



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

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

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20250471MN000000F660

क	फ़ाइलसंख्या FILE NO.	S/49-01/CA-2/CUS/AHD/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-011-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	21/AP/JRS-AC/SVPIA/2023-24, dated 28.12.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	08.04.2025
छ	अपीलकर्तानामवपता NAME AND ADDRESS OF THE APPELLANT:	Assistant Commissioner of Customs, SVPI Airport, Ahmedabad, T-2, SVP International Airport, Customs, Ahmedabad
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, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं.	



	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)	बैगेजकेरूपमेंआयातितकोईमाल .	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकीसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो .	
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 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) या रु. 1000/- (रूपएएकहजारमात्र), 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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी 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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa,

	Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्रहोनेचाहिए-
	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहीतोएकहजाररूपए.
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहीतो; पाँचहजाररूपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहीतो; दसहजाररूपए.
(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, जहांकेवलदंडविवादमेंहैं, 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) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्रहोनेचाहिए.
	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 Assistant Commissioner of Customs, SVP International Airport, Ahmedabad, (hereinafter referred to as 'the appellant department') have filed the present appeal in terms of Section 129D (4) of the Customs Act, 1962 on the basis of Authorization bearing F. No. GEN/REV/OIO/7535/2024-RRA dated 06.06.2024 issued by the Principal Commissioner of Customs, Ahmedabad, challenging Order-in-Original No. 21/AP/JRS-AC/SVPIA/2023-24 dated 28.12.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs, SVPI Airport, Ahmedabad (hereinafter referred to as "the adjudicating authority") in case of Shri Abdul Sattar Mirza, Resident of Divaniya Colony, Near Panch Pir Dargah, Veraval, Junagarh, Gujarat - 362265 (hereinafter referred to as 'the respondent').

2. Briefly stated, facts of the case are that the respondent, holding Indian Passport No. K7065646, had arrived at Sardar Vallabhbhai Patel International (SVPI) Airport, Ahmedabad from Sharjah on 27.10.2020 by Air Arabia Flight No. G9418. On the basis of profiling, the respondent was intercepted by the officers of Customs, Air Intelligence Unit (AIU), SVPI Airport, Ahmedabad, after crossing the Red Channel. The respondent was asked if he had anything to declare to the Customs to which he replied in negative. The respondent was examined by the AIU officers and was found carrying a raw gold bar weighing 57.83 grams. The respondent was then diverted by AIU to custom officers present at Red Channel for detention/seizure of the said gold.

2.1 The respondent stated that he did not declare the said gold at Red Channel because he was not conversant with the laws. The respondent requested for release of the gold on payment of applicable duty. However, since the respondent had not declared the said gold bar at Red Channel and was diverted by AIU on crossing the Red Channel, the said gold bar was considered liable for confiscation and the respondent was liable to pay penalty under Customs Act 1962.

2.2 Accordingly, the said gold bar weighing 57.83 grams of purity 999.0/24Kt having Market Value of Rs. 3,03,608/- and Tariff Value of Rs. 2,64,074/-, was seized under ITC Order issued vide F No VIII/48/ITC-258/AP/2020-21, dated 27.10.2020, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the respondent with an intention to evade the payment of Customs duty and accordingly the same was liable for confiscation under Customs Act, 1962 read with Rules and Regulation made thereunder.

2.3 Being aggrieved, the respondent filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. AHD-CUSTOM-000-APP-292 to 297-22-23 dated 24-06-2022 remitted the case to the Adjudicating Authority to ascertain the facts, examine the documents, submission and case laws relied upon by the appellant and pass speaking order afresh following principal of natural justice and legal provisions.

2.4 In remand proceedings, the Assistant Commissioner of Customs, SVPIA, Ahmedabad, vide Order-in-Original No. 21/AP/JRS-AC/SVPIA/2023-24, dated 28.12.2023 read with Corrigendum dated 25.04.2024 has Ordered confiscation of the gold bar weighing 57.83 grams of purity 999.0/24kt having Market Value of Rs 3,03,608/- and Tariff Value of Rs. 2,64,074/- under Section 111(d), 111(i), 111(j) and 111(m) of the Customs Act, 1962. The adjudicating authority further gave an option to the respondent to redeem the impugned gold bar weighing 57.83 grams on payment of redemption fine of Rs. 35,000/- under Section 125(1) of the Customs Act, 1962 only for the purpose of re-export along with applicable duties and other levies/charges in terms of Section 125(2) of the Customs act, 1962. The adjudicating authority also imposed penalty of Rs 25,000/- on the respondent under Section 112 (a) & (b) of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant department have filed the present appeal and contended that:

In the instant case, the respondent has carried on his person gold bar weighing 57.83 grams of purity 999.0/24Kt having Market Value of Rs. 3,03,608/- and Tariff Value of Rs. 2,64,074/-, with malafide intention to smuggle/illegally import the same into India.

- The adjudicating authority in the discussion and findings made under Para Nos. 18, 21 and 25 has held that the impugned goods viz. raw gold bar weighing 57.830 grams is liable for absolute confiscation. The said paras are reproduced hereunder:

"18. I find that Section 125 of the Customs Act, 1962 states whenever confiscation of any goods is ordered, an option to pay fine in lieu of confiscation shall in the case of goods which are not prohibited be given to the owner or the person from whose custody the goods have been seized. It is a fact that the gold is not on the list of prohibited items per se, however, import of the same is controlled. So far as the import of gold in baggage by an eligible passenger is considered, it is allowed subject to fulfillment of certain conditions. In the present case, the passenger cannot be



termed as "eligible" passenger to bring gold in his baggage. Thus, the gold so brought becomes prohibited goods in terms of Section 2(33) of the Customs Act, 1962 more so by the fact that the gold was attempted to be brought into India by not declaring/denying, it is an ingenious way so as to evade detection and thereby to evade payment of Customs duty. I am, therefore, of the firm opinion that being contraband/prohibited goods smuggled in by the passenger in the present case, absolute confiscation." the gold is liable for absolute confiscation."

"21. In the instant case, I am of the view that the gold recovered from the passenger who intentionally crossed the red channel and was intercepted by the AIU officers is liable to absolute confiscation.

I find that in case of Khemani Purshotam Mohandas Vs CC, CSI Airport, Mumbai reported in 2017 (354) ELT 275 (Tri. Mumbai), Hon'ble Tribunal also upheld the absolute confiscation of the seized smuggled gold holding the view that 'allowing redemption fine is at the discretion of the adjudicating authority based on the facts of the case and the facts of smuggling of the gold was not disputed in the case of Hon'ble Tribunal In the present case before me, I find that the passenger has confessed to have concealed the said gold by not declaring it to the custom authorities on arrival and tried to smuggle it by hoodwinking the Customs Authorities. This leaves me with no option but to absolutely confiscate the gold."

"25. Given the facts of the present case and the judgements and rulings cited above, the said improperly imported (smuggled) gold by the passenger ingeniously concealed in his baggage without declaring it to the Customs is therefore liable to be confiscated absolutely. In view of the above, I find that the gold was kept denied/undeclared and therefore was prohibited in nature and is liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said seized Gold, which was 24KT gold in the form of bar weighing 57.830 grams having purity of 999.0 valued at Rs.2,64,074/-/Rupees two lakhs sixty four thousand seventy four only) Tariff value and Rs.3,03,608/- [Rupees three lakhs three thousand six hundred eight only) Market value, placed under seizure vide ITC case No. 258 dated 27.10.2020 and recovered from the passenger, is liable to absolute confiscation under Section 111(d), (i), (f) & (m) of the Act."



- Though the adjudicating authority has held in the discussion and findings that the impugned gold is liable for absolute confiscation, in Order Portion, the adjudicating authority has erroneously ordered for confiscation of the impugned gold with an option to redeem the same on payment of redemption fine of Rs. 35,000/- for re-export, which is contrary to the discussion and findings made under the above para Nos. 18, 21 and 25. The adjudicating authority has grossly erred in passing an order contrary to the discussion and findings made in the impugned order. Thus, the impugned order passed by the adjudicating authority is erroneous, incorrect and therefore legally not sustainable. The same, therefore, deserves to be set aside.
- The impugned order read with Corrigendum dated 25.04.2024 passed by the adjudicating authority is not legally correct and proper and requested to remand back the matter to the adjudicating authority for passing order afresh rectifying the mistake.

4. Personal hearing in the matter were scheduled on 29.11.2024, 11.02.2025, 20.02.2025, and 12.03.2025. However, no one appeared for personal hearing. As sufficient opportunities for personal hearing have been given, the appeal is taken up for decision on the basis of documents available on record.

5. It is observed that the respondent, holding Indian Passport No. K7065646, had arrived at Sardar Vallabhbhai Patel International (SVPI) Airport, Ahmedabad from Sharjah on 27.10.2020 by Air Arabia Flight No. G9418 where he was intercepted by the officers of Customs, Air Intelligence Unit (AIU), SVPI Airport, Ahmedabad. The respondent was examined by the AIU officers and was found carrying a raw gold bar weighing 57.83 grams. Since the respondent had not declared the said gold bar, the same weighing 57.83 grams of purity 999.0/24Kt having Market Value of Rs. 3,03,608/- and Tariff Value of Rs. 2,64,074/-, was seized under ITC Order issued vide F. No. VIII/48/ITC-258/AP/2020-21, dated 27.10.2020. The respondent aggrieved with the ITC order issued vide F. No. VIII/48/ITC-258/AP/2020-21, dated 27.10.2020, filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad, who vide OIA No. AHD-CUSTOM-000-APP-292 to 297-22-23, dated 24-06-2022 remitted the case to the Adjudicating Authority. In remand proceedings, the adjudicating authority, vide impugned order read with Corrigendum dated 25.04.2024 has Ordered confiscation of the gold bar weighing 57.83 grams having Market Value of Rs 3,03,608/- and Tariff Value of Rs. 2,64,074/ under Section 111(d), 111(i), 111(j) and 111(m) of the Customs Act, 1962 and gave an option to the respondent to redeem the confiscated gold on payment of redemption fine of Rs 35,000/- under Section 125(1) of the Customs Act, 1962 only for the purpose of re-export



along with applicable duties and other levies/charges in terms of Section 125(2) of the Customs act, 1962. The adjudicating authority also imposed penalty of Rs. 25,000/- on the respondent under Section 112 (a) & (b) of the Customs Act, 1962.

5.1 It is observed that the appellant department has filed the present appeal only on the ground that the adjudicating authority in discussion and findings at paras 18, 21 and 25 of the impugned order found the seized gold liable for absolute confiscation. However, the adjudicating authority in the Order Portion has erroneously ordered for confiscation of the seized gold with an option to redeem the same on payment of redemption fine of Rs. 35,000/- for re-export. Thus, the order of the adjudicating authority is contrary to his discussion and findings. The appellant department in the present appeal requested to remand back the matter to the adjudicating authority for passing order afresh rectifying the mistake.

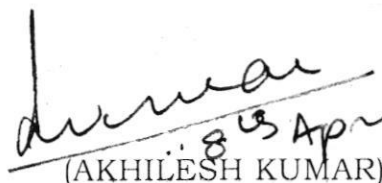
5.2 I have gone through the impugned order specially Paras 18, 21 and 25 of the impugned order as contended in the present appeal. It is observed that the order of the adjudicating authority is contrary to the discussion and findings recorded in the impugned order. In view of the above, I am in agreement with the request of the appellant department to remand the matter to the adjudicating authority for passing order afresh rectifying the mistake which is apparent on record.

5.3 Thus, I am of the considered view that remitting of the matter to the lower authority has become *sine qua non* to meet the ends of justice. The adjudicating authority is required to examine all the contentions raised by the appellant and record his finding and issue order accordingly. In this regard, I rely upon the 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)*, which have also relied upon the case of *Medico Labs - 2004(173) ELT 117 (Guj.)*, wherein it has been held that Commissioner (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f. 11.05.2001.

6. In the light of the aforesaid facts and circumstances, I set aside the impugned order and allow the appeal filed by the appellant department by way of remand and remit the matter to the adjudicating authority to pass speaking order after following principles of natural justice and adhering to the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute or the submissions made by the



appellant department in this regard, which shall be independently examined by the adjudicating authority.


(AKHILESH KUMAR)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.Nos. S/49-01/CA-2/CUS/AHD/2024-25/
To, 338

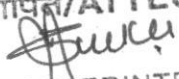
Dated - 08.04.2025

- i. Assistant Commissioner of Customs,
SVPI Airport, Ahmedabad, T-2,
SVP International Airport, Customs, Ahmedabad,
- ii. Shri Abdul Sattar Mirza, Resident of Divaniya Colony,
Near Panch Pir Dargah, Veraval, Junagarh, Gujarat - 362265

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House,
Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Joint/ Additional Commissioner of Customs, Ahmedabad.
4. Guard File



सत्यापित/ATTESTED

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

