



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंजिल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड 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
	दिनांक DATE	08.04.2025
ड	उदभूतअपीलआदेशकीसं. 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	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Assistant Commissioner of Customs, SVPI Airport, Ahmedabad, T-2, SVP International Airport, Customs, Ahmedabad
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
	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) केअधीनिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं।	

	<p>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.</p>				
	निम्नलिखित सम्बन्धित आदेश/Order relating to :				
(क)	बैगेज के रूपमें आयातित कोई माल.				
(a)	any goods imported on baggage.				
(ख)	भारतमें आयात करने हेतु किसी वाहन में लादा गया यालेकिन भारतमें उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने पर याउस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.				
(ब)	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 बना एगएनियमों 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.	<p>पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :</p> <p>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 :</p> <p>(क) कोर्ट फी एक्ट, 1870 के मद्दसं. 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.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) यारु. 1000/- (रुपए एक हजार मात्र), जैसा भी माल लाहो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए एक लाख याउस से कम होतो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक होतो फीस के रूप में रु. 1000/-</p> <p>(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/-.</p>				
4.	<p>मद्दसं. 2 के अधीन सूचित मालों के अलावा अन्य मालों के सम्बन्ध में यदि दिकोई 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 सेवाकर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं</p> <p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p> <table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधर नगर पुल, असार वा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa,</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधर नगर पुल, असार वा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa,
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		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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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;पाँचहजाररुपए	
(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;दसहजाररुपए.	
(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,जहांशुल्कयाशुल्कएवंदंडविवादमेहै,यादंडके 10% अदाकरनेपर,जहांकवलदंडविवादमेहै,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) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएगएअपील : - 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.	



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-CUSTM-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 principle 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:

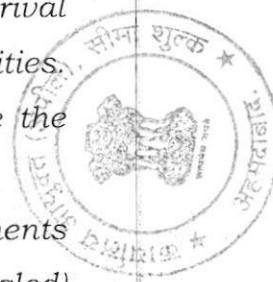
“18. I find that Section 125 of the Customs Act, 1962 states whenever confiscation of any goods is ordered, an option to pay fine in lieu of confiscation shall in the case of goods which are not prohibited be given to the owner or the person from whose custody the goods have been seized. It is a fact 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-CUSTM-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 becomes *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.

divine
8/4/2025
(AKHILESH KUMAR)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

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

Dated – 08.04.2025

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- 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



सत्याधित/ATTESTED
[Signature]
अधीक्षक/SUPERINTENDENT
समाचारक (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

