



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
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दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250571MN0000444AA1

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| क | फाइल संख्या FILE NO. | S/49-318/CUS/AHD/2023-24 |
| ख | अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962): | AHD-CUSTM-000-APP-52-25-26 |
| ग | पारितकर्ता PASSED BY | SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD |
| घ | दिनांक DATE | 30.05.2025 |
| ङ | उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO. | Order - In - Original No. 139/ADC/VM/2023-24 dated 13.09.2023 passed by the Additional Commissioner of Customs, Ahmedabad. |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 30.05.2025 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | Shri Hemraj Meena Plot No. E-34-A, Kusum Vihar Ramnagariya Road, Jagatpura, <u>Jaipur- 302017</u> . Email: rajmeena1306@gmail.com |
| <p>यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.</p> <p>This copy is granted free of cost for the private use of the person to whom it is issued.</p> | | |
| <p>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.</p> | | |
| <p>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.</p> | | |



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| | 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. | <p>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 :</p> <p>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 :</p> <p>(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.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order - In - Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 दोप्रतियां, यदि शुल्क, मांगा गया व्याज, 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/-</p> <p>(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/-.</p> | | | | |
| 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 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 अपीलिय 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 |
| सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय 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 | | | | |
| 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- | | | | |



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| | 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) | 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 Hemraj Meena, Plot No. E-34-A, Kusum Vihar, Ramnagariya Road, Jagatpura, Jaipur- 302017 (hereinafter referred to as 'Appellant') has filed the present appeal against Order-In-Original No. 139/ADC/VM/2023-24 dated 13.09.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that on the basis of specific and credible intelligence received by officers of the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, it was reported that gold was being smuggled into India through the Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad. The intelligence specifically pointed to two passengers — Shri Mohammed Zeeshan Pakhali and Shri Sahil Firoz Khan Pathan — who were arriving by Emirates Flight No. EK540 from Dubai on 09.07.2022 at approximately 08:25 hours. The intelligence further revealed that these passengers were part of a larger smuggling syndicate and would attempt to smuggle gold bars concealed in their hand baggage, with the intention of leaving them in the toilets near the immigration counters for later retrieval by airport personnel.

2.1 In response to this intelligence, a coordinated operation was conducted by officers of DRI, Ahmedabad and the Air Intelligence Unit (AIU) of Customs at SVPI Airport. Upon arrival of the flight, the officers boarded the aircraft and intercepted the identified passengers before deboarding. The passengers were requested to identify their hand baggage. Shri Sahil Pathan pointed out two bags—a shoulder bag of "ALOK" brand and a hand bag of "CITIZEN" brand. Shri Mohammed Zeeshan Pakhali stated he only had check-in baggage. Both passengers were escorted by the officers for immigration formalities, followed by identification and collection of their checked-in baggage from the conveyor belt. The entire team, along with panchas and the passengers, proceeded to the AIU office for further examination of the baggage.

2.2 A detailed search was conducted at the AIU office. The personal search yielded no objectionable items. Upon examination of the "ALOK" shoulder bag, nothing suspicious was found. However, the "CITIZEN" hand bag contained two black cloth pouches. One of these pouches contained 21 gold bars, and the other contained 12 more gold bars, totaling 33 gold bars of 10 tola each. The markings on the gold bars indicated various foreign origins such as:

- ARG 10 Tolas 999.0 ARG Melter Assayer (10 pieces)



[Handwritten signature]

- MWG UAE 10 Tolas 999.0 MWG Melter Assayer (10 pieces)
- Gulf Gold Refinery 10 Tolas 999.0 (1 piece)
- NAMOH and Value Gold (12 pieces)

The total gross and net weight of the gold bars was 3849.120 grams, with a tariff value of ₹1,79,97,364 and market value assessed at ₹2,02,65,617.

2.3 The seized gold was examined and certified by government-approved Valuer Shri Kartikey Vasantrai Soni. It was then sealed in transparent containers and deposited in the Customs warehouse at SVPI Airport under Warehouse Entry Nos. 3653 and 3654 dated 09.07.2022.

2.4 Statements of the key individuals involved in the incident i.e. Shri Mohammed Zeeshan Pakhali was recorded on July 9/10, 2022 & Shri Sahil Firoz Khan Pathan was recorded on July 9, 2022, and again on July 10, 2022, under Section 108 of the Customs Act, 1962. Further investigation led to the summoning and recording of statements from following individuals believed to be involved in the smuggling operation as detailed below:

- Shri Hemraj Meena, Terminal Manager of the Airports Authority of India (AAI) at SVPI Airport.
- Shri Kiran Arvindbhai Rathod, Housekeeping Staff of BVG India Ltd.
- Shri Deepak Kumar Parmar, Housekeeping Staff of BVG India Ltd.
- Shri Dharam Raj Meena, Housekeeping Staff of BVG India Ltd.

These individuals were believed to have assisted in the smuggling of gold through SVPI Airport.

2.5 Based on the evidence gathered and the statements recorded, it appeared that Shri Mohammed Zeeshan Pakhali, Shri Sahil Firoz Khan Pathan, Shri Hemraj Meena, Shri Kiran Arvindbhai Rathod, Shri Deepak Kumar Parmar, and Shri Dharam Raj Meena had committed offenses punishable under the Customs Act, 1962. They were arrested on July 10, 2022, in Ahmedabad under Section 104 of the Customs Act, 1962, and were produced before the Additional Chief Judicial Magistrate (ACMM), Ahmedabad, who remanded them to judicial custody.

2.6 Further investigation revealed that Shri Wasim Gulam Dadu Shaikh and Shri Khalid were the key figures in the gold smuggling syndicate. Shri Sahil Firoz Khan Pathan's statement indicated that Shri Wasim, based in Dubai, was involved in smuggling

gold and had handed over the 33 gold bars to the passengers. Shri Sahil Firozkhan Pathan provided Shri Wasim's mobile number, which led to further investigation, including obtaining call data records.

2.7 Statements of both Shri Mohammed Zeeshan Pakhali and Shri Sahil Firozkhan Pathan were recorded under Section 108 of the Customs Act, 1962. Both admitted to carrying the smuggled gold at the behest of one Shri Wasim Gulam Dadu Shaikh, a Dubai-based mastermind. It was confirmed that Shri Wasim arranged their travel and accommodation and provided the gold bars to be transported to India. It was further revealed that a code-word "Munnabhai" was to be used at the SVPI Airport to identify a contact person for handover of the smuggled gold. The suspects identified two individuals in the gold handover chain — Shri Hemraj Meena, Terminal Manager at the airport, designated "Doctor," and Shri Kiran Rathod, housekeeping staff, designated "Compounder." These coded references demonstrated an attempt to conceal identities within the operational syndicate. They stated that the gold was to be deposited in the toilet near the immigration counters or the VIP lounge, where it would be collected by housekeeping staff and subsequently handed over to an individual outside the airport, allegedly with the assistance of airport staff including one Shri Hemraj Meena, Senior Superintendent-Fire and holding charge of Terminal Manager, Airport Authority of India, SVPI Airport, Ahmedabad.

2.8 The investigation revealed that a syndicate involving airport housekeeping personnel and supervisory staff was repeatedly used to smuggle gold from the secure terminal areas. Statements were recorded from several housekeeping staff of M/s BVG India Ltd., including Shri Kiran A. Rathod, Shri Deepak Kumar Parmar, and Shri Dharam Raj Meena. These individuals admitted to having retrieved smuggled gold from airport toilets and handed it over outside, naming Shri Hemraj Meena as the person giving them directions. Notably, these employees consistently stated that Shri Hemraj Meena, posted as Terminal Manager, coordinated such activities and facilitated the safe passage of smuggled goods in past by escaping Customs channel. Their statements revealed their active participation in the smuggling operation. They confessed to collecting gold handed over by arriving passengers in the airport toilets and subsequently delivering the same to external parties, notably to one Shri Khalid, an associate of Shri Wasim based in India. These individuals were found to be receiving financial compensation for their involvement. Forensic examination of mobile phones submitted by them revealed photographic evidence, call logs, and electronic communications. Significant among the findings were photographs of gold bars, airline tickets, and chats coordinating arrivals and deliveries.



2.9 Shri Hemraj Meena was summoned at around 22:30 hours on 09.07.2022. His statement was recorded between the night of 09.07.2022 and continued till 10.07.2022. In his statement, he confirmed knowledge of the current incident and admitted awareness of previous gold clearances. He also acknowledged familiarity with housekeeping staff involved in these acts. He was arrested on 10.07.2022 at 11:35 PM.

2.10 A forensic extraction report provided by the National Forensic Science University (NFSU) established that the appellant had received large cash payments, which he used to settle loans with the Ahmedabad Aerodrome Employees Co-op Credit Society. Pay-in slips showed deposits of ₹2,80,000 and ₹2,90,000 on two occasions. The cash flow directly linked to the gold smuggling operation was confirmed by mobile chats and call records with Shri Khalid and Shri Wasim. Investigation revealed that between 17.06.2022 and 22.06.2022, two cheques of ₹3,00,000 and ₹2,76,000 were issued from the appellant's account following equivalent cash deposits. This raised suspicion that these were proceeds from smuggling operations. These were used to repay personal loans at a co-operative credit society. The origin of the cash was suspected to be the consideration received for facilitating smuggling. The amounts corresponded with previous statements by syndicate leader Wasim Gulam Dadu Shaikh, who admitted to paying approximately ₹70,000–₹80,000 per kg of gold smuggled to the appellant in cash.

2.11 Analysis of the appellant's mobile data via forensic software showed sustained communication with key syndicate members, notably Shri Khalid. The frequency and duration of calls spiked around the date of gold seizure, affirming operational coordination. These digital footprints matched confessions from other co-accused. The data extracted using Cellebrite forensic tools revealed repeated and recent WhatsApp communications with key syndicate members including Wasim and Khalid. The logs revealed calls and messages aligning with smuggling operations, particularly on days when gold was smuggled. Notably, the appellant acknowledged that the screenshots and files shown to him from his phone—including personal photos, UPI payment screenshots, and SMS logs—belonged to his device. These included direct UPI transactions to/from known accused persons.

2.12 The DRI recorded statements, under Section 108, from multiple airport housekeeping staff, including Shri Kiran Rathod, Shri Deepak Parmar, Shri Dharam Raj Meena. These individuals worked for M/s BVG India Ltd. and confirmed retrieving gold bars from washrooms near the immigration area as per instructions from the appellant. Their consistent testimonies pointed to a systematic modus operandi that Gold was dropped in specific toilets by incoming passengers and housekeeping staff retrieved it

covertly and it was delivered to the appellant, who passed it to external persons like Shri Khalid. Shri Deepak Parmar had also stated that the appellant directed them where and when to retrieve the gold.

2.13 Statement of Shri Wasim Gulam Dadu Shaikh, the kingpin behind the gold smuggling network, recorded under Section 108, after being detained at Mumbai Airport reveals that he used to send gold with couriers like Sahil and Zeeshan. He also stated that the appellant was their designated contact inside the airport and that the appellant charged approximately ₹70,000–₹80,000 per kg and demanded payment in cash.

2.14 The investigation established Shri Wasim Gulam Dadu Shaikh as the principal orchestrator of the operation from Dubai. He recruited carriers, arranged for gold procurement, and devised the method of smuggling. Shri Khalid was identified as his local accomplice in India, responsible for receiving smuggled gold and disbursing payments. Call Data Records (CDRs) indicated extensive telephonic contact between these individuals and the accused in India, particularly during the period of smuggling. Despite multiple summons, Shri Wasim and Shri Khalid failed to appear before investigating officers. Searches conducted at their last known addresses yielded no conclusive evidence of their presence. Their evasive conduct and the corroborated statements of the arrested individuals underscore their central role in the smuggling syndicate.

2.15 After investigation, Show Cause Notice F.No. DRI/AZU/GI-02/ENQ-30/2022 dated 04.01.2023 was issued to Shri Mohammed Zeeshan Pakhali and Shri Sahil Pathan, proposing as under:

- 33 gold bars of 10 tolas each totally weighing 3849.120 grams having a market value of Rs. 2,02,65,617/- recovered from their possession should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- Three black jewellery pouches, which were used for the concealment of gold bars having no value should not be confiscated under Section 119 of the Customs Act, 1962.
- Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
- Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

Further, the Show Cause Notice F.No. DRI/AZU/GI-02/ENQ-30/2022 dated 04.01.2023 was also issued to (i) Shri Wasim Gulam Dadu Shaikh, (ii) Shri Khalid Ali, (iii)

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Shri Hemraj Meena, (iv) Shri Kiran Rathod Arvindbhai, (v) Shri Deepak Kumar Parmar, and (vi) Shri Dharam Raj Meena, proposing penalties upon them under Section 112(a) & (b) of the Customs Act, 1962.

2.16 An Addendum to the Show Cause Notice was issued on 15.06.2023 based on further statements, including that of Shri Wasim Gulam Dadu Shaikh, intercepted via Look Out Circular at Mumbai Airport. In his statement, he also corroborated the roles of the appellant and others in clearing smuggled gold at SVPI Airport. The addendum reinforced the allegation that there existed a clear modus operandi in which gold was dropped in airport toilets by incoming passengers and collected by housekeeping staff under the supervision of the appellant, to be delivered to persons outside the airport.

2.17 The Adjudication Authority passed order as detailed below:

- i. He has ordered absolute confiscation of the 33 gold bars totally weighing 3849.120 grams of 24Kt/999.0 purity, having tariff value of Rs.1,79,91,364/- (Rupees One Crore Seventy Nine Lakhs Ninety One Thousand Three Hundred and Sixty Four only) and market value of Rs.2,02,65,617/- (Rupees Two Crore Two Lakh Sixty Five Thousand Six Hundred and Seventeen only), recovered and seized from the passengers Shri Mohammed Zeeshan Pakhali and Shri Sahil Firozkhan Pathan vide Seizure Order/memo dated 09.07.2022 and Panchnama proceedings dated 09.07.2022, under the provisions of Sections 111 (d), 111(l) and 111(m) of the Customs Act, 1962.
- ii. He has ordered absolute confiscation of three black jewellery pouches, which were used for concealment of the 33 gold bars totally weighing 3849.120 grams of 24Kt/999.0 purity seized from the passengers Shri Mohammed Zeeshan Pakhali and Shri Sahil Firozkhan Pathan vide Seizure Order/memo dated 09.07.2022 and Panchnama proceedings dated 09.07.2022, under the provisions of Sections 119 of the Customs Act, 1962.
- iii. He has imposed a Penalty of Rs.60,00,000/- (Rupees Sixty Lakhs Only) on Shri Mohammed Zeeshan Pakhali under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- iv. He has imposed a Penalty of Rs.60,00,000/- (Rupees Sixty Lakhs Only) on Shri Sahil Firozkhan Pathan under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- v. He has imposed a Penalty of Rs.60,00,000/- (Rupees Sixty Lakhs Only) on Shri Wasim Gulam Dadu Shaikh under the provisions of Section 112(a)(i) and (b) of the Customs Act 1962.

[Signature]

- vi. He has imposed a Penalty of Rs.60,00,000/- (Rupees Sixty Lakhs Only) on Shri Khalid Ali under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- vii. **He has imposed a Penalty of Rs.60,00,000/- (Rupees Sixty Lakhs Only) on Shri Hemraj Meena under the provisions of Section 112(a)(i) of the Customs Act 1962.**
- viii. He has imposed a Penalty of Rs.30,00,000/- (Rupees Thirty Lakhs Only) on Shri Kiran Arvindbhai Rathod under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- ix. He has imposed a Penalty of Rs.30,00,000/- (Rupees Thirty Lakhs Only) on Shri Deepak Kumar Parmar under the provisions of Section 112(a)(i) of the Customs Act 1962.
- x. He has imposed a Penalty of Rs.30,00,000/- (Rupees Thirty Lakhs Only) on Shri Dharam Raj Meena under the provisions of Section 112(a)(i) of the Customs Act 1962.

3. Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant viz. Shri Hemraj Meena, has filed the present appeal on 06.11.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 13.09.2023 has been shown as 18.09.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a self-photocopy of the T.R.6 Challan No. 0923 dated 16.10.2023 for Rs.4,50,000/- towards payment of pre-deposit calculated @7.5% of the disputed penalty amount of Rs.60,00,000/-, under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

4. The appellant has, inter-alia, raised various contentions in his submission as under:

- He was not directly involved in the seizure operation.
- No physical recovery of gold was made from him.
- His statement was allegedly taken under pressure.
- Natural justice was denied as the adjudication order was passed without a proper opportunity of personal hearing.
- There is violation of Section 155 of the Customs Act, 1962 as there was no compliance of the mandates of the Section 155 (2) of the Customs Act, 1962. In this regard, the appellant has relied upon a decision dated 13.02.2023 in Customs Appeal No. 75232 of 2022 of Hon'ble Tribunal, Kolkata, in the case of **Shri. Amit**



Ghosh Vs. Commissioner of Customs (Preventive), Kolkata. Relevant portion of the said Order is reproduced below:

"7.10. That it is also admitted position that the first three Appellants were working as Havaldars of Customs, Department of Revenue, Ministry of Finance, Government of India on 06.03.2017 when they were apprehended by DRI, Kolkata. Section 155 of the Customs Act, 1962 provides as follows –

Section 155. Protection of action taken under the Act.— (1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

That from the reading of the said provision of the Customs Act, 1962 it would be evident that sub-Section (1) and sub-Section (2) thereof operates at different circumstance. While sub-Section (1) *ibid* applies to the Officer of Central Government on-duty, sub-Section (2) *ibid* applies to all the Officers of Central Government w.r.t. any proceeding in pursuance of the Customs Act, 1962. The argument advanced on behalf of Revenue that sub-Section (2) must be preceded by sub-Section (1) of Section 155 *ibid* cannot be accepted since the said provisions are neither disjunctive nor conjunctive in nature.



7.11. This Tribunal after considering several earlier judicial pronouncements in the Order No. FO/A/75056-75060/2019 dated 15.01.2019 in Customs Appeals Nos. 460, 541-544/09 [Shri Prabir Kumar Guha & Ors. v. Commr. of Customs (Airport & Admn.), Kolkata] has held that the mandates of Section 155(2) of Customs Act, 1962 are to be fulfilled while contemplating a proceeding under Customs Act, 1962 against any Officer of the Central Government. Revenue has not placed reliance upon any contra judgment in this regard. In the present case, admittedly, the cause of action arose on 06.03.2017 but no Show Cause Notice under Section 124 of

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Customs Act, 1962 was issued within three months from such date. The Show Cause Notice was issued only on 05.09.2017 i.e. much beyond the period of such three months. Further, on a specific query, it was confirmed by the Revenue before this Tribunal that no one month's previous notice was also issued to the first three Appellants before contemplation of the proceeding under Section 124 *ibid* against them. Hence, there was no compliance of the mandates of Section 155(2) of Customs Act, 1962 in the present case against the first three Appellants which renders the entire proceeding bad in law."

In view of the above, the appellant has prayed to set aside the impugned order.

5. Personal hearing in the matter has been held on 07.05.2025 in virtual mode i.e. through video conference, which was attended by Shri. Ashok Israni, Tax Consultant, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeal. He also relied upon the decision of Hon'ble CESTAT, Mumbai, in the case of **Vinay Brij Singh & Others Vs. Commissioner of Customs (APSC), Mumbai** (Final Order No. 85523-85526/2025 dated 24.03.2025 in Customs Appeal No. 85945 of 2020 and others). Vide email dated 09.05.2025, he sent a copy of the said Order dated 24.03.2025 of Hon'ble CESTAT, Mumbai.

Findings:

6. I have carefully gone through the impugned order, appeal memorandum filed by the appellant, submissions made on behalf of the appellant during course of hearing as well as the documents and evidences available on record. The issue to be decided in the case is whether the impugned order passed by the adjudicating authority imposing penalty of Rs.60,00,000/- on the appellant under Section 112 (a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

7. It is observed that the appellant, Shri Hemraj Meena, was issued a Show Cause Notice dated 04.01.2023 and subsequent addendum dated 15.06.2023 for his alleged involvement in the smuggling of 33 gold bars (total weight 3849.120 grams; market value ₹2,02,65,617) seized at SVPI Airport, Ahmedabad from passengers Shri Mohammed Zeeshan Pakhali and Shri Sahil Pathan. The Show Cause Notice alleged that the appellant, a terminal manager at the airport, along with others, knowingly facilitated the illegal movement and disposal of smuggled gold. The Order-in-Original



imposed a penalty of ₹60,00,000 on Shri Hemraj Meena under Section 112(a)(i) of the Customs Act, 1962.

8. It is observed that Statements under Section 108 of the Customs Act, 1962, of passengers (Shri Mohammed Zeeshan Pakhali and Shri Sahil Pathan) as well as multiple housekeeping staff and Shri Wasim Gulam Dadu Shaikh consistently indicate that Shri Hemraj Meena knowingly facilitated the past and planned smuggling of gold by allowing it to be deposited in the toilet and then removed by ground staff. The statements available on record clearly implicate Shri Hemraj Meena as the insider facilitating the smuggling operation. His access to secure airport zones, supervisory role, and failure to report such activities indicate willful omission and active participation.

9. It is observed that though no physical recovery was made from the appellant, the law under Section 112(a) of the Customs Act does not require possession, but rather knowledge and facilitation, which has been adequately demonstrated by way of wilful omission and active participation on part of the Appellant. The appellant's position as Terminal Manager, his direct access to restricted areas, and absence of preventive action despite repeated incidents point toward complicity and *mens rea*. Facilitation, assistance, or abetment is sufficient when proven through credible statements and records.

10. It is observed that the appellant has relied upon the decisions of Hon'ble Tribunal, Kolkata Eastern Zonal Bench, Kolkata in case of **Shri Amit Ghosh v/s Commissioner of Customs (Preventive), Kolkata** (Final Order No. 75055-75058/2023 dated 13.02.2023 in Customs Appeal No. 75232 of 2022) and Hon'ble CESTAT, Mumbai, in the case of **Vinay Brij Singh & Others Vs. Commissioner of Customs (APSC), Mumbai** (Final Order No. 85523-85526/2025 dated 24.03.2025 in Customs Appeal No. 85945 of 2020 and others). However, it is observed that the facts and situation in the relied upon cases are different from the instant case and the said decisions are not squarely applicable in the instant case. It is observed that the appellant has not retracted their statement dated 09-10.07.2022 and have further confirmed his statement dated 09-10.07.2022 in his subsequent statement dated 06.12.2022 and stated that the facts stated in the statement dated 09-10.07.2022 are true and correct.

11. It is observed that the records show that multiple opportunities for personal hearing were extended to the appellant. Opportunity for Personal Hearing was granted on 16.05.2023, 22.05.2023, 25.05.2023 and 24.08.2023 which were acknowledged by the appellant. He sought adjournment twice. Despite scheduling of a personal hearing

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multiple times, the appellant failed to appear for hearing or present a defense. Proviso to Section 122A (2) of the Customs Act, 1962, states that no adjournment shall be granted more than three times to a party during the proceedings. Thus, the adjudicating authority reasonably proceeded *ex parte*. Hence, principles of natural justice were not violated.

12. It is observed that the appellant has submitted that Section 155(2) of the Customs Act, applies to all the Officers of Central Government or a local authority w.r.t. any proceeding in pursuance of the Customs Act, the mandate of Section 155(2) of Customs Act, 1962 is to be fulfilled while contemplating a proceeding under Customs Act, 1962, against any Officer of the Central Government or a local authority. In the present case, the cause of action arose on 09.07.2022, but no Show Cause Notice was issued within three months from such date. The Show Cause Notice was issued only on 04.01.2023 i.e. much beyond the period of such three months. No one month's previous notice was also issued to appellant before contemplation of the proceeding under Section 124 ibid against him. Hence, there was no compliance of the mandates of Section 155(2) of Customs Act, 1962 in the present case. In this regard, I observe that no such contention was raised after receipt of the Show Cause Notice before the adjudicating authority and hence, this contention raised by the appellant is also not sustainable and is in the nature of afterthoughts.

12.1 Further, I also rely on the judgment of the Hon'ble High Court of Madras in the case of **S. Karthikeyan vs Addl. Commr. of C. Ex., Coimbatore** reported as 2016 (344) E.L.T. 841 (Mad.), wherein at Para 13 was held as below:

"13. The issue raised by the petitioner by referring to Section 155(2) of the Customs Act is a matter pertaining to limitation. From the material papers placed before this Court in the form of typed set of papers, it is seen that the petitioner has not raised such an issue at the time of submitting his letter dated 23-10-2015, where he requested his letter addressed to the Chief Commissioner, dated 22-9-2015, to be treated as an interim reply. Though in the written submissions, which were placed before the respondent during the personal hearing, the petitioner had referred to Section 155 of the Customs Act and relied upon the decision in the case of Commissioner of Customs, New Delhi v. M.I. Khan (supra), record of the proceedings do not clearly show that the point has been canvassed as put forth before this Court by the learned Senior counsel for the petitioner. The question of limitation is not a pure question of law, but a mixed question of fact and law. Even assuming without admitting that the submissions made by the learned

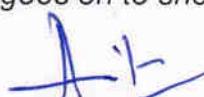


Senior Counsel for the petitioner is correct and that Section 155(2) of the Customs Act, would stand attracted still it has to be seen as to what would be the starting point of limitation. This exercise cannot be made in a Writ Petition. This Court could have rendered a finding on the said issue, but refrains from doing so, as it would prejudice the petitioner at the time of filing the appeal, as this Court is fully convinced that the Writ Petition cannot be entertained as serious, disputed and complicated questions of fact are involved and therefore, the petitioner should be necessarily relegated to avail the appellate remedy provided under the Customs Act."

12.2 I also rely upon the judgment of the Hon'ble High Court of Punjab & Haryana in the case of **Sandeep Kumar Vs. Commissioner of Customs, Ludhiana** reported as 2024 (387) E.L.T. 676 (P & H). Relevant portion of the same is reproduced below:

2. A perusal of the said notices would go on to show that the petitioner was working as an Inspector (Customs) (now placed under suspension) and had been posted at Focal Point, Dhandari Kalan, Ludhiana. On 9-4-2021, a container had been intercepted having the bill of entry dated 8-4-2021 in favour of M/s. P.S. Traders situated at Patiala. The goods declared as such were stated to be containing 14836 kgs. of aluminium scrap. The result of the examination of the container found that there were 3960000 cigarettes of 4 different brands, 4 alloy wheels and 10030 kgs. of metal scrap. The consignment had apparently been cleared from the customs port at Ludhiana without conducting actual examination of consignment and even without breaking the Shipping Line Seal. In such circumstances, notice was issued on 6-7-2022 not only to the petitioner but also to the Superintendent Rambir Singh Gahlaut and, therefore, he was put to notice as to why proceedings under Sections 112 and 117 of the Act be not commenced against him. The requisite one month's notice was issued in compliance of provisions of Section 155(2) of the Act. After the said period of one month, second notice dated 22-8-2022 (Annexure P-2) was also issued giving the details as show how the container as such had been cleared against the settled norms.

3. A perusal of the same would go on to show that apart from the petitioner, various other persons have been called upon to show cause under the Act. Further, it goes on to show that the petitioner was one of the




noticees and was directed to file a written reply. Reference was also made to Section 124 of the Act which pertains to issuance of show cause notice before confiscation of goods and even granting an opportunity of filing a representation in writing before imposing any penalty. The noticees were also to state whether they wish to be heard in person or not.

4. No cause was shown within the stipulated time or within the extended time and the case was liable to be decided *ex parte*. The petitioner apparently took his sweet time in filing the reply a year later on 24-8-2023 (Annexure P-4) before the Additional Commissioner of Customs, Ludhiana wherein, he has taken various pleas on the ground that he has been falsely implicated. The delay as such is justified on the ground that legible copies have not been supplied, which is also mentioned in the reply as such. In reply to the show cause notice, various pleas have been taken that he made entry in the EDI system in respect of the said bill of entry dated 8-4-2021. Further pleas have also been taken that show cause notice dated 22-8-2022 (Annexure P-2) is time barred as the incident had taken place on 9-4-2021.

5. In our considered opinion, the factual aspect has to be gone into by the authorities as to whether the petitioner was responsible for clearing the container along with his co-employee. Apparently, the fact remains that he was placed under suspension immediately, which is also conceded as such by the Counsel for the petitioner, on the detection of the container having been cleared without following the procedure prescribed and the fact that the said container contained the goods which had not been declared. The larger issue thus, remains whether there was a conspiracy with the consignee and other persons. These are factual aspects which the writ Court will not go into. Since the reply has already been filed, we are of the considered opinion that it is for the authorities to take a decision on the above said show cause notices and it is not for the writ Court to entertain the petition of an employee who *prima facie* is guilty of eating the fence.

12.3 It is pertinent to note that an SLP (C) No. 1015 of 2014 filed by Shri. Sandeep Kumar against the above-mentioned Order of Hon'ble Punjab & Haryana High Court has been dismissed by Hon'ble Supreme Court on 16.01.2024, as reported as 2024 (387) E.L.T. 645 (S.C.).

J.I.



12.4 In the present case also, Shri. Hemraj Meena has not filed any reply to the Show Cause Notice dated 04.01.2023 and its Addendum dated 15.06.2023. When the case was posted for hearing on 16.05.2023, 22.05.2023, 25.05.2023 and 24.08.2023, the noticee/appellant had not appeared before the adjudicating authority. Under this circumstances, I am of the view that the contention raised by the appellant regarding applicability of Section 155(2) of the Customs Act, 1962, at this stage, is not maintainable.

13. It is observed that the appellant's role, as alleged and reasonably established, falls within the scope of acts or omissions rendering goods liable for confiscation under the provisions Section 111(d), 111(l) and 111(m) of the Customs Act, 1962, and therefore, I am of the view that the order of the adjudicating authority imposing penalty on the appellant under Section 112(a)(i) of the Customs Act, 1962, is legal and proper.

14. In view of the above discussions, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings of the adjudicating authority.

15. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant Shri. Hemraj Meena.



F. No. S/49-318/CUS/AHD/2023-24


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

Date: 30.05.2025

By Registered Post A.D / E-mail (As per Section 153 of the Customs Act, 1962)

To
Shri Hemraj Meena
Plot No. E-34-A, Kusum Vihar
Ramnagariya road, Jagatpura,
Jaipur- 302017.

Email: rajmeena1306@gmail.com

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoaahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in ; rra-customsahd@gov.in)
3. The Additional Commissioner, Customs, Ahmedabad.
(email: cus-ahmd-adj@gov.in)
4. Shri. Ashok Israni, Tax Consultant, 16, 4th floor, 4-D Square Mall, Visat-Gandhinagar Road, Near Visat Circle, Motera, Ahmedabad – 380005.
(email: sitaxconsultant.org@gmail.com)
5. Guard File.

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