



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
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DIN – 20251171MN0000777B19

क	फ़ाइल संख्या FILE NO.	S/49-363/CUS/AHD/2023-24
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-306-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	03.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 06/AR/ADC/SRT/2023-24 dated 05.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	03.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Zakariya Farooque Matcheswala, Proprietor of M/s Chocolate House, Shop No.: 106, Shop No.: 1 & 7, Matcheswala Market , Wada Chauta Galu Nanavat, Opp. Rainbow Ice Cream, Bhaga Talav Main Road, Surat, Gujarat -395 003.



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 मर्दों 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, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as



	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 :	
	<p>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</p>	<p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench.</p> <p>2nd Floor, Bahumali Bhavan Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad -380 016</p>
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; पांच 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, where 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 Zakariya Farooque Matcheswala, Proprietor of M/s Chocolate House, Shop No.: 106, Shop No.: 1 & 7, Matcheswala Market, Wada Chauta Galu Nanavat, Opp. Rainbow Ice Cream, Bhaga Talav Main Road, Surat, Gujarat -395 003 (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No.: 06/AR/ADC/SRT/2023-24 dated 05.09.2023 (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, in brief, on the basis of available records, are that on the basis of specific intelligence that the appellant Shri Zakariya Farooque Matcheswala, Proprietor of M/s. Chocolate House, located at Shop No. 106, Shop No. 1& 7, Matcheswala Market, Wada Chauta Galu Nanavat, Opp. Rainbow Ice Cream, Bhaga Talav Main Road, Surat-395003 , who is engaged in the trading of imported and domestically procured Chocolates & Confectionary items, is in possession of smuggled goods Viz. Foreign Origin Cigarettes, lying at it shop/godown/residence.

2.1 Based on above intelligence, officers of the Directorate of Revenue Intelligence, Surat (hereinafter referred to as "DRI") conducted a search at the premises of the appellant Shri Zakariya Farooque Matcheswala located at Shop No. 106, Shop No. 1 & 7 (Underground) and his residence at 4th Floor, Matcheswala Market, Wada Chauta Galu Nanavat, Opp Rainbow Ice Cream, Bhaga Talav Main Road. Surat, Gujarat under panchnama dtd. 30.11.2022. During the course of search at the residence premises, total 128920 nos. of sticks of different types of imported / foreign origin cigarettes and total 198 no. of e-cigarettes were found. Further, search was also conducted at shop (underground) and found total 231880 nos. of imported / foreign origin cigarettes stick. The imported / foreign-origin cigarette sticks and e-cigarettes were placed under detention and subsequently seized under the provisions of the Customs Act, 1962, as the appellant failed to produce any valid and legally admissible documents in support of the lawful purchase, possession, or importation of the said goods.

2.2 Statement of appellant Shri Zakariya Farooque Matcheswala was recorded on 30.11.2022/01.12.2022 under the provisions of Section 108 of the Customs Act, 1962.



He stated that M/s Chocolate House, Shop No 106, Matcheswala Market, Surat was opened to start his business ; that his firm M/s Chocolate House also run from shop no. 07 in basement of Matcheswala market and had one godown at shop no. 01 of basement of Matcheswala market; that that his firm M/s Chocolate House was registered with GST having GSTIN No.: 24DGSPM5824B1ZC under composition scheme; that M/s Chocolate House, was engaged in the trading of imported and domestically procured Chocolates & confectionary items; that he also dealt in purchase and sale of foreign origin cigarettes; he perused the panchnama dated 30.11.2022 drawn at Shop No 106, Shop No 1 & 7 (underground) and 4th Floor Matcheswala Market, Surat ; that he agreed that during the course of panchnama total 128920 nos. of sticks of imported cigarettes and total 198 E-cigarettes from his residence and total 231880 imported cigarettes were found from godown. He further agreed to the detention of the imported foreign cigarettes as those were smuggled goods and he did not have any legal documents for procurement of the same. He put his dated signatures on the annexure prepared by the DRI taking average market price of the detained goods.

2.2.1 The appellant further stated that he was a wholesale distributor of these goods and wholesale rates of these goods was lesser than the market rates quoted in the above Annexures by the DRI; that on inquiry regarding the business of cigarettes, he came into the contact of Shri Rajubhai mobile no. 9824106904, who visited his shop and agreed to supply cigarettes at his shop directly; that all the payment to Shri Rajubhai is made in cash only against the purchase of cigarettes, that he (the appellant) had sold these cigarettes to Shri Nileshbhai, Shri Mukeshbhai, Shri Anil Ambani, Shri Ankit, Shri Arhraf, Shri Vijay Kadodara, Shri Nilesh etc. All aforesaid persons randomly visited his shop on their bike to purchase cigarettes and he delivered cigarettes to them at his shop, that he had sold these foreign origin cigarettes in cash only: that he didn't know the address and mobile number of all the aforesaid 7 persons; that he stored these cigarettes in his godown located at Shop No 1 & 7 (underground) and residence at 4th Floor, Matcheswala Market, Surat ; that as per his knowledge these cigarettes appeared to be of foreign origin however, he purchased these all from Shri Rajubhai Patel who delivered the same to his shop directly; that he purchased these foreign origin cigarettes in cash without any legal documents. With respect to the supplier & buyers of e-cigarettes (Vapes), he contacted Shri Rajubhai for the same and he (Rajubhai) agreed to supply these E-cigarettes at his shop and he (the appellant) sold these e cigarettes to his retail customers directly from the Shop; that all the payment against the sale and purchase of

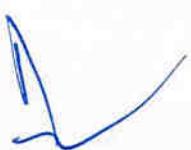


e-cigarettes were made in cash only; that he was aware that these were smuggled goods but didn't know the main person who actually smuggled the said goods; that since these were foreign origin cigarettes, hence they did not follow Indian Legal norms and hence there was no pictorial warning; that provisions of "The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003" as amended and Rules made there under had been contravened by him.

2.2.2 It is observed that the appellant had knowledge that import of E-Cigarettes or any parts thereof, falling under CTH 8543 was prohibited in accordance with Para 13 of General Rules regarding Import Policy, in terms of DGFT Notification No 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage Advertisement) Act, 2019; that he recently came to know that Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement of e-cigarettes is prohibited in India after purchase of these e-cigarettes.

2.2.3 It is observed that the appellant had committed an offence of the nature described under Section 135(1) (b) of Customs Act, 1962, punishable under Section 135 (1) (ii) of Customs Act, 1962 read with (i) The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and rules made there under (ii) The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 in as much as concerned himself in acquiring, possessing, selling or purchasing of smuggled goods i.e. 3,60,800 sticks of smuggled foreign origin cigarettes valued at Rs.72,16,000/- (Market Value) and prohibited goods i.e. 198 Nos. of sticks prohibited foreign origin e-cigarettes valued at Rs. 2,87,200/- (Market Value). Therefore, for committing above offences under Customs Act, 1962 and related provisions, the appellant was arrested on 01.12.2022 under the provision of Section 104 of the said act and was later released on bail.

2.3 It is observed that the appellant revealed the name & mobile number 9824106904 of one person Shri Raju bhai Patel from whom he purchased above imported goods. Details gathered from the mobile service provider Vodafone Idea limited who shared details. On the basis of these details, it was found that Shri Irfan Malek was using




the above mobile number. Statement of Shri Irfan Malek recorded on 14.02.2023, wherein he stated that he was employed as a Shipping Assistant with M/s Kshitij Marine Services Pvt. Ltd., Surat, and his duties were limited to filing documents with the Customs Office related to inward and outward movements of vessels at Hazira Port, Surat. He further clarified that he did not know Shri Zakariya Farooque Matcheswala or Shri Rajubhai Patel, had never met or interacted with them, and was unaware why his name was mentioned in the said statement.

2.4 It is observed that statement dt. 13.03.2023 of the appellant was recorded to cross verify the contents of Shri Irfan Malek. He stated that regarding the contact number 9824106904 earlier provided by him as that of Shri Rajubhai, he clarified that he did not remember the exact number, as Shri Rajubhai used to visit his shop in a tempo to deliver foreign-origin cigarettes. He explained that the number was saved in his phone as "Rajubhai," but from the statement dated 14.02.2023 of Shri Malek Mohamed Irfan Yusuf Miya, it appeared that the said number actually belonged to Shri Malek Mohamed Irfan Yusuf Miya. Upon seeing the Aadhaar photo of Shri Malek Mohamed Irfan Yusuf Miya, he stated that he could not recall having met him and had no business dealings with him, further clarifying that Shri Malek Mohamed Irfan Yusuf Miya was not the person who supplied foreign-origin cigarettes to his shop.

2.5 Therefore, a Show Cause Notice F. No. VIII/10-01/O&A/ADC/Zakariya/2023-24 dt. 17.05.2023 was issued to the appellant calling upon them to show cause to the Additional Commissioner of Customs, Custom House, Surat as to why the said 3,60,800 sticks of foreign origin cigarettes valued at Rs.72,16,000/- (Market Value) and total 198 numbers of prohibited foreign origin e-cigarettes valued at Rs.2,87,200/- (Market Value) were appeared to be smuggled goods and liable for confiscation under the provisions of Customs Act, 1962. Therefore, the aforesaid goods were placed under seizure, vide seizure memo dated 19.12.2022 under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same are liable for confiscation under the provisions of the Customs Act, 1962.

2.6 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:

He ordered for absolute confiscation of the subject seized 3,60,800 foreign



origin cigarettes valued at Rs.72,16,000/- and 198 E-Cigarettes valued at Rs.2,87,200/- under the provisions of Section 111 (d) of the Customs Act, 1962,

(ii) He imposed penalty of Rs.75,03,200/- (Rupees Seventy Five Lakh Three Thousand Two Hundred Only) upon Shri Zakariya Farooque Matcheshwala under Section 112(i) of the Customs Act, 1962.

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

- That the Impugned Order passed by Ld. Commissioner is grossly erroneous on facts and law and deserves to be set aside on the following grounds, amongst other grounds, which are in the alternative and without prejudice to each other. The Appellant further reserves the right to add, alter or modify grounds of appeal during the course of proceedings in the instant matter.
- That NO PENALTY UNDER SECTION 112(1) OF THE CUSTOMS ACT, 1962 IS IMPOSABLE ON THE APPELLANT IN THE PRESENT CASE. From the relevant portion of the provision, it is understood that penalty under Section 112 of the Customs Act, 1962 can only be imposed wherein a person does or omits to any act which would render the goods liable to confiscation under Section 111 of the Customs Act. It is submitted that the goods have not been imported by the Appellant, therefore the order to confiscate the goods in terms of Section 111(d) of the Customs Act, 1962 is liable to be set aside. The Appellant had not committed any act which rendered the goods liable for confiscation. He had simply sold the cigarettes that he had purchased from another individual. Since, the Appellant has purchased the goods from another individual, the question of importing goods does not arise on the part of the Appellant. Further, the Appellant had no knowledge of subject goods which he had purchased from the Appellant were prohibited under the Customs Act, 1962 or any other law in force. Without prejudice to the above, it is submitted that the conduct of the Appellant were totally bonafide. The Appellant neither had any intention to evade payment of duty, nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on the part of the appellant, no penalty is imposable.
- That THE SUBJECT GOODS ARE NOT LIABLE FOR CONFISCATION UNDER




SECTION 111(D) OF THE CUSTOMS ACT, 1962. It is submitted that import of e-cigarettes has been prohibited as laid down in the General Rules to CTH 8543- Import Policy. However, the Appellant in the present case has merely purchased the subject goods from another individual. The Appellant himself has not imported the subject goods, the liability of complying with the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 is not on the Appellant. The order itself states and provides that no import related documents were found from the possession of the Appellant, therefore it is clear that the Appellant had not imported the goods with the intent of smuggling them by violating provisions of any act or law for the time being in force. The Appellant was merely a bonafide purchaser of the subject goods and had no knowledge of the various compliances that are otherwise to be followed by the importer of the subject goods. The Appellant is engaged in running a small chocolate & confectionary shop. His business also includes manufacturing of homemade chocolates. Therefore, the Appellant cannot be held responsible for importing prohibiting items or not complying with the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

- That THE SUBJECT GOODS HAVE NOT BEEN IMPORTED BY THE APPELLANT. The Appellant in the present case is engaged in the trading of imported and domestically procured Chocolates and Confectionary items. Further, the Appellant is engaged in selling homemade chocolates. The Appellant cooperated with the department during the entire investigation procedure and provided all the relevant information and documents. As observed by the Ld. Commissioner in the impugned order, no import documents such as Tax Invoice, Bill of Entry with respect to the subject seized goods were found from the premises of the Appellant. This proves that the Appellant was not engaged in the import of the subject goods. Since the Appellant has not imported the subject goods, imposition of penalty under Section 112 of the Customs Act, 1962 ought to be set aside. This proves that the Appellant was not engaged in the import of the subject goods. Since the Appellant has not imported the subject goods, imposition of penalty under Section 112 of the Customs Act, 1962 ought to be set aside. Further, the Appellant was a bonafide purchaser of the subject goods, therefore it is proved




that the goods have not been smuggled into India by the Appellant, therefore confiscation of the goods under Section 111(d) of the Customs Act, 1962 ought to be set aside. The Appellant had no knowledge that import of the subject goods is prohibited in India or that there is requirement of complying with the provisions of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and rules made thereunder. Therefore, no penalty can be imposed on the appellant under Section 112(i) of the Customs Act, 1962.

PERSONAL HEARING:

4. In the matter, appellant was granted several opportunities of personal hearing on 07.05.2025, 26.06.2025, 08.08.2025 and 28.10.2025 to represent their case. Finally, personal hearing in the matter was held on 28.10.2025, following the principles of natural justice in physical mode. Ms. Raksha Bhandari, Advocate appeared for the hearing on behalf of the Appellant and re-iterated the submission made at the time of filing the appeal. Since, the appellant has not yet submitted any proof of pre-deposit of ₹5,62,740/-, representing 7.5% of the penalty imposed under Section 129E of the Customs Act, 1962, she was requested to furnish the same by 31.10.2025, to which she agreed.

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 05.09.2023 has been shown as 08.09.2023 and the date of filing Appeal shown as 30.11.2023. Therefore, it is observed that the present appeal have not been filed within the statutory time limit of 60 days as prescribed under Section 128(1) of the Customs Act, 1962, there is a delay of 23 days in filing the present appeal. The appellant, vide letter dated 30.11.2023, requested the authority to condone the delay in filing the appeal and explained the reasons for the late submission. In light of the provisions of law and considering the submissions of the Appellant to condone the delay in filing appeal and also considering the fact that the appeal has been filed within a further period of 30 days, I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice in the present appeal.



6. It is observed that the appellant in Form C.A.-1 dated 30.11.2023, at Sr.No.: 06 submitted that pre-deposit of Rs. 5,62,740/- vide Challan dated 00.00.2023 (7.5% of penalty imposed) in terms of Section 129E of the Customs Act, 1962. However, till date they have not submitted copy of challan.

6.1 Further, at page no. 06 of the submission, the appellant submitted that they deposited amount of Rs. 5,62,740/- i.e. 7.5% of the penalty imposed (Rs. 75,30,200/-) in terms of Section 129E of the Customs Act, 1962. The copy of challan is enclosed as Annexure-A. Although it is mentioned that the copy of the challan is enclosed as Annexure-A, however, no such annexure was found attached.

6.2 It is observed that the appellant was granted a personal hearing on 07.05.2025 to present their case. The appellant, vide their letter without date (received on 08.05.2025), submitted a physical copy of their earlier written submission in FORM C.A.-1 dated 30.11.2023 and requested an adjournment of one month on the ground that the owner was suffering from typhoid, in the interest of justice. Upon verification of the said physical submission dated 30.11.2023, it is found that, even at this time and stage, the appellant has not furnished any proof of the mandatory pre-deposit amounting to Rs. 5,62,740/. Therefore, it is found that the appellant has not made any payment of Pre-deposit as required under the provisions of Section 129E of the Customs Act, 1962.

6.3 It is also observed from the records that the appellant vide mail dt. 27.10.2025 and 28.10.2025 was requested to submit proof of payment of pre deposit in the matter. During the personal hearing in the matter on 28.10.2025, Ms. Raksha Bhandari, Advocate appeared for the hearing on behalf of the Appellant was asked to submit the proof of pre-deposit. She agreed to submit the same on or before 31.10.2025. However, from the records, it is found and confirmed that the appellant have not paid any amount towards pre deposit till date.

6.4 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, 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.]"

6.5 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.

6.6 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."

6.7 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 case 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."

6.8 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."

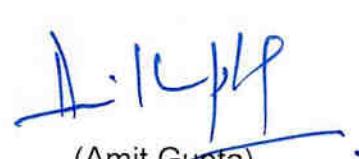
7. In the present case, the adjudicating authority has imposed a penalty of Rs. 75,03,200/- under Section 112(i) of the Customs Act, 1962 vide impugned order. Therefore, for filing appeal against the impugned order, the appellant was required to pay pre-deposit Rs. 5,62,740/-, as per the provisions of Section 129E and submit a proof thereof to this office. Whereas, in the present case, the appellant claim of submitting proof of payment of pre deposit as discussed above in para no. 6, 6.1 and 6.2 found incorrect. The appellant also could not submit any proof of payment of the mandatory pre-deposit either at the time of the personal hearing or even after the extended time granted by the appellate authority for submitting 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.

8. 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/49-363/CUS/AHD/2023-24

Date: 03.11.2025

By Speed Post

To,

Shri Zakariya Farooque Matcheswala,
Proprietor of M/s Chocolate House,
Shop No.: 106, Shop No.: 1 & 7, Matcheswala Market ,
Wada Chauta Galu Nanavat, Opp. Rainbow Ice Cream,
Bhaga Talav Main Road, Surat, Gujarat -395 003

Copy to:

1. The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoaahm-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) .
4. The Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat. (icd-sachin@gov.in)
5. Ms. Raksha Bhandari, Advocate (raksha.bhandari@lakshmisri.com)
6. Guard File.