri Hanif Salemohmad Talu along with his staff and consultant Shri Ketan Parmar were present at the godown premises of M/s. Apollo Traders. It was informed by Shri Riyaz Rafik Babla, Accountant of M/s. Apollo Traders, that on the basis of the stock register, purchase invoices/Bills of Entry and sale invoices, there was a total of 477.114 MT of cut/mutilated imported garments and 29.450 MT of uncut imported garments (i.e. worn clothing) lying in stock with them. The import documents were scrutinized with the stock register. Thereafter, physical stock taking of the said goods lying in the 7 godowns of M/s. Apollo Traders was conducted and it was ascertained that there was a total of 453.164 MT of cut/mutilated imported garments and 53.400 MT of uncut imported worn garments. The details of the same were recorded as Annexure-A to the Panchnama dated 09.12.2016. It was found that there was an excess stock of 23.950 MT of uncut imported worn garments lying in the godown premises of M/s. Apollo Traders, Upleta. The noticee could not produce supporting documents towards the 23.950 MT of uncut imported worn garments. Therefore, in absence of any supporting documents of import viz. Bills of Entry or any purchase document evidencing payment of customs duty or licit import/possession or acquisition of the said goods of foreign origin, the old and worn garments of foreign origin weighing 23.950 MT (detailed as per Annexure-B to the Panchnama), found at the godown premises of M/s. Apollo Traders, along with other documents (Annexure-C to the Panchnama), were placed under seizure vide Panchnama dated 09.12.2016 under the reasonable belief that the said restricted goods were liable to confiscation under the provisions of the Customs Act, 1962. The Seized goods were then handed over to the Appellant under Supratnama dated 09.12.2016 for safe custody.

2.4 A statement of Shri Hanif Salemohmad Talu, Proprietor of M/s. Apollo





Traders, Upleta was recorded under Section 108 of the Customs Act, 1962 on 09.12.2016, wherein he, inter alia, stated that even though he could not be present at the godown premises all throughout the recording of the Panchnama, as he was also attending a family function in between, he was present at the godown premises of M/s. Apollo Traders during the commencement of the recording of the Panchnama and during the concluding portion of the Panchnama. He accepted that he was in total agreement with the contents of the Panchnama and that what was recorded therein was correct; that he was unable to produce any documents relating to the purchase of the 23.950 MT seized uncut old and used imported clothes; that he was aware of the fact that the said seized imported goods were restricted; that he was not aware that there would be restricted goods amongst the goods purchased by him; that he accepted the fact that the said seized imported goods had been procured without any invoices or Bills of Entry or without obtaining any permission, and that he will pay up the duty payable on the said seized goods.

2.5 The value of the goods was subsequently ascertained to Rs. 16,76,500/- on the basis of NIDB data, three Bills of Entry available with M/s Apollo Traders showing import of similar goods and considering the general inflation.

2.6 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 for import of Seized items 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.

2.7 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 old and worn clothing, being restricted goods under the Foreign Trade Policy, were liable to confiscation under Section 111(d) of the Act.

2.8 The Investigation into the matter culminated into issuance of Show Cause Notice No. VIII/10-147/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 23.950 MT valued at Rs. 16,76,500/- seized from the godown of M/s. Apollo Traders, Upleta should not be confiscated under section 111 (d) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon Shri Hanif Sale mohmad Talu, Proprietor of M/s Apollo Traders, Upleta under Section 112(a) and Section 112(b) of the Customs Act, 1962.

2.9 During the first round of litigation matter was adjudicated vide the Order-in-Original No. 18/Joint Commissioner/2017-18 dated 30.01.2018/26.02.2018 issued by the Joint Commissioner, Customs (Prev), Jamnagar which was upheld vide Order-in-Appeal No. JMN-CUSTM-000-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 No. 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.

2.10 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 Javedbhai Rajakbhai Patel (2) Shri Makki Rafikbhai Hakka 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, Javedbhai Rajakbhai Patel and Shri Makki Rafikbhai Hakka inter alia stated that they were called for by a customs officer while both of them were on the way to Upleta on highway; that upon being requested to remain present as Pancha at the premises they agreed and remained present; that they left place after 15/20 minutes to attend a marriage at Upleta and came back when called for; that they were not present at the time of stock taking and not witnessed weighment of goods on



9.12.2016; that they did not see the goods and also labels of foreign make on it. Both of them said that since it was governmental work they signed the documents. On being asked both of them stated that S/Shri Sarfaraz Abla, Shakil Ghanchi, Sadiq Ghanchi, Mustak Yunusbhai Sharif, Lakhmanbhai Kanjibhai Panera, Mori Vasim Ibrahim and Rajab Jiva Makwana were present at a place where they were attending marriage ceremony

2.11 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 confiscated the seized foreign origin goods viz. old & worn clothing falling under CTH 63090000, weighing 23950 kgs valued at Rs. 16,76,500/-, seized from the godown premises of Shri Hanif Salemohmad Talu, Proprietor of M/s. Apollo Traders, Upleta, under Section 111(d) of the Customs Act, 1962.

(ii) he offered the goods, ordered for confiscation, 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

(iii) he imposed penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on Shri Hanif Salemohmad Talu, Proprietor of M/s. Apollo Traders, 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 Appellant submits that the impugned order passed by the Additional Commissioner is ex-facie illegal and unsustainable, as it is based on erroneous findings and a disregard of critical evidence and arguments placed on record. The adjudicating authority failed to appreciate the preliminary and final replies of the Appellant and erroneously relied on a tainted panchnama dated 09.12.2016, despite clear contradictions from the panch witnesses during cross-examination. The Appellant argues that



reliance on this panchnama is misplaced, as both panch witnesses admitted they were not present during the proceedings, attended a village marriage that day, and signed the panchnama without witnessing the search or examining the goods. This undermines the evidentiary value of the panchnama entirely.

- The Appellant highlights that there was no evidence on record to establish that the 23.950 MT of goods allegedly found were uncut foreign-origin garments, especially since departmental officers admitted to having only counted bales without opening or examining them. The stock discrepancy alleged by the department (23.950 MT) precisely mirrors the shortfall in cut/mutilated garments and the corresponding alleged excess of uncut garments, suggesting a clerical or procedural misclassification rather than deliberate concealment or smuggling.
- The Appellant emphasizes that this was a town seizure, and as per settled law, the burden of proving smuggled or foreign origin lies on the department, which it has failed to discharge. No Bills of Entry, foreign brand labels, or any direct evidence was produced linking the goods to smuggled foreign-origin imports. The panchnama was neither supported by credible witness testimony nor by physical examination of the goods.
- The Appellant further contends that the Adjudicating Authority erred in upholding the panchnama merely on the basis of panch signatures, despite their deposition stating they were unaware of the contents. The presence of the proprietor or staff during the search cannot cure the procedural defects, particularly when the panchnama is contradicted by both the witnesses and the proprietor's statement, which clarified that he was attending a family function during the stock-taking process and did not witness the full proceedings.
- To support their contentions, the Appellant has relied on the following case laws;

B.D. Goel v. Ebrahim Essa Sodha, 2014 (306) E.L.T. 337 (Bom.)

– Held that no charge of smuggling can be sustained when panch witness contradicts the panchnama during cross-examination.

Commissioner of C.Ex. & S.T., Lucknow v. Anand Kumar @ Babu, 2015



(325) E.L.T. 609 (Tri.-Del.)

– Tribunal held that panchnama loses evidentiary value when panch deposes that he was not present during the search and merely signed documents.

Commissioner of C.Ex., Ahmedabad-III v. Baroda Rolling Works, 2009 (238) E.L.T. 495 (Tri.-Ahmd.)

– Held that panchnama drawn in absence of independent witnesses is unreliable.

Ashok Kumar v. Commissioner of Customs, New Delhi, 2003 (158) E.L.T. 441 (Tri.-Del.)

– Tribunal held that mere signatures on documents by panchas without witnessing proceedings render the panchnama inadmissible.

- The Appellant concludes that no valid seizure can be sustained based on a panchnama contradicted by its own witnesses, without corroborative evidence, and in absence of proper examination of the goods. Since the burden of proof was not discharged by the department, and due process was not followed, the penalty, confiscation, and findings of the adjudicating authority are liable to be set aside in the interest of justice.
- The appellant submits that the proceedings undertaken by the department, including the panchnama dated 09.12.2016, are fundamentally flawed as the investigating officers did not physically inspect or open the bales to verify whether the goods were indeed uncut, imported, and of foreign origin. The officers merely counted the bales and estimated the weight based on average bale weight, which is an unreliable method of stock verification. This is further corroborated by the deposition of the panch witnesses during cross-examination, who categorically stated that they were not present during the panchnama and saw no foreign labels on the goods. Thus, the foundational evidence of the department's case stands seriously compromised. The adjudicating authority erroneously relied solely on the fact that the appellant's proprietor had signed the panchnama without considering whether proper procedure was followed, especially given the gravity of smuggling allegations, which require strict adherence to due process and evidentiary standards.
- The appellant contends that estimating stock by visual inspection or bale count has been consistently held to be inadequate by various judicial fora.



In Commr. of C. Ex., Haldia v. Shri Badri Narayan Alloys & Steels Ltd. (2018 (8) G.S.T.L. 79), the Tribunal held that stock-taking must be supported by weighment slips or counting documents, and mere eye-estimation is impermissible. Similar views were upheld in Raika Ispat Udyog Pvt. Ltd. (2016 (340) E.L.T. 598), Surya Wires Pvt. Ltd. (2021 (376) E.L.T. 550), Shree Rolling Mill (2021 (377) E.L.T. 883), and others. In the present case, the bales were not opened and their contents not verified, making the panchnama proceedings an unreliable and tainted basis for confiscation.

- Further, the adjudicating authority selectively relied on the appellant's admission that goods were procured from various sources to justify confiscation, while conveniently ignoring the critical point raised by the appellant that the goods were not uncut but mutilated garments, legally purchased through documented invoices from local suppliers. The appellant never admitted that the entire 23.950 MT of goods consisted of restricted imported goods. The authority's approach in treating only part of the total quantity (23.950 MT out of 53.40 MT) as restricted and confiscable; while ignoring the remaining 29.450 MT, demonstrates inconsistency and weakens the department's case.



It is also argued that since the goods were found in the appellant's warehouse well outside any customs-notified area the presumption under law is that they are duty-paid goods. The appellant produced valid purchase invoices, and these transactions were duly reflected in their books of accounts. In the absence of contrary evidence, the burden to prove smuggled nature of the goods lies squarely on the department. In this context, reliance is placed on A.K. Hamsa Mohideen v. Commissioner of Customs, Chennai (2004 (171) E.L.T. 327), where the Tribunal, upheld by the Madras High Court in 2012 (276) E.L.T. 503, held that for non-notified goods, mere foreign origin is not sufficient to allege smuggling; the department must discharge the burden of proof. Similar views were adopted in Sadbhavana v. Commissioner of Customs, Indore (2003 (158) E.L.T. 652), V. Muniyandi (2004 (167) E.L.T. 215), and Ashok Premji Patel (2003 (157) E.L.T. 568).

- Regarding the credibility of panchnama proceedings, the appellant strongly disputes the conclusion of the adjudicating authority that the



depositions of the panchas are an afterthought. The panch witnesses, brought by the department itself, testified under oath that they were not present during the inspection. Disregarding their testimony without summoning or cross-examining the investigating officers under Section 138B of the Customs Act is unjustified. The law requires due weight to be given to the testimony of witnesses whose examination-in-chief is not challenged or disproved. The adjudicating authority's presumption that the officers would not have chosen unwilling panchas lacks factual basis and fails to rebut the direct contradiction posed by the panchas' depositions.

- The appellant further contends that penalty under Sections 112(a) and 112(b) of the Customs Act is wholly unwarranted. Section 112(a) applies only when an act or omission renders goods liable for confiscation under Section 111. Since the confiscation itself is based on flawed proceedings and unproven allegations, no penalty can be imposed under this provision. Section 112(b), which applies when a person is knowingly concerned with goods liable to confiscation, also has no application here as the show cause notice failed to show how the appellant had knowledge or reason to believe the goods were of smuggled nature. There is no evidence that the appellant was involved in smuggling, nor any specific act of concealment or illegal handling as required under this clause.
- The principles laid down by the Hon'ble Supreme Court in *Hindustan Steel Ltd. v. State of Orissa* (1978 ELT J159) are applicable in the present case. The Court held that penalty should not be imposed merely because it is lawful to do so. It must be shown that the person acted with contumacious intent or deliberate defiance of law. Where conduct is bona fide or due to a genuine misunderstanding, no penalty should be imposed. In this case, the appellant acted based on valid purchase documents, and there is no evidence of intent to violate any provision of law.
- Lastly, the appellant submits that the adjudicating authority acted beyond jurisdiction by invoking Section 125(2) of the Customs Act to impose a duty liability, despite there being no such proposal in the show cause notice. The scope of adjudication cannot exceed the show cause notice, and therefore, the order demanding duties in addition to redemption fine is bad in law and deserves to be set aside.



**PERSONAL HEARING:**

4. Personal hearing was held on 06.06.2025, following the principles of natural justice wherein Shri Sudhanshu 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 (Javedbhai Rajakbhai Patel and Shri Makki Rafikbhai Hakka) 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.

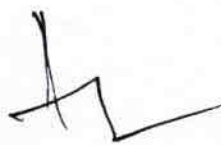
5.7 Confiscation under Section 111 and penalties under Section 112 of the Customs Act, 1962 are contingent upon the goods being illegally imported or smuggled. If the department fails to prove the fundamental allegation of illegal import/smuggling, then the goods cannot be held liable for confiscation, 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. 22/Additional Commissioner/2023-24 dated 20.02.2024.

(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 23950 kgs of old and worn clothing valued at Rs. 16,76,500/- and redemption fine of Rs 2,75,000/- are hereby set aside.

(iv) The penalty of Rs. 2,00,000/- imposed on Hanif Sale mohmad Talu, Proprietor of M/s. Apollo Traders, 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.

*(Signature)*  
(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-36/CUS/JMN/2024-25

Date: 04.07.2025

By Registered post A.D/E-Mail

2030

To,

Shri Hanif Sale mohmad Talu,  
Proprietor of M/s Apollo Traders,  
Near Nilkanth Petrol Pump,  
Dhoraji Road, NH - 8A, Upleta.

सत्यापित/ATTESTED  
*(Signature)*  
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.