



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 रोड़ Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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 DIN – 20251271MN000000D602

क	फ़ाइल संख्या FILE NO.	S/49-54/CUS/AHD/24-25
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) :	AHD-CUSTM-000-APP-497-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.12.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No.: 38/JC/SM/O&A/2020-21 dt. 09.09.2020 passed by the Joint Commissioner, Customs, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Kalpit Sharma, 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382 305.



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)	बैगज 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.



4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी 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 हैं, 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

Shri Kalpit Sharma, resident of 11, Shreenath Bungalows, Ahmedabad Road, Dehgam-382 305, Gujarat (hereinafter referred to as 'the Appellant') has filed the present appeal challenging the Order-In-Original No.: 38/JC/SM/O&A/2020-21 dated 09.09.2020 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Customs, Custom House, Ahmedabad (hereinafter referred to as 'the Adjudicating Authority').

2. Facts of the case, in brief, are that on the basis of specific information that one export parcel containing large number of high end watches of foreign brands consigned to one Shri Kalpit Sharma with its destination to Congo, the Democratic Republic, was lying at the premises of M/s. Star Door - 2 - Door Courier Service (hereinafter referred to as 'Star'), the officers of Directorate General of Revenue intelligence (hereinafter referred to as 'DRI') had carried out search at the premises of Star under Panchnama dated 20.09.2018 in presence of Shri Ranjan Surendra Prasad Kumar, authorized signatory of Star and Shri Harsh Sharma, the person who had booked the consignment. During the search, 21 parcels (packages) of cargo were found, stacked outside the premises and meant for shipment of Kinshasa, Congo. On inquiry, Shri Ranjan Surendra Prasad Kumar informed that Shri Harsh Sharma, residing at Plot No. 747/1, Near Police Station, Sector 7B, Gandhinagar-382 007, had booked the said consignment for shipment to his cousin brother Shri Kalpit Bharatbhai Sharma, Masengo Nzolameso, RD Cargo, Kinshasa (i.e. the appellant) and had submitted copies of documents serially numbered from Page No. 1 to 15 related to the said consignment of 21 packages and also submitted copy of receipt of booking. On further inquiry, Shri Harsh Sharma had informed that the said consignment was handed over to him by his cousin brother Shri Kalpit Sharma (i.e. the appellant) with instruction to export the same to him when he informs to do so. Examination of the consignment (21 packages) was carried out and it was found that the consignment contained watches of foreign brand such as Rado, Edifice, Tissot, Diesel etc. and other goods like shoes, garments etc. inventory of goods contained in the packages were made separately for other than watches and watches of foreign brand as Annexure - A and Annexure - B to panchnama respectively. Shri Harsh Sharma had expressed his inability to produce import documents in respect of the said watches. He had further informed that he handed over the goods in the same packed condition, as handed over to him by his cousin brother Shri Kalpit sharma. On the basis of reasonable belief that the watches of foreign brands were illicitly smuggled into India and that the other goods, viz. garments, shoes, etc., were used to camouflage and conceal the smuggled foreign-brand watches, the consignments as detailed in Annexure-A (goods other than branded watches) and Annexure-B (branded watches) were detained



under a detention memo dated 20.09.2018. The possession of the consignments of foreign-brand watches, as detailed in Annexure-B, was taken over by the DRI for further investigation. The consignments of goods other than branded watches, as detailed in Annexure-A, were handed over to Shri Ranjan Kumar, Authorized Signatory of STAR, for safe custody under Supratnama dated 20.09.2018.2.1

2.1 In follow up inquiry, searches / visits were carried out. Search was carried out and Panchnama dated 24.09.2018 drawn at Residence of Shri Harsh Sharma, Plot No. 747/1, Near Police Station, Sector 7B. Gandhinagar-382007 (person who has booked and delivered the 21 packages at STAR for shipment to his cousin brother Shri Kalpit Bharatbhai Sharma (i.e. the appellant), Masengo Nzolameso, RD Congo, Kinshasa). Another search carried out and Panchnama dated 24.09.2018 drawn at Residence of Shri Kalpit Sharma (i.e. the appellant), 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305 (person who has given the 21 packages to his cousin brother Shri Harsh Sharma with instruction to export the same to him at Kinshasa Congo when he informs him to do so).

2.2 Further, during the course of investigations, examination of the watches was carried out in presence of the Technical persons, representatives from various retailers and dealers of foreign brand watches in India, wherein, they opined that either watches were counterfeit and not exact copy of original watches or of unidentifiable brand or they were not dealing with those brands. Further, the brand owners of the famous foreign brands were informed and requested to examine these watches bearing their brand name for genuineness. All the representatives of the brand owners, who participated in the investigation, after examination of the watches informed that the watches are counterfeit. Other brand owners did not participate in the investigation on various grounds mainly, the quantity was less.

2.3 Shri Kalpit sharma (i.e. the appellant) never participated in the investigation even after summons were issued to him. During the course of investigation, statements of Shri Ranjan Surendra Kumar, authorized signatory of star and Shri Harsh Sharma were recorded under Section 108 of the Customs Act, '1962.

2.3.1 Shri Ranjan Surendra Kumar, authorized signatory of Star' in his statement recorded under Section 108 of the Customs Act, 1962 on 29.11.2018, inter alia, stated that Shri Harsh Sharma was a walk in customer and contacted their Customers Sales Manager for sending certain goods as unaccompanied baggage in the name of his brother Shri Kalpit Sharma who was in Congo; that the Customs Sales Manager forwarded the phone number of Shri Harsh Sharma to him and he contacted Shri Harsh Sharma and enquired about the goods to be forwarded to Congo; That Shri Harsh Sharma informed him that the contents of baggage are clothes and garments, few watches of low

price, shoes etc. and the total weight of the goods would be approx 300/400 Kgs. and the goods were to be forwarded as unaccompanied baggage to his brother Shri Kalpit Sharma and inquired about the charges for forwarding the same; that Shri Harsh Sharma informed him that he needed only port to port delivery of the goods and the rate was quoted on port to port basis and after negotiation / bargaining the rates were settled at Rs. 370/- per Kg.; that he informed Shri Harsh Sharma to submit copies of documents such as Air ticket, Passport copy and Visa copy of Shri Kalpit Sharma evidencing his departure from India and KYC documents of Shri Harsh Sharma in original; that Shri Harsh Sharma visited their office on 13.09.2018 and produced his self-attested driving license and Aadhar Card along with copies of e-tickets, passport, visa copy, invoice for procurement of goods, packing list etc.; that as the KYC of the shipper was clear, he sent the above documents on 17.09.2018 to the personnel of M/s. Express Handling Worldwide (authorized IATA Agent) for verification of the documents, acceptance of the goods and forwarding to the CHA to complete the Customs procedure for export from port to port; that on 17.09.2018 Shri Harsh Sharma visited their office with 21 consignment of goods packed in HDPE sacks as well as in carton boxes; that the personnel in their office checked the weight of the 21 consignments and made a note of the same in a piece of paper in presence of Shri Harsh Sharma which was about 683 Kgs.; that their office personnel calculated the volume weight on the basis of actual weight and volume size which resulted in 790 Kgs.; on the basis of volume weight of 790 Kgs Shri Harsh Sharma made the payment at the rate of Rs. 370/- Per Kg. for forwarding the above goods to Congo on 100% advance basis and they had issued necessary receipt for having received the amount; amount was paid by Shri Harsh Sharma in cash stating that he did not have any account to issue necessary cheque or transfer the amount under RTGS / NEFT / Card Payment etc.: that they received the documents back from M/s. Express Handling worldwide (IATA agent) in the evening of 17.09.2018 stating that the documents were not proper and requested to obtain GST invoice and also stated that the air ticket produced was beyond the time limit of three months prescribed under the rules for forwarding the goods as unaccompanied baggage; that he informed Shri Harsh Sharma as informed by agent and Shri Harsh Sharma informed that he will furnish the documents as required; that on being shown the invoice issued by Last Option in respect of goods delivered by Shri Harsh Sharma, he stated that there is no mention of the address GST No. etc. on the invoice and the description of the goods such as Brand name / model No. of the goods and is only giving very vague and general description of the goods as Ladies watches, Men Watches, Goggles and frame, jeans etc.; that the name of the consignee on the invoice is also not Shri Kalpit Sharma as claimed by Shri Harsh Sharma while delivering the goods to them.



2.3.2 Statement of Shri Harsh Sharma was recorded on 20.02.2019 wherein he, inter-alia, stated that Shri Kalpit Sharma (i.e. the appellant) S/o Shri Bharatbahi Sharma is his cousin brother, and his residence address in India is at 11, Shreenath Bunglows, Ahmedabad Road, Dehgam; that Shri Kalpit Sharma is residing at Kinshasa, Congo and visited India in January, 2018 and went back on 17.03.2018; that Shri Kalpit Sharma, before leaving India, gave him goods packed in 21 packages and informed him to export the same when he informs him to do so; that he received message from Shri Kalpit Sharma to send the 21 packages given to him and accordingly he contacted M/s. Star Door - 2 - Door (M) for sending unaccompanied baggage to shri Kalpit sharma at Kinshasa, congo and submitted copies of invoice No. 0071-52 dated 08.09.2018 of Last Option, packing list showing description of goods as Watches, Goggles, Frames, Gents wear T-Shirts, Jeans, Shoes, Ladies purse, Ladies wear etc., Air ticket, Passport copy and visa copy given by Shri Kalpit Sharma evidencing his departure from India and his KYA documents such as Aadhar card, Driving Licence to M/s. Star Door - 2 - Door (M); that M/s. Star Door - 2 - Door (M) agreed to send the 21 packages as unaccompanied baggage to shri Kalpit sharma at Kinshasa congo and he made the payment of Rs. 2,92,300/- towards booking amount for sending the 21 packages; that the 21 packages given by him for sending to Shri Kalpit Sharma at Kinshasa congo are the same which have been detained under panchnama dated 20.09.2018 and these packages were delivered by him in the premises of M/s. Star Door 2 Door (M) in the same packed condition as was handed over to him by shri Kalpit Sharma; that Shri Kalpit Sharma never contacted him after knowing that DRI has booked a case in regard to the above mentioned goods on 20.09.2018; that he tried to contact him many times on his contact No. 00243817118534 but was not able to contact him as his mobile number is unreachable / not working since then; that he doesn't have any other contact number of Shri Kalpit Sharma or his residence address of Kinshasa congo where at present he is staying; that he doesn't have his e-mail address and he is by no means contactable by him.

2.4 The consignment of 21 packages containing watches of foreign brand as per Annexure-B to Panchnama dated 20.09.2018 and other goods as detailed in Annexure - A to Panchnama dated 20.09.2018 were placed under seizure under seizure Memo dated 20.02.219, considering the watches as 'prohibited goods, smuggled into India in violation of the various provisions of the Customs Act, 1962, Rules, Regulations and in violation of the Intellectual property Rights (imported Goods) Enforcement Rules, 2007 and other goods used to camouflage / conceal the smuggled watches.

2.5 After investigation, the DRI had issued Show Cause Notice F.No.: 38/JC/SM/O&A/2020-21 dated 05.03.2019 proposing:

- (i) confiscation of the goods i.e. Foreign Brand Watches seized under Seizure Memo dated 20.02.2019 as mentioned in Annexure-A to the SCN having value of Rs. 73,23,104/- which were smuggled into India and attempted to be exported out of India under Section 111(d), 111(f) & 111(j) and Section 113(d) of the Customs Act, 1962,
- (ii) confiscation of the goods i.e. other than watches seized under Seizure Memo dated 20.02.2019 as mentioned in Annexure-B to the SCN having value of Rs. 37,60,877/- which were used to camouflage / conceal the foreign brand watches and attempted to be exported out of India, under Section 119 and Section 113(d) of the Customs Act, 1962,
- (iii) imposition of penalty on Shri Kalpit Sharma under Section 112(a), Section 112(b), Section 114(i) and Section 117 of the Customs Act, 1962,
- (iv) imposition of penalty on Shri Harsh Sharma under Section 112(b) and Section 114(i) of the Customs Act, 1962,
- (v) imposition of penalty on Shri Ranjan Kumar, authorized signatory of M/s Star Door 2 Door(M) under Section 114(i) of the Customs Act, 1962.

2.6 Shri Kalpit Sharma (i.e. the appellant) and Harsh Sharma have neither filed any defence reply nor appeared for personal hearings before the adjudicating authority. Shri Ranjan Surendra Prasad Kumar, had filed his defence reply and appeared for personal hearing.

2.7 The Adjudicating Authority after considering the evidences, submissions on record and statements recorded, passed the impugned order as under:

- (i) absolute confiscation of the goods i.e. Foreign Brand Watches seized under Seizure Memo dated 20.02.2019 having value of Rs. 73,23,104/- smuggled into India and attempted to be exported out of India under Section 111(d), 111(f) & 111(j) and Section 113(d) of the Customs Act, 1962,
- (ii) absolute confiscation of the goods i.e. other than watches seized under Seizure Memo dated 20.02.2019, having value of Rs. 37,60,877/- which were used to camouflage / conceal the foreign brand watches and attempted to be exported out of India, under Section 119 and Section 113(d) of the Customs Act, 1962,
- (iii) Imposed penalties on Shri Kalpit Sharma of Rs. 5,00,000/- under Section 112(a), Section 112(b) under sub clause 112(i), Rs. 5,00,000/- under Section 114(i) and Rs. 1,00,000/- under Section 117 of the Customs Act, 1962.



(iv) Imposed penalties on Shri Harsh Sharma of Rs 2,00,000/- under Section 112(b) under sub clause 112(i), and Rs. 2,00,000/- under Section 114(i) of the Customs Act, 1962.

(v) imposed penalty of Rs. 1,00,000/- on Shri Ranjan Kumar, authorized signatory of M/s Star Door 2 Door(M) under Section 114(i) of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant i.e. Shri Kalpit Sharma have filed the present appeal on 09.05.2024. Shri Rahul Gajera, Advocate, Ahmedabad has been appointed to present appellant's case before the Commissioner(A), Customs, Ahmedabad. The appellant, in his appeal memorandum dated 01.05.2024, received on 09.05.2024, raised below mentioned points / submission in this regard:

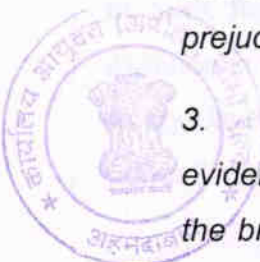
"Grounds of Appeal :

1. *The Order dated 9-9-2020 of learned Joint Commissioner by which he has ordered absolute confiscation of goods viz watches, apparels, shoes etc and further imposed penalties under section 112 (a), 112 (b), 112 (1) & 114 (1) & 117 of the customs act is not legal and proper and is liable to be set aside*

2. *At the outset, Show Cause Notice and Relied upon documents, report of chartered engineer & Government approved values Mr. Bhasker G Bhatt have not been furnished to the appellant, and hence, appellant reserve his right to make further submissions after having furnished the same to the appellant. Without prejudice to the aforesaid, the following submissions are being urged.*

3. *Learned Joint Commissioner erred by concluding without any prima facie evidence, that the watches of foreign brand were smuggled into India because of the brand name tagged on the watches. He erred in not appreciating that foreign markings/brands are not sufficient to infer the foreign origin nature of goods. In this behalf, appellant rely upon the Hon'ble Bombay High Court judgement in the case of State of Maharashtra v. Prithviraj Pokhraj Jain in which it has been held that foreign markings are not sufficient to establish the foreign origin of the goods and that such markings do not speak for themselves and are in the nature of hearsay evidence. It is held in the said judgement that no presumption about the foreign origin of goods arises from the foreign markings unless there is evidence to show that the same were put by the particular foreign company in ordinary course of business"*

4. *It is submitted that there is no evidence in the present case that the seized watches bearing the marks of foreign brands had indeed been put up by the foreign*



[Handwritten signature]

companies whose markings they purport to be and that therefore as laid down in the aforesaid judgement of the High Court no presumption of the foreign origin of the goods can arise from such markings.

5. On the contrary, as per the impugned order itself inspection/verification done on various dates under Panchnamas by the respective right holders of the brands (brand owners) whose brands were tagged/attached in the seized goods, have submitted their verification reports and confirmed that the smuggled watches bearing their brand names are not original but counterfeit.

6. Without prejudice to the aforesaid, and in any event, the valuation of watches is entirely incorrect, as it is undisputed fact that the watches were counterfeits of low value. Learned Joint Commissioner seriously erred in not appreciating that as stated by Mr. Harsh Sharma before whose statement has been relied upon in the show cause notice, the value of the goods is about 8-9 lacs and as panchnama carried out at the premises of various retailers/owners of the said brands, undisputed fact is that the watches were counterfeit; of low value. In that view reliance placed on the report of chartered engineer and government approved valuer Mr. Bhasker G Bhatt is misplaced. It is submitted that appellant has neither been furnished copy of said report nor appellant has been afforded opportunity to cross-examine him, in absence of which reliance placed upon the said report which is on the face of the records is inconsistent with the various material relied upon during investigation and relied upon in the SCN as pointed out supra.

7. It is further submitted that heavy reliance has been placed in the impugned order on the foreign marking on the goods purchased without bills to shift onus on the appellant to prove that the seized good is not smuggled goods which is contrary to the below mentioned decisions, wherein it is held that mere foreign markings or absence of purchase details is not enough to form reasonable belief under Section 123 of the Customs Act.

1) CC v. India Sales International 2009 (241) ELT 182

11) Yakub Ibrahim Yusuf v. CC-2011 (263) ELT 685

iii) Gauri Enterprises v. CC-2002 (145) ELT 706

iv) Alfred Menezes v. CC-2009 (236) ELT 587

8. Learned Joint commissioner seriously erred in holding that the goods other than watches were used to conceal the smuggled watches of foreign brands He erred in not appreciating that firstly, invoice under which goods were purchased is dated 8th September 2018 and appellant left Congo on 17th March 2018, there can



therefore be no purchase by the appellant of the said goods which is alleged to have been of smuggled nature, as such the allegation of concealment of the goods as against the appellant cannot be sustained. Secondly, it is inconceivable to even allege that one would buy goods worth Rs. 37,60,877/- to conceal goods worth Rs. 73,23,104 as has been alleged in the impugned order."

PERSONAL HEARING:

4. Personal hearing in the matter was held on 16.10.2025, wherein Shri Rahul Gajera, Advocate and Ms. Anshu Gupta, Advocate, appeared in person on behalf of the appellant and reiterated the submissions made at the time of filing of the appeal. On their request, another opportunity of personal hearing was granted on 24.12.2025. The said hearing was attended by Shri Rahul Gajera, Advocate and Ms. Anshu Gupta, Advocate, on behalf of the appellant through virtual mode, during which they made additional submissions in support of the appeal.

DISCUSSION & FINDINGS:-

5. Before proceeding to examine the merits of the case, I observe from Form C.A.-1 that the impugned Order-in-Original was passed on 09.09.2020 and the same have been shown as received on 16.04.2024, i.e. after a lapse of approximately three years and six months. Such an inordinate delay in the receipt of the Order-in-Original appears to be unusual, as orders are ordinarily dispatched and received by the appellant within a reasonable period. I further note that the date of receipt of the Order-in-Original assumes crucial significance, since the limitation period for filing an appeal before the Commissioner (Appeals) under Section 128 of the Customs Act, 1962 is to be reckoned from the date of communication of the order. Therefore, determination of the actual date of receipt of the impugned order is of vital importance for deciding the admissibility of the appeal on the ground of limitation.

5.1 Therefore, in order to verify the appellant's claim regarding receipt of the impugned Order-in-Original on 16.04.2024, this office caused necessary verification from the adjudication section vide letter dated 05.12.2025. The Adjudication Section, Customs House, Ahmedabad through letters dated 10.12.2025 and 12.12.2025 informed that the impugned order issued in respect of Shri Kalpit Sharma (i.e. the appellant) was dispatched by Speed post bearing number EG326345625IN on 10.09.2020 and has not been received back undelivered.

5.2 In accordance with the principles of natural justice, the appellant was afforded an opportunity of personal hearing on 24.12.2025, vide office letter dated 22.12.2025, to present their submissions regarding the dispatch and delivery of the impugned Order-in-Original, which was sent by Speed Post bearing consignment number **EG326345625IN** on 10.09.2020.

5.3 Shri Rahul Gajera, Advocate and Ms. Anshu Gupta, Advocate on behalf of the appellant attended hearing on 24.12.2025 through virtual mode. In their submission, they made additional submission as under:

"2. Along with PH notice, we have also received a letter dated 12.12.2025, which appears to have been issued by the Customs Adjudication section. The said letter states that the OIO was dispatched by speed post on 10.09.2020 and has not been received back undelivered. It also refers to two earlier letters dated 05.12.2025 and 10.12.2025; however, copies of these two letters have not been furnished to us.

3. In respect of the said letter dated 12.12.2025, we submit that mere proof of dispatch does not constitute valid service of the OIO as contemplated under Section 153 of the Customs Act, 1962. In absence of proof of delivery, valid service cannot be assumed. For ease of reference, the provision of Section 153 has been quoted by the appellant.

In absence of such proof of delivery of OIO to the person intended to as mandated under sub-section 1(b) of section 153, our submission that appellant acquired knowledge of passing of such OIO through his Chartered Accountant who files his income tax returns and that upon such information, appellant vide letter dated 06.04.2024, requested customs a copy of OIO if any passed. In reply vide email dated 16.04.2024, the OIO was served upon the appellant for the first time, deserves to be accepted.

In this regard, reliance is placed on the decision of the Hon'ble Tribunal in the case of (2023) 4 CENTAX 249 (Mad.) - Sri steels V Commissioner of customs, Chennai. A copy of which is annexed herewith.

4. Without prejudice to the above submission, it is further submitted that the OIO records the appellant's address as "11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305." (Ref- Pg no. 62 of appeal memo). However, the appellant's prevailing address at the relevant time was:

B-202, Vaibhav Complex,
Nandol Road, Dehgam,



Gandhinagar-382305, Gujarat

The aforesaid address is reflected on the passport of the appellant during the period of issuance of OIO, relevant pages of passport forms part of the appeal. (Ref Pg no. 27 of appeal memo). Further, the said address was also known to customs as investigation records reflects that copy of passport was also resumed during search and further the investigation records reflects that during search proceedings, Shri Harsh Sharma (appellant's cousin) specifically informed the department of the aforesaid address of the Appellant. (refer Page No. 33 of the Appeal Memo). Despite, it appears that Learned Joint Commissioner has chosen to serve the copy of the Order-in-Original by adopting the address recorded in the statement of Shri Harsh Sharma (refer Page No. 40 of the Appeal Memo) for the reason best known to him.

It is submitted that despite availability of such authentic and contemporaneous records, the order was served at an incorrect address, rendering the service improper and invalid in law.

In view of the above, even assuming that the order was dispatched and not returned undelivered, the same cannot be treated as valid service, as dispatch to an incorrect address does not fulfil the statutory requirement of service under Section 153 of the Customs Act, 1962. The obligation to effect proper service cannot be diluted merely on the ground that the postal article was not returned."

5.4 I find that during the personal hearing on 24.12.2025, the appellant claimed that his prevailing address at the relevant time was B-202, Vaibhav Complex, Nandol Road, Dehgam, Gandhinagar-382305, as also reflected in his passport at the time of issuance of the OIO. Further, this address was known to the Customs Department, as during the search proceedings on 20.09.2018, Shri Harsh Sharma, the appellant's cousin, had informed the department accordingly. The appellant further submit that despite knowing this aforesaid address, the OIO was served on the address i.e. 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382 305 as stated and confirmed by Shri Harsh Sharma in his statement dt. 20.02.2019. Accordingly, the appellant contended that dispatch to an incorrect address i.e. 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382 305, despite availability of authentic records i.e. B-202, Vaibhav Complex, Nandol Road, Dehgam, Gandhinagar-382305, renders the service improper and invalid in law.

6. The contention & argument of the appellant is found to be incorrect and misleading. The impugned Order-in-Original was rightly dispatched and communicated

to the correct and legal address, i.e., 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305. This address was stated, accepted, and confirmed by Shri Harsh Sharma, the appellant's cousin, in his statement dated 20.02.2019, recorded by the DRI Officers under Section 108 of the Customs Act, 1962. Kind attention to the page 8 of 30 of the impugned order (Ref. page no. 40 of the Appeal memo), same is reproduced herein below :

10. **Statement of Shri Harsh Sharma resident of Plot No. 747/1, Near Police Station, Sector-7/B, Gandhinagar** was recorded under Section 108 of the Customs Act, 1962 on 20.02.2019 wherein he interalia stated that Shri Kalpit Sharma S/o Shri Bharatbhai Sharma is his cousin brother and his residence address in India is at 11, Shreenath Bunglows, Ahmedabad Road, Dehgam; that Shri Kalpit

F. No.VIII/10-149/ACC/O&A/HQ/2018-19

6.1 In order to negate the contention of the appellant that the impugned order was dispatched to an incorrect address i.e. **11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305** which does not fulfil the statutory requirements of service under Section 153 of the Customs Act, 1962, kind attention to the page 2 of 30 of the impugned order (Ref. page no. 34 of the Appeal memo) , same is reproduced herein below :

Page 2 of 30

Outcome Of The Searches Conducted

3 Thereafter, further inquiry was also conducted by way of searches / visits by the officers of DRI at various related premises under Panchnamas. The list and brief summary is as follows:-

- (i) **Panchnama dated 24.09.2018** drawn at Residence of Shri Harsh Sharma, Plot No. 747/1, Near Police Station, Sector 7B, Gandhinagar-382007 (person who has booked and delivered the 21 packages at STAR for shipment to his cousin brother Shri Kalpit Bharatbhai Sharma, Masengo Nzolameso, RD Congo, Kinshasa):- No incriminating documents related to case were found.
- (ii) **Panchnama dated 24.09.2018** drawn at Residence of Shri Kalpit Sharma, 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305 (person who has given the 21 packages to his cousin brother Shri Harsh Sharma with instruction to export the same to him at Kinshasa Congo when he informs him to do so):-No incriminating documents related to case were found.



From the above paragraph of the impugned Order, it is an admitted and established fact that the residential premises of Shri Kalpit Sharma (i.e. the appellant), situated at **11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305**, were searched by the officers of the Directorate of Revenue Intelligence, and a panchnama dated **24.09.2018** was drawn. The said panchnama is a statutory and contemporaneous document prepared by DRI officers in the presence of two independent panch witnesses and carries evidentiary value in law. The panchnama conclusively establishes that the aforesaid address i.e. **11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305** is the residential address of the appellant and was live, functional, and contactable at the relevant time.

6.2 Further, attention is drawn to the copies of the appellant's passport (**Ref. pages 13-14 of the appeal memo**), which indicate the residence address as 11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305. So, on the basis of this address, the impugned Order-in-Original was rightly and correctly dispatched and communicated to the appellant.

6.3 Further, it is on records & established from the letters dated 10.12.2025 and 12.12.2025 of the adjudication section, Customs House, Ahmedabad that the impugned order issued in respect of Shri Kalpit Sharma (i.e. the appellant) was dispatched by Speed post bearing number EG326345625IN on 10.09.2020 and has not been received back undelivered. This proved the delivery and communication of the impugned order at right and correct address.

6.4 It is observed that the appellant's claim that mere proof of dispatch of the impugned Order-in-Original by Speed Post on 10.09.2020, without evidence of delivery, does not constitute valid service, is incorrect. This contention is not legally sustainable in terms of sub-section (3) of Section 153 of the Customs Act, 1962. Herein below exact wordings of the said section is quoted for ease of reference:

Section -153 : Service of Order, decisions etc.

(3) *When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.*”

Therefore, in view of provision of above, the impugned order has been delivered through speed post to the appellant and it shall be deemed to be delivered

unless something contrary to this proved by the appellant.

6.5 The appellant's contention that he first became aware of the impugned Order-in-Original through his Chartered Accountant and thereafter requested a copy from the Customs authorities is found to be vague and unsupported by any cogent justification, legal reasoning, or credible evidence. The appellant has not produced any material, documentary or circumstantial evidence, such as postal records, affidavit, or contemporaneous correspondence, to substantiate his claim of non-receipt of the order.

In view of the provisions of sub-section (3) of Section 153 of the Customs Act, 1962, once the order is dispatched by Speed Post to the correct and recorded address, a statutory presumption of due service arises. The burden to rebut such presumption squarely lies upon the appellant. In the absence of any convincing evidence to the contrary, the appellant has failed to discharge this burden. Accordingly, the plea of non-receipt of the impugned order is not acceptable and is liable to be rejected.

6.6 It is further observed that the TR-6 challan bearing No. 2287 dated 26.04.2024, evidencing payment of the mandatory pre-deposit in the present matter, records the appellant's address as **11, Shreenath Bunglows, Ahmedabad Road, Dehgam-382305**. This clearly establishes that the said address is the correct, existing, and contactable address of the appellant. Consequently, it reinforces the conclusion that the impugned Order-in-Original was rightly and legally dispatched and served upon the appellant at the said address by Speed Post on 10.09.2020, in accordance with the provisions of Section 153 of the Customs Act, 1962.


6.7 In view of above such convincing and corroborative evidences on record, the appellant's plea of non-delivery of the impugned Order-in-Original, which was duly dispatched by Speed Post bearing consignment number **EG326345625IN** on 10.09.2020 to the said address, is wholly untenable and devoid of merit. Consequently, the question of non-service of the impugned order does not arise.

7. In view of the foregoing discussion and the cogent evidences on record, I hold that the impugned Order-in-Original was duly and validly dispatched by Speed Post to the correct and established residential address of the appellant on 10.09.2020, in accordance with the provisions of Section 153 of the Customs Act, 1962, and is deemed to have been properly served upon him. The appellant has failed to rebut the statutory presumption of due service by producing any credible or convincing evidence. Consequently, the period of limitation for filing the appeal is required to be reckoned from the date of such deemed service i.e. 10.09.2020.



Since the present appeal has been filed much beyond the prescribed period of limitation as well as the condonable period provided under Section 128 of the Customs Act, 1962, and as the Commissioner (Appeals) has no power to condone delay beyond the statutory limit, the appeal is barred by limitation and is, therefore, not maintainable in law. Accordingly, the appeal is rejected as time-barred without going into the merits of the case.




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

F. No. S/49-54/CUS/AHD/24-25

Date: 26.12.2025

By Speed Post.

Shri Kalpit Sharma,
11, Shreenath Bunglows,
Ahmedabad Road,
Dehgam-382 305, Gujarat

Email: Kalpitsharma76@gmail.com

Copy to:

1. The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in).
3. The Joint Commissioner of Customs, Custom House, Ahmedabad. (email : cus-ahmd-adj@gov.in)
3. The Deputy Commissioner, Customs, SVPIA, Customs, Ahmedabad.
(customsahmedabad@gmail.com svpicustoms@gmail.com)
4. Shri Rahul Gajera, Advocate on behalf of Shri Kalpit Sharma, Dehgam.
(rahulgajera1982@gmail.com)
5. Guard File.