



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

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

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250771MN0000914439

क	फ़ाइल संख्या FILE NO.	S/49-31/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-091-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.07.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. 24/Additional Commissioner/2023-24 dated 21.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) Shri Irfan Jumani, Proprietor of M/s. Golden Stores, Behind Suryoday Petrol pump, Dhoraji Road, Upleta-360490, District- Rajkot.

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 D(D)(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.
	<b>निम्नलिखित सम्बन्धित आदेश/Order relating to :</b>
(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 वापसी की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया व्याज, 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 :	
	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 मंजिल, 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 रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(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 रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील ; - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



## ORDER-IN-APPEAL

The present appeal has been filed by Shri Irfan Jumani (hereinafter referred to as the 'Appellant'), Proprietor of M/s. Golden Stores, behind Suryoday Petrol pump, Dhoraji Road, Upleta-360490, District- Rajkot, in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 24/Additional Commissioner /2023-24 dated 21.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Hon'ble CESTAT, Ahmedabad vide Order No. A/11322-11328/2022 dated 31.10.2022 in the matter of Shri Irfan Jumani, Proprietor of M/s. Golden Stores, behind Suryoday Petrol pump, Dhoraji Road, Upleta-360490, District- Rajkot has set aside the Order-in-Appeal-JMN-CUSTM-000-APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses.

2.1 Brief facts of the case are that, intelligence was received by the officers of the Headquarters, Preventive Section, Customs (P), Jamnagar, indicating that M/s Golden Stores, located behind Suryoday Petrol Pump, Dhoraji Road, Upleta, District Rajkot, was engaged in the smuggling of large quantities of imported old and worn clothing/garments. The import of such goods, classified under Chapter Heading 63090000 of the Customs Tariff Act 1975, is restricted under ITC (HS) in terms of DGFT Notification No. 7/2004-09 dated 27.10.2004, read with Paragraph 2.17 of the Foreign Trade Policy, and is permitted only against a valid import licence or authorization issued by the Directorate General of Foreign Trade. It was further gathered that the said goods were being sold by M/s Golden Stores under the misdeclaration of old and used cut rags, wipers, or mutilated fabrics falling under Chapter Heading 6310 of the Customs Tariff Act in an apparent attempt to evade customs duty.

2.2 Acting upon the said intelligence, officers of Customs (Preventive), Jamnagar, conducted a search at the godown premises of M/s Golden Stores, owned by the Appellant, on 09.12.2016. During the search, recorded under Panchnama dated 09.12.2016, a large quantity of worn clothing stacked in bales was found. Upon opening the bales, items such as old and used garments, towels, napkins, and sarees were discovered. These garments were labelled as "MADE IN CHINA," "MADE IN SRI LANKA," "MADE IN USA," etc., and were found to be uncut, in wearable condition, and clearly of foreign origin. The appellant admitted that the goods were of foreign origin and uncut but denied having imported them directly, stating instead that the goods were purchased from



various local markets across India. He was unable to produce any documentation such as purchase bills, Bills of Entry, or import authorizations at the time of the search, though he stated that the relevant documents would be provided subsequently. The foreign-origin goods, weighing 31.880 MT and valued at Rs. 13,65,725/-, were segregated from the rest of the stock, inventoried in Annexure-A to the Panchnama, and placed under detention. Custody of the detained goods was handed over to the Appellant under Supratnama dated 09.12.2016.

2.3 Subsequently, the Appellant's statement was recorded under Section 108 of the Customs Act, 1962, on 19.12.2016. He confirmed that he was engaged in the retail purchase and sale of old and used clothing from the said godown. He reiterated that the goods were procured from local markets in Upleta and Jamnagar and that no import documents were available in the godown. Upon being shown the purchase bills later, he conceded that they did not contain any reference to the goods being imported or that customs duty had been paid. He acknowledged, upon being shown the Customs Tariff 2016-17, that the goods in his possession fell under Chapter Heading 63090000 and were restricted items. He further stated that the goods in his possession consisted of uncut clothing such as sweaters, jackets, pants, shirts, towels, napkins, and sarees.

2.4 A further statement of the Appellant was recorded on 28.12.2016, where he was shown the purchase bills submitted on 23.12.2016 pertaining to transactions made during 2015-16 and 2016-17 with M/s Noble Traders and M/s Sapna Sari Centre, Upleta. He confirmed that nothing in those bills indicated the goods were imported or that duty had been paid. As no valid import documents, Bills of Entry, or evidence of duty-paid procurement could be provided, the goods were seized under Section 110 of the Customs Act, 1962, vide Panchnama dated 04.01.2017 on the reasonable belief that they had been smuggled into India and were liable for confiscation under the provisions of the said Act. The seized goods were handed over to the Appellant for safe custody under Supratnama dated 04.01.2017, and representative samples were drawn and sealed in the presence of panchas and the Appellant.

2.5 Further, statements of the suppliers were recorded under Section 108 of the Customs Act, 1962. Shri Asif Rafiq Talu, proprietor of M/s Sapna Sari Centre, Upleta, stated on 06.04.2017 that he had sold a total of 8.878 MT of old and used clothing to M/s Golden Stores during 2016-17. Although the invoices did not indicate the goods were imported, he confirmed that his firm deals exclusively in imported clothing, either directly imported or purchased from local markets. He described the goods sold to M/s Golden Stores as old pants, shirts, jeans, tops, jackets, and sweaters. On the same day, Shri Asif Rafiq Talu, in his

capacity as power of attorney holder for M/s Noble Traders, confirmed that the firm had sold 21.250 MT of similar goods to M/s Golden Stores during 2015-16. He similarly admitted that while the invoices did not mention the imported nature of the goods, the firm deals exclusively in imported clothing and had already submitted relevant documents to the Customs Department during an earlier search.

2.8 A reference was made to the Directorate General of Foreign Trade regarding this case, the seizure of the said goods and also seeking clarification on the release of the said goods considering the restrictions imposed on their import. The Directorate General of Foreign Trade, New Delhi vide letter F. No. 01/89/214/002/AM-02/PC-2[A]/Vol-1 dated 26.05.2017 replied as under:

*"...it is informed that the import of "Worn Clothing \& others and Worn articles" are "restricted" under 63090000 for import. No authorization had been given for import of these items by DGFT. Hence these were unauthorized imports.*

*It was therefore requested that Customs [Prev.] may take appropriate action under Customs Act."*

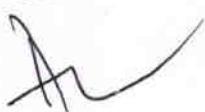
2.5 The Investigation into the matter culminated into issuance of Show Cause Notice No. VIII/10-146/JC/O&A/2017 dated 07.06.2017 to the Appellant, calling him as to why:

(i) the imported worn clothing falling under Chapter Heading 630900 of the CTA, weighing 31.880 MT valued at Rs. 13,65,725/- seized from the godown of M/s Golden Stores, Upleta should not be confiscated under section 111(d) of the Customs Act, 1962

(ii) penalty should not be imposed upon Shri Irfan Jumani, proprietor of M/s Golden Stores, Upleta under section 112(a) and (b) of the Customs Act, 1962.

2.6 During the first round of litigation, matter was adjudicated vide the Order-in-Original No. 22/Joint Commissioner/2017-18 dated 28.02.2018/ 28.03.2018 issued by the Joint Commissioner, Customs (Prev), Jamnagar which was upheld vide Order-in-Appeal No. 'Order-in-Appeal-JMN-CUSTM000-APP-74-80-19-20 dated 30.05.2019' and in subsequent litigation the Hon'ble CESTAT vide its common Order No. A/11322-11328/2022 dated 31.10.2022 has set aside the Impugned Order-in-Appeal-JMN-CUSTM-000APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses.

2.7 The appellant, initially, vide their reply dated 28/08/2017 had



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 Examine 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, the Cross Examination of both the Panchas (1) Shri Shakilbhai Yunusbhai Ghanchi and (2) Shri Sadiq Kadarbhai Ghanchi by Shri Amal dave Advocate and Shri Sudhanshu Bissa on behalf of the Appellant was conducted on 05/01/2024. During the Cross Examination, Shri Shakilbhai Yunusbhai Ghanchi and Shri Sadiq Kadarbhai Ghanchi inter alia stated that they were not present during the stock taking between 3:45 P.M. to 9:00 PM and were attending a marriage; that they were at marriage from morning to evening and they were told by the officer that there was some incidence of "theft" and they had to remain present; that officers called for signature at 4:00 o'clock in the evening; that they were not present at the time of stock taking and not witnessed weighment of goods on 09.12.2016; that they did not see the goods and also labels of foreign make on it. On being asked about why they signed the documents, Shri Shakil Yunusbhai Ghanchi said that officer told it to be governmental work and he signed the documents in the interest of the government. Shri Sadiq Kadarbhai Ghanchi said that the officer told that this was work related to customs and hence he signed. On being asked both of them stated that S/Shri Mori Vasim Ibrahim, Shri Rajab Jiva Makwana, Shri Sarfaraz Alia, Shri Javedbhai Patel, Shri Rafikbhai Hakka and Shri Mustak Yunusbhai Sharif, were present at a place where they were attending marriage ceremony.

2.8 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 wherein:

- (i) He confiscated the seized goods viz. the worn clothing falling under CTH 63090000, weighing 31880 kgs. valued at Rs.13,65,725/- seized from the godown of M/s. Golden Stores, Upleta under Section 111(d) of the Customs Act.
- (ii) He offered for redemption of the confiscated goods under Section 125(1) of the Customs Act, 1962 upon payment of a fine of Rs.2,75,000/- which shall be 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/- on Shri Irfan Jumani, Proprietor of

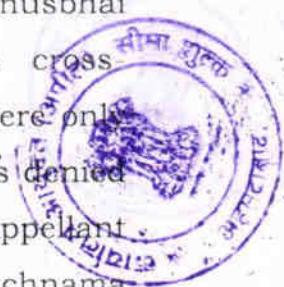


M/s. Golden Stores, Upleta, under Section 112 (a) & Section 112(b) of the Customs Act, 1962.

### **3. SUBMISSIONS OF THE APPELLANT:**

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

- The impugned order by the Additional Commissioner is legally flawed and unsustainable. The findings of the adjudicating authority lack merit and jurisdiction, as it failed to consider the substantial arguments raised by them in their preliminary and final replies. Despite the panch witnesses denying any knowledge of the contents of the panchnama dated 09.12.2016, the adjudicating authority unjustifiably upheld the legality of the panchnama proceedings. Moreover, the adjudicating authority failed to address the absence of evidence proving that the seized goods were uncut foreign-origin clothing. The appellant also contends that the department's failure to prove that the goods were imported or smuggled is crucial, as the burden to prove the same lies with the revenue.
- The appellant disputes the findings of the adjudicating authority in paragraphs 24(1) and 24(2), which state that the panchnama proceedings cannot be invalidated based on the panch witnesses' signatures. The appellant asserts that the panch witnesses, Shri Shakil Yunusbhai Ghanchi and Shri Sadiq Kadarbhai Ghanchi, testified in cross-examination that they were at a wedding on 09.12.2016 and were only present at the panchnama for signing documents. Both panchas denied any knowledge of the seized goods and their foreign origin. The appellant submits that the adjudicating authority's conclusion that the panchnama was valid because the panchas signed it is erroneous.
- The appellant emphasizes that the presence of the panch witnesses at the signing of the panchnama, without their being involved in the actual proceedings, renders the panchnama proceedings unreliable. Since the panchas denied witnessing the seizure or examination of the goods, the appellant argues that no reliance can be placed on the panchnama. Despite this, the adjudicating authority unjustifiably accepted the panchnama's legitimacy. Therefore, the appellant requests that the impugned order be set aside.
- The appellant contends the adjudicating authority's claim that the panchas should have objected to the panchnama proceedings when they were signed. The appellant clarifies that the panchas were unaware of the contents of the documents and were merely told to sign them for



"government work." Therefore, they had no reason to challenge the panchnama. Additionally, the appellant stresses that the panchas were not present during the stock-taking and the entire process, as evidenced by their cross-examination.

- The appellant cites several case laws to support their argument. In *B.D. Goel vs. Ebrahim Essa Sodha* (2014), the Bombay High Court ruled that an accused cannot be charged based on a panchnama when the panch witness's testimony contradicts the panchnama's contents. Similarly, in *Commissioner of C. Ex. & S.T. vs. Anand Kumar* (2015), the Tribunal rejected the department's case based on discrepancies in the panch witness's testimony. In *Baroda Rolling Works* (2009), the Tribunal held that a panchnama is unreliable when the panchas were not present during the seizure proceedings. The appellant submits that these precedents, where contradictions in panchnama proceedings led to the dismissal of charges, are applicable in their case as well.
- The appellant contests the finding in paragraphs 24(3) and 24(4) of the impugned order, which suggests that the proprietor's presence during the panchnama proceedings on 09.12.2016 validates the seizure. The appellant clarifies that the proprietor was attending a wedding on the same day and was not present during the panchnama. Furthermore, the appellant never conceded that all 31.880 MT of goods were imported or uncut, as no detailed examination of the bales was carried out by the officers. The appellant submits that the failure to open and inspect each bale casts serious doubt on the claim that the seized goods were of foreign origin or imported.

The appellant argues that the investigating officers only counted the bales and did not open them to verify the nature of the goods. This raises significant doubts about the correctness of the panchnama proceedings. The fact that the bales were not opened or segregated to identify foreign labels undermines the department's claim that the goods were smuggled or restricted. The appellant also points out that the panchas testified that they did not witness the goods or the stock-taking process. In light of these facts, the appellant submits that the panchnama and the findings based on it should not be relied upon.

- The adjudicating authority erred by stating that the panchnama proceedings of 09.12.2016 could not be vitiated due to different officers being involved on 09.06.2016 and 04.01.2017. The key issue is the lack of independent panchas during the stock verification, not the officers' involvement. The panchnama only counted bales, but it did not confirm

that each bale was opened and examined to verify the goods' nature. Judicial forums have consistently ruled that stock-taking based on eye-estimation alone is improper. In *Commr. of C. Ex., Haldia vs. Shri Badri Narayan Alloys & Steels Ltd.* (2018 (8) G.S.T.L. 79 Tri. - Kolkata), it was held that stock-taking must be supported by objective material like weighment slips, and it cannot be based on mere eye-estimation. Similarly, in *Raika Ispat Udyog Pvt. Ltd. v. Commissioner of Central Excise, Raipur* (2016 (340) E.L.T. 598 Tri.-Del.), the Tribunal held that rough estimation based on bundles and average weights was not valid without supporting evidence. Hence, the verification method employed here was inadequate.

- The Additional Commissioner wrongly held that the appellant could not dispute the quantity of goods based on their admission of procurement. However, the appellant only disputed that the goods were imported in uncut condition, not the quantity. Invoices from local suppliers, such as M/s. Noble Traders and M/s. Sapna Saree Centre, prove that the goods were locally procured. The adjudicating authority ignored this evidence and relied on incomplete responses to impose penalties. In *Commissioner of Customs, Mumbai v. M/s. Ashoka Trading Company* (2012 (280) E.L.T. 560 (Tri.-Mumbai)), the Tribunal held that when the burden is on the department to prove that the goods are imported, the claim of local purchase cannot be disregarded without sufficient evidence.
- The show cause notice wrongly presumed that the goods were smuggled because of a lack of import documents. The appellant did not import these goods but purchased them locally, and invoices from the suppliers were provided to substantiate this. The burden of proving illegal import rests on the department, which failed to do so. In *A.K. Hamsa Mohideen vs. Commissioner of Customs, Chennai* (2004 (171) E.L.T. 327 (Tri.-Chennai)), the Tribunal held that the burden to prove that goods are smuggled rests with the department, especially when such goods are readily available in the market.
- The appellant contends that since the goods were found in the warehouse, it can be presumed they were duty-paid. Therefore, the adjudicating authority's insistence on import documents was irrelevant. The nature of the goods as "imported worn clothing" was inaccurately characterized. The appellant presented valid invoices from local suppliers, and the goods were properly accounted for in the books. In *Sadbhavana vs. Commissioner of Customs, Indore* (2003 (158) E.L.T. 652 (Tri.-Del.)), the Tribunal held that the initial burden to prove the smuggled nature of goods lies with the department, especially when the goods are freely available in the open market.



- The adjudicating authority made a mistake by dismissing the panchas' testimony regarding their absence during the panchnama proceedings. The panchas clearly stated they were not present, casting doubt on the validity of the panchnama. The appellant should not have been required to cross-examine the investigating officers to corroborate the panchas' statements. In *V. Muniyandi vs. Commissioner of Customs, Chennai* (2004 (167) E.L.T. 215 (Tri.-Chennai)), the Tribunal ruled that the testimony of panchas cannot be disregarded without proper evidence from the department.
- The goods seized on 04.01.2017 were not imported by the appellant, and thus, cannot be deemed smuggled or in violation of the Customs Act. The appellant had valid purchase invoices for the seized goods, and the local suppliers confirmed the sale. The department failed to prove the goods were illegally imported, and therefore, the confiscation and penalty should be annulled. In *Shree Nakoda Ispat Ltd. vs. Commissioner of Central Excise, Raipur* (2017 (348) E.L.T. 313 (Tri.-Del.)), the Tribunal held that when the appellant provides proof of local purchase, the burden of proving smuggling lies with the department.
- The penalty imposed is unjustified. The appellant has not committed any act that would render the goods liable for confiscation. Since Section 112(a) is not applicable, the penalty is legally unsustainable. In *Commissioner of Customs, Chennai v. M/s. Hindustan Steel Ltd.* (1978 ELT (J159)), the Hon'ble Supreme Court held that penalties should not be imposed merely because it was lawful to do so. Penalties are only justified when the conduct is contumacious or dishonest.
- Under Section 112(b), penalties are only applicable if someone knows the goods are liable for confiscation. The show cause notice did not provide evidence of such knowledge on the part of the appellant, making the penalty under this section unjustifiable. In *Ashok Premji Patel vs. Commissioner of Customs, Mumbai* (2003 (157) E.L.T. 568 (Tri.-Mumbai)), the Tribunal set aside penalties imposed on the appellant as no evidence was presented that they had reason to believe the goods were smuggled.
- Penalties should not be imposed without proof of dishonest conduct. The Supreme Court in *Hindustan Steel Limited* (1978 ELT (J159)) ruled that penalties are only justified in cases of clear wrongdoing. Therefore, in this case, the imposition of a penalty is unreasonable. In *Rajeev Kumar Agarwal vs. Commissioner of Customs, Kolkata* (2004 (164) E.L.T. 206), the Tribunal reiterated that penalties are not justified when the contravention arises from a bonafide belief.



- The adjudicating authority exceeded its jurisdiction by imposing a redemption fine of Rs. 2,75,000/- under Section 125(2) of the Customs Act. The show cause notice did not propose recovering any duties; it only referred to confiscation. As such, the redemption fine is unjustified and should be overturned. In *M/s. Shree Krishna Keshav Kumar vs. Union of India* (2010 (252) E.L.T. 503), the Hon'ble Tribunal held that the adjudicating authority cannot act beyond the scope of the show cause notice.

#### **PERSONAL HEARING:**

4. Personal hearing in the matter was granted to the Appellant on 10.06.2025, following the principles of natural justice wherein Shri Amal P. Dave and Shri Sudhanshu Bissa, 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 the issues required to be decided in the present appeal are as follows:

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

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

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

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

5.2 I find that the Hon'ble CESTAT, Ahmedabad, in its Final Order No. A/11322-11328/2022 dated 31.10.2022, explicitly remanded the matter, specifically directing the adjudicating authority to allow cross-examination of witnesses and to decide the case afresh. This remand was based on the observation that the department's case relied solely on the Panchnama and



statements of witnesses whose cross-examination was crucial. The cross-examination of Panchas (Shri Mustakbhai Yunusbhai Sharif and Shri Lakhmanbhai Kanjibhai Panera) on 05.01.2024 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.



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.

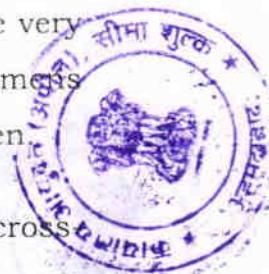
5.7 Confiscation under Section 111 and penalties under Section 112 of the Customs Act, 1962 are contingent upon the goods being illegally imported or smuggled. If the department fails to prove the fundamental allegation of illegal import/smuggling, then the goods cannot be held liable for confiscation, 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. 24/Additional Commissioner/2023-24 dated 21.02.2024.

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

(iii) the confiscation of 31880 kgs of worn clothing and consequently, redemption fine of Rs. 2,75,000/- is hereby set aside.

(v) The penalty of Rs. 2,00,000/- imposed on Shri Irfan Jumani, proprietor of M/s Golden Stores, Upleta under Section 112(a) and (b) of the Customs Act, 1962, is hereby set aside.

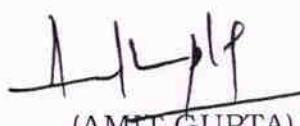
(vii) Any amounts deposited by the Appellant towards redemption fine or penalties shall be refunded to them with applicable interest, in accordance with law.

The appeal filed by Shri Irfan Jumani is hereby allowed with consequential relief, if any.

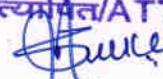
F. No. S/49-31/CUS/MUN/2024-25 *2512*

By Registered post A.D/E-Mail

To,  
Shri Irfan Jumani,  
Proprietor of M/s. Golden Stores,  
Behind Suryoday Petrol pump, Dhoraji Road,  
Upleta-360490, District- Rajkot.

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

Date: 10.07.2025

सत्यापित/ATTESTED  
  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील्स), 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.