



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250771MN0000000E27A

क	फ़ाइल संख्या FILE NO.	S/49-37/CUS/JMN/2024-25
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)	JMN-CUSTM-000-APP-090-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.07.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 23/Additional Commissioner/2023-24 dated 21.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) Shri Salim Aziz Kajaliya, Proprietor of M/s. Royal Stores, Kuldevi Wooden Compound, Opp. Panera Petrol Pump, Near Toll Plaza, NH-8A, Upleta-360490, District- Rajkot.



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। 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। 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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए 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 :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	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-
	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)	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 रूपए.
(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)	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; पांच हजार रूपए
(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)	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 रूपए.
(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)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(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.	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.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

The present appeal has been filed by Shri Salim Aziz Kajaliya (hereinafter referred to as the 'Appellant'), Proprietor of M/s Royal Stores, Kuldevi Wooden Compound, Opp. Panera Petrol Pump, Near Toll Plaza, NH-8A, Upleta-360490, District- Rajkot, in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 23/Additional Commissioner /2023-24 dated 21.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Hon'ble CESTAT, Ahmedabad vide Order No. A/11322-11328/2022 dated 31.10.2022 in the matter of Shri Salim Aziz Kajaliya, Proprietor of M/s. Royal Stores, Kuldevi Wooden Compound, Opp. Panera Petrol Pump, Near Toll Plaza, NH-8A, Upleta-360490 has set aside the Order-in-Appeal-JMN-CUSTM-000-APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses

2.1 Brief facts of the case are that, based on specific intelligence received by officers of the Headquarters, Preventive Section, Customs (P), Jamnagar, it was indicated that M/s Royal Stores, located at Kuldevi Wooden Compound, Opp. Panera Petrol Pump, Near Toll Plaza, NH-8A, Upleta, District Rajkot, was involved in smuggling large quantities of imported worn clothing/garments. These goods, falling under Chapter Heading 63090000 of the Customs Tariff Act, 1975, are classified as "restricted" under DGFT Notification No. 7/2004-09 dated 27.10.2004, and are permitted for import only against a valid license/authorization issued by the DGFT. The intelligence further revealed that the said firm was misdeclaring and selling these smuggled goods as old and used cut cloth, wipers, rags, and mutilated fabrics, which fall under Chapter Heading 6310, in an attempt to evade applicable customs duty.

2.2 Acting on the above intelligence, the officers of Customs (P), Jamnagar, conducted a search of the godown premises of M/s Royal Stores on 09.12.2016. The godown was owned by the Appellant. During the search, which was carried out under Panchnama dated 09.12.2016, a large quantity of worn clothing stacked in bales was found. On opening the bales, it was observed that the garments were labeled as "MADE IN PAKISTAN," "MADE IN INDONESIA,"



"MADE IN US," etc. A significant number of garments were found to be uncut and appeared to be in a reusable condition. Some garments contained 3 to 4 cuts, mostly along seams, which could easily be repaired, indicating that the goods were not mutilated beyond reuse. The nature and labeling of the goods indicated their foreign origin.

2.3 Shri Atif Salim Kajaliya, son of the Appellant, who was present at the godown at the time of the search, stated that they had never imported such clothing and that he was unaware of whether the said goods were duty paid or not. No records or documents relating to the legal purchase or import of these goods were found at the premises. As Shri Atif Salim Kajaliya was unable to produce any documentation substantiating the legal import or payment of duties, the entire stock of worn clothing, weighing 54.790 MT, was detained under a regular Panchnama dated 09.12.2016 and handed over to him for safe custody under a Supratnama executed the same day.

2.4 Subsequently, on 19.12.2016, a statement of the Appellant, was recorded under Section 108 of the Customs Act, 1962. He stated that the godown in question was rented and used for storing purchased bales of clothing. He claimed that relevant bills were maintained at their town office in Upleta and that purchases were made from local markets including Upleta, Jamnagar, and Ahmedabad. He specifically named M/s Star Traders (Jamnagar), M/s Talu Stores (Upleta), M/s Apollo Traders (Upleta), and Archie Tradelink (Ahmedabad) as his suppliers. He admitted to selling both cut and uncut clothing. When confronted with the foreign origin labels on the goods, he admitted that no import documents, such as Bills of Entry or customs invoices, were available. The purchase bills he submitted did not describe the goods as imported or reflect payment of customs duty. Upon being shown the relevant chapters of the Customs Tariff, he acknowledged that uncut clothing falls under Chapter Heading 630900000 and is classified as restricted, whereas cut/mutilated garments and rags fall under Chapter Heading 6310000. He explained that "cut" garments referred to clothing with 2 to 3 cuts along the seams (around 2 to 3 inches in size) which can be made wearable by stitching, and "uncut" clothing was ready for direct use. The goods in his possession included pants, shirts, T-shirts, jackets, and woollen garments like sweaters.

2.5 A further statement was recorded from the Appellant on 28.12.2016, during which he was shown Annexure-A a document detailing procurement of



4

the goods between 2012-13 and 2015-16 based on bills he had submitted. He confirmed the correctness of the annexure and acknowledged that the bills did not demonstrate that the goods were imported or duty paid.

2.6 Based on the findings from the search and the statements of Shri Salim Aziz Kajaliya, it was concluded that the detained goods were of foreign origin, imported without proper documentation, not mutilated beyond reuse, and hence smuggled into the country in contravention of the Customs Act. Accordingly, the said goods, weighing 54.790 MT and valued at Rs.30,23,680, were seized under Section 110 of the Customs Act, 1962 through Panchnama dated 04.01.2017 and again handed over to Shri Kajaliya under Supratnama for safe custody. Samples were drawn and sealed in the presence of panch witnesses and Shri Kajaliya.

2.7 Further investigation involved recording the statements of various suppliers named in Annexure-A, all of whom had sold goods to M/s Royal Stores:

- Shri Asif Rafiq Talu, proprietor of M/s Sapna Sari Centre, Upleta, in his statement dated 06.04.2017, stated that he sold 19.067 MT of old and used clothing to M/s Royal Stores during FY 2016-17. While his bills did not explicitly mention the goods as imported, he admitted that his firm deals only in imported clothing, either directly imported or procured from the local market. He claimed that the goods were cleared after payment of customs duty, fine, and penalty.
- Shri Iqbal Kadar Dalu, proprietor of M/s Star Traders, Jamnagar, in his statement dated 11.04.2017, confirmed sales of old clothing to M/s Royal Stores between 2012-13 and 2015-16. The goods included pants, shirts, T-shirts, jeans, skirts, tops, jackets, and sweaters. He admitted that his bills did not mention the goods as imported and that he possessed no import documents or customs clearance papers to support the claim that the goods were legally imported or duty paid.
- Shri Yasin Habib Salat, proprietor of M/s Taj Mexi Ghar, Upleta, in his statement dated 12.04.2017, stated that he sold old clothing described as "old clothing/rags" to M/s Royal Stores during 2016-17. He claimed that these goods had 3 to 4 cuts, rendering them unwearable. However, he also admitted that his bills did not indicate the imported nature of the goods and that he had no documents like Bills of Entry or customs invoices.
- Shri Hanif Salemmammad Talu, proprietor of M/s Apollo Traders, Upleta, in



his statement dated 13.04.2017, confirmed sales of clothing such as "mixture lot short," old velvet cloth, cut pant-shirts, and jackets to M/s Royal Stores during 2015-16 to 2016-17. He described the goods as "rags" having multiple cuts which he claimed made them unsuitable for wear. On being shown Chapter Heading 6309 of the CTA, he stated that the goods sold by him fell under subheadings of Chapter Heading 6310.

- Shri Mohammad Hussein Hanif, proprietor of M/s Talu Stores, Upleta, in his statement dated 13.04.2017, gave a similar account of selling clothing such as "mixture lot short," cut pant-shirts, and jackets during 2015-16 to 2016-17. He also described the goods as rags with multiple cuts and claimed they fell under subheadings of Chapter 6310. He too had no import-related documents or customs clearances.

2.8 A reference was made to the Directorate General of Foreign Trade regarding this case, the seizure of the said goods and also seeking clarification on the release of the said goods considering the restrictions imposed on their import. The Directorate General of Foreign Trade, New Delhi vide letter F. No. 01/89/214/002/AM-02/PC-2[A]/Vol-1 dated 26.05.2017 replied as under:

"....it is informed that the import of "Worn Clothing \& others and Worn articles" are "restricted" under 63090000 for import. No authorization had been given for import of these items by DGFT. Hence these were unauthorized imports.

It was therefore requested that Customs [Prev.] may take appropriate action under Customs Act."

2.5 The Investigation into the matter culminated into issuance of Show Cause Notice No. VIII/10-144/JC/O&A/2017 dated 07.06.2017 to the Appellant calling him as to why:

(i) the imported worn clothing falling under Chapter Heading 630900 of the CTA, weighing 54.790 MT and valued at Rs. 30,23,680/- seized from the godown of M/s Royal Stores, Upleta should not be confiscated under section 111(d) of the Customs Act, 1962;

(ii) penalty should not be imposed upon Shri Salim Aziz Kajaliya, proprietor of M/s Royal Stores, Upleta under section 112(a) and 112(b) of the Customs Act, 1962.

2.6 During the first round of litigation matter was adjudicated vide the Order-in-Original No. 23/Joint Commissioner/2017-18 dated 28.02.2018/



28.03.2018 issued by the Joint Commissioner, Customs (Prev), Jamnagar which was upheld vide Order-in-Appeal No. 'Order-in-Appeal-JMN-CUSTM000-APP-74-80-19-20 dated 30.05.2019' and in subsequent litigation the Hon'ble CESTAT vide its common Order No. A/11322-11328/2022 dated 31.10.2022 has set aside the Impugned Order-in-Appeal-JMN-CUSTM-000APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses.

2.7 The Appellant, initially, vide their reply dated 28/08/2017 has requested for cross examination of Panch witnesses as well as other persons including officers of the department. However, during the remand proceedings, the Appellant through their Advocate Shri Amal Dave's letter no. NIL dated 26.10.2023 and dated 01.11.2023 submitted that they wish to Cross Examination only two Panch witnesses in connection with the Panchnama Proceedings of 09.12.2016 and they did not want to cross examine other persons. Accordingly, the Cross Examination of both the Panchas (1) Shri Mori Vasim Ibrahim and (2) Shri Rajab Jiva Makwana by Shri Amal dave Advocate and Shri Sudhanshu Bissa on behalf of the Appellant, was conducted on 05/01/2024. During the Cross Examination, Shri Mori Vasim Ibrahim and Shri Rajab Jiva Makwana inter alia stated that they were not present during the stock taking between 8:00 A.M. to 9:00 PM and attending marriage of Shri Sohailbhai alias Sholebhai; that they were at marriage from 06:00 in morning to 9:30 PM. Shri Mori Vasim Ibrahim stated that he received a phone call at 03:00 PM saying that you come here as there is some work, whereas Shri Razab Jivabhai Makwana stated that he received a phone call at 12:00 O'clock in the noon. Shri Mori Vasim Ibrahim stated that he was there in the marriage ceremony up to 09:30 PM and then he had to return as he had to attend given miscellaneous work. Shri Razab Makwana stated that marriage was lasted up to 12:00 midnight but he returned earlier because of my driving work etc. On being asked that why did they sign the documents Shri Mori Vasim Ibrahim stated that "I went there in car with others and there I was told there you sign and you will not face any problem so I signed", Shri Razab Jivabhai Makwana stated that "Officers came in our town and told me this is a government work this is a case of duty evasion so I signed"; that they were not present at the time of stock taking and not witnessed weighment of goods on 09.12.2016; that they did not seen the goods and also labels of foreign make on it. On being asked both of them stated that S/Shri Sarfaraz Abla, Shivani Siddiqbhai Shakil Ghanchi, Sadik Ghanchi, Javedbhai




Patel, Rafikbhai Hakka and Mustak Yunusbhai Sharif, were present at a place where they were attending marriage ceremony.

2.8 The adjudicating authority after granting personal hearing and considering the outcome of Cross examination and further submission made by the Appellant in the matter passed the following order:

(i) He confiscated the seized foreign origin goods viz. old & worn clothing falling under CTH 63090000, weighing 54790 kgs. valued at Rs.30,23,680/- seized from the godown premises of M/s. Royal Stores, Upleta under Section 111(d) of the Customs Act.

(ii) He offered for redemption of the confiscated goods under Section 125(1) of the Customs Act, 1962 upon payment of a fine of Rs.5,00,000/- which shall be in addition to duties and charges payable under Section 125(2) of the Customs Act, 1962.

(iii) He imposed penalty of Rs.3,00,000/- on Shri Salim Aziz Kajaliya, Proprietor of M/s. Royal Stores, Upleta, under Section 112 (a) & Section 112(b) of the Customs Act, 1962.

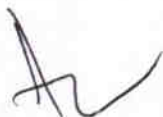
3. SUBMISSIONS OF THE APPELLANT:

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

- The impugned order passed by the Additional Commissioner is ex-facie illegal and without jurisdiction. The adjudicating authority failed to consider vital submissions made by the appellant in both the preliminary and final replies. Despite acknowledging that the panch witnesses denied knowledge of the panchnama dated 09.12.2016, the authority still held the proceedings to be proper. The appellant contends that such reliance on a questionable panchnama renders the order unsustainable in law.
- The adjudicating authority erred by ignoring the fact that there was no evidence to suggest that the seized goods were foreign-branded or imported. Officers only counted bales without opening them for individual examination. Yet, confiscation and penalty were confirmed. Legal purchase documents from local suppliers were dismissed without findings, and the burden of proof on the department—especially in town seizure cases—was entirely overlooked.



- The authority wrongly concluded that the panchnama was valid simply because the panchas signed it. During cross-examination on 05.01.2024, both panchas, Shri Mori Vasim Ibrahim and Shri Razab Jivabhai Makwana, deposed that they were at a wedding on 09.12.2016 and had no knowledge of the panchnama's contents. They stated they were called only to sign documents for "government work," without witnessing any stock-taking or identification of foreign goods.
- Given that the panch witnesses were not present during the search and stock-taking, no sanctity can be attached to the panchnama. Despite clear contradictions between the panchas' statements and the panchnama, the adjudicating authority attempted to justify the process instead of discarding it. The panchnama cannot be considered reliable when it was prepared in the absence of independent verification.
- The adjudicating authority wrongly expected the panch witnesses to challenge the panchnama at the time of its drawing. However, the panchas were mere departmental witnesses, not parties to the case. Since they were unaware of the true nature of the proceedings, they had no reason or obligation to object. Their later cross-examination sufficiently establishes that they were not present during the critical activities.
- The appellant relies on multiple judicial pronouncements which hold that panchnamas contradicted by panch witnesses cannot form the basis of smuggling charges. In B.D. Goel v. Ebrahim Essa Sodha [2014 (306) ELT 337], the Bombay High Court held that contradictory panch depositions negate the reliability of panchnama. Similar views were taken in Anand Kumar alias Babu [2015 (325) ELT 609], Baroda Rolling Works [2009 (238) ELT 495], and Ashok Kumar [2003 (158) ELT 441], where tribunals discredited panchnamas drawn without independent witness presence.
- The authority's reliance on the appellant's alleged acknowledgment of the panchnama is also misplaced. The appellant had clearly stated in the reply dated 28.08.2017 that the proprietor was attending the same wedding on 09.12.2016 and was not present during the search. Furthermore, the department never opened the bales to inspect the clothing. Merely multiplying the number and average weight of bales to conclude that all contained foreign goods is a flawed method.
- It is undisputed that the bales were not opened or examined individually. No attempt was made to segregate or identify foreign-labeled goods. The entire case rests on eye-estimation and assumptions. Even if the panchnama was signed, that does not validate the investigative process.




Such serious allegations of smuggling require concrete proof, which is missing in this case.

- The authority wrongly reasoned that different sets of officers conducted the proceedings on 09.12.2016 and 04.01.2017, and that no objections were raised at the time. However, the question is not about who conducted the seizure, but whether the process was carried out lawfully in the presence of independent witnesses—which it was not. The panchnama lacks any record of bales being opened or clothing being identified as imported or uncut.
- Numerous decisions have held that stock-taking based on visual estimation is unreliable. In *Shri Badri Narayan Alloys & Steels Ltd.* [2018 (8) GSTL 79], *Raika Ispat Udyog* [2016 (340) ELT 598], and *Surya Wires Pvt. Ltd.* [2021 (376) ELT 550], tribunals emphasized that stock must be verified with supporting documentation such as weighment or counting slips—not by average weight calculations. The same flawed methodology adopted in the present case vitiates the seizure.
- The Adjudicating Authority erred in concluding that the quantity of 54.790 MT could not be disputed by the appellant, merely because the appellant acknowledged procurement from local markets. The appellant never admitted to the goods being imported or in uncut condition. Rather, it was consistently submitted that the goods were procured from suppliers based in Upleta, Jamnagar, and Ahmedabad, with supporting invoices and purchase registers produced. The suppliers had also confirmed the transactions. Yet, the Adjudicating Authority ignored these evidences, misinterpreted the appellant's admission, and wrongly presumed importation and smuggling, despite a lack of evidence to that effect.
- The Show Cause Notice wrongly presumes that the appellant had to prove legal import of the goods, despite clear evidence of local procurement. In town seizures, the burden lies on the department to prove smuggled character of the goods. The appellant submitted supplier details and documentary evidence. The suppliers also confirmed the sale of goods. As held in *A.K. Hamsa Mohideen* [2004 (171) ELT 327], mere foreign origin or absence of import documents does not justify confiscation, particularly when the goods are non-notified. This legal position was upheld by the Madras High Court and reiterated in *Sadbhavana* [2003 (158) ELT 652] and *Ashok Premji Patel* [2003 (157) ELT 568].
- The seized goods were found outside the customs area, creating a presumption of duty-paid status. The Adjudicating Authority wrongly



Handwritten signature

insisted on import documents despite goods being purchased locally. The department misclassified the goods as "restricted" under CTH 6309 6310, when in fact they were used clothing backed by local purchase documents duly recorded in the appellant's books. The case is squarely covered by town seizure jurisprudence, where the burden to establish smuggled nature lies with the department and was not discharged.

- The Adjudicating Authority committed a serious error in validating the panchnama despite both panch witnesses categorically deposing that they were absent during the proceedings on 09.12.2016. Instead of giving weight to their depositions, the authority relied on presumptions and held that the panchas' statements were afterthoughts. The appellant submits that when departmental witnesses contradict the panchnama, such evidence becomes unreliable. There was no need for further corroboration via investigating officers' cross-examination. Additionally, the adjudicating authority failed to invoke Section 138B of the Customs Act to independently examine officers. Thus, the panchnama proceedings are vitiated and cannot be relied upon.
- The appellant had valid invoices for the entire stock, including 54.790 MT of used clothing seized on 09.12.2016. No evidence of illegal import or smuggling was presented by the department. The suppliers had confirmed sales to the appellant, and no provision of the Customs Act or Foreign Trade Policy was violated. Therefore, confiscation under Section 111(d) was unwarranted and the order deserves to be quashed.
- The penalty imposed under Section 112(a) lacks justification as the appellant neither committed nor abetted any act rendering the goods liable to confiscation. There was no import or smuggling. Section 111 itself is not applicable, hence the foundation for penalty under Section 112(a) collapses.
- The Show Cause Notice fails to demonstrate how the appellant knowingly dealt with goods liable for confiscation. There is no evidence that the appellant had knowledge or reason to believe the goods were smuggled. The Adjudicating Authority failed to specify whether the penalty was under 112(a) or 112(b), and did not establish the elements of either. The penalty is thus vitiated and must be set aside.
- As laid down by the Supreme Court in Hindustan Steel Ltd. [1978 ELT (J159)], penalty should not be imposed merely because it is lawful to do so. There must be contumacious conduct or deliberate violation, which is absent in the present case. The appellant acted in bona fide belief,




supported by documentation. Therefore, both confiscation and penalty lack legal foundation.

- The Adjudicating Authority exceeded jurisdiction by invoking Section 125(2) to demand duty in addition to redemption fine. The Show Cause Notice contained no such proposal or reference to recovery of duty. The order therefore travels beyond the scope of the notice, violating settled principles of natural justice and deserves to be struck down.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.06.2025, following the principles of natural justice wherein Shri Amal P. Dave and Shri Sudhanshu Bissa, Advocate, appeared for the hearing and 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 Additional Commissioner, Customs (Preventive), Jamnagar and the defense put forth by the Appellant in their appeal.

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

- Whether the adjudicating authority, in the remand proceedings, correctly appreciated the evidence adduced during cross-examination of the Panchas and whether its findings are sustainable in light of the CESTAT's specific directions.
- Whether the department has successfully discharged its burden of proving the alleged illegal import/smuggling of goods.
- Whether the confiscation of goods and imposition of penalties under Section 112(a) and (b) of the Customs Act, 1962, are justified.
- Whether the impugned order suffers from a violation of the principles of natural justice and is a non-speaking order.

5.2 I find that the Hon'ble CESTAT, Ahmedabad, in its Final Order No. A/11322-11328/2022 dated 31.10.2022, explicitly remanded the matter, specifically directing the adjudicating authority to allow cross-examination of witnesses and to decide the case afresh. This remand was based on the observation that the department's case relied solely on the Panchnama and statements of witnesses whose cross-examination was crucial. The cross-



examination of Panchas (Shri Mustakbhai Yunusbhai Sharif and Shri Lakhmanbhai Kanjibhai Panera) on 05.01.2024 yielded critical information:

- Both Panchas stated they were not present when the Panchnama was drawn, and were elsewhere.
- They admitted to signing the Panchnama only because they were asked to do so by Customs Officers, without knowing its contents or the quantities involved.
- They denied seeing the seized goods physically.

5.3 These depositions directly contradict the evidentiary value and sanctity of the Panchnama. A Panchnama drawn in the absence of independent witnesses, or where the witnesses have no knowledge of its contents, loses its evidentiary value. The Hon'ble Bombay High Court in *B.D. Goel vs Ebrahim Essa Sodha* [2014 (306) E.L.T. 337 (Bom.)] held that the assessee cannot be charged with smuggling solely based on a Panchnama where cross-examination reveals contradictions. Similarly, in *Anand Kumar vs Commissioner of C. Ex. & S.T., Lucknow* [2015 (325) E.L.T. 609 (Tri. - Del.)], it was held that if Panchas were not present during the proceedings, no sanctity can be attributed to such Panchnama.

5.4 The adjudicating authority, in the impugned order, dismisses these critical depositions by merely stating they are "insufficient to prove that the Panchnama proceeding was incorrect". This is a clear misappreciation of evidence and a failure to adhere to the spirit of the CESTAT's remand order. When the very foundation of the department's case (the Panchnama) is shaken by the direct testimony of the Panchas themselves, the burden shifts back squarely to the department to provide irrefutable evidence of illegal import. The adjudicating authority cannot simply discard such crucial evidence.

5.5 In cases of seizure of goods outside the Customs area, the initial burden is on the department to prove that the goods are smuggled/illegally imported. Once a credible Panchnama is drawn, the burden may shift to the Appellant. However, when the Panchnama itself is rendered unreliable by cross-examination, the primary burden remains with the department.

5.6 The department's only other assertion is that the goods had "foreign labels" and were "uncut/unmutilated," which indicates imported nature. However, the Appellants claimed to have purchased these goods locally and even provided purchase bills. The department's bald assertion that these local



purchase bills are "not in the nature of import documents, and therefore, the invoices cannot be accepted" without providing any evidence of their falsity or contradiction, is insufficient. The Hon'ble Madras High Court in Commissioner of Customs, Chennai Vs. A.K. Hamsa Mohideen [2004 (171) E.L.T. 327 (Tri. - Chennai)] held that if the department fails to produce any evidence to prove smuggling, the order of confiscation and penalty cannot be sustained. Since the Panchnama is discredited, and the department has not provided any other concrete evidence (such as import documents, foreign suppliers, or intelligence reports) to prove that these specific goods were illegally imported, it has failed to discharge its burden of proof.

5.7 Confiscation under Section 111 and penalties under Section 112 of the Customs Act, 1962 are contingent upon the goods being illegally imported or smuggled. If the department fails to prove the fundamental allegation of illegal import/smuggling, then the goods cannot be held liable for confiscation, and consequently, no penalties can be imposed.

5.8 Given the infirmities in the Panchnama and the department's failure to independently prove the imported or smuggled nature of the goods, the very basis for confiscation and penalties collapses. There can be no question of mens rea (intentionality) for smuggling when smuggling itself has not been proven.

5.9 The CESTAT remanded the matter specifically to allow cross-examination and to decide the case afresh. While cross-examination was conducted, the impugned order, by summarily dismissing the crucial evidence from cross-examination without a proper reasoned analysis of why the Panchas' statements are unreliable, fails to comply with the spirit of a "speaking and reasoned order." The adjudicating authority was bound to give proper weight and reasoning to the cross-examination evidence, especially when it directly impeaches the primary evidence. This amounts to a failure to follow the remand directions adequately and consequently a violation of natural justice.

6. In view of the detailed discussions and findings above, I find that the impugned order passed by the adjudicating authority is legally unsustainable. The adjudicating authority has failed to correctly appreciate the crucial evidence that emerged during the cross-examination of the Panch witnesses, which significantly weakened the evidentiary value of the Panchnama. Consequently, the department has failed to discharge its burden of proving the illegal import/smuggling of goods.



7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) I hereby set aside the Order-in-Original No. 23/Additional Commissioner/2023-24 dated 21.02.2024.

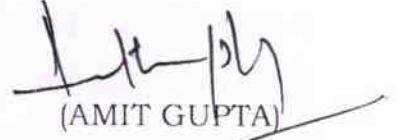
(ii) I hold that the department has failed to establish that the seized goods were illegally imported or smuggled into India.

(iii) the confiscation of 54790 kgs of old & worn clothing and consequently, redemption fine of Rs. 5,00,000/- is hereby set aside.

(iv) The penalty of Rs. 3,00,000/- imposed on Shri Salim Aziz Kajaliya, proprietor of M/s Royal Stores, Upleta under Section 112(a) and (b) of the Customs Act, 1962, is hereby set aside.

(vii) Any amounts deposited by the Appellant towards redemption fine or penalties shall be refunded to them with applicable interest, in accordance with law.

The appeal filed by Shri Salim Aziz Kajaliya is hereby allowed with consequential relief, if any.


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-37/CUS/MUN/2024-25

By Registered post A.D/E-Mail


2507



Date: 10.07.2025

To,
Shri Salim Aziz Kajaliya,
Proprietor of M/s. Royal Stores,
Kuldevi Wooden Compound, Opp. Panera Petrol Pump,
Near Toll Plaza, NH-8A, Upleta-360490, District- Rajkot.

सत्यापित/ATTESTED


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

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs (Preventive), Jamnagar.
4. Guard File.