



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंजिल 4th Floor, हड्डोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250471MN0000611E12

क	फाइलसंख्या FILE NO.	S/49-174/CUS/AHD/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-05-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	03.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	96/ADC/VM/O&A/2022-23, dated 14.02.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	03.04.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	Mr Gaurangkumar Navinchandra Nai, 301/Shreeji Pujan Residency, Chaprabhatta Road, Amroli, Surat City, Gujarat – 395006.
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय,	

(राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं	
Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेरीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क, मांगायाव्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी. ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ	
Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नप्रहोनेचाहिए-	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो; पांचहजाररुपए	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायादंडकीर कमपचासलाखरूपएसेअधिकहोतो; दसहजाररुपए.	
(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, जहांकेवलदंडविवादमेहै, 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) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नप्रहोनेचाहिए.	
	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

Mr. Gaurangkumar Navinchandra Nai, 301/Shreeji Pujan Residency, Chaprabhata Road, Amroli, Surat City, Gujarat – 395006 (hereinafter referred to as “the appellant”) has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order - in - Original No. 96/ADC/VM/O&A/2022-23, dated 14.02.2023 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Customs, Ahmedabad, (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that as per the input received by the Customs officers of Air Intelligence Unit (AIU), SVPI Airport, Ahmedabad, the appellant holding Indian Passport No. R 9801972, was found suspicious of carrying contraband in violation of the Customs Act, 1962 and the Rules and Regulations made thereunder, as the AIU officers had earlier intercepted two passengers the same day who were to board the same flight i.e., Air Arabia Flight No. G9 484 on 30.12.2021 to Sharjah from SVPIA, Ahmedabad. Accordingly, the AIU officers along with two panchas reached the Departure Hall located at the ground floor of Terminal 2 Building of SVPIA and intercepted the appellant who was waiting after he had cleared immigration procedure under panchnama proceedings dated 31.12.2021.

2.1 The checked in baggage of the appellant was offloaded from the flight and was handed over to AIU officials by the Airlines staff and the same was identified by the appellant as his baggage. The AIU officers asked the appellant if he was having anything to declare before Customs, in reply to which he denied. The appellant was asked to pass through the Door Frame Metal Detector installed opposite to Belt No.4 near green channel in the arrival hall of Terminal-2, SVPI Airport and his baggage was scanned through the X-Ray Baggage Inspection Machine. The AIU officers then searched the checked in baggage of the appellant which was light brown coloured trolley suitcase. On opening of the said suitcase, one black coloured polythene bag was found inside it. On thorough examination of the said black polythene bag, it was found that foreign currency US Dollar of the denomination 100 was concealed in it. On counting the same, it was ascertained that there was 2,00,000 USD in total equivalent of Indian Rupees 1,50,90,000/-.

2.2 Detailed inventory of the recovered foreign currency was made by the officers of AIU in presence of panchas and the appellant, which is as under in Table - A:

Table -A

Sr No	Foreign Currency	Denomination of the foreign currency notes	Number of Notes	Total Value of Foreign Currency Notes	Exchange Rate of one unit of Foreign Currency equivalent to Indian Rupees as per Not. No. 98/2021-Cus (NT) dated 16.12.2021 (taken as per exported goods)	Value equivalent to Indian Currency (taken as per exported goods)
1	US Dollar	100	2000	2,00,000	75.45	1,50,90,000

2.3 The value of foreign currency in Indian Rupees as per exchange rate Notification No. 98/2021-Cus (N.T.) dated 16.12.2021 was equivalent to Rs 1,50,90,000/-. The AIU officers asked the appellant whether he was having any documents for authorized purchase/acquisition of the Foreign Currency which was recovered from him, to which he replied in negative. The said foreign currency i.e., 2,00,000 USD equivalent to Indian Rs. 1,50,90,000/- was placed under seizure vide Seizure Memo/Order under Panchnama proceedings both dated 31.12.2021 by the AIU officers on a reasonable belief that the said Foreign Currency was attempted to be smuggled out of India and hence it was liable for confiscation under the Customs Act, 1962 and FEMA Regulations, 2015.

2.4. Statement of the appellant was recorded on 31.12.2021 and 04.06.2022 under Section 108 of the Customs Act,1962, wherein he, inter-alia, stated that he can read and write English, Gujarati and Hindi languages. The currency was not for his personal use, and he did not know to whom he had to hand it over. He had not purchased the currency. He further stated that one person name Ankit from Surat had arranged his ticket for travel to Sharjah and stay for 5 days there and he had no idea about the source of the foreign currency recovered from him and to whom he had to hand over the same on his arrival at Sharjah. He also stated that on his departure day to Sharjah i.e., 30.12.2021, someone unknown to him had handed over a black polythene bag and told him that on his arrival at Sharjah, someone will receive the bag from him; that he had no idea about the person who handed over to him the black polythene bag and about the person who will receive the bag on his arrival at Sharjah.

2.5 In view of the above facts, foreign currency i.e., 2,00,000 USD equivalent to Indian Rs. 1,50,90,000/- carried by the appellant appears to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 31.12.2021 under Section 108 of the Customs Act, 1962.

2.6 As per Regulation 5 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 issued by Reserve Bank of India under Notification No. FEMA 6 (R)/RB-2015, dated 29/12/2015, no person

shall, without the general or special permission of the Reserve Bank, export or send out of India, any foreign currency. Similarly, Regulation 7 ibid deals with export of foreign exchange and currency notes. Regulation 7, inter alia, states that "Any person may take or send out of India, foreign exchange obtained by him by drawl from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued there under. On the basis of Regulation 7 ibid, a person is entitled to take or send out foreign exchange drawn from an Authorized Person in accordance with the provisions of the Act or the rules or regulations or directions made or issued there under. During the search in person and of the baggage of the appellant no documents with respect to Foreign Currency were found which could prove the legal purchase of foreign currency recovered from him from any authorized person as per Regulation 7 ibid.

2.7 Further, the appellant was unable to produce any document evidencing a legitimate procurement of the seized Foreign Currency. On the basis of the above, it appears that the appellant carried the foreign currencies illegally and with intention to smuggle/improperly export the same out of India in violation of the said Act/Rules/Regulations in force. Regulation 7 (3) and (4) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015.

2.8 In view of the above, it appears that foreign currency seized from the appellant cannot be exported without having proper legal and legitimate documents. Therefore, the attempt to carry the said foreign currency by the appellant in the baggage for export is a clear violation of the restrictions imposed under Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and hence the same appears to fall under the ambit of "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962. Further, in terms of Section 11H (a) of the Customs Act, 1962; commission of the said act again amounts to "Illegal export of foreign currencies by the appellant in as much as the appellant failed to produce any legitimate/legal document in support of purchase of foreign currency from an authorized person at the time of interdiction, seizure and during the course of investigation. He had also admitted in his statement recorded under Section 108 of the Customs Act, 1962 that he had attempted to smuggle the seized Foreign Currency. The foreign currencies totally equivalent to Indian Rupees 1,50,90,000/- seized from the appellant therefore, appears liable to confiscation under Section 113 (d) of the Customs Act, 1962 for violation of FEM (Export and Import of Currency) Regulations, 2015 and the Customs Act, 1962.

2.9 The appellant had carried the foreign currency and cleared the immigration procedure at Ahmedabad Airport to smuggle the same out of India illegally. The foreign currency amounting to 2,00,000 USD totally valued at Rs 1,50,90,000/- was recovered from his possession in his checked in baggage during the search under Panchnama dated 31.12.2021 drawn at SVPI Airport, Ahmedabad. He appears to have actively and knowingly indulged in the smuggling of the foreign currency totally valued at Rs. 1,50,90,000/-, which are liable to confiscation under Section 113 (d) of the Customs Act, 1962. Therefore, it also appears that the appellant has rendered himself liable for penalty under the provisions of section 114 of the Customs Act, 1962.

2.10 A SCN under F. No. VIII/10-38/SVPIA/O&A/HQ/2022-23, dated 20.06.2022 was issued to the appellant proposing confiscation of foreign currency i.e., USD 2,00,000/- equivalent to Indian Rs. 1,50,90,000/- which were attempted to be smuggled/improperly exported out of India, in contravention of the provisions of Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 read with Rule 7 of the Baggage Rules, 2016 seized under seizure memo/order under Panchnama dated 31.12.2021, under Section 113(d) of the Customs Act, 1962 and for imposition of penalty upon the appellant under Section 114 of the Customs Act, 1962.

2.11 The Adjudicating authority has vide the impugned order, absolutely confiscated the foreign currency i.e., USD 2,00,000 equivalent to Indian Rs. 1,50,90,000/- seized under Panchnama dated 31.12.2021 under Section 113(d) of the Customs Act, 1962. The adjudicating authority also imposed penalty of Rs. 60,00,000/- on the appellant under Section 114(i) of the Customs Act, 1962.

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

- The adjudicating authority has erred in upholding the confiscation of foreign currency from the Appellant and further coming to a conclusion that an attempt was made to smuggle it, without appreciating the factual aspects as and legal position involved and therefore, the impugned order is bad and not sustainable in the eyes of law.
- Opportunity of personal hearing was not granted. Thus, the impugned order has been passed in violation of principles of natural justice. The appellant relied upon the decision in the case of

Bhushan Steel & Strips Ltd. Vs. CCE, Meerut, reported in 1999 (114) E.L.T. 564 (T).

- The adjudicating authority ought to have appreciated that the Appellant has relevant documents which proves that Foreign Currency was from a relevant source and it was not prohibited goods as defined under the Act. However, before such material could be gathered, the adjudicating authority passed the impugned order.

4. Personal hearing in the matter were scheduled on 29.01.2025, 13.02.2025, 12.03.2025, and 26.03.2025. However, no one appeared for personal hearing. As sufficient opportunities for personal hearing have been given, the appeal is taken up for decision on the basis of documents available on record.

5. It is observed that the present appeal have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant has requested for condoning the delay of 28 days in filing the said appeal. The appellant submitted that he is an individual who needs to take appropriate legal advice before challenging the order in original. Therefore, it took some time to approach appropriate lawyer to take proper legal advice causing delay in filing the present appeal. Therefore, taking a lenient view to meet the end of justice, I allow the appeal, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

6. Before going into the merits of the case, it is observed that the appellant has not submitted any evidence in support of payment of mandatory pre-deposit in terms of Section 129E of the Customs Act, 1962. Therefore, it has to be decided whether the appeal can be entertained in case of non-payment and non-submission of any evidence in support of payment of mandatory pre-deposit in terms of Section 129E of the Customs Act, 1962, and whether the Commissioner (Appeals) can waive the requirement of payment of pre-deposit.

6.1 It is relevant to refer to law pertaining to filing of appeals before the Commissioner (Appeals) and law requiring the pre-deposit of certain amount in respect of filing an appeal before the Commissioner (Appeals) as contained under Section 128 and Section 129 E of the Customs Act, 1962 respectively. The text of relevant sections is reproduced below for ease of reference.

"SECTION 128. Appeals to Commissioner (Appeals). — (1)

Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal

Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."

"SECTION 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. — The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, —

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."

6.2 On perusal of the legal provision under Section 128 and Section 129E of the Customs Act, 1962, it is observed that any person aggrieved

by any decision or order passed under the Customs Act, 1962 may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order. However, such appeal filed by the appellant shall not be entertained unless the appellant has made pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Thus, it is mandatory for an appellant to deposit the seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. The statutory provision pertaining to requirement of payment of pre-deposit does not grant any discretion to the Commissioner (Appeals) to waive the requirement of pre-deposit.

6.3 In this regard, I also rely upon the judgment of Hon'ble High Court of Madhya Pradesh in case of Ankit Mehta V. Commissioner of CGST, Indore, [2019 (368) E.L.T. 57 (M.P.)], wherein the Hon'ble High Court of Madhya Pradesh has observed that Section 129E of the Customs Act, 1962 does not empower the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit. The relevant para of the judgment is reproduced hereunder:

"13. This Court after careful consideration of the aforesaid judgments is of the opinion that Section 129E does not empower the Tribunal or the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit, this Court is also not inclined, keeping in view the aforesaid statutory provision of law to waive or reduce the pre-deposit and, therefore, no case for interference is made out in the matter."

6.4 The Hon'ble High Court of Punjab and Haryana in case of G. D. Goenka World Institute [2019 (368) E.L.T. 67 (P&H)] had taken a similar view. The relevant para of the judgment is reproduced below:

"19. To our minds, there would be no escape from pre-deposit as the Tribunal lacks the power to entertain the appeal without it. If we have to lend any other interpretation, it would defeat the legislative intent which is so clearly visible from the provisions of Section 35F of the Act and in fact, there would have been no necessity of amendment and Section 129E in its unamended form need not have been tinkered with. In conclusion, the said vires have already been upheld (and in fact, Learned Counsel for the petitioner also candidly concedes to it) the only question which was left for us to determine is of an inherent discretion with the Tribunal to entertain an appeal without pre-deposit which we have for the aforesaid reasons held to be a course not available to it."
(emphasis supplied)

6.5 The above Judgment of Hon'ble High Court of Panjab and Haryana was affirmed by the Hon'ble Supreme Court of India in case of IL

& FS Rail Limited [2019 (368) E.L.T. A37 (S.C.)] with following observations:

"Heard Learned Counsel for the petitioner(s) and perused the relevant material.

Application for exemption from filing certified copy of the impugned order is allowed.

Special Leave Petitions are dismissed. However, if the petitioner(s) are in a position to pay the pre-deposit amount(s), as ordered by the Customs, Excise and Service Tax Appellate Tribunal (for short, 'the Tribunal'), within two months from today, the appeal(s) filed by the petitioner(s) before the Tribunal, if already disposed of shall stand restored, and be heard on merits."

7. In view of the above judicial pronouncements, it is a settled law that the Commissioner (Appeals) cannot entertain the appeal filed by the Appellant without payment of pre-deposit as prescribed under Section 129E of the Customs Act, 1962 or waive the payment of pre-deposit.

8. In view of the above legal position as discussed above, as the Appellant have not made pre-deposit as required under the Section 129E of the Customs Act, 1962, I am constrained to dismiss the appeal filed by the Appellant, without going into the merits of the appeal.

9. In view of the above, the appeal filed by the Appellant is dismissed for non-payment of an amount of pre-deposit in terms of Section 129E of the Customs Act, 1962.



By Registered Post A.D.

F. No. S/49-174/CUS/AHD/2023-24

To,

(i) Mr Gaurangkumar Navinchandra Nai,
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Amroli, Surat City, Gujarat – 395006,

(ii) Shri Pranav Trivedi/ Rahul Dholakya,
Chamber No 3007, New Advocate Building,
Gujarat High Court, Ahmedabad - 380059.

Dated –03.04.2025

Surveen
3rd April, 2025..
(AKHILESH KUMAR)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

सत्यापित/ATTESTED

Surveen
अधीकारी/SUPERINTENDENT
सीમા ચૂલ્ખ (અપેલ્સ), અહેમદાબાદ
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. The Principal Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Ahmedabad.
3. The Joint/Additional Commissioner of Customs, Ahmedabad.
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