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 - 20260271MN000042424B

क	फ़ाइलसंख्या FILE NO.	S/49-79 & 77/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-553 to 554-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	12.02.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	36/REF/CPV-AC/SVPIA/2024-25 dated 25.02.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	12.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	(i) Mr. Rahat Ali, Makan No. 17, Chak No. 12, Tehsil-Tanda, District-Rampur, Uttar Pradesh 244925. (ii) Mr. Waseem Akram, House No. 145, Mohalla Tandoli, PO & Tehsil Tanda, District-Rampur, Uttar Pradesh 244925.

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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 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,असारवा,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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;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.	

Shri Rahat Ali, Makan No. 17, Chak No. 12, Tehsil-Tanda, District-Rampur, Uttar Pradesh 244925 (hereinafter referred to as "the appellant - 1") and Shri Waseem Akram, House No. 145, Mohalla Tandoli, PO & Tehsil Tanda, District-Rampur, Uttar Pradesh 244925 (hereinafter referred to as "the appellant - 2") have filed the present two appeals in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 36/REF/CPV-AC/SVPIA/2024-25 dated 25.02.2025 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Customs, SVPIA, Ahmedabad (hereinafter referred to as "the adjudicating authority".

2. Briefly stated, facts of the case are that the Appellant 1 arrived at Ahmedabad by Air India Flight No. 031 from Mumbai on 27-02-2018. On suspicion, Appellant I was intercepted when he was about to exit the green channel and was asked whether he had anything to declare. The appellant 1 replied in the negative. Upon detailed examination, 7 gold bars and 1 cut gold bar with foreign markings, having a purity of 999.0, totally weighing 845.980 grams and having a market value of Rs.26,69,913/- and tariff value of Rs.23,59,058/- were recovered from him. Appellant 1 stated that he had bought the gold from Mumbai to sell in Ahmedabad. Not being satisfied with the reply, officers carried out checks at the green channel exit point by verifying passengers' passports, where it was noticed that Appellant 2 (Waseem Akram) and appellant 1 were from the same place in UP. Upon questioning Appellant 2 admitted that he knew Appellant 1 and that the gold belonged to him, and he had handed over the same to Appellant 1 at the arrival hall of the Ahmedabad airport. This impugned gold 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, a Show Cause Notice was issued to the Applicants. Details of the seized gold are as given below:

Table 1

Description of seized gold	Qty.	Weight in Grams : all 24 kt
07 Gold Bars & 01 Cut Gold Bar		845.980
Total Market Value		Rs 26,69,913/-
Total Tariff Value		Rs 23,59,058/-

2.1 The adjudicating authority, i.e. the Additional Commissioner of Customs, SVPIA, Ahmedabad vide Order-in-Original No. 06/ADC MLM/SVPIA/O&A/2018-19 dated 30.11.2018, ordered the absolute confiscation of the impugned gold (07 Gold Bars and 01 Cut Gold Bar) having a purity of 999.0, totally weighing 845.980 grams, valued at Rs. 23,59,058/- (Tariff Value) and Rs.26,69.913/- (Market Value) under Section 111(d), 111(1), 111(1) & 111(m) of the Customs Act, 1962. A penalty of Rs.2,35,000/- was imposed on each appellant (appellant 1 & 2) under Section 112(a) & (b) of the Customs Act, 1962.

2.2 Aggrieved by the order, the appellants appealed to the appellate authority, the Commissioner of Customs (Appeals), Ahmedabad. The appellate authority found no reason to interfere with the adjudicating authority's Order- in-Original and upheld it vide Order-In-Appeal No. AHD-CUSTM-000-APP-554 to 555-19-20 dated 10.01.2020.

2.3 Aggrieved by the above Order-In-Appeal No. AHD-CUSTM-000-APP-554 to 555-19-20 dated 10.01.2020, the applicants filed revision application. The Principal Commissioner & ex-officio Additional Secretary Government of India issued Order No. 514-515/2023-CUS (WZ)/ASRA/MUMBAI dated 30.06.2023 modified the impugned order of the appellate authority and allowed the applicant to redeem the impugned gold bars i.e. 7 gold bars and 1 cut gold bar with foreign markings, having a purity of 999.0, totally weighing 845.980 grams and having a market value of Rs.26,69,913/- and tariff value of Rs.23,59,058/-, on payment of redemption fine of Rs. 5,00,000/- and upheld the penalty of Rs 2,35,000/-

2.3 The above gold weighing 845.980 grams were sent to the India Government Mint, Mumbai on 16.01.2020 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 appellants were sanctioned refund of Rs 5,59,618/- each 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 dated 25.02.2025, that the gold has been already disposed of on 16.01.2020. This is in spite of the fact that the appeal filed by the petitioner against the order of absolute confiscation of the gold was pending before the Commissioner (Appeals). The petitioner was not issued any Notice under Section 150 of the Customs Act, 1962 by the authority concerned before disposing 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 violated section 150 of the Customs Act, 1962 and also failed to follow the instructions issued by the Board with regard to issuance of notice to the petitioner before the disposal of the gold which resulted in undue financial loss to him.

- As per the instructions issued by the Board, 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. No Notice of sale/disposal was ever issued to the petitioner. Disposal of the gold without giving any notice to the petitioner is violation of section 150 of Customs Act, 1962 and also contrary to the Board's circular F.No.711/4/2006- Cus (AS) New Delhi, February 14, 2006 dated 14-2-2006 which is binding on the authorities concerned. The petitioner cannot be made to suffer any loss because of the wrong committed by the Department. In this connection reliance is placed on the following decisions:-

    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 disposal of gold. In the present case no personal hearing was given to the petitioner before the disposal of the gold. The action of the Department and the Magistrate stand vitiated owing to the lapse committed in not giving a notice to the petitioner, not affording opportunity of hearing, or showing cause against such an application being allowed. In this case, the Customs authority concerned being fully aware by reason of the pending appeal proceeding, should not have sold the gold before the decision of the case in appeal without giving any notice to the petitioner and without giving any opportunity of personal hearing to him. Thus, he has been put into an undue financial loss and deprivation of his property. Failure to follow the due process of law, would be violation of human rights, as also the constitutional right under Article 300A of the Constitution. As per the instructions issued by the Board, 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. No Notice of sale was ever issued to the petitioner. Disposal of the gold without giving any notice to the petitioner is violation of section 150 of Customs Act, 1962 and also contrary to the Board's circular F.No.711/4/2006- Cus (AS) New Delhi, February 14, 2006 dated 14-2-2006 which is binding on the authorities concerned. The Revisionary Authority is the highest appellate authority under the Customs Act and its orders are final and binding. It is also submitted that failure to comply with such orders will amount to contempt of court, as held by the Hon'ble Apex Court in the case of Union of India vs. Kamalakshi Finance Corporation (1991(55) ELT 433 SCJ. If the Department fails to implement the order of the Revisionary Authority, it would amount to contempt of Court. Further, in the case of Union of India Versus Ind Metal Extrusions Pvt. Ltd 2013 (289) E.L.T. 106 (Del), the Delhi High Court held that finality attached to revision order cannot be questioned by Central Government by filing writ petition against it. The petitioner requested for only for redemption of the gold weighing 845.980 grams for re-export. He never applied for refund of sale proceeds of the gold. In the absence of any refund application filed by the petitioner, sanctioning of refund on his own by the Deputy Commissioner of Customs is unwarranted and the petitioner is not bound to accept the refund order. There is violation of petitioner's fundamental right under Article 300A.

- The gold was disposed of without any notice to the petitioner and without the knowledge of the petitioner even before the case was decided in appeal by the Commissioner (Appeals). The fact of disposal of the gold was not brought to the knowledge of the Commissioner (Appeals) and Government of India. The claim that the seized gold was sent to the India Government Mint on 16-01-2020, and hence could not be released, raises serious questions. The gold was under the custody of the Customs Department, and its disposal without issuing any notice to the petitioner or obtaining necessary approvals is a gross violation of procedural norms and the petitioner's rights. On 25-02-2025, the Assistant Commissioner issued an order sanctioning a refund of Rs. 5,59,618/- to petitioner, citing the unavailability of the gold (allegedly sent to the India Government Mint). This refund was sanctioned without any application for refund from the petitioner, who had explicitly requested the redemption of the gold. The order issued by the Revisionary Authority, Government of India, explicitly allowed the petitioner to redeem the seized gold on RF, PP. The Respondent's decision to sanction a refund, rather than facilitating the redemption of the gold, directly contravenes this order, thereby undermining the legal authority of the Government of India. The Respondent acted beyond the scope of his authority by unilaterally deciding to issue a refund without any request from petitioner. This not only disregards petitioner's expressed wishes but also lacks any legal basis, rendering the order arbitrary and ultra vires. The principles of natural justice necessitate that the petitioner be given the opportunity to redeem the gold as ordered by the Government of India, The Assistant Commissioner's actions deprived the petitioner of this opportunity, thereby violating the fundamental principles of fairness and justice. Article 300A of the Constitution of India states: "No person shall be deprived of his property save by authority of law." This constitutional provision protects the right to property and mandates that any deprivation of property must be legally justified and accompanied by due process. The gold in question was the petitioner's personal property. The disposal of this gold by the Customs Department, without giving a notice to the petitioner or obtaining necessary approvals, constitutes an unlawful deprivation of property. This action is a clear violation of the petitioner's fundamental right under Article 300A. The Government of India's order permitted petitioner to redeem the gold o RF, PP. The Assistant Commissioner's unilateral decision to issue a refund and the disposal of the gold without due process or the petitioner's consent bypasses the established legal procedure. This lack of due process further aggravates the violation of Article 300A. The Assistant

Commissioner's actions in issuing a refund and disposing of the gold without a proper basis are arbitrary and beyond the scope of his authority. These actions not only contravene the Government of India's directive but also undermine the legal safeguards provided under Article 300A.

- In the present case, there was non-compliance with pre-audit requirement. Since the refund amount was more than Rs 5,00,000/- the draft refund order should have been sent to pre-audit. The actions of the respondent prejudiced the petitioner. As per the Customs Refund Application (Form) Regulations, 1995, Notification No. 34/95-Cus. (N.T.), dated 26-5-1995 and amended by Notification No. 29/1999-Cus. (N.T.), dated 11-05-1999, any refund amount exceeding Rs. 5,00,000/- should undergo the procedure of pre-audit before final approval and issuance.
- Charging of warehouse charges is not as per law. Warehouse charge of Rs 28,980/- is liable to be refunded to the petitioner. Warehouse charge of Rs 28,980/- charged by the Respondent on the petitioner from the date of seizure is illegal. The gold in question, during the period of seizure until the date of the authority's release order, was solely under the custody of customs and not with the Custodian of imported and export goods. Therefore, imposition of warehouse charges during this period is not proper and may not align with then framework governing such cases. Since, the gold was solely under the custody of customs and not under purview of the Custodian of imported and export goods, the application of warehouse charges would not be lawful. The petitioner has been put into undue financial burden because of warehouse charges charged on him.
- Instruction under reference M.F. (D.R.) Instruction No. 22/2022-Cus., dated 6-9-2022 in file F. No. CBIC-50711/5/2021-INV-CUSTOMS issued by the Board and followed by the Respondent in the matter of calculation of applicable refund amount to the petitioner is not binding on the petitioner. Without prejudice to the fact that impugned O-i-O dated 25.02.2025 is not sustainable, the petitioner further submits that the Respondent followed the instructions issued under reference M.F. (D.R.) Instruction No. 22/2022-Cus. dated 6-9-2022 in file F. No. CBIC-50711/5/ 2021-INV-CUSTOMS for calculating the amount to be refunded.
- The petitioner claims present market price of the gold as on 25-02-25, the date on which the refund order was issued. It is submitted that the petitioner was not issued any notice u/s 150 of the Customs Act, 1962 before disposal of the Gold. Neither the Commissioner (Appeals) nor the Revisionary authority was informed about the disposal of the gold. They were kept in dark about the disposal of the gold. As per notification no

31/86 dated 5-2-86, the Department has the power to dispose of the gold. But this power comes with a condition that the owner of the gold should be given a notice u/s 150 of Customs Act. Another condition is that it is only when the gold is ripe for disposal, it could be sold. The question is when will the seized/confiscated gold be ripe for disposal? It is only when the appeal remedy available for the owner expires. In this connection, please refer para 11.2.1 of Disposal Manual, 2019 and the circular No. 57/2016-Customs dated 1-12-2016. There is a mention as "gold found ripe for disposal". In this connection Form-8 as prescribed under para 3.7.1 of the Disposal manual for disposal of the gold may be referred. Form-8 is a report to be given by the Officer in-charge of Disposal to the Custodian of Seized/Confiscated gold wherein "List of Cases in Which Period of Redemption and Appeal has Expired". As it may be seen under Form-8, the Officer-in-charge of disposal has to report that "The goods mentioned hereunder have not been so far redeemed within the prescribed period and the period for preferring appeal is also over."

- In view of all the above submission, the Appellant finally submitted that he is eligible for refund of the market value of 845.980 grams of gold.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 21.01.2026 on behalf of the appellants. 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. Before going into the merits of the case, I find that the appeals filed by the appellants, have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellants have requested for condoning the delay in filing the said appeals on the grounds that they were out of station and was unable to pursue as per order in stipulated time, and brief the Advocate, therefore the appeals could not be filed in the stipulated time causing delay in filing the appeals. Therefore, taking a lenient view to meet the ends of justice, I allow the appeals, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

6. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellants 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 5,59,618/- to appellant 1 & 2, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 It is observed that the Appellant 1 arrived at Ahmedabad by Air India Flight No. 031 from Mumbai on 27-02-2018. On suspicion, Appellant I was intercepted when he was about to exit the green channel and was asked whether he had anything to declare. The appellant 1 replied in the negative. Upon detailed examination, 7 gold bars and 1 cut gold bar with foreign markings, having a purity of 999.0, totally weighing 845.980 grams and having a market value of Rs.26,69,913/- and tariff value of Rs.23,59,058/- were recovered from him. Appellant 1 stated that he had bought the gold from Mumbai to sell in Ahmedabad. Not being satisfied with the reply, officers carried out checks at the green channel exit point by verifying passengers' passports, where it was noticed that Appellant 2 (Waseem Akram) and appellant 1 were from the same place in UP. Upon questioning Appellant 2 admitted that he knew Appellant 1 and that the gold belonged to him, and he had handed over the same to Appellant 1 at the arrival hall of the Ahmedabad airport. This impugned gold 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, a Show Cause Notice was issued to the Applicants. The adjudicating authority, i.e. the Additional Commissioner of Customs, SVPIA, Ahmedabad vide Order-in-Original No. 06/ADC MLM/SVPIA/O&A/2018-19 dated 30.11.2018, ordered the absolute confiscation of the impugned gold (07 Gold Bars and 01 Cut Gold Bar having a purity of 999.0, totally weighing 845.980 grams, valued at Rs. 23,59,058/- (Tariff Value) and Rs.26,69.913/- (Market Value) under Section 111(d), 111(1), 111(1) & 111(m) of the Customs Act, 1962. A penalty of Rs.2,35,000/- was imposed on each appellant (appellant 1 & 2) under Section 112(a) & (b) of the Customs Act, 1962. Aggrieved by the order, the appellants appealed to the appellate authority, the Commissioner of Customs (Appeals), Ahmedabad. The appellate authority found no reason to interfere with the adjudicating authority's Order- in-Original and upheld it vide Order-In-Appeal No. AHD-CUSTM-000-APP-554 to 555-19-20 dated 10.01.2020. Aggrieved by the above Order-In-Appeal No. AHD-CUSTM-000-APP-554 to 555-19-20 dated 10.01.2020, the applicants filed revision application. The Principal Commissioner & ex-officio Additional Secretary Government of India issued Order No. 514-515/2023-CUS (WZ)/ASRA/MUMBAI dated 30.06.2023 modified the impugned order of the appellate authority and allowed the applicant to redeem the impugned gold bars i.e. 7 gold bars and 1 cut gold bar with foreign markings, having a purity of 999.0, totally weighing 845.980 grams and having a market value of Rs.26,69,913/- and tariff value of

Rs.23,59,058/-, on payment of redemption fine of Rs. 5,00,000/- and upheld the penalty of Rs 2,35,000/-.

6.2 It is observed that since the seized gold weighing 845.980 grams were sent to the India Government Mint, Mumbai on 16.01.2020 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 appellants were sanctioned refund of Rs. 5,59,618/- each 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 appellants have 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 appellants, there is no finding of the adjudicating authority on the contentions raised by the appellants 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 appellants 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.

7. In view of the foregoing, the appeals are allowed by way of remand to the adjudicating authority for passing a reasoned and speaking order, after affording the appellants 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 appellants. These shall be independently examined and considered by the adjudicating authority in accordance with law.

8. In view of above, the appeals filed by the appellants are allowed by way of remand.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

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

By Registered Post A.D.

F.No. S/49-79,77/CUS/AHD/2025-26 5751 Dated -12.02.2026

To,

(i) Shri Rahat Ali, Makan No. 17,
Chak No. 12, Tehsil-Tanda, District-Rampur,
Uttar Pradesh 244925,

(ii) Shri Waseem Akram, House No. 145,
Mohalla Tandoli, PO & Tehsil Tanda,
District-Rampur, Uttar Pradesh 244925,

(iii) Rishikesh J Mehra, B/1103, Dev Vihaan,
Behind 3rd Eye Residency, Motera Stadium Road,
Motera, Sabarmati, Ahmedabad-380005

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.