



सीमाशुल्क(अपील) आयुक्तकाकार्यालय, अहमदाबाद

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

DIN – 20250671MN0000005E14

क	फ़ाइलसंख्या FILE NO.	S/49-88/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-53-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.06.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	03/ADC/2023-24 dated 06.07.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Cellular World, 2 nd Floor, Om Shanti Complex, BapaSitaramChowk, Ravapar Road, Vajepar, Morbi – 363641.



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 imported on baggage				
(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 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है मेंरु. 200/- (रूपए दो सौ मात्र) यारु. 1000/- (रूपए एक हजार मात्र)), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एकलाख यातु से कम होतो ऐसे फीस के रूप मेंरु. 200/- और यदि एकलाख से अधिक होतो फीस के रूप मेंरु. 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 those 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="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट 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 अपील 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
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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 रुपए.
(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 रुपए
(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 रुपए.
(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,जहांशुल्कयाशुल्कएवंदंडविवादमेहैं,यादंडके %10 अदाकरनेपर,जहांकेवलदंडविवादमेहैं,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.

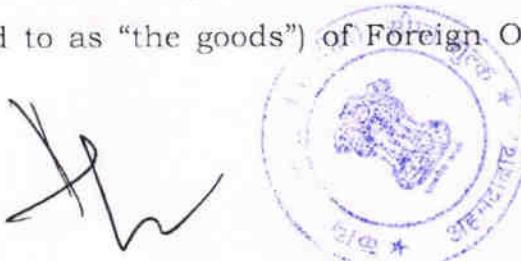


ORDER IN APPEAL

M/s Cellular World, having their Principal Place of Business at 2nd Floor, Om Shanti Complex, Bapa Sitaram Chowk, Ravapar Road, Vajepar, Morbi, Gujarat-363641 (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-in-Original No. 03/Additional Commissioner/2023-24, dated 06.07.2023 (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 appellant is engaged in trading of Mobile Phones and Accessories and is registered as proprietorship firm of Shri Darshan Ghanshyambhai Pujara. Intelligence was received that various mobile phones dealers/retailers in the areas of Jamnagar, Rajkot and Morbi were involved in selling of smuggled goods i.e., Foreign origin Mobile Phones and their Accessories, mainly of Apple Brand without any invoices/Bills and thus evading the Customs Duty including IGST.

2.1 Acting upon the intelligence, a search was carried out on 12.01.2022 at the retail / office premises of the appellant. During the search proceedings, Shri Darshan Ghanshyambhai Pujara, the owner/Proprietor of M/s Cellular World, was asked to produce the stock of the mobile phones and accessories available in the shop for verification of the same with available records. Shri Darshan Ghanshyambhai Pujara was unable to produce any Invoices/Bills in respect of mobiles phones, accessories & watches of Apple brand which were of foreign origin. Further, on being asked, Shri Darshan Ghanshyambhai Pujara informed that the said mobile phones, accessories & watches were imported goods and purchased from three different suppliers i.e. (1) M/s. Navrang Mobile, Rajkot, (2) M/s. Mehul Telecom, Wankaner and (3) Shri Bharatbhai, Jamnagar without invoices or other import documents. Search was conducted under Panchnama dated 12.01.2022 and mobile phones, accessories & watches of Apple Brand of Foreign Origin and some incriminating documents were found at the premises of the appellant. Since, the appellant was unable to produce the bills in respect of the mobile phones, accessories & watches of Apple brand which were of foreign origin and without any supporting valid import documents, the same were seized under the provisions of the Section 110 of the Customs Act, 1962, vide Seizure Memo dated 12.01.2022, under the reasonable belief that the said mobile phones, accessories & watches of Apple Brand (hereinafter referred to as "the goods") of Foreign Origin were liable to



confiscation under the provisions of the Customs Act, 1962 and the incriminating documents were also seized for further investigation.

2.2 Statement of Shri Darshan Ghanshyambhai Pujarawas recorded on 12.01.2022 under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that he is sole proprietor of the firm M/s Cellular World, Morbi and he looked after the sales and purchases of the firm and due to market demand of foreign mobile phones without bill by the customers, he was compelled to do the same to sustain in the market. He further stated that he was dealing in smuggled mobile phones and accessories since six months and that he mainly purchased smuggled mobile phones and accessories from different suppliers viz. (1) M/s. Navrang Mobile, Rajkot concerned person Bablubhai, (2) M/s. Mehul Telecom, Wankaner concerned person Mehulbhai and (3) Shri Bharatbhai, Jamnagar without invoices and any other import documents; he further stated that payments were made to the sellers through HM Angadiya and he received all the payments from their customers in respect of smuggled mobile phones through cash only and he further stated that he had sold the smuggled mobile phones and accessories valued at Rs.49,32,600/- . Further, Annexure-A to the statement dated 12.01.2022 was prepared on the basis of 'Kachha Hisaab' as mentioned in the Panchnama dated 12.01.2022, which was shown to Shri Darshan Ghanshyambhai Pujara and he put his dated signature in token of having perused and agreed with the same that he had sold the smuggled mobile phones and accessories valued at Rs.49,32,600/- as mentioned in the said Annexure-A.

2.3 Further, the appellant had vide TR-6 Challan No. F-07/22-23, dated 21.04.2022 paid Customs Duty & Penalty amounting to Rs.6,33,191/- (Basic Custom Duty Rs.2,49,082/- + Swachchha Bharat Cess Rs. 24,908/- + IGST Rs.2,76,610/- + Penalty Rs.82,591/-) on the seized Mobile phones & accessories. Further, the competent authority on request of the appellant provisionally released the goods seized vide Seizure Memo dated 12.01.2022 to the appellant on execution of Bond for the full value of the seized goods and on execution of Bank Guarantee of Rs.2,50,000/-.

2.4 Statement of Shri Ramesh P. Mulchandani alias Bablubhai, Partner of M/s Navrang Mobile, Rajkot was recorded on 25.07.2022 under Section 108 of the Act, 1962, wherein, he, inter-alia, stated that he had sold some mobile phones to Shri Darshanbhai of M/s Cellular World, Morbi on proper invoices and submitted copies of the same and further stated that he had not sold any smuggled phones to him. Statement of Shri Bharatkumar Udhavdas Aaswani, Proprietor of M/s Mehul Telecom, Jamnagar was recorded on 12.08.2022 under Section 108 of the Act, 1962, wherein, he, interalia stated that he had sold some mobile phones to Shri Darshanbhai of M/s Cellular World, Morbi but he had not sold any smuggled phones or accessories to him. Statement of

Shri Raymagiya Mehul, Proprietor of M/s Mehul Telecom, Wankaner was recorded on 16.03.2022 under Section 108 of the Customs Act, 1962, wherein, he, interalia, stated that he had sold mobile phones and accessories to M/s Cellular World under proper bill/invoices and they had credited sale amount in his bank accounts and further stated that he had never sold any smuggled mobile phones and accessories to M/s Cellular World. He submitted copies of bills / invoices which were raised in the name of M/s Cellular World, Morbi.

2.5 Thereafter, A Show Cause Notice No. ADC-10/2022-23, dated 20.03.2023 was issued to the appellant by the Additional Commissioner of Customs (Preventive) Commissionerate Jamnagar, as to why: -

- i. The smuggled / illegally imported foreign-made mobile phones, accessories & watches of Apple brand seized from the premises of the appellant vide Seizure Memo dated 12.01.2022 totally valued at Rs. 19,04,000/- and provisionally released on execution of a Bond for full value and a Bank Guarantee of Rs.2,50,000/- should not be confiscated under Section 111(d), 111 (j) & 111(l) of the Customs Act, 1962.
- ii. The smuggled / illegally imported foreign-made mobile phones & accessories of Apple brand already sold by the appellant valued at Rs.49,32,600/- should not be held liable for confiscation under Section 111(d), 111 (j) & 111(l) of the Customs Act, 1962.
- iii. Duty (Customs Duty + SWS + IGST) amounting to Rs.20,84,363/- not paid in respect of smuggled / illegally imported foreign-made mobile phones, accessories & watches of Apple brand seized from the premises of the appellant vide Seizure Memo dated 12.01.2022 and those already sold by the appellant should not be demanded and recovered from the appellant under Section 28(4) of the Customs Act, 1962 and the duty of Rs.5,50,600/- already voluntarily paid by the appellant should not be appropriated against the duty demand.
- iv. Interest under Section 28AA of the Customs Act, 1962 on the demand of duty of Rs.20,84,363/- should not be charged and recovered from them.
- v. Penalty under Section 114A of the Customs Act, 1962 should not be imposed upon them and the amount of Rs. 82,591/- paid during the investigation by the appellant should not be appropriated.

2.6 The adjudicating authority vide the impugned Order dated 06.07.2023 held as under:



a) Confiscated the smuggled / illegally imported foreign made Mobile Phones and accessories of Apple brand valued at Rs.19,04,000/- seized under Seizure Memo dated 12.01.2022 under Section 111 (l) of the Customs Act, 1962 and imposed fine of Rs.2,50,000/- in lieu of confiscation under Section 125 (1) of the Customs Act, 1962 which shall be in addition to any charges payable and ordered for encashment of bank guarantee of Rs.2,50,000/- furnished at the time of provisional release of the goods and appropriated the same towards fine in lieu of confiscation.

b) The smuggled / illegally imported foreign made Mobile Phones and accessories of Apple brand valued at Rs.49,32,600/- already sold by the appellant are liable to confiscation under Section 111 (l) of the Customs Act, 1962. However, in view of non-availability of the goods for confiscation, refrained from imposing any fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

c) Confirmed the demand of customs duty of Rs.20,84,363/- under Section 28(4) of the Customs Act, 1962 in respect of smuggled /illegally imported foreign made mobile phones, accessories and watches of Apple brand seized from the premises of the appellant vide Seizure Memo dated 12.01.2022 and those already sold by the appellant. Further, appropriated the amount of Customs duty of Rs.5,50,600/- already paid by the appellant vide TR-6 Challan No. F-07/22-23 dated 21.04.2022 against the Customs duty demand.

d) Ordered to charge and recover applicable interest under Section 28AA of the Customs Act, 1962 on the demand of duty of Rs.20,84,363/-.

e) Imposed penalty of Rs.20,84,363/- plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above under Section 114A of the Customs Act, 1962 and appropriated the amount of penalty of Rs. 82,591/- already paid by the appellant vide TR-6 Challan No. F- 07/22-23 dated 21.04.2022 against the penalty imposed herein.

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

- The impugned Order is devoid of merit and without understanding provisions of the Customs Act, 1962 as well as facts available on records. The Adjudicating authority miserably failed to appreciate the facts available on records that they had purchased said goods viz. Mobile Phone, Accessories and Watch of Apple brand from three suppliers who have admitted that they have supplied the said goods to them and same are not smuggled one. Just because the invoice or any import documents are not available it cannot be said that goods are smuggled one especially when its suppliers are available and same is admitted fact on record. Even goods are not notified under Section 123 of the Customs Act, 1962, therefore onus lies upon the department to prove that goods are smuggled one. The investigation miserably failed to identify importer as well as port/airport/land customs etc. from where same were smuggled, by whom same were smuggled if same are smuggled one. Merely because the goods are of foreign origin and invoices are not available it does not empower the officer under the Customs Act, 1962 to presume about smuggling of goods. Since, they are not importer of the goods, no duty can be demanded from them. Duty can be demanded under Section 28 of the Customs Act, 1962 which were not levied or not paid or short levied or short paid in as much as when the proper officer had made an order for the clearance of the goods or when duty was provisionally assessed from the relevant date and not on the smuggled goods and/or seized goods. Therefore, impugned order is liable to be set aside.
- The duty of customs can be levied on goods imported as provided under Section 12 of the Customs Act, 1962 and can be charged and collected from importer who is entering goods under Section 46 of the Customs Act, 1962.
- It is admitted fact on records that they have purchased the goods from said three suppliers who have also asserted supply of goods, therefore, they cannot be considered as importer of the goods. Even it is not the case of the department that appellant is the importer of the goods. Therefore, by any standard no duty can be demanded from them on seized goods and already sold goods.
- They cannot be considered as "importer" within the meaning of Section 2(26) of the Customs Act, 1962.
- Neither the seized goods nor goods already sold can be considered as imported goods as goods which are cleared for home consumption are no more imported goods. It is the case of the department that seized goods and sold goods are of appellant which is situated in the Morbi Town only. Goods were seized from their business premises only. It is not the case of the department that goods were seized nearby port, airport or any land

customs station while attempting to smuggle etc. Therefore, goods cannot be considered as imported goods at all within the meaning of Section 2(25) of the Customs Act, 1962 and in support of the above reliance is placed upon following decisions and ratio of the same is squarely applicable in the facts and circumstance of the case.

- COMMISSIONER OF CENTRAL EXCISE, SURAT-II Versus MAHADEV ENTERPRISE-2014 (301) E.L.T. 150 (Tri. Ahmd.)
- VIJAY KUMAR CHAUDHERY Versus COMMISSIONER OF CUSTOMS, PATNA - 2015 (325) E.L.T. 788 (Tri. Kolkata)

• The goods are not notified under sub-section (2) of Section 123 of the Customs Act, 1962 therefore burden to prove that goods are smuggled one lies upon the department. Department failed to prove that goods are smuggled one. Merely because they do not have any invoice or bill etc and goods are of foreign origin it cannot be presumed that same are smuggled goods. Therefore, seizure of goods from their business premises and from the town is totally illegal and liable to be lifted unconditionally. Further, in support of the above contention, they placed reliance upon following case laws:

- METAL KING Versus COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI - 2013 (292) E.L.T. 266 (Tri. Mumbai)
- OM MERCHANTS EXPORTS P. LTD. Versus COMMISSIONER OF CUSTOMS, LUCKNOW 2017 (358) E.L.T. 643 (Tri. - All.)
- COMMISSIONER OF CUS. (PREVENTIVE), MUMBAI Versus SHAILESH N.C. SHAH-2007 (218) E.L.T. 377 (Tri. Mumbai)
- COMMISSIONER OF C. EX., INDORE Versus TOKYO ELECTRONICS - 2007 (212) E.L.T. 86 (Tri. - Del.)
- VIJAY KUMAR CHAUDHARY Versus COMMISSIONER OF CUS., NEW DELHI -2006 (206) E.L.T. 307 (Tri. - Del.)
- SYED IBRAHIM Versus COMMISSIONER OF CUSTOMS, BANGALORE 2005 (191) E.L.T. 449 (Tri. - Bang.)
- A.K. HAMSA MOHIDEEN Versus COMMISSIONER OF CUSTOMS, CHENNAI 2004 (171) E.L.T. 327 (Tri. - Chennai)
- MUNIYANDI Versus COMMISSIONER OF CUSTOMS, CHENNAI (167) E.L.T. 215 (Tri. Chennai) 2004
- ASHOK PREMJI PATEL Versus COMMISSIONER OF CUSTOMS, MUMBAI - 2003 (157) E.L.T. 568 (Tri. - Mumbai)



- The goods which are already sold as per kacha chits by any standard cannot be considered of foreign origin and without any invoice in absence of any evidence to that regard.
- The learned Additional Commissioner had ignored the statements of three suppliers and not considered that the goods were purchased from open market. The statements of buyer i.e. appellant and said 3 suppliers under Section 108 of the Customs Act, 1962 are valid piece of evidence, merely in absence of invoices with the appellant it cannot take colour of smuggled goods. Therefore, facts and circumstances of the case ratio of the below referred decision is squarely applicable in the instant case.
 - ANNAYAPPA Versus COMMISSIONER OF CUSTOMS, BANGALORE - 2005 (191) E.L.T. 556 (Tri. Bang.)
- The proprietor has clearly deposed that goods were supplied by said 3 suppliers and their statements are also same except about issue of invoices. It means it has purchased all the goods on proper invoice and not in a position to co-relate with the invoices already on record. Merely by that it cannot be considered as illegally imported goods and smuggled goods.
- The investigation has considered the statements of said 3 suppliers as correct and did not put any question to proprietor about availability of invoice etc after recording their statement and simply presumed that proprietor had made admission about dealing with smuggled goods. The same is not permissible at all. Even his statement cannot be relied upon without examining him as provided under Section 138B of the Customs Act, 1962.
- The evidential value of statement recorded under Section 108 of the Customs Act, 1962 is subject to Section 138B ibid and if same is not considered on whatsoever ground such statement cannot have any evidential value at all.
- The learned Additional Commissioner has totally mis-placed the reliance upon decision in the case of Stalin Joseph Vs. Commissioner of Customs (Airport), Chennai 2021(377) ELT 13 (Mad) as in the said case grounds of cross examination were not stated in the request and even provisions of Section 138B of the Customs Act, 1962 were not brought to the notice of Hon'ble High Court which specifically provides for examination and cross examination of witnesses by the adjudicating authority if their statements are to be relied upon.
- The duty demanded on the goods already sold is arrived at as per Annexure - A to the statement of proprietor. However, it is not forthcoming from anywhere that investigation has prepared such Annexure A

and on which Kacha Chits, as no Kacha Chits were recovered during search nor same were seized by the officer under Panchnama. Only reference is made in Seizure Memo which is not part of panchnama nor signed by Panchas and the officer before who such panchnama was drawn. Apart from that such Kacha Chits are neither relied upon in the SCN nor furnished with the SCN. Therefore, Annexure -A's its authenticity is also doubtful. The learned Additional Commissioner has not given clear findings on the above submissions but considered such Kacha Chits as valid piece of evidence that too without any base.

- Without admitting anything it is further submitted that since they have already paid duty of Customs Rs. 5,50,600/- with nil interest and 15% penalty Rs. 82,590/- well before 30 days as provided under sub- section (5) of Section 28 of the Customs Act, 1962, then the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be conclusive as to the matters stated therein as provided under sub-section (6) of Section 28 of the Customs Act, 1962.
- Without admitting anything, it is further submitted that interest under Section 28AA can be charged from the person liable to pay duty from the first day of the month succeeding the month in which the duty ought to have been paid, up to the date of payment of such duty. In the instant case date of duty ought to have been paid is not available it is not possible to compute the interest. Even department will also not be able to compute the interest and it is the responsibility of the department to compute the interest and communicate to the importer or the person chargeable with duty. Therefore, in the present case interest is not paid and if according to department same is payable department may compute and communicate the same to it and as per settled position of law time limit of 30 days as provided under Section 28 of the Customs Act, 1962 starts from such date of communication only.
- Thus, in view of the above, the proceeding in respect of Appellant is deemed to be conclusive for the matters stated in impugned show cause notice at least for the duty demanded and paid on seized goods. In other words, seized goods cannot be confiscated nor fine can be imposed in lieu of confiscation nor same can be held liable to confiscation nor any further penalty can be imposed under Section 112 and/or Section 114A of the Customs Act, 1962. Appellant in support of the above, placed reliance upon the decision in case of ORBIT JEWELLERS Versus COMMR. OF CUS., AIR CARGO (EXPORTS), NEW DELHI - 2016 (338) E.L.T. 620 (Tri. - Del.).
- As per Section 28(5) ibid even if part of the duty accepted and paid then the department was bound to issue SCN for balance amount only. Since,



they had discharged entire duty on seized goods with 15% penalty (as no interest was payable as discussed in para above) no notice was required to be issued for demanding duty, interest and penalty and even proposal for confiscation of seized goods. The learned Additional Commissioner failed to follow the clear dictum of the said provisions and judicial discipline too.

- Since, proceedings under Section 28(6)(i) ibid is concluded as to the matters stated in the SCN for at least seized goods therefore, no fine is imposable in lieu of confiscation of goods under Section 125(1) of the Customs Act, 1962. In view of the above, entire demand may be set aside and seized goods may be released unconditionally. Alternatively, matter may be concluded for the seized goods and seized goods may not be confiscated and no fine may be imposed in lieu of confiscation of seized goods.
- Further, since no duty is payable by them on seized goods as well as goods sold under Section 28 of the Customs Act, 1962, no penalty under Section 114A of the Customs Act, 1962 is imposable upon them.
- Without admitting anything further submitted that valuation arrived at by taking Market Value of the goods by making reverse calculation so as to arrive at assessable value are also alien to Section 14 of the Customs Act, 1962 and Rules made thereunder. Impugned SCN as well as letter dated 30.05.2023 is silent on how Market Value of Seized goods and goods already sold are arrived at and what basis. How same can be adopted? Valuation of any goods under the Customs Act, 1962 is to be as per Section 14 read with Customs Valuation Rules, 2007 only and not by any other method other than prescribed under the Act and Rules. The learned Additional Commissioner has passed cryptic findings on this and failed to follow the provisions of Section 14 of the Customs Act, 1962.
- The learned Additional Commissioner has failed to understand the issue before him and follow the clear dictum of the Customs Act, 1962 especially above referred provisions. He has simply tried to distinguish the decision cited by the appellant on one or other ground without appreciating the facts and circumstance of the impugned matter. He has erred in relying upon decision on clandestine removal under the Central Excise Act, 1944, ratio of such decisions by any means cannot be applied in the facts and circumstances of the case.
- The seized goods and sold goods are not prohibited goods not notified under Section 11 of the Customs Act, 1962, therefore same cannot be confiscated or held liable to confiscation under Section 111(d) of the Customs Act, 1962.



- The seized goods are not liable to confiscation under Section 111(j) of the Customs Act, 1962 as it is not the case of the department that goods are brought from a place outside India nor it had imported or attempted to be imported goods or brought within the Indian Customs waters for the purpose of being imported are seized in the customs area, therefore, seized goods cannot be confiscated under said clause (j) nor sold goods can be held liable for confiscation under the said clause (j).
- The seized goods are not liable to confiscation under Section 111(l) of the Customs Act, 1962 as it is not the case of the department that dutiable goods are not included or are in excess of those included in the entry made under this Act means in the bills of entry, therefore, seized goods cannot be confiscated under said clause (l) nor sold goods can be held liable for confiscation under the said clause (l).
- The learned Additional Commissioner has erred in holding the goods liable to confiscation under Section 111(l) without appreciating the provisions of the said section as appellant is not importer and not required to file bills of entry.

4. Personal hearing in the matter was held on 29.05.2025 which was attended by Shri P. D. Rachchh, Advocate on behalf of the appellant. During the personal hearing, he reiterated the submission made in appeal memorandum and submitted a synopsis and compilation of case laws and requested to allow the appeal.

5. I have carefully considered the submissions made by the appellant along with relevant case laws, relied upon documents, additional submission and the impugned order. The main issues to be determined in the present matter are:

- a) Whether the impugned order confiscating the Mobile Phones and accessories of Apple brand having foreign origin seized from the premises of the appellant under Section 111 (l) of the Customs Act, 1962 and allowing its redemption on payment of redemption fine in lieu of confiscation of goods under Section 125(1) of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.
- b) Whether the impugned order confiscating the Mobile Phones and accessories of Apple brand already sold by the appellant as per kaccha chits under Section 111 (l) of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.
- c) Whether the impugned order confirming the demand of duty under Section 28 (4) of the Customs Act, 1962 on the Mobile Phones, Apple watches and accessories of Apple brand having foreign origin seized from



the premises of the appellant and those already sold by the appellant as per kacha chits, along with interest under Section 28 AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

d) Whether the impugned order imposing penalty on the appellant under Section 114A of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant is engaged in trading of Mobile Phones and Accessories and is registered as proprietorship firm of Shri Darshan Ghanshyambhai Pujara. A search was carried out on 12.01.2022 at the retail / office premises of the appellant by the officers of Customs, Preventive, Jamnagar. The search proceedings were recorded under Panchnama dated 12.01.2022 and the mobile phones, accessories & watches of Apple Brand of Foreign Origin were found at the premises of the appellant. Since, the appellant was unable to produce the bills in respect of the mobile phones, accessories & watches of Apple brand which were of foreign origin and without any invoice or valid import documents, the same were seized under the provisions of Section 110 of the Customs Act, 1962 vide Seizure Memo dated 12.01.2022, under the reasonable belief that the mobile phones, accessories & watches of Apple Brand of Foreign Origin were liable to confiscation under the provisions of the Customs Act, 1962 and the incriminating documents were also seized for further investigation. Further, it is also observed that some kacha chits were also seized vide Seizure Memo dated 12.01.2022.

5.2 Statement of Shri Darshan Ghanshyambhai Pujara was recorded on 12.01.2022 wherein he, inter-alia, stated that he mainly purchased smuggled mobile phones and accessories from different suppliers viz. (1) M/s. Navrang Mobile, Rajkot concerned person Bablubhai, (2) M/s. Mehul Telecom, Wankaner concerned person Mehulbhai and (3) Shri Bharatbhai, Jamnagar without invoices and any other import documents. The appellant vide TR-6 Challan No. F-07/22-23, dated 21.04.2022 paid Customs Duty & Penalty amounting to Rs.6,33,191/- in respect of the seized Mobile phones & accessories. Thereafter, the seized goods were provisionally released on his request by the competent authority on execution of Bond for full value and Bank Guarantee of Rs.2,50,000/-.

5.3 Statement of Shri Ramesh P. Mulchandani alias Bablubhai, Partner of M/s Navrang Mobile, Rajkot was recorded on 25.07.2022 under Section 108 of the Act, 1962, wherein, he, inter-alia stated that he had sold some mobile phones to Shri Darshanbhai of M/s Cellular World, Morbi on proper invoices

and submitted copies of the same. He further stated that he had not sold any smuggled phones to him. Statement of Shri Bharatkumar Udhavdas Aaswani, Proprietor of M/s Mehul Telecom, Jamnagar was recorded on 12.08.2022 under Section 108 of the Act, 1962, wherein, he, inter-alia, stated that he had sold some mobile phones to Shri Darshanbhai of M/s Cellular World, Morbi but he had not sold any smuggled phones or accessories to him. Statement of Shri Raymagiya Mehul, Proprietor of M/s Mehul Telecom, Wankaner was recorded on 16.03.2022 under Section 108 of the Customs Act, 1962, wherein, he, inter-alia, stated that he had provided mobile phones and accessories to M/s Cellular World under proper bill/invoices and they had credited sale amount in his bank accounts and further stated that he had never provided any smuggled mobile phones and accessories to M/s Cellular World. He submitted copies of bills / invoices which were raised in the name of M/s Cellular World, Morbi.

5.4 In respect of the first issue i.e., confiscation of seized Mobile Phones, Apple Watches, and Apple-branded accessories under Section 111(l) of the Customs Act, 1962, and redemption fine under Section 125(1) of the Customs Act, 1962, in lieu of confiscation, it is essential to determine whether the goods seized from the premises of the appellant can be considered as smuggled goods. This determination is crucial for the applicability of Section 111(l) and the question of liability for redemption fine under Section 125(1).

5.5 I have carefully gone through the Panchnama dated 12.01.2022, the Seizure Memo dated 12.01.2022, and the statement of Shri Darshan Ghanshyambhai Pujara, proprietor of M/s Cellular World. It is observed that during the course of the Panchnama, Shri Darshan Ghanshyambhai Pujara stated that he had purchased the seized goods from three different sellers, specifically naming those sellers. However, the sellers, in their statements, never admitted to having sold smuggled goods to Shri Darshan Ghanshyambhai Pujara. Moreover, the sellers provided copies of invoices raised in respect of the mobile phones and accessories supplied to the appellant. The goods were seized under the Seizure Memo dated 12.01.2022, based on a reasonable belief that they were liable for confiscation under the Customs Act, 1962, primarily due the fact that the appellant could not produce any invoices or valid import documents for the goods, which were of foreign origin.

5.6 The adjudicating authority, at Para 22 of the impugned order, concluded that the department had discharged its initial burden of proving that the appellant had procured the goods through smuggling. This conclusion was based on the fact that the appellant was not having any invoices or valid

import documents for the goods, and the appellant had not retracted his admission and confession made in his statement. The adjudicating authority considered the appellant's statement to be legally significant in proving that the goods were procured through smuggling. In support of this, reliance was placed on the decision of the Hon'ble Madras High Court in the case of Stalin Joseph v. Commissioner of Customs (Airport), Chennai (2021 (337) E.L.T. 13 (Mad.)), wherein it was held that when statement is not retracted the same is binding as per law, and subsequently rejected the appellant's contention that he was not the importer, solely on the basis of the aforementioned findings.

5.7 The appellant contended that they had purchased the seized goods—namely, Mobile Phones, Accessories, and Watches of the Apple brand—from three suppliers who have confirmed that the goods were supplied to the appellant on proper invoice, and they have asserted that these goods are not smuggled. The appellant argues that just because invoices or import documents are unavailable, it cannot be conclusively presumed that the goods are smuggled, especially when the suppliers have acknowledged the supply of these goods. The appellant further asserts that since the goods are not notified under Section 123 of the Customs Act, 1962, the burden of proving that the goods are smuggled lies upon the department. The investigation failed to establish the identity of the importer, nor did it trace the port, airport, or customs station from where the goods were allegedly smuggled, if they were indeed smuggled. The appellant emphasizes that merely because the goods are of foreign origin and invoices are not available, the officer cannot presume that the goods are smuggled under the Customs Act, 1962. Further, the department does not contend that the appellant is the importer of the goods. The appellant further argues that neither the seized goods nor the goods already sold can be considered as "imported goods" because goods cleared for home consumption are no longer regarded as imported goods. The goods in question were seized from the appellant's business premises in Morbi Town, and it is not the department's case that the goods were seized from a port, airport, or any customs station while attempting to smuggle them. The appellant has relied upon some case laws as detailed in para 3 above.

5.8 The appellant also contended that since the goods are not notified under Section 123(2) of the Customs Act, 1962, the burden to prove that the goods are smuggled lies with the department. They argue that mere absence of invoices or bills, and the foreign origin of the goods, does not empower the department to presume that the goods are smuggled. Therefore, the seizure of the goods from the appellant's business premises and from within Morbi Town is considered to be illegal, and the appellant seeks the unconditional lifting of



the seizure. The appellant has relied upon some case laws as detailed in para 3 above.

5.9 The appellant's primary argument is that the seizure cannot be justified merely on the basis that the goods are of foreign origin or that invoices are missing. The department has not proven that the goods were smuggled or that the appellant is the importer. Consequently, the appellant contends that the seized goods should not be considered smuggled and that the seizure should be lifted. The appellant has relied upon some case laws as detailed in para 3 above.

5.10 I have carefully gone through the statement of Shri Darshan Ghanshyambhai Pujara and it appears that the Investigating Officer has failed to make a reasonable effort to establish that the seized goods are indeed smuggled. Instead, the Investigating Officer prematurely concluded that the appellant was involved in the trade of smuggled goods, as evident by the question posed to the appellant: "For how long have you been dealing in smuggled mobiles and accessories?". In my considered view, it is essential that the Investigating Officer first establish the smuggled nature of the goods before concluding the appellant's involvement in smuggling activities, especially when the goods were seized from the appellant's premises, and not from any Customs-controlled area. Mere absence of invoices or other import documents is insufficient to conclusively prove that the goods are smuggled. Further, the adjudicating authority wrongly treated the appellant's statement as a critical piece of evidence, despite the fact that the appellant's statement directly contradicted the statements of the sellers. The sellers asserted that they had supplied the goods to the appellant with proper invoices and had never engaged in dealing with smuggled goods. Under these circumstances, the appellant's statement, not corroborated with the statement of seller's, cannot form the basis that the goods are smuggled.

5.11 It is observed that the adjudicating authority relied upon the decision of the Madras High Court in Stalin Joseph v. Commissioner of Customs (Airport), Chennai (reported at 2021 (337) E.L.T. 13 (Mad.)) wherein it was held that when statement is not retracted the same is binding as per law. However, it is observed that this decision is not applicable to the facts and circumstances of the present case. If the appellant's statement were to be accepted as true and relied upon, it would render the suppliers' statements false or contradictory, thus making them irrelevant. Therefore, in either scenario, the allegations set forth in the show cause notice cannot stand. It is also observed that no further statement from the appellant was recorded after the three sellers explicitly

denied having sold any smuggled goods. Further, there is no indication in the investigation records that the invoices provided by these three sellers were cross-verified against the goods seized from the appellant's premises or the goods previously sold by the appellant. The adjudicating authority also erred in concluding that the department had fulfilled its initial burden of proof to establish that the appellant procured the goods through smuggling. This is particularly significant as the show cause notice does not allege that the appellant procured the goods through smuggling or that the appellant imported the goods into India without paying the applicable customs duties. Instead, the show cause notice merely alleges that the appellant procured smuggled goods based on his own statement and his failure to produce invoices for the seized goods, which were of foreign origin. It is important to emphasize that the mere unavailability of invoices is insufficient evidence to establish that goods of foreign origin, which can be freely imported under a general license, are smuggled goods. It is also observed that no investigation was conducted in respect of the buyers of the said goods. Thus, the appellant's confessional statement, not corroborated by the statement of seller, cannot be considered for holding that the goods are smuggled, as previously discussed. Consequently, the findings of the adjudicating authority regarding the smuggled nature of the goods are not substantiated and are, therefore, unjustifiable.

5.12 Further, I have perused Para 26 of the impugned order, wherein the adjudicating authority has provided explanations regarding the non-applicability of the case laws cited by the appellant. The appellant had cited certain case laws to support their contention that the goods in question were not notified under sub-section (2) of Section 123 of the Customs Act, 1962, thereby placing the burden of proving that the goods were smuggled on the department. Upon careful consideration, it is observed that the findings of the adjudicating authority in Para 26 are neither proper nor justifiable. I have gone through the case laws relied upon by the appellant, and the common facts of these cases were that the seizure of the goods was a town seizure, the goods were not notified under Section 123 of the Customs Act, 1962, and the smuggled nature of the goods was not proven by the department. The facts of the present case bear a striking similarity to those in the case laws cited by the appellant.

5.13 In view of the above, in my considered view, the department has failed to establish that the goods in question are smuggled goods. Therefore, it is not justifiable to classify these goods as smuggled goods.

5.14 With regard to the confiscation of goods under Section 111(l) of the Customs Act, 1962, it is observed that Section 111(l) provides for the confiscation of any dutiable or prohibited goods that are either not included or are in excess of those included in the entry made under the Customs Act, 1962, or, in the case of baggage, in the declaration made under Section 77 of the Customs Act, 1962.

5.15 Further, at Para 34 of the impugned order, the adjudicating authority had held the goods liable for confiscation under Section 111(l) of the Customs Act, 1962, on the basis that the appellant had imported the seized goods and those previously sold by way of smuggling, without making the requisite entry under the Customs Act, 1962, or paying the applicable duties.

5.16 Further, the act of smuggling has not been proved by the department, nor is it alleged in the show cause notice that the appellant imported the goods by way of smuggling. As discussed in the preceding paragraphs, the goods cannot be considered as smuggled. Therefore, the confiscation of goods under these circumstances is not sustainable. Furthermore, for confiscation to be valid under Section 111(l) of the Customs Act, 1962, there must be a bill of entry filed by the importer, or in the case of baggage, a declaration made under Section 77 of the Customs Act, 1962. In the present case, neither of these conditions has been fulfilled. Consequently, the confiscation of goods by the adjudicating authority is not legally justified under the facts and circumstances of this case, nor in accordance with the provisions of Section 111(l) of the Customs Act, 1962. In view of the above, I hereby set aside the confiscation of goods under Section 111(l) of the Customs Act, 1962 and consequently, no redemption fine is imposable under Section 125(1) of the Customs Act, 1962.

5.17 With regard to the liability to pay duty under Section 28(4) of the Customs Act, 1962, on the Mobile Phones, Apple Watches, and Apple-branded accessories of foreign origin seized from the appellant's premises, and those already sold by the appellant as per kacha chits, the appellant contended that Customs duty can only be levied on goods that have been imported, as outlined in Section 12 of the Customs Act, 1962. The appellant further asserts that Customs duty is chargeable from the importer, who is required to make an entry of the goods under Section 46 of the Customs Act, 1962. The appellant states that he purchased the goods from the three suppliers who have asserted the supply of goods to him and, therefore, cannot be considered the importer of the goods. Moreover, it is not the department's case that the appellant is the importer of the goods. The appellant also argues that neither the seized goods nor those already sold can be considered as imported goods, as goods cleared

for home consumption are no longer imported goods. The appellant further contests the valuation provided by the department, asserting that the valuation does not comply with Section 14 of the Customs Act, 1962 and the Valuation Rules, 2007.

5.18 The adjudicating authority at Para 26 of the impugned order, held that the appellant did not contest ownership or possession of the impugned goods, and that the sale of goods by the appellant had been established on record. The adjudicating authority concluded that illicit importation and clearance for home consumption, without filing the necessary Bill of Entry and without paying the applicable customs duties, had been proven, and therefore the duty was correctly demanded under Section 28 of the Customs Act, 1962 for both the seized goods and those already sold. Further, at Para 32, the adjudicating authority held that the goods in question were cleared through smuggling and not by filing a Bill of Entry under Section 46 of the Customs Act, 1962. Therefore, the valuation was based on the sale price of identical or similar imported goods in India, with the Customs duty element deducted, due to the unique circumstances of the case.

5.19 In view of above I am not in agreement with the findings of the adjudicating authority since the smuggled nature of the goods and the act of smuggling by the appellant has not been established, as discussed earlier. Further, I do not accept the justification provided by the adjudicating authority regarding the valuation of the goods. The market price of imported goods generally includes Customs duty, the seller's profit margin, and other expenses, making it impossible to accurately determine the assessable value by reverse-calculating the Customs duty component. I find that, in accordance with the provisions of the Customs Act, 1962, the valuation of goods should only be determined in compliance with Section 14 of the Customs Act, 1962 and the Valuation Rules, 2017. The adjudicating authority has made a material error in accepting the valuation provided by the department, and this cannot be sustained.

5.20 Further, it is observed that the appellant's reliance on the decision in *Commissioner of Central Excise, Surat-II v. Mahadev Enterprise (2014 (301) E.L.T. 150 (Tri- Ahmd))* is directly applicable to the present case. The relevant portion of the judgment, reproduced below, highlights the following:

"From the above definition of 'importer', it is evident that in relation to any goods, only between their importation and the time when they are cleared for home consumption, includes any owner or any

person holding himself out to be the importer. So, the word 'importer' has to be read in the context of the time between their importation and till they are cleared for home consumption, which is the time when the imported goods are in the Customs area. Accordingly, it is held that Customs duty cannot be demanded in town seizures in addition to the redemption fine from the person from whose possession the smuggled goods are seized, because the value/price of the seized/confiscated goods is deemed to include the duty element levied/leviable with respect to such goods, and the officer adjudicating the case has considered the same while imposing the redemption fine."

This decision was relied in the case of Vijay Kumar Chaudhery v. Commissioner of Customs, Patna (2015 (325) E.L.T. 788 (Tri Kolkata)).

5.21 In view of the above, and following the decision of Hon'ble Tribunal Ahmedabad and Kolkata, I am of the considered view that demand for Customs duty from the appellant does not survive in the facts and circumstances of this case. Accordingly, the demand for duty under Section 28(4) and consequently, interest under Section 28AA of the Customs Act, 1962, is hereby set aside.

5.22 Further, since the confiscation of goods and the demand for duty have already been set aside in the preceding paragraphs, the penalty imposed under Section 114A of the Customs Act, 1962, cannot be sustained. Consequently, the penalty under Section 114A is also hereby set aside.

6. In view of above, the appeal filed by the appellant is allowed with consequential reliefs, if any.



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

Dated -30.06.2025

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