



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंजिल 4th Floor, हड्डो भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000666EFC

क	फ़ाइल संख्या FILE NO.	S/49-426/CUS/AHD/2023-2024
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)	AHM-CUSTM-000-APP-077-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
द	दिनांक DATE	16.06.2025
इ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 164/ADC/VM/O&A/2023-24 dated 31.10.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	16.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Vishal Purohit Proprietor of M/S Sarashwati Infosys Shop no.118, 1st floor Sunrise Mall, Vastrapur Ahmedabad-380015



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 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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(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 जांच 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 मात्रा)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 ब्याज, 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 :				
	<table border="0"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(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.</p> <p>(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;</p> <p>(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</p> <p>(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 ;</p> <p>(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.</p> <p>(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</p> <p>(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 ।</p> <p>(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.</p>				
6.	<p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

ORDER-IN-APPEAL

Appeal has been filed by Shri Vishal Purohit Proprietor of M/S Sarashwati Infosys, Shop No.118, 1st Floor, Sunrise Mall, Vastrapur, Ahmedabad-380015, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 164/ADC/VM/O&A/2023-24, dated 31.10.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs Ahmedabad (hereinafter referred to as the 'adjudicating authority').

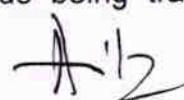
2. Facts of the case, in brief, are that Intelligence gathered by the Directorate of Revenue Intelligence, Ahmedabad indicated that a consignment of foreign brand cigarettes smuggled into the country was transported to Ahmedabad in one truck bearing registration No.GJ-07-YY-7801. The said truck was expected to arrive on 08.08.2020 and the said consignment of smuggled foreign origin cigarettes would be delivered to a person namely Shri Vishal Purohit in the parking area of Aslali, Ahmedabad. Accordingly, a watch was kept for the above truck bearing registration No. GJ-07-YY-7801. During the operation, the officers of DRI, Ahmedabad, identified the suspected truck bearing registration no.GJ-07-YY-7801 parked in Sainath Parking a private parking premises, Aslali, Ahmedabad. The truck was of Eicher make with body in saffron colour and covered with tarpaulin and thick black polythene sheet. The officers kept a watch over the truck bearing registration no.GJ-07-YY-7801and the driver who was moving suspiciously and conversing over the mobile phone. The watch continued for a few hours as the officers were waiting for the receivers to come and receive the cigarettes. After sometime, officers noticed a small closed vehicle of Mahindra make which arrived near the above parking lot and tried to enter the parking lot. However, the vehicle could not move inside the parking lot. In the meanwhile, the officers noticed that the aforesaid truck came out of Sainath Parking lot and the driver parked the truck on the road side in the service lane behind small closed vehicle. The officers noticed that the driver of the small closed vehicle and the driver of the Truck GJ-07-YY-7801 had some discussions and within few minutes, both the vehicles started moving. The officers followed both the vehicles. The officers noticed that the truck bearing registration no.GJ-07-YY-7801 moved into a private parking lot and parked the truck inside the premises which was an open plot near Indian Oil Petrol Pump in Aslali. The officers noticed that the small covered vehicle was parked in the premises of Indian Oil Petrol Pump. The officers noticed that the drivers of both the above vehicles i.e. truck and small covered vehicle had some discussions and later on, the small covered vehicle which appeared to have come for taking delivery, left without taking delivery of the goods. The officers kept a watch over the truck parked in the private parking lot near Aslali Indian Oil Petrol Pump.

2.1 However, since no vehicle or any person came to receive the goods for some hours, the officers enquired with the driver as to the contents of the goods



transported in the truck bearing registration no. GJ-07-YY-7801. The driver of the truck introduced himself as Shri Radheshyam Yadav and produced the documents for the goods being transported in his truck. The documents pertained to the LR issued by DRS Dilip Roadlines Ltd., Guwahati for transport of household goods of 114 packages to Shri Harihar Sharan Singh at Vadodara. The officers further enquired from the driver Shri Radheshyam Yadav whether any other goods were there in the truck along with the goods mentioned in the documents and the reason why he had parked his vehicle at the said location. Shri Radheshyam Yadav, informed the officers that apart from the goods shown in the documents, one person namely Shri Syed Manowar also gave 22 carton boxes to be delivered at Ahmedabad, which was also loaded into his truck at the godown of Shri Syed Manowar situated at NH-37, Tetalia, Near Ganga Filling Station at Guwahati. Further Shri Radheshyam informed that he was contacted by a person, whose mobile number is 8141073849 which was stored in his (Radheshyam's) mobile number 7041879775 as "Jatin" on 07.08.2020 at around 0900 hours. Shri Radheshyam informed the officers that 'Jatin' contacted him and enquired about the time of delivery of goods i.e. the 22 carton boxes, and instructed that the goods should be delivered at the private parking plot at Aslali in Ahmedabad. Shri Radheshyam Yadav also informed the officers that on reaching Aslali, he parked his vehicle at Sainath Parking plot, Aslali, Ahmedabad; that the said contact person "Jatin" sent his small covered vehicle of Mahendra make, to collect the 22 carton boxes loaded into his truck bearing registration No. GJ-07-YY-7801; that the driver of this small vehicle contacted him from the mobile number 6354730430- and informed him that Vishal had sent him to collect the 22 carton boxes from him; that Shri Radheshyam informed the officers that his name appeared as Bhavani in his mobile screen; that the receiving driver told that 'Jatin' was actually 'Vishal' and the goods have to be delivered to Vishal only; that however, the delivery of the carton boxes was not allowed by Sainath Parking inside the parking lot and hence, Shri Radheshyam Yadav parked his truck on the service road side for delivery of the 22 numbers of carton boxes to the receiver in the small covered vehicle; that though he wanted to deliver the 22 carton boxes to the person in the small covered vehicle but the said person refused to transfer the carton boxes in the small covered vehicle on the roadside; that left with no other alternative, he proceeded to the parking lot near Aslali Indian Oil Petrol Pump; that the delivery of the carton boxes could not take place in the parking lot near Indian Oil Petrol Pump also as 'Jatin'/Vishal' was not ready to do the exchange in open public area. Hence, the small covered vehicle left from the place and later he received a call at around 9.00 pm from 'Jatin'/Vishal that he ('Jatin'/Vishal) would come and collect the 22 boxes from him at Aslali the next day (09.08.2020) at around 7.00 am, hence he was waiting at the parking lot for the delivery next morning.

2.2 The officers sought for examination of the goods being transported in the truck. As it was raining heavily and the parking lot was an open plot and there was no sufficient light to examine the goods, the truck with the driver was brought to the office premises of DRI, Ahmedabad and the goods being transported in the truck were



examined under panchnama dated 08/09.08.2020. During the course of panchnama proceedings, it was noticed that apart from the goods mentioned in LR produced by the Shri Radheshyam Yadav which was issued by M/s. DRS Dilip Roadlines Ltd., Guwahati for transport of household goods of 114 packages to Shri Harihar Sharan Singh at Vadodara, there were 23 cartons (corrugated boxes) of cigarettes of Gudang Garam and Win brand in the said truck bearing registration No. GJ-07-YY-7801. A detailed examination conducted revealed that totally there was 1200 Dhanda (cartons) of Gudang Garam and 150 Dhanda (cartons) of Win brand cigarettes totalling to 3,18,000 sticks of cigarettes which were transported to Ahmedabad vide the aforesaid Truck. On further enquiry about the 23 carton boxes, Shri Radheshyam Yadav informed the officers that the above carton boxes were loaded at Guwahati from the godown of one Shri Syed Manowar at Guwahati which was near Ganga Filling Station (petrol pump) on the Highway at Guwahati. Further, Shri Radheshyam Yadav was asked to produce legitimate documents viz. import or purchase documents for the said cigarettes. Shri Radheshyam Yadav replied that he did not have any such documents to prove its legitimate import and that no such documents were ever given to him by Shri Syed Manowar who loaded the above 23 carton boxes containing cigarettes into his truck bearing registration No. GJ-07-YY-7801 or by 'Jatin'Vishal who were supposed to receive them. The officers also examined the other goods which were household items listed as per Annexure-B to the panchnama. As per the documents viz. LR of DRS Dilip Roadlines Ltd., Goods consignment No. 4705898 dated 23.07.2020, along with the a packing list issued by M/s. Agarwal Packers & Movers, produced by Shri Radheshyam Yadav, the goods belonged to Shri Harihar Sharan Singh (Mobile No. 8730004607) of Vadodara. Thus, on the reasonable belief that the foreign origin cigarettes found in the said truck, appeared to have been smuggled into India without payment of Customs Duty and without following proper legal procedure, the foreign brand cigarettes mentioned in Annexure A to the panchnama, the truck which was used as a conveyance for transportation of the said cigarettes and the household goods which were used to camouflage the smuggled foreign origin cigarettes were detained under panchnama dated 08.08.2020 & 09.08.2020.

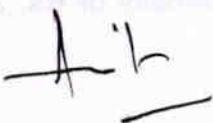
2.3 The following statements were recorded during the course of investigation:

- (i) Statement of Shri Radheshyam Yadav, the truck driver of Truck bearing Number- GJ-07-YY-7801 recorded under Section 108 of the Customs Act, 1962 on 09.08.2020;
- (ii) Statement of Shri Radheshyam Yadav, the truck driver of Truck bearing Number- GJ-07-YY-7801 recorded under Section 108 of the Customs Act, 1962 on 10.08.2020;
- (iii) Statement of Shri Vishal Purohit recorded under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Ahmedabad on 09.08.2020;
- (iv) Statement of Shri Vishal Purohit recorded under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Ahmedabad on 10.08.2020;

- (v) Statement of Shri Mahendra Purohit recorded under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Ahmedabad on 09.08.2020;
- (vi) Statement of Shri Mahendra Purohit recorded under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Ahmedabad on 10.08.2020;
- (vii) Statement of Shri Shri Harihar Sharan Singh recorded under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Ahmedabad on 11.08.2020;
- (viii) Statement of Shri Ramsankar Nishad@ Bhawani recorded under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Ahmedabad on 27.10.2020

Key Admissions and Findings from Statements:

- a. Shri Radheshyam Yadav: He stated he purchased the truck (GJ-07-YY-7801) in May 2019. He transported household goods and 22 cartons of cigarettes from Guwahati, loaded by Shri Syed Manowar. He was contacted by "Jatin" (Vishal Purohit) for delivery. He later admitted he was aware of transporting cigarettes along with household items. The truck was surrendered to Adani Capital Pvt. Ltd. due to loan default;
- b. Shri Vishal Purohit (Appellant): He admitted to dealing in smuggled foreign brand cigarettes since 2018-19. He stated his elder brother, Shri Praveen Purohit, who operated from Bangalore, was actively involved in the business and connected him with suppliers from Kolkata and Delhi. He took delivery of smuggled cigarettes via FedEx Courier or other vehicles. He purchased the present consignment from Shri Zakir of Kolkata. He confessed to deleting chat history with suppliers and buyers. He used fake delivery addresses for courier consignments;
- c. Shri Mahendra Purohit: He stated that Vishal Purohit started retail sale of cigarette lighters and hookahs in 2012-13, then shifted to smuggled cigarettes due to demand and profit margin. He confirmed a previous case in 2016 where DRI seized foreign brand smuggled cigarettes from Vishal Purohit's shop and a penalty was imposed. He was aware of Vishal Purohit's dealings in smuggled cigarettes;
- d. Shri Syed Manowar: Contended he was only a transport broker and had nothing to do with smuggled goods. However, call records show he was in touch with Radheshyam Yadav and guided him. He loaded the cigarettes onto the truck. He failed to appear for investigation or present submissions, indicating willful disregard;
- e. Shri Zakir of Kolkata: Identified as the seller of foreign origin cigarettes. His whereabouts could not be verified. He did not present himself for hearings or make submissions.




2.4 After investigation, Show Cause Notice under F. No. DRI/AZU/GI-02/ENQ-46/2020, dated 05.02.2021 was issued to the Appellant, proposing as to why:

- (i) The total 3,18,000 sticks of smuggled foreign brand Cigarettes sticks having market value of Rs. 63,00,000/- (Rs. Sixty Lakh Only) as detailed in Annexure A of Seizure Memo dated 14.08.2020 should not be confiscated under the provisions of Section 111(d), (e), (f), (h), (i), & (k) of the Customs Act, 1962;
- (ii) Penalty should not be imposed on them under Section 112 (a) & 112 (b) of the Customs Act, 1962.

2.4.1 Further the Show Cause Notice was issued to Shri Radheshyam Yadav, proposing as to why:

- (i) The truck bearing registration Number GJ-07-YY-7801 used in transportation of smuggled foreign brand Cigarettes having market value of Rs.8,00,000/- (Rs. Eight Lakh Only) as detailed in seizure memo dated 14.08.2020 should not be confiscated under the provisions of Section 115 (2) of the Customs Act 1962;
- (ii) Penalty should not be imposed on him under Section 112(a) & 112(b) of the Customs Act, 1962.

2.5 The adjudicating authority vide the impugned order has passed the order as detailed below:-

- (i) He has ordered absolute confiscation of the goods i.e. foreign origin cigarettes seized under Seizure Memo dated 14.08.2020 having value of Rs. 63,00,000/- (Rupee Sixty Three Lakh only) under Section 111 (d), (e), (f), (h), (i) & (k) of the Customs Act, 1962;
- (ii) He has ordered confiscation of the truck bearing no. GJ-07-YY-7801 used for transporting foreign origin cigarettes having market value of Rs 8,00,000/- (Rupees Eight Lakh Only) as mentioned in Seizure Memo dated 14.08.2020 under Section 115 (2) of the Customs Act, 1962. He gave an option to Shri Radheshyam Yadav to redeem the truck bearing no. GJ-07-YY-7801 on payment of redemption fine of Rs. 2,40,000/- (Rupees Two Lakh and Forty Thousand only) under Section 125 (1) of the Customs Act, 1962;
- (iii) He has ordered to enforce the Bond of Rs. 8,00,000/- (Rupees Eight Lakh only) furnished by Shri Radheshyam Yadav during the course of attaining provisional release of truck bearing no.GJ-07-YY-7801 that was used for transporting foreign origin cigarettes as mentioned in the Seizure Memo dated 14.08.2020 under Section 115 (2) of the Customs Act, 1962 and also ordered to encash and appropriate the Bank Guarantee No. 0505423BG0000299, dated 24.03.2023 of Rs. 2,40,000/- (Rupees Two Lakh and Fourty Thousand Only) towards the aforementioned redemption fine;
- (iv) He has imposed a penalty of Rs. 21,00,000/- (Rupees Twenty One Lakh Only)

- upon the Appellant, Proprietor of M/s Shri Sarashwati Infosys, Ahmedabad under Sections 112 (a) and (b) (i) of the Customs Act, 1962;
- (v) He has imposed a penalty of Rs 21,00,000/- (Rupees Twenty One Lakh Only) upon Shri Syed Manowar of M/s M.R, King Road Carriers under Section 112 (a) and (b) (i) of the Customs Act, 1962;
- (vi) He has imposed a penalty of Rs 21,00,000/- (Rupees Twenty One Lakh Only) upon Shri Zakir of Kolkata under Section 112 (a), Section 112 (b) (i) of the Customs Act, 1962;
- (vii) He has imposed a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) upon Shri Radheshyam Yadav, resident of A-337, HUDCO Quarters., Kathwada, Ahmedabad under Section 112 (a) and (b) (i) of the Customs Act, 1962.

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

3.1 The Adjudicating Authority erred in imposing penalty under Section 112 (a) and (b) of the said Act upon the Appellant by holding that the Appellant is the owner of the foreign origin cigarettes without appreciating the submissions made by the Appellant during the adjudication. The Adjudicating Authority erred in relying upon the statements of the Appellant even though he retracted his statements giving ample reasons as to why he was not owner of the goods and why his statements are not relied upon. The Adjudicating Authority ought to have granted an opportunity of cross examination of the Co-Appellants when the entire case has been booked based on their oral statements. Since the impugned order is passed contrary to the factual aspects, the same is required to be quashed and set aside in the interest of justice;

3.2 The Show Cause Notice dated 05.02.2021 issued by the Additional Director of Revenue Intelligence is bad in law as the said authority is not a competent authority to issue the Show Cause Notice in terms of the decision of Canon India Pvt. Ltd. Vs. Union of India reported in 2021 (376) 3. The Hon'ble Supreme Court in the case of Canon India Pvt. Ltd. Vs. Union of India reported in 2021 (376) 3 laid down that:

- DRI is an organization created by a notification by the Government of India on 4th December 1957. Both officers of DRI and Customs officers are appointed by the Government of India;
- The officers of DRI have been appointed as Customs officers under Section 4(1);
- The notification dated 7th May 2012 issued by the Board under section 2(34) is not valid;
- Officers of DRI can only exercise the functions of Customs officers under various provisions of the Customs Act only if they are entrusted with such functions by the Government under section 6. In the absence of such entrustment, they cannot exercise functions under the Customs Act;
- The use of article the 'has a particularizing effect and the proper officer'

means only a particular officer and not any officer who may have jurisdiction. A demand under section 28 can be issued by only that officer who has done the assessment in the first place, i.e., the officer of the Appraising Group or his successor in office and not by any other officer.

3.3 The Appellant has submitted that the investigating authority who is creature of the statute was duty bound to exercise its powers as per the mandate of the said statute i.e. the Customs Act in the instant case. It is settled law that if the law requires an act to be done in a particular manner, it is to be done in that manner and no other manner. In the instant case, the investigating authority not being competent authority to re-assess the bill of entry, assessed by proper officer under section 17 and 47 of the Act, could not have issued the Show Cause Notice. Without prejudice to the aforesaid, it is submitted that Section 124 of the said Act empowers Proper Officer to issue the Show Cause Notice for confiscation of the goods or imposition of penalty on any person. Second proviso to Section 124 empowers the Proper Officer to issue supplementary notice under such circumstances and in such manner as may be prescribed. Proper Officer is defined under Section 2 (34) of the said Act. (F) Section 124 (a) of the Customs Act provides that the Notice is required to be issued with approval of the Assistant Commissioner of Customs for confiscation of goods or imposing of penalty on any person. In the present case, Additional Directorate of Revenue Intelligence has issued the Impugned Show Cause Notice without approval of the Assistant Commissioner of Customs;

3.4 The intention to confer power is not on any officer but only on "the proper officer". Hence, in the instant case the power to reassess and re-determine the differential duty, interest and other consequential provisions, if any is vested only with the officer who had assessed the Bills of Entry, and he only could be termed as the Proper Officer, and hence only such officer was empowered to exercise jurisdiction. The investigating authority who was never responsible for assessment of the impugned goods and was not the original Assessing Officer, therefore is not empowered to issue the impugned Show Cause Notice. The legislature has affirmed the findings of the Hon'ble Supreme Court and has accordingly inserted section 110AA of the Act, clarifying that officer of Customs after carrying out investigation in the cases specified therein, will have to transfer the proceeding to the proper officer who have been assigned assessment under section 5 of the Act. Hence, the investing authority who issued the show cause notice, lacked jurisdiction from issuance of the Show Cause Notice. (1) It is submitted that the amendment made to the Customs Act, 1962 vide Finance Act, 2022, has not caused any amendment to section 124 of the Customs Act, 1962, thereby the power to issue Show Cause Notice under section 124 still vests with "the assistant commissioner" and other amendments made to the provisions of the Customs Act, 1962 does not empower the investigating authority as "the proper officer". Therefore, the embargo for issuance of Show Cause Notice cannot be caused by any other officer. Circular No. 07/2022-Customs dated 31.03.2022 issued by the Board clarifies that Section 110AA is being inserted with a view to affirm the principle that, wherever, an original function duly

exercised by an officer of competent jurisdiction, is the subject matter of a subsequent inquiry, investigation, audit or any other specified purpose by any other officer of customs, then, notwithstanding, such inquiry, investigation, audit or any other purpose, the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like reassessment, adjudications, etc. consequent to the completion of such inquiry, investigation, audit or any other purpose;

3.5 *The Adjudicating Authority heavily relied upon statements of the Co-Appellant for the charges levelled in the Show Cause Notice. In terms of Section 138B of the Customs Act, it is an obligation upon the adjudication authority to examine the witnesses before relying upon their statements. In the case of G-Tech Industries Vs. Union of India - 2016 (339) ELT 209 (P&H) it is held in para 16, 17 and 18 as under:*

"16. Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

17. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.

18. It is only, therefore,-

- (i) after the person whose statement has already been recorded before a Gazetted Central Excise officer is examined as a witness before the adjudicating authority, and*
- (ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence, that the question of offering the witness to the assessee, for cross-examination, can arise."*

3.6 In view of Section 138B of the Customs Act and the above decisions, it is submitted statements of the Co-Appellant ought not have relied upon unless the procedure prescribed in the above provisions and the decision have been complied with it. Without prejudice to the above, it is submitted that the Adjudicating Authority alleged that the Appellant purchased the disputed goods from Shri Zakir and / or Shri Sayed,

Manower without any invoice. The Appellant sought cross examination of them to bring correct facts on record. The Adjudicating Authority passed the impugned order without considering the request of cross-examination. In the following decisions it has been held that statement of Co-Appellant should not be relied upon if such person has not been allowed to be cross examined. They relied upon the decision in the case of (i) *M.P. Ganesan Vs. Commercial Tax Officer - 2020 (42) GSTL 178*; (ii) *Thoppil Agencies Vs. Assistant Commissioner of Commercial Tax - 2020 (41) GSTL 30 (Kar.)* (iii) *Shree Parvati Metals Vs. Union of India - 2018 (11) GSTL 137*; (iv) *Kay Pan Sugandh Pvt. Ltd. Vs. C.C.Ex. - 2017 (7) GSTL 276*. The Appellant submits that the finding of the Adjudicating Authority is contrary to the facts. Statements of the Appellants were recorded under physical and mental harassment. The Appellant retracted his statement. In terms of the decision of *Vinod Solanki reported in 2009 (233) ELT 157 (SC)* it is held in para 34 and 35 as under:

"34. A person accused of commission of an offence is not expected to prove to the court that confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction. With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.

*35. In the instant case, the Investigating Officers did not examine themselves. The authorities under the Act as also the Tribunal did not arrive at a finding upon application of their mind to the retraction and rejected the same upon assigning cogent and valid reasons therefor. Without prejudice to the above, it is submitted that the Adjudicating Authority alleged that the Appellant purchased the disputed goods from Shri Zakir and/or Shri Sayed, Manower without any invoice. The Appellant sought cross examination of them to bring correct facts on record. The Adjudicating Authority passed the impugned order without considering the request of cross-examination. In the following decisions it has been held that statement of Co-Appellant should not be relied upon if such person has not been allowed to be cross examined. (O) The Hon'ble Delhi High Court in the case of *Manak Kala Vs. Union of India - 2020 (382) ELT 701* held that statement of an employee of accused which has been retracted cannot be relied upon particularly when the same is not corroborated with any other evidence. (P) In the case of *Kellogg India Pvt. Ltd. v. Union of India, 2006 (193) E.L.T. 385 (Bom)*, it was held that: "An incriminating material sought to be used against a person without giving opportunity to such person of cross-examination of author of such document amounts to an ex parte proceeding, i.e., deciding matter without giving opportunity of hearing to other side and that is how denial of cross-examination was held bad."*

3.7

It is submitted that smuggled cigarettes were not recovered from the



possession of the Appellant. Further the Appellant is not an owner of said cigarettes. The Appellant did not ever claim to be owner of the said cigarettes. Thus section 123 of the Customs Act is not attracted in the present case. Section 123 would be applicable only when any goods are seized under the Act under the reasonable belief that they were smuggled goods and after seizure the burden of proof as to said goods were not smuggled goods, shall be on the person from whose possession the goods were seized or the person who claims to be owner of said goods. Upon perusal of the above provisions, it reveals that burden lies upon the Appellant in a case where goods are seized from the possession or he would be considered as owner of the seized goods. In the present case, neither the goods are seized from the possession of the Appellant nor the Appellant is the owner of the goods and therefore, the provisions of Section 123 is not applicable. The adjudicating authority relied upon the statement of Shri Radheshyam Yadav and came to the conclusion that the Appellant was the owner of the goods. The adjudicating authority ought to have appreciated that the investigating authority could not find a single documentary evidence to prove that the Appellant was the owner of the goods. Section 2 (4) of Sale of Goods Act. 1930, provides the nature of the documents by which title can be proved.

3.8

In the present case, the investigating authority did not find any single document to show that title over the goods vested upon the Appellant. Section 4 of the Sale of Goods Act deals with transaction of sale and agreement to sale. Section 4 (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part, i.e., owner and another. In the present case, there is neither any contract between the Appellant and Shri Zakir / Shri Sayed Manowar as well as there is no any understanding of supply of cigarettes to the Appellant. In the absence of any evidence, the impugned order holding the Appellant as owner of the goods, is factually incorrect. It is an obligation upon the investigating authority to ascertain from the facts of the case whether Shri Zakir located at Kolkata, sold cigarettes to the Appellant or not. Such confirmation can be ascertained through the confirmative statements of Shri Zakir and corresponding documentary evidence. The Adjudicating Authority could not trace Shri Zakir. In the absence of any evidence who supplied the goods to the Appellant it cannot be held that the Appellant was owner of the smuggled cigarettes.

3.9

The Adjudicating Authority ought to have granted cross examination of Shri Radheshyam Yadav before relying upon his statement against the Appellant. His statement cannot be considered as evidence mainly on the following grounds:

- The Appellant placed order to Shri Zakir for supply of Flavored Hookah;
- Shri Radheshyam Yadav was not party to the understanding made between Shri Zakir and Appellant;
- Shri Radheshyam Yadav did not reveal that the Appellant placed order for supply of cigarettes;

d. The Appellant sent Shri Ramshankar Bhawani to get the Flavoured Hookah from Shri Radheshyam Yadav which was ordered by him. Since the Appellant learnt that it was a different goods, the Appellant asked the tempo driver not to take the delivery;

3.10 The Adjudicating Authority ought to have appreciated that Shri Ramshankar Bhawani is not a party to the Show Cause Notice hence his statement cannot be relied upon particularly when he was not allowed to cross examine by the Appellant. It is obligation upon the investigating authority to make Shri Ramshankar Bhawani as a party to the Show Cause Notice so that he would have revealed correct facts of the case. In the absence of making him as a party, his inculpatory statement cannot be considered as evidence against the Appellant. Shri Ramshankar Bhawani did not take the delivery of cargo from Shri Radheshyam Yadav and left the place as instructed by the Appellant. When the Appellant sent Shri Ramshankar Bhawani to get delivery of the goods, it is strange as to why he left the place without taking delivery of the goods. It shows that the Appellant was not interested to take delivery of the smuggled foreign origin cigarettes. The Adjudicating Authority ought to have appreciated that no evidence has been found against the Appellant to show that the Appellant smuggled foreign origin cigarettes. The investigating authority did not extend the enquiry into how the payment was made against purchase of the disputed goods. The investigating authority did not extend the investigation to the buyers to whom the goods were to be delivered. The Appellant submits that FSL report does not provide details regarding any call exchanged between the Appellant and Shri Zakir. Had the Appellant placed an order for supply of cigarettes, the investigating authority could have found call details between them. In the absence of any evidence, the Appellant should not be penalized.

3.11 It is submitted that call data is insufficient to establish guilt. It is an imperative for the investigating authority to highlight the need for a more comprehensive examination that includes ascertaining the contents of the call data. The mere existence of call data, without a thorough analysis of the actual communication, lacks the necessary context to conclusively prove a person's guilt. It is submitted that call data records, while providing information about the duration, time, and parties involved in a communication, do not inherently reveal the substance or context of the conversation. To draw accurate conclusions about an individual's involvement or culpability, it is essential to delve into the actual contents of the calls in question. Without considering the contents, relying solely on call data could lead to misinterpretations and inaccuracies. Therefore, it is a right of the Appellant to have the opportunity to contest and scrutinize the specific details of the communication, ensuring a fair and just legal process. In summary, the submission contends that call data alone is insufficient to establish guilt, and a thorough examination of the contents of the calls is necessary to provide a more accurate and contextual understanding of the circumstances surrounding the alleged offense.



3.12 The impugned order has imposed penalty on the Appellant under section 112 of the Customs Act. It is submitted that above section is not attracted in the present case and penalty is not imposable on Appellant. It is submitted that in the present case, Appellant was not aware about the content of packages. Further Appellant had no knowledge about the smuggled cigarettes. The Appellant ordered for Flavored Hookah for which Appellant was in touch with truck driver. Even truck driver was not aware about the smuggled cigarettes. Thus, penalty under section 112 is not imposable in the present case. Reference can be made to various decisions of the Tribunal. In *New Amar Goods Carriers v. CC, New Delhi* reported in 2012 (276) E.L.T. 389 (Tri.-Del.) it was held that in the absence of evidence regarding knowledge of appellant about the contents of the cargo, penalty cannot be imposed. In *Electronik Lab v. CC (P), Mumbai* reported in 2005 (187) E.L.T. 362 (Tri.-Mumbai), *Joseph Itteyara v. CC, Mumbai* reported in 2004 (176) E.L.T. 165 (Tri.-Mumbai) and *Calcutta Ahmedabad Carriers v. CC, New Delhi* reported in 2004 (164) E.L.T. 367 (Tri.-Del.), it is held that penalty on abettor cannot be imposed on assumptions and presumptions. Cogent, tangible and reliable evidence is required. Reliance is also placed upon following decisions.

- (i) *Vijay Transport Co. Ltd. v. CCE* [2008 (230) E.L.T. 154 (T);
- (ii) *C.C.Ex vs. AI Matheswara Lorry Service* [2004 (171) E.L.T 421 (T);
- (iii) *Gagan Freight Carriers v. C.C.Ex* 2003 (151) E.L.T 633 (T);
- (iv) *New Decent Footware Industries v. C.C.Ex* [2000 (121) E.L.T. 141 (T);
- (v) *Steel Tubes of India Ltd. v. Commr. of C. EX., Indore* [2007 (217) E.L.T. 506 (Tri.-LB)].

3.13 Without prejudice to the aforesaid, it is submitted that combine penalty under Section 112 (a) and 112(b) (i) ought not to have been imposed. It is settled law that the order is bad in law if the combine penalty has been imposed without bifurcation of the amount between different provisions. Even otherwise, the impugned order is bad in law and therefore, the same is required to be quashed and set aside.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 07.05.2025 following the principles of natural justice wherein Shri Hardik P. Modh, Advocate appeared for the hearing and he 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 adjudicating authority, and the defense put forth by the Appellant in their appeal memorandum. The Appellant has filed the present appeal on 30.01.2024. In the Form C.A.-1, the Appellant have mentioned date of communication of the Order-In-Original dated 31.10.2023 as 06.11.2023. Therefore, the appeals were required to be filed by 05.01.2024 i.e. within stipulated period of 60 days under Section 128(1) of the Customs

Act, 1962. Since the appeals have been filed on 30.01.2024, there is a delay of 25 days beyond the stipulated period of 60 days. The Appellant have also filed applications for condonation of delay.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- (i) That condonation of delay application so filed by the appellant is to be allowed or otherwise i.e. whether the appeal is time barred or not;
- (ii) Whether the foreign brand cigarettes are "smuggled goods" liable for confiscation under Section 111 of the Customs Act, 1962;
- (iii) Whether the imposition of penalty on the Appellant under Section 112(a) and (b) of the Customs Act, 1962, is justified.

5.2 Firstly, I take up the issue of condonation of delay application filed by the Appellant along with their appeal. It is observed that the appeal have been filed with a delay of 25 days. The Appellant vide their application for condonation of delay have submitted that due to complication during the pregnancy of the Appellant's wife, the the Appellant had to stay in Bangalore with his wife. Hence, the appeal was delayed and prayed to condone the said delay. The Appellant has provided reasons for the delay, which, upon careful consideration, appear to constitute "sufficient cause" for the delay. The period of delay is within the permissible condonable limit of thirty days. Therefore, the delay in filing the appeal is hereby condoned. I allow the condonation of delay application of the Appellants in light of the reasons so mentioned in their said applications and in the interest of natural justice.

5.3 The Appellant has submitted copy of the T.R.6 Challan No. 1768 dated 29.01.2024 for Rs. 2,10,000/- towards payment of pre-deposit under the provisions of Section 129E of the Customs Act, 1962, thereby complying with the requirement under Section 129E of the Customs Act, 1962. Thus, the appeal has been admitted and being taken up for disposal on merits.

6. It is observed that the Appellant have raised the objection by contending that that the Show Cause Notice dated 05.02.2021 issued by the Additional Director of Revenue Intelligence is bad in law as the said authority is not a competent authority to issue the Show Cause Notice in terms of the decision of Canon India Pvt. Ltd. Vs. Union of India reported in 2021 (376) 3. In this regard, it is pertinent to mention that the CBIC, vide Notification No. 40/2012 - Customs (N.T.) dated 02.05.2012 has appointed several persons including the Officers of Directorate of Revenue Intelligence (DRI) as "Proper Officers" under Section 2 (34) of the Act, 1962. Further, vide Section 97 of the Finance Act, 2022, the Show Cause Notice issued by the officers of the DGRI stands validated for the past period notwithstanding anything contained in any judgment, decree or order of any Court. Thus, the officers of Directorate of Revenue Intelligence (DRI) who are

primarily drawn from the Customs Department were also given the task of issuing show cause notice and adjudicating the same in terms of Notifications issued as "Proper Officer", as defined in Section 2 (34) of the Customs Act, 1962. Further, it is pertinent to mention that the Hon'ble Supreme Court in the Review Petition No. 400 of 2021, dated 07.01.2024 filed by the department has considered this aspect and settled the jurisdictional dispute concerning the power of DGRI to issue Show Cause Notice in favour of the department. Thus, in view of the above legal provisions and judicial pronouncement of the Hon'ble Supreme Court, the contention raised by the Appellant on this issue is not legally sustainable and is accordingly rejected.

6.1 The Appellant's argument regarding the illegality of the seizure and the inapplicability of Section 123 is unsubstantiated. Section 110 of the Customs Act, 1962, permits seizure based on "reason to believe" that goods are liable to confiscation. The intelligence received by DRI specifically pointed to a consignment of foreign brand smuggled cigarettes being transported in the identified truck for delivery to the Appellant. The officers' observation of suspicious movements by the driver, the failed attempts to transfer goods in public places, and the subsequent discovery of concealed foreign cigarettes during examination, collectively formed a very strong "reason to believe" that the goods were smuggled. The seizure was therefore legal. Furthermore, cigarettes are "specified goods" under Section 123 (1) of the Customs Act, 1962. Consequently, the burden of proving that these cigarettes are not smuggled goods lies squarely on the person from whom they were seized (the truck driver, Shri Radheshyam Yadav) and the person who claimed to be their owner (Appellant). Neither the truck driver nor the Appellant could produce any legitimate import or purchase documents for the cigarettes. The truck driver explicitly stated that he did not have any documents and understood that carrying smuggled goods was an offense. This failure to discharge the burden of proof under Section 123 is a critical factor in affirming the smuggled nature of the goods.

6.2 The Hon'ble Supreme Court in Collector of Customs, Madras vs. D. Bhoormull, 1974 (1) SCC 544, clearly held that in cases of smuggling, where direct evidence is rarely available, the court can draw inferences from circumstantial evidence. The elaborate narrative in the impugned order, detailing the intelligence, surveillance, recovery, and statements, paints a clear picture of a clandestine operation.

6.3 The Appellant's assertion that there is no absolute prohibition on the import of cigarettes and thus Section 111 is not applicable is fundamentally flawed. While cigarettes are not absolutely prohibited for import, they are heavily regulated and subject to specific conditions, duties, and packaging requirements (e.g., health warnings as per the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008). Any import of cigarettes that bypasses these regulations and customs duty payment constitutes smuggling and renders the goods liable to confiscation under Section 111. The absence of legitimate import documents and the clandestine nature of the transport

confirm that these goods bypassed legal import procedures. The clauses of Section 111 invoked by the adjudicating authority are applicable:

- Section 111(d): Goods imported contrary to any prohibition. The import of cigarettes without payment of duty and without complying with import regulations amounts to a contravention of prohibitions/restrictions in force.
- Section 111(e): Goods kept in any part of Customs area or loaded in a conveyance.
- Section 111 (f): Goods which are not covered by an import manifest or export manifest, or are otherwise not accounted for.
- Section 111(h): Dutiable or prohibited goods which are removed from a customs area or a warehouse without the permission of the proper officer or otherwise than in accordance with the provisions of this Act or the rules, regulations or notifications made thereunder.
- Section 111(i): Dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act.
- Section 111(k): Any goods in respect of which any statement is made or document is furnished, which is false or incorrect in any material particular. The production of only household goods documents to camouflage cigarettes falls under this.

6.4 The statements of Shri Radheshyam Yadav and the Appellant clearly confirm the illicit nature of the consignment. The Appellant explicitly admitted that he knew these cigarettes were smuggled via the Indo-Myanmar border and that he received regular supplies of smuggled cigarettes. This self-admission is compelling evidence.

6.5 The Appellant's claim that his statements were not voluntary and were obtained under coercion is a common defense. However, statements recorded under Section 108 of the Customs Act, 1962, are admissible in evidence as they are not recorded by police officers. The Hon'ble Supreme Court in *Ramesh Chandra Mehta vs. State of West Bengal* [1970 AIR 940 SC], held that a confession made under Section 108 of the Customs Act, 1962, unless proved to have been obtained by threat, coercion, or inducement, is admissible. The burden of proving involuntariness lies on the person making the claim, and no concrete evidence has been provided by the Appellant to substantiate this beyond a mere assertion. Moreover, the Appellant's statements are strongly corroborated by circumstantial evidence: the intelligence received, the actual interception of the truck, the concealment of cigarettes, the driver's corroborative statements (including the fact that he was contacted by "Jatin" alias "Vishal" and the failed delivery attempts), and the inability to produce legitimate documents. His detailed admission about dealing in smuggled cigarettes, knowing their origin via the Indo-Myanmar border, and having suppliers in Kolkata, clearly establishes *mens rea*. The fact that he was previously booked by DRI for trading in smuggled cigarettes further confirms his knowledge and deliberate involvement in such illicit activities.

6.6 Section 115 (2) of the Customs Act, 1962, allows for the confiscation of any conveyance used for the carriage of smuggled goods, "unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent or the person in charge of the conveyance." In this case, Shri Radheshyam Yadav, the person in charge of the conveyance, explicitly admitted that he knew he was transporting "illegally smuggled goods viz. Cigarettes" and was receiving an extra Rs. 10,000/- for it. This clearly demonstrates his knowledge and connivance, making the truck liable for confiscation. Section 118 of the Customs Act, 1962, provides for the confiscation of "packages and coverings in which any smuggled goods are found, and any other goods mixed with smuggled goods, or used for concealing smuggled goods." The household goods were admittedly used to "camouflage the smuggled foreign origin cigarettes." Therefore, the confiscation of household goods is also legally justified.

6.7 As discussed, the seizure was based on solid intelligence and immediate findings, satisfying the "reason to believe" criterion under Section 110.

- Voluntariness of Statements: The statements are admissible and corroborated. Mere retraction without evidence of coercion is insufficient to discard them.
- Mens Rea: The Appellant's own admissions and past history clearly establish his knowledge and deliberate involvement in dealing with smuggled goods.
- Non-Applicability of Section 123: Cigarettes are specified goods, and the burden of proof clearly shifts under Section 123.
- No Prohibition: Cigarettes are regulated goods, and their clandestine import without duty payment and compliance with regulations constitutes smuggling, making Section 111(d) applicable.
- Proportionality of Penalty: The penalty imposed is commensurate with the gravity of the offense, considering the large quantity of smuggled cigarettes and the Appellant's established involvement in such activities.
- Confiscation of Conveyance and Household Goods: As discussed, the conditions under Sections 115(2) and 118 are met, and the driver's connivance makes the conveyance liable, and the use of household goods for concealment makes them liable.

7. Based on the detailed discussion and findings, I find that the adjudicating authority has correctly concluded that the foreign brand cigarettes were smuggled into India without payment of Customs Duty and without following proper legal procedures. The evidence on record, including the specific intelligence, the panchnama proceedings, and the unrettracted and corroborated statements of the truck driver, and the self-incriminating and corroborated statements of the Appellant, conclusively establish the smuggled nature of the goods and the active involvement of the Appellant in dealing with

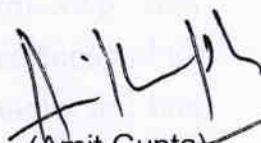
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them. The confiscation of goods, the conveyance, and the household goods used for concealment, along with the penalties imposed, are legally sound and proportionate to the offenses committed.

ORDER:-

8. In view of the discussions made above, I reject the appeal filed by Shri Vishal Purohit and uphold the impugned order to the extent it relates to Shri Vishal Purohit.




 (Amit Gupta)
 Commissioner (Appeals),
 Customs, Ahmedabad

F. No. S/49-426/CUS/AHD/2023-2024

Date: 16.06.2025

By Registered post A.D/E-Mail

1606

To,

M/s Vishal Purohit,
 Prop. of M/s Shri Saraswati Infosys
 Shop No. 118, 1st Floor,
 Sunrise Mall, Vastrapur,
 Ahmedabad – 380 015

सत्यापित/ATTESTED


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

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Ahmedabad.
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