



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 - 20260171MN000000D00C

क	फ़ाइलसंख्या FILE NO.	S/49-101/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-526-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	23.01.2026
च	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	06/REF/HG-DC/SVPIA/2024-25 dated 13.05.2024
छ	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	23.01.2026
ज	अपीलकर्तानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Hitesh Laxmichand Gagnani, G-302, Karnavati Enclave, Parallel to Express Highway, Near Doon School. New Maninagar, Ramol, Ahmedabad-382449.



- यहप्रतिसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
This copy is granted free of cost for the private use of the person to whom it is issued.
- 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)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	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, लगायागयादंडकीराशिऔररूपएएकलाखाउससेकमहोतोऐसेफीसकेरूपमेंरु. 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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd 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)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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(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; पाँचहज़ाररूपए	
(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; दसहज़ाररूपए.	
(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) 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

Shri Hitesh Laxmichand Gagnani, G-302, Karnavati Enclave, Parallel to Express Highway, Near Doon School. New Maninagar, Ramol, Ahmedabad-382449 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 06/REF/HG-DC/SVPIA/2024-25 dated 13.05.2024 (hereinafter referred to as "the impugned Order") passed by the Deputy Commissioner of Customs, SVPI Airport, Ahmedabad, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, arrived from Dubai at the Sardar Vallabhai Patel International (SVPI) Airport, Ahmedabad on 21.08.2018 by Spicejet Flight No. SG-016/21.08.2018 and was intercepted by the Customs Officers after he had cleared himself alongwith his baggage through the green channel. The two bags were put through the baggage screening machine, however, nothing objectionable was indicated. Thereafter, after keeping aside his personal effects which were on his person, the applicant was requested to pass through the door frame metal detector (DFMD) which detected the presence of metal. At this, the appellant revealed that he was wearing a gold chain on his neck hidden under the collar and a gold kada on his right hand hidden under the sleeve of his shirt. Details of which is as given below:

Table 1

Description of seized gold	Qty.	Weight in Grams : all 24 kt
Gold Kada	01	174.810
Gold Kadiwali Chain	01	176.080
Total		350.890
Total Market Value		Rs 10,68,811/-
Total Tariff Value		Rs 9,63,004/-

2.1 The adjudicating authority viz, Assistant Commissioner of Customs, Ahmedabad vide Order-In-Original No. 05/AP/MM-AC/SVPIA/2019 dated 29.10.2019 ordered for the absolute confiscation of one Gold Kada and one Gold Chain totally weighing 350.890 grams, valued at Rs. 9,63,004/- (T.V.) and Rs. 10,68,811/- (M.V.) under Section 111(d), 111(3), 111(1) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 2,00,000/- under Section 112(a) & (b) of the Customs Act, 1962 was imposed on the appellant.

2.2 Aggrieved by the said order, the appellant preferred an appeal before the appellate authority viz. Commissioner of Customs (Appeals), Ahmedabad, who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-764-20-21 dated 08.02.2021 issued through F. No. 8/49-535/CUS/AHD/19-20 agreed with the findings of the adjudicating authority and did not find any merit in the contentions raised by the applicant and hence rejected the appeal filed by the applicant.

2.3 Aggrieved by the above Order-In-Appeal No. AHD-CUSTOM-000-APP-764-20-21 dated 08.02.2021, the appellant filed revision application and the Hon'ble Principal Commissioner & ex-officio Additional Secretary to Govt. of India vide Order No. 605/2023-CUS(WZ)/ASRA/MUMBAI dated 22.08.2023 set aside the order passed by the appellate authority and allowed the appellant to redeem the impugned gold jewellery i.e. one gold kada and one gold chain, totally weighing 350.890 grams valued at Rs. 9,63,004/- (T.V.) and Rs. 10,68,811/-(M.V.) for re-export on payment of a redemption fine of Rs. 1,90,000/-. Further, the penalty of Rs. 2,00,000/- imposed on the appellant under Section 112(a) and (b) of the Customs Act, 1962 is reduced to Rs. 1,00,000/-.

2.4 The above gold weighing 350.890 grams were sent to the India Government. Mint, Mumbai on 16.01.2020 and hence it was not possible to release the impugned gold to the appellant. Therefore, in terms of Instruction No. 22/2022-Customs dated 06.09.2022 the appellant was sanctioned refund of Rs 9,44,194/- vide the impugned order.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;



• Gold was disposed of without any notice to the petitioner/owner of the gold. Disposal of gold without notice to the owner/petitioner is illegal. It is seen from the impugned O-I-O dated 13/20-5-24 that the gold has been already disposed of on 16-1-2020. This is in spite of the fact that the appeal filed by the petitioner against the order of absolute confiscation of the gold was pending before the Commissioner (Appeals). The petitioner was not issued any Notice under Section 150 of the Customs Act, 1962 by the authority concerned before disposing of the gold. In this connection, reference is invited to Board's circular F.No.711/4/2006- Cus (AS) New Delhi, February 14, 2006 wherein the Board has stressed upon the requirement of issuing Notice to the owner of goods under the provision of the Customs Act, 1962 before the disposal of goods which have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the

goods. This instruction was issued by the Board when a similar instance was brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods which resulted in a loss to the exchequer because of failure to comply with the requirements of Section 150 of the Customs Act, 1962. In the present case, the authority concerned violated section 150 of the Customs Act, 1962 and also failed to follow the instructions issued by the Board with regard to issuance of notice to the petitioner before the disposal of the gold which resulted in undue financial loss to him. In this case, the Customs authority concerned being fully aware by reason that the case was not yet decided in appeal should not have sold the gold. Thus, he has been put into an undue financial loss and deprivation of his property. Failure to follow the due process of law, would be violation of human rights, as also the constitutional right under Article 300A of the Constitution. As per the instructions issued by the Board, confiscated goods in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods could be sold only after giving notice to the owner of the goods. No Notice of sale/disposal was ever issued to the petitioner. Disposal of the gold without giving any notice to the petitioner is violation of section 150 of Customs Act, 1962 and also contrary to the Board's circular F.No.711/4/2006-Cus (AS) New Delhi, February 14, 2006 dated 14-2-2006 which is binding on the authorities concerned. In this regard the appellant relied upon the following case laws:

- i. Union of India V. Shambhunath Karmakar 1986 (26) E.L.T. 719 (Cal.)
 - ii. State of Gujarat -vs- M.M. Hazi Hasan, reported in AIR 1967 SC 1885
 - iii. Ashupati Nath Dhandhanania - 2014 (305) ELT 392 (Cal.)
 - iv. Bhogilal Mehta vs. The Union of India and ors. 2004 (164) ELT 239 (Cal.)
 - v. Kailash Ribbon Factory Ltd.- 2002 (143) ELT 60 (Del.)
 - vi. Northern Plastics Ltd. 1999 (113) E.L.T. 3 (S.C.)
 - vii. Zhinet Banu Nazir Dadany - 2019 (367) ELT 385(Del.)
 - viii. Ishwar Parasram Punjabi v. Union of India 1990 (48) ELT 224 (Delhi)
- In the recent case of Leyla Mohmoodi and Mojtaba Ebrahim Gholami vs The Additional Commissioner of Customs and others in WP no 467/2023 which is similar to the case of the petitioner, the Hon'ble High Court of Bombay while ordering return of equal quantity of gold or refund of present market value of the gold.



- The Delhi High Court further held that "Even though there is no express provision for the notice of hearing in Section 110A of the Customs Act, 1962 Magistrate carries an inherent power to give notice of hearing to the person concerned, from whom property is seized, before an order is passed." Thus personal hearing is mandatory before the disposal of the gold. In the present case no personal hearing was given to the appellant before the disposal of the gold. The action of the Department and the Magistrate stand vitiated owing to the lapse committed in not giving a notice to the petitioner, not affording opportunity of hearing, or showing cause against such an application being allowed.
- The petitioner requested for only for redemption of the gold weighing 350.890 grams for re-export. He never applied for refund of sale proceeds of the gold. In the absence of any refund application filed by the petitioner, sanctioning of refund on his own by the Deputy Commissioner of Customs is unwarranted and the petitioner is not bound to accept the refund order. There is violation of petitioner's fundamental right under Article 300A. The gold was disposed of without any notice to the petitioner and without the knowledge of the petitioner even before the case was decided in appeal by the Commissioner (Appeals). The fact of disposal of the gold was not brought to the knowledge of the Commissioner (Appeals) and Government of India. The claim that the seized gold was sent to the India Government Mint on 16-01-2020, and hence could not be released, raises serious questions. The gold was under the custody of the Customs Department, and its disposal without issuing any notice to the petitioner or obtaining necessary approvals is a gross violation of procedural norms and the petitioner's rights. On 13/20-05-2024, the Deputy Commissioner issued an order sanctioning a refund of Rs. 9,44,194/- to petitioner, citing the unavailability of the gold (allegedly sent to the India Government Mint). This refund was sanctioned without any application for refund from the petitioner, who had explicitly requested the redemption of the gold jewellery. The order issued by the Revisionary Authority, Government of India, explicitly allowed the petitioner to redeem the seized gold jewellery for re-export. The Respondent's decision to sanction a refund, rather than facilitating the redemption of the gold, directly contravenes this order, thereby undermining the legal authority of the Government of India. The Respondent acted beyond the scope of his authority by unilaterally deciding to issue a refund without any request from petitioner. This not only disregards petitioner's expressed wishes but also lacks any legal basis, rendering the order arbitrary and ultra vires.



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- The principles of natural justice necessitate that the petitioner be given the opportunity to redeem the gold as ordered by the Appeal Commissioner, for on payment of penalty, fine, Duty. The Assistant Commissioner's actions deprived the petitioner of this opportunity, thereby violating the fundamental principles of fairness and justice. Article 300A of the Constitution of India states: "No person shall be deprived of his property save by authority of law." This constitutional provision protects the right to property and mandates that any deprivation of property must be legally justified and accompanied by due process. The gold jewellery in question was the petitioner's personal property. The disposal of this gold by the Customs Department, without giving a notice to the petitioner or obtaining necessary approvals, constitutes an unlawful deprivation of property. This action is a clear violation of the petitioner's fundamental right under Article 300A. The Government of India's order permitted petitioner to redeem the gold jewellery for re-export. The Deputy Commissioner's unilateral decision to issue a refund and the disposal of the gold without due process or the petitioner's consent bypasses the established legal procedure. This lack of due process further aggravates the violation of Article 300A. The Deputy Commissioner's actions in issuing a refund and disposing of the gold without a proper basis are arbitrary and beyond the scope of his authority. These actions not only contravene the Government of India's directive but also undermine the legal safeguards provided under Article 300A. The Deputy Commissioner's actions, which resulted in the unlawful disposal of the gold, violate these principles and deny the petitioner a fair chance to exercise his property rights. In light of the above arguments, it is evident that the disposal of petitioner's gold jewellery by the Customs Department constitutes a violation of the fundamental right to property under Article 300A of the Constitution of India. The Deputy Commissioner's order, being illegal, arbitrary, and not maintainable, should be set aside.
- In the present case, there was non-compliance with pre-audit requirement. the draft refund order should have been sent to pre-audit. The actions of the respondent prejudiced the Appellant.
- Charging of warehouse charges is not as per law. Warehouse charge of Rs 21,480/- is liable to be refunded to the Appellant. Warehouse charge of Rs 21,480/- charged by the Respondent on the Appellant from the date of seizure is illegal. The gold in question, during the period of seizure until the date of the authority's release order, was solely under the custody of customs and not with the Custodian of imported and export goods. Therefore, imposition of warehouse charges during this period is



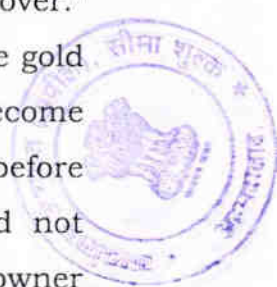
not proper and may not align with the legal framework governing such cases.

- Instruction under reference M.F. (D.R.) Instruction No. 22/2022-Cus., dated 6-9-2022 in file F. No. CBIC-50711/5/2021-INV-CUSTOMS issued by the Board and followed by the Respondent in the matter of calculation of applicable refund amount to the Appellant is not binding on the Appellant. As per Section 151A, no orders, instructions or directions shall be issued so as to require any such officer of Customs to make a particular assessment or to dispose of a particular case in a particular manner. From the above, it may be seen that the instructions dated 6-9-22 issued by the Board are against the spirit of Section 151A. Therefore, the method adopted by the authority for calculating the amount refundable is not legal and correct.
- When a quasi-judicial authority enjoys discretionary power while deciding a case, giving directions to them and forcing them in deciding the case in a particular manner i.e ordering calculation of refund to be based on the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL is illegal and against the provision of Section 151-A of Customs Act, 1962. Instructions issued under reference M.F. (D.R.) Instruction No. 22/2022-Cus., dated 6-9-2022 in file F. No. CBIC-50711/5/2021-INV-CUSTOMS are only advisory in nature and the advisory cannot be made a rule for ordering refund in the said manner. The issuance of circulars/instructions, intended to clarify ambiguities in statutory provisions and provide greater ease of administration, has raised a whole host of questions about the manner in which, and extent to which, they shall be given effect. Statutes conferring this power upon administering authorities are clear that circulars shall be binding on all persons participating in their implementation. Do these circulars/instructions continue to have effect when they reach beyond the limits of statutory provisions, or come into direct conflict with them? Will these instructions bind the State? Will they bind the assessee or an accused? If so, will they have binding effect under all circumstances, or are courts and quasi-judicial authorities permitted the discretion to deviate from them? The Judiciary has wrestled with these concerns for a considerable period of time, resulting in a chaotic, inconsistent collection of Supreme Court decisions, each adopting varied hues of interpretation. The purposes behind the issuance of circulars bring to light their supplementary character, suggesting that the extent to which this power shall be utilised by administrative authorities must be confined to the objectives stated in relevant statutes. Instructions issued under reference M.F. (D.R.) Instruction No. 22/2022-Cus., dated 6-9-2022 in file F. No.



CBIC-50711/5/2021-INV-CUSTOMS conflict with the statute and the scheme contemplated thereunder under Section 14(2) of Customs Act, 1962. While the position regarding the binding nature of circulars upon the Revenue is well-settled, a related question that arises for consideration is whether circulars shall be binding on assesses. While the Board cannot issue circulars which impose on the assessee a burden greater than that contemplated by the statute, the strict application of the law or its procedures can be reduced by the issuance of a circular. Moreover, when a circular benefitting the assessee has been issued, it is not open to the Department to argue against the contents of such circular.

- The Appellant claims present market price of the gold as on 20.05.2024. the date on which the refund order was issued. As per notification no 31/86 dated 5-2-86, the Department has the power to dispose of the gold. But this power comes with a condition that the owner of the gold should be given a notice u/s 150 of Customs Act. Another condition is that it is only when the gold is ripe for disposal, it could be sold. The question is when will the seized/confiscated gold be ripe for disposal? It is only when the appeal remedy available for the owner expires. In this connection, please refer para 11.2.1 of Disposal Manual, 2019 and the circular No. 57/2016-Customs dated 1-12-2016. There is a mention as "gold found ripe for disposal". In this connection Form-8 as prescribed under para 3.7.1 of the Disposal manual for disposal of the gold may be referred. Form-8 is a report to be given by the Officer in-charge of Disposal to the Custodian of Seized/Confiscated gold wherein "List of Cases in Which Period of Redemption and Appeal Has Expired". As it may be seen under Form-8, the Officer-in-charge of disposal has to report that "The goods mentioned hereunder have not been so far redeemed within the prescribed period and the period for preferring appeal is also over." From the above, it is very clear that it is only when the owner of the gold exhausts all his appeal remedy, the seized/confiscated gold will become ripe for disposal. In the present case, the gold was disposed even before the Appellant exhausted his legal remedy and the gold also did not become ripe for disposal and even without giving any notice to the owner under section 150 of Customs Act, 1962. But in present case the objection against pre-trial disposal was filed along with all documents. As per CBEC instructions vide letter F. No. 711/4/2006-Cus. (AS), dated 14-2-2006, before selling the goods Notice must be given to the owner/importer. As per Section 150 of the Customs Act, before sale of any goods under any provisions of the said Act, notice shall be given to the owner or the sale should happen with the consent of the owner. If the



goods are no longer available with the Respondents, the same quantity of Gold must be returned to the Appellants. Alternately the Present Market Value of the same quantity of Gold must be returned to the Appellant.

- In view of all the above submission, the Appellant finally submitted that he is eligible for refund of the market value of 350.890 grams of gold.

4. Shri Rishikesh Mehra, Advocate, appeared for personal hearing on 15.01.2026 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He further relied upon the decision of Hon'ble Tribunal, Ahmedabad, in the case of PRADIPBHAI SEVANTILAL SHAH decided vide FINAL ORDER NO. 10841/2025 dated 10.10.2025.

5. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in present appeal is whether the impugned order passed by the adjudicating authority sanctioning refund of Rs 9,44,194/-, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant, arrived from Dubai at the Sardar Vallabhai Patel International (SVPI) Airport, Ahmedabad on 21.08.2018 by Spicejet Flight No. SG-016/21.08.2018 and was intercepted by the Customs Officers after he had cleared himself alongwith his baggage through the green channel. The two bags were put through the baggage screening machine, however, nothing objectionable was indicated. Thereafter, after keeping aside his personal effects which were on his person, the applicant was requested to pass through the door frame metal detector (DFMD) which detected the presence of metal. At this, the appellant revealed that he was wearing a gold chain on his neck hidden under the collar and a gold kada on his right hand hidden under the sleeve of his shirt. The adjudicating authority viz, Assistant Commissioner of Customs, Ahmedabad vide Order-In-Original No. 05/AP/MM-AC/SVPIA/2019 dated 29.10.2019 ordered for the absolute confiscation of one Gold Kada and one Gold Chain totally weighing 350.890 grams, valued at Rs. 9,63,004/- (T.V.) and Rs. 10,68,811/- (M.V.) under Section 111(d), 111(3), 111(1) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 2,00,000/- under Section 112(a) & (b) of the Customs Act, 1962 was imposed on the appellant. Aggrieved by the said order, the appellant preferred an appeal before the appellate authority viz. Commissioner of Customs (Appeals), Ahmedabad, who vide Order-In-Appeal No. AHD-CUSTM-000-APP-764-20-21 dated 08.02.2021 issued through F. No. 8/49-535/CUS/AHD/19-20 agreed with the findings of the adjudicating authority and did not find any merit in the contentions raised by the



applicant and hence rejected the appeal filed by the applicant. Aggrieved by the above Order-In-Appeal No. AHD-CUSTOM-000-APP-764-20-21 dated 08.02.2021, the appellant filed revision application and the Hon'ble Principal Commissioner & ex-officio Additional Secretary to Govt. of India vide Order No. 605/2023-CUS(WZ)/ASRA/MUMBAI dated 22.08.2023 set aside the order passed by the appellate authority and allowed the appellant to redeem the impugned gold jewellery i.e. one gold kada and one gold chain, totally weighing 350.890 grams valued at Rs. 9,63,004/- (T.V.) and Rs. 10,68,811/-(M.V.) for re-export on payment of a redemption fine of Rs. 1,90,000/-. Further, the penalty of Rs. 2,00,000/- imposed on the appellant under Section 112(a) and (b) of the Customs Act, 1962 is reduced to Rs. 1,00,000/-.

5.2 It is observed that since the seized gold weighing 350.890 grams were sent to the India Government Mint, Mumbai on 16.01.2020 and hence it was not possible to release the impugned gold to the appellant. Therefore, in terms of Instruction No. 22/2022-Customs dated 06.09.2022, the appellant was sanctioned refund of Rs. 9,44,194/- vide the impugned order. I have gone through the impugned order and observe that the adjudicating authority has only recorded the calculation of the amount refunded. Further, I also observe that no personal hearing was granted before issuance of the impugned order. I am of the considered view that a reasonable opportunity of being heard is required to be provided. The appellant has also submitted that they had not been provided with an opportunity of hearing before passing of the impugned order. Therefore, requirement of natural justice was not satisfied. Thus, the impugned order has been issued in violation of the principles of natural justice. Since no personal hearing was given to the appellant, there is no finding of the adjudicating authority on the contentions raised by the appellant as well as the case laws relied upon by him. Hence, all the contentions are raised by the appellant in the appeal memorandum have been made for the first time before me and the adjudicating authority has no opportunity to record his findings on the same. Therefore, I find that remitting of the case for passing speaking orders after providing the appellant with an opportunity for personal hearing becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Bombay Hon'ble High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case

of Prem Steels P. Ltd. – [2012-TIOL-1317-CESTAT-DEL/ and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] holding that Commissioner(Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. In view of the foregoing, the appeal is allowed by way of remand to the adjudicating authority for passing a reasoned and speaking order, after affording the appellant an adequate opportunity of personal hearing. The adjudicating authority is directed to examine all relevant facts, documents, and submissions placed on record during the appeal proceedings. Based on such examination, fresh orders shall be issued expeditiously, strictly in accordance with the principles of natural justice and the applicable legal provisions. It is clarified that, while passing this order, no findings or views have been expressed on the merits of the case or on the submissions made by the appellant. These shall be independently examined and considered by the adjudicating authority in accordance with law.

7. In view of above, the appeal filed by the appellant is allowed by way of remand.


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


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

By Registered Post A.D.

F.No. S/49-101/CUS/AHD/2024-25

Dated -23.01.2026

5314

To,



- (i) Shri Hitesh Laxmichand Gagnani,
G-302, Karnavati Enclave,
Parallel to Express Highway,
Near Doon School. New Maninagar,
Ramol, Ahmedabad-382449
- (ii) Rishikesh J Mehra, B/1103, Dev Vihaan,
Behind 3rd Eye Residency, Motera Stadium Road,
Motera, Sabarmati, Ahmedabad-380005

Copy to:

- ✓ 1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Deputy/Assistant Commissioner of Customs, SVPIA, Ahmedabad.
4. Guard File.