सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260171MN000000C60D

क	फ़ाइलसंख्या FILE NO.	S/49-78/CUS/AHD/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-525-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	23.01.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	02/REF/CPV-AC/SVPIA/2025-26 dated 14.04.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	23.01.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Mr. Subhan Gulab Pathan, Flat No. 304, 3rd Floor, A-Wing, Maria Heights, Balveder Road, Mumbai, Maharashhtra-400010.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन) ,वित्तमंत्रालय, (राजस्वविभाग)

	संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट,1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असार वा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(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.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	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.	

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

Mr. Subhan Gulab Pathan, Flat No. 304, 3rd Floor, A-Wing, Maria Heights, Balveder Road, Mumbai, Maharashhtra-400010 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 02/REF/CPV-AC/SVPIA/2025-26 dated 14.04.2025 (hereinafter referred to as "the impugned Order") passed by the Assistant Commissioner of Customs, SVPI Airport, Ahmedabad, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, had arrived at SVP International Airport, Ahmedabad by Air Arabia Flight No. G9 481 from Sharjah on 17.07.2023. On suspicion the applicant was intercepted after he was about to exit the green channel and asked whether he had anything to declare. The applicant replied in negative. On detailed examination, four plastic pouches covered with brown & grey plastic tapes were recovered from him. He accepted that he had concealed the above four plastic pouches containing gold and chemical mix in semi solid form at the bottom side of the airport luggage trolley. One gold bar weighing 272.110 grams, having a purity of 999.0/24 Kt. and having a market value of Rs. 16,66,402/- and tariff value of Rs.14,27,149/ was derived from 335.84 grams of gold paste and chemical mix contained in plastic pouches. This impugned gold weighing 272.110 grams was seized under the provisions of Customs Act, 1962, on the reasonable belief that the said goods were smuggled into India and liable for confiscation and subsequently SCN was issued to the appellant. Details of the seized gold is as given below:

Table 1

Description of seized gold	Qty.	Weight in Grams : all 24 kt
01 Gold Bar	01	272.110
Total Market Value		Rs 16,66,402/-
Total Tariff Value		Rs 14,27,149/-

2.1 The adjudicating authority viz. the Additional Commissioner of Customs, Ahmedabad vide Order-In-Original No. 210/ADC/VM/O&A/2023-24 dated 16.01.2024 ordered for absolute confiscation of the impugned gold i.e. 01 Gold Bar weighing 272.110 grams having a purity of 999.0/24 Kt. and having tariff value of Rs. 14,27,149/-

and market value of Rs. 16,66,402/-derived from semi solid gold paste weighing 335.840 grams concealed in four plastic pouches containing gold and chemical mix in semi solid form at the bottom side of the airport luggage trolley under Section 111(d), 111(f), 111(6), 111(j). 111(l) & 111(m) of the Customs Act, 1962 and a penalty of Rs.5,00,000/- was imposed on the appellant under the provisions of Section 112(a)(i) of the Customs Act, 1962.

2.2 Aggrieved by the said order, the applicant preferred an appeal before the appellate authority viz. Commissioner of Customs (Appeals), Ahmedabad, who vide Order-In-Appeal No. AHD-CUSTM-000-APP-161-24-25 dated 26.07.2024 has set aside the absolute confiscation ordered by the adjudicating authority and allowed redemption of one gold bar weighing 272.110 grams, derived from 335.840 grams of gold paste and chemical mix contained in plastic pouch, which was made up of 24 kt gold, having a purity of 999.0 and valued at Rs.14,27,149/-(Tariff value) and Rs.16,66,402/- (market value), on payment of fine of Rs.3,20,000/- in addition to the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962. Further, the Commissioner of Customs (Appeals) has reduced the penalty from Rs.5,00,000/- to Rs.2,00,000/-.

2.3 The above gold weighing 272.110 grams were sent to the India Government. Mint, Mumbai on 04.12.2023 and hence it was not possible to release the impugned gold to the appellant. Therefore, in terms of Instruction No. 22/2022-Customs dated 06.09.2022 the appellant was sanctioned refund of Rs 3,82,412/- vide the impugned order.

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

- Gold was disposed of without any fresh/new notice to the appellant/owner of the gold. Disposal of gold without notice to the owner/petitioner. It is seen from the impugned OIO ref 02/REF/CPV-AC/SVPIA/24-25 dated 14.04.2025, that the gold has been already disposed of on 04.12.2023. This is in spite of the fact that the Commissioner of Customs (Appeals) vide his order dated 26-7-24 set aside the absolute confiscation ordered by the adjudicating authority in the impugned order and allowed redemption of one gold bar weighing 272.110 grams which was derived from 335.840 grams of gold paste and chemical mix contained in plastic pouch, which was made up of 24 kt gold, having purity of 999.0 and valued at Rs. 14,27,149/- (Tariff Value) and market value of Rs. 16,66,402/- on payment of fine of Rs.3,20,000/-

in addition to the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962 and reduced the penalty to Rs 2,00,000/-. This order was accepted by the competent authority and thus the said O-I-A reached finality and the appellant was eligible for redemption of 272.110 grams of gold on payment of applicable duty, redemption fine of Rs 3,20,000/- and penalty of Rs 2,00,000/-.

- It is submitted that the appellant was not issued any Notice by the authority concerned before disposal of the gold. In this connection, reference is invited to Board's circular F.No.711/4/2006-Cus (AS) New Delhi, February 14, 2006 wherein the Board has stressed upon the requirement of issuing Notice to the owner of goods under the provision of the Customs Act, 1962 before the disposal of goods which have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods. This instruction was issued by the Board when a similar instance was brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods which resulted in a loss to the exchequer because of failure to comply with the requirements of Section 150 of the Customs Act, 1962. In the present case, the authority concerned failed to follow the instructions issued by the Board with regard to issuance of notice to the appellant before the disposal of the gold which resulted in undue financial loss to him. Since, the appellant was not duly served any notice before the disposal of the gold and since he was not aware of anything about the disposal of the gold, while filing the appeal before the Appellate Authority, he prayed for redemption of the gold on payment of reasonable fine and penalty. Considering the merits of the case. the appellate authority was pleased to allow redemption of the gold on payment of applicable duty, fine and penalty. In this case, the Customs authority concerned being fully aware by reason of the legal remedy available to the appellant, should not have sold the gold before he exhausted all the legal remedies available to him. Thus, he was put into an undue financial loss and deprivation of his property in violation of Article 300A.
- As per the instructions issued by the Board, confiscated goods (repeat Confiscated goods) in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods could be sold only after giving notice to the owner of the goods. In the present case, disposal of the gold without giving any notice to the appellant is contrary to the Board's circular dated 14-2-2006 which is binding on the authorities concerned. No Notice of sale was ever issued to him. The appellant intended to get back only the gold. He cannot be made to suffer any loss because of the

wrong committed by the Department. As per the order of the Appellate Authority, the appellant is rightly eligible for either the same quantity of gold i.e 272.110 grams of gold returned/given to him and in the absence of the gold available with the Department he is eligible for refund of present market price of 272.110 grams of gold.

In this regard the appellant relied upon the following case laws:

i. Union of India V. Shambhunath Karmakar 1986 (26) E.L.T. 719 (Cal.)
ii. State of Gujarat -vs- M.M. Hazi Hasan, reported in AIR 1967 SC 1885
iii. Ashupati Nath Dhandhania - 2014 (305) ELT 392 (Cal.)
iv. Bhogilal Mehta vs. The Union of India and ors. 2004 (164) ELT 239 (Cal.)
v. Kailash Ribbon Factory Ltd.- 2002 (143) ELT 60 (Del.)
vi. Northern Plastics Ltd. 1999 (113) E.L.T. 3 (S.C.)
vii. Zhinet Banu Nazir Dadany - 2019 (367) ELT 385(Del.)
viii. Ishwar Parasram Punjabi v. Union of India 1990 (48) ELT 224 (Delhi)

- In the recent case of Leyla Mohmoodi and Mojtaba Ebrahim Gholami vs The Additional Commissioner of Customs and others in WP no 467/2023 which is similar to the case of the petitioner, the Hon'ble High Court of Bombay while ordering return of equal quantity of gold or refund of present market value of the gold.
- No opportunity of personal hearing was given to the appellant before sanctioning refund to him, the decision for refund was taken suo motu and ex-parte. Thus prejudice was caused to the appellant. The impugned O-i-O dated issued in violation of Principles of Natural Justice is therefore not sustainable. The appellant did not file any claim for any refund. The case was decided suo motu by the Assistant Commissioner of Customs without giving any opportunity of personal hearing to the appellant before sanctioning of the refund. Section 125 of the Customs Act, 1962 provides for redemption of confiscated goods on payment of fine. The appellate authority exercised this provision in favor of the appellant, but the Department Commissioner effectively denied this statutory right by disposing of the gold without giving the appellant an opportunity to redeem it. The Assistant Commissioner had no authority to unilaterally issue a refund when the appellate authority had specifically directed redemption. This constitutes an excess of jurisdiction and overreach of administrative authority. By substituting the redemption process with a refund mechanism. the Assistant Commissioner has effectively reviewed and modified the appellate order,

which is beyond his jurisdictional competence. The appellant had a legitimate expectation, arising from the appellate order. to redeem the actual gold upon payment of the requisite amounts. The issuance of a refund order instead of allowing actual redemption frustrates this legitimate expectation.

- Instructions issued by CBIC under instruction no 22/2022 dated 06.09.2022 cannot be made applicable to the case of the appellant.
- The appellant claims present market value of the gold already disposed of. The appellant was not issued any notice before the disposal of the gold. The concerned authority never informed either the Adjudicating Authority or the Appellate Authority that the seized gold of the appellant itself was not available and was disposed of. Even if there is a power to dispose of the gold, it has to be exercised fairly, reasonably and transparently. Disposal of the property belonging to the persons like the appellant and/or to sell the seized goods at the ipse dixit of the officers, is not what the law would recognise. The procedure to dispose of such valuable commodities is required to withstand the test of law and more particularly. the constitutional requirement of reasonableness, non-arbitrariness, fairness and transparency as enshrined under Article 14 of the Constitution coupled with safeguarding the valuable rights of property recognized by the Constitution, under Article 300A. It cannot be otherwise, as Section 110(1A) would be required to be read, interpreted and applied only in a manner the basic law of land under the provisions of Articles 14 and 300A of the Constitution of India, would permit the department to so apply.
- Sub-section (1A) of Section 110 cannot be read as an absolute entitlement or authority with the proper officer to dispose of the items like gold in the absence of any cogent reasons, which would attract the ingredients of sub-section (1A) of Section 110. Such reasons as falling under sub-section (1A) are required to be intimated to the owner of the goods for the reason that ultimately the disposal of the goods would entail serious consequences of affecting the constitutional rights of the owner of the goods guaranteed under Article 300A of the Constitution, as the owner would be deprived of his property. This would be the basic requirement of law the proper officer dealing with any goods, which are merely seized and not confiscated would be required to be followed. This for the reason that prior to the goods being confiscated, rights in the goods, the corporeal ownership of the goods remain with the owner of the goods and such rights do not stand vested and/or transferred in favour of the Customs department/Government.

- In the present case the gold belonging to the appellant has been dealt, disposed of in patent disregard to the basic principles of law as Articles 14 and 300A of the Constitution would ordain. This apart, even the provisions of the Customs Act. which we have discussed, stand violated not only in taking away the substantial statutory rights as the law would guarantee to the petitioners, on seizure of the appellant's gold but also in the manner in which the gold has been disposed of. If such is the consequence of the actions, the same cannot be recognized in law on any parameters. Based on these parameters, the Honorable High Court of Bombay in the case of Leyla Mohmoodi and Mojtaba Ebrahim Gholami vs The Additional Commissioner of Customs & Others in WRIT PETITION NO. 467 OF 2023 held that the disposal / sale of the gold jewellery belonging to the petitioner, is per se illegal, void, ab initio and unconstitutional. Once such action on the part of the respondents is being regarded as a brazen illegality, the mandate of law would be to restore to status quo ante which is the legitimate corollary to remedy such illegality. In the said case, the Honorable High Court of Bombay directed the Department to restore to the petitioners, equivalent amount of gold namely 1028 gms. and/or to compensate the petitioners by making payment of amounts equivalent to the market value of the said gold, as on date.
- In view of all the above submission, the Appellant finally submitted that he is eligible for refund of the market value of 272.110 grams of gold.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 21.01.2026 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He further relied upon the decision of Hon'ble Tribunal, Ahmedabad, in the case of PRADIPBHAI SEVANTILAL SHAH decided vide FINAL ORDER NO. 10841/2025 dated 10.10.2025.

5. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in present appeal is whether the impugned order passed by the adjudicating authority sanctioning refund of Rs 3,82,412/-, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant, had arrived at SVP International Airport, Ahmedabad by Air Arabia Flight No. G9 481 from Sharjah on 17.07.2023. On suspicion the applicant was intercepted after he was about to exit the green channel and asked whether he had anything to declare. The applicant replied in negative. On detailed examination, four plastic pouches covered with brown & grey plastic tapes were recovered from him.

He accepted that he had concealed the above four plastic pouches containing gold and chemical mix in semi solid form at the bottom side of the airport luggage trolley. One gold bar weighing 272.110 grams, having a purity of 999.0/24 Kt. and having a market value of Rs. 16,66,402/- and tariff value of Rs.14,27,149/ was derived from 335.84 grams of gold paste and chemical mix contained in plastic pouches. This impugned gold weighing 272.110 grams was seized under the provisions of Customs Act, 1962, on the reasonable belief that the said goods were smuggled into India and liable for confiscation and subsequently SCN was issued to the appellant. The adjudicating authority viz. the Additional Commissioner of Customs, Ahmedabad vide Order-In-Original No. 210/ADC/VM/O&A/2023-24 dated 16.01.2024 ordered for absolute confiscation of the impugned gold i.e. 01 Gold Bar weighing 272.110 grams having a purity of 999.0/24 Kt. and having tariff value of Rs. 14,27,149/- and market value of Rs. 16,66,402/-derived from semi solid gold paste weighing 335.840 grams concealed in four plastic pouches containing gold and chemical mix in semi solid form at the bottom side of the airport luggage trolley under Section 111(d), 111(f), 111(6), 111(j). 111(1) & 111(m) of the Customs Act, 1962 and a penalty of Rs.5,00,000/- was imposed on the appellant under the provisions of Section 112(a)(i) of the Customs Act, 1962. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority viz. Commissioner of Customs (Appeals), Ahmedabad, who vide Order-In-Appeal No. AHD-CUSTM-000-APP-161-24-25 dated 26.07.2024 has set aside the absolute confiscation ordered by the adjudicating authority and allowed redemption of one gold bar weighing 272.110 grams, derived from 335.840 grams of gold paste and chemical mix contained in plastic pouch, which was made up of 24 kt gold, having a purity of 999.0 and valued at Rs.14,27,149/-(Tariff value) and Rs.16,66,402/- (market value), on payment of fine of Rs.3,20,000/- in addition to the duty chargeable and any other charges payable in respect of the goods as per Section 125(2) of the Customs Act, 1962. Further, the Commissioner of Customs (Appeals) has reduced the penalty from Rs.5,00,000/- to Rs.2,00,000/-.

5.2 It is observed that since the seized gold weighing 272.110 grams were sent to the India Government Mint, Mumbai on 04.12.2023 and hence it was not possible to release the impugned gold to the appellant. Therefore, in terms of Instruction No. 22/2022-Customs dated 06.09.2022, the appellant was sanctioned refund of Rs. 3,82,412/- vide the impugned order. I have gone through the impugned order and observe that the adjudicating authority has only recorded the calculation of the amount refunded. Further, I also observe that no personal hearing was granted before issuance of the impugned order. I am of the considered view that a reasonable opportunity of being heard is required to be provided. The appellant has also submitted that they had not been provided with an opportunity of hearing before passing of the impugned order. Therefore, requirement of natural justice was not satisfied. Thus, the impugned order has been issued in violation of the principles of natural justice. Since no personal hearing was given to the appellant, there is no finding of the adjudicating authority on the contentions raised by the appellant as well as the case laws relied upon by him. Hence, all the contentions are raised by the appellant in the appeal memorandum have been made for the first time before me and the adjudicating authority has no opportunity to record his findings on the same. Therefore, I find that remitting of the case for passing speaking orders after providing the appellant with an opportunity for personal hearing becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Bombay Hon'ble High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. – [*2012-TIOL-1317-CESTAT-DEL]* and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] holding that Commissioner(Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. In view of the foregoing, the appeal is allowed by way of remand to the adjudicating authority for passing a reasoned and speaking order, after affording the appellant an adequate opportunity of personal hearing. The adjudicating authority is directed to examine all relevant facts, documents, and submissions placed on record during the appeal proceedings. Based on such examination, fresh orders shall be issued expeditiously, strictly in accordance with the principles of natural justice and the applicable legal provisions. It is clarified that, while passing this order, no findings or views have been expressed on the merits of the case or on the submissions made by the appellant. These shall be independently examined and considered by the adjudicating authority in accordance with law.

7. In view of above, the appeal filed by the appellant is allowed by way of remand.

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

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.No. S/49-78/CUS/AHD/2025-26 5397 Dated -23.01.2026

To,

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Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Deputy/Assistant Commissioner of Customs, SVPIA, Ahmedabad.
4. Guard File.