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
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20260371MN0000888D0C

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| क | फ़ाइल संख्या FILE NO. | S/49-315/CUS/AHD/2024-25<br>S/49-188/CUS/AHD/2024-25 |
| ख | अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) | AHD-CUSTM-000-APP-702 to 703-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta<br>Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 30.03.2026 |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | Order-in-Original No. 17/AB/ADC/SRT-AIRPORT/2024-25<br>dated 04.02.2025 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 30.03.2026 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | Shri Paragkumar Dhirajlal Dave, Police Sub Inspector, Immigration Department, Surat International Airport, Surat, ( R/O B-204, Sunday Avenue, Amba Talavadi, Katargam Surat. (pddave777@gmail.com ) |

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| 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 है. |
| | 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) | बैगेज़ के रूप में आयातित कोई माल. |
| (a) | any goods exported |
| (ख) | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो. |
| (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 दस्तावेज़ों 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 हज़ार मात्र ), जैसा भी मामला हो, से सम्ब न्धित 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/- |

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| (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 सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं** | |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : | |
| | **सीमाशुल्क,** केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Benc** |
| | दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2nd 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 हज़ार 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 हज़ार 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 हज़ार 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 है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा । | |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. | |
| 6. | **उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.** | |
| | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |

## ORDER-IN-APPEAL

The present two appeals have been filed by Shri Paragkumar Dhirajlal Dave, Police Sub Inspector, Immigration Department, Surat International Airport, Surat, R/O B-204, Sunday Avenue, Amba Talavadi, Katargam Surat (hereinafter referred to as 'the Appellant') under section 128 of the Customs Act, 1962, challenging the Order-in-Original No.: 17/AB/ADC/SRT-AIRPORT/2024-25 dated 04.02.2025 ( hereinafter referred to as 'the impugned order' ) passed by the Additional Commissioner, Surat International Airports, Customs, Surat ( hereinafter referred to as the 'adjudicating authority' ). The second appeal has been filed by the appellant against the decision / letter dated 18.09.2024 issued by the AC, Surat International Airports, Customs, Surat.

2. Facts of the case, in brief, are that a specific intelligence was received by the Directorate of Revenue Intelligence, Surat (Hereinafter referred to as "DRI"), that four Indian nationals travelling from Sharjah to Surat on Air India Express Flight IX-172 on 07.07.2023 were likely to smuggle gold in solid/paste form through Surat International Airport. The Intelligence further indicated that the passengers would smuggle the gold in collusion with a person working at Surat International Airport by handing over the smuggled gold in the washroom located at the arrival wing of the airport to the person working at Surat International Airport.

Acting on the above information, officers of DRI, Ahmedabad Zonal Unit and Surat Regional Unit intercepted four passengers arriving from Sharjah via Air India Flight No. IX-172 at Surat International Airport on 08.07.2023 in the presence of independent Panchas and drew a running panchnama dated 07/08.07 2023.

2.1. During the panchnama, the officers identified four passengers viz. Shri Uvesh Imtiyaz Shaikh ('Shri Uvesh' in short), Shri Mohamed Sakib Mustak Ahmad Atashbajiwala (Shri Sakib' in short), Shri Yasir Shaikh ('Shri Yasir' in short) and Smt Marufabanu Yasir Shaikh ('Smt Marufabanu' in short) when they crossed the Customs counter along with their baggage and intercepted the said 4 passengers at the green channel. The officers asked the above said 4 passengers whether they had declared or wanted to declare any highly valued dutiable/restricted/prohibited items under Baggage Rules, 2016, before the Customs authorities/ DRI officers, to which they stated that they had nothing to declare. The officers informed the said passengers that their personal search and detailed examination of their baggage (handbag and luggage) would be carried out by the officers one by one

2.2 During the panchnama, Shri Sakib informed that he and Shri Uvesh went to UAE from Mumbai on 04.07.2023 and returned to Surat via flight IX172 from Sharjah on

07.07.2023. Shri Sakib produced his Passport bearing No. N8244014 which was issued by the Regional Passport Office, Surat on 19.05.2016 (valid till 18.05.2026) and the Boarding Pass of Flight No. IX 172 dated 07.07.2023 from Sharjah to Surat, having Seat No. 3E. The officers systematically searched the Maroon Colour Duffle Bag of the Brand "La Polo ™ International" Handbag of Shri Sakib. During the search of the said handbag, 01 white-coloured pouch and 01 Black Belt containing 04 white coloured pouches ie a total of 5 white coloured pouches were recovered from the said Maroon Colour Duffle Bag of Brand "La Polo T™ International" of Shri Sakib. On being asked, Shri Sakib informed that those 5 white coloured pouches contained Gold in paste form and the officers marked Serial Number from 1 to 5 on those pouches.

2.3 Thereafter, Shri Uvesh produced his Passport bearing No. M6562625 which was issued by the Surat Passport Office on 20.02.2015 (validity till 19.02 2025) and the Boarding Pass of Flight No. IX 172 dated 07.07.2023 from Sharjah to Surat having Seat No. 3C. Shri Uvesh informed the officers that he carried 01 black colour Side Bag of the Brand "RichBaolong and 01 Blue-Black colour Bagpack of Brand "ROYAL MOUNTAIN COLLECTION". During a systematic search of the black Colour Side Bag of the Brand "RichBaolong", 02 white coloured pouches and 01 Black Belt containing 04 white-coloured pouches ie a total of 6 white-coloured pouches were recovered from the Black Colour Side Bag of the Brand "Rich Baolong of Shri Uvesh Imtiyaz Shaikh On being asked, Shri Uvesh informed that the white coloured pouches contained Gold in paste form and the officers marked Serial Number from 6 to 11 on those pouches. During a search of a Blue-Black colour Bagpack of the Brand "ROYAL MOUNTAIN COLLECTION of Shri Uvesh, the officers recovered 3 black belts containing 09 white coloured pouches from a Blue-Black colour Bagpack of the Brand "ROYAL MOUNTAIN COLLECTION" Shri Uvesh informed the officers that Shri Yasir had handed over that Blue-Black colour Bagpack of the Brand "ROYAL MOUNTAIN COLLECTION" to him after boarding the flight from Sharjah on 07.07.2023 and that the white coloured pouches contained Gold in paste form. The officers marked Serial Numbers from 12 to 20 on those pouches.

2.4 Thereafter, Shri Yasir produced his Passport bearing No. U5847557, which was issued by the Surat Passport Office on 11.09.2020 (validity till 10.09 2030), and the Boarding Pass of Flight No. IX 172 dated 07.07.2023 from Sharjah to Surat, having Seat No. 6C. Shri Yasir informed that during the security check at Sharjah airport, he carried a Blue-Black colour Bagpack of the Brand "ROYAL MOUNTAIN COLLECTION of Shri Uvesh and after boarding the flight he kept the belts containing 9 pouches of Gold paste in the said Blue-Black colour Bagpack and returned the said bag to Shri Uvesh. Shri Yasir said one Shri Salman Rafiqbhai Penwala (Shri Salman in short), having mobile No. 9228181206 (saved in his mobile as 'Salman Bhai), had handed over to him 09 white

coloured pouches containing Gold in paste form in the afternoon of 07.07.2023 at Sharjah The officers searched the baggage of Shri Yasir and found nothing objectionable

2.5 Thereafter, Smt Marufabanu produced her Passport bearing No. U1142048 which was issued by the Surat Passport Office on 23.10.2019 (valid till 22.10.2029) and the Boarding Pass of Flight No. IX 172 dated 07.07.2023 from Sharjah to Surat, having Seat No. 6B. The officers searched the baggage of Smt. Marufabanu and found nothing objectionable. Thereafter, the officers scanned all luggage bags through the XBIS Scanner machine, and during scanning, nothing objectionable was observed in their baggage.

2.6 On being asked, Shri Uvesh informed the DRI officer that he was carrying gold paste on the directions of one Shri Salman having mobile No. 9228181206. On being asked about the photo of Shri Salman, Shri Uvesh denied the availability of the photo of Shri Salman. However, he informed that Shri Salman had handed over to them all 20 packets containing Gold in paste form in the afternoon of 07.07.2023 in Sharjah and had instructed him to deliver all packets containing Gold in paste form in the toilet at the Surat Airport before the Immigration counter to a person who was working in Immigration Department. Shri Salman informed the name of the official as "Baburao" showed him a photo of that person, and instructed him to place a call from the toilet of the airport to Shri Salman, who would then add the person from the immigration department to a conference call and then after, the said person would receive all the 20 packets containing Gold in paste form in the toilet. He informed that he had seen the said person near the immigration counter area, but at the immigration counter, he had felt that someone was following him, and that was the reason he did not go to the toilet area, as planned, to deliver all packets containing gold paste. On being asked regarding the photo of said person, Shri Uvesh stated that Shri Salman had not forwarded that person's photo to him but he could recognize the said person if confronted. On being asked regarding any documents about the purchase of Gold in paste form, Shri Uvesh, Shri Sakib, Shri Yasir, and Smt Marufabanu informed the officers that none of them possessed any documents relating to the purchase or ownership of 20 packets containing Gold in paste form.

2.7 After some time, some of the officers went to the CCTV room of the airport and checked the recording of Immigration area and noticed that one of the Immigration officers at the Immigration area was seen leaving the premises hurriedly, that the officers established the identity of said Immigration officer, contacted and requested him to come back to Airport. Meanwhile, the officers carried out the weight of each white-coloured pouch with the help of a weighing machine available at the Customs Office, Surat International Airport. The total gross weight of the pouches of gold paste is 43,537.280

gms, as reflected in *Table A* of the impugned order.

2.8 Thereafter, the Customs officer called the government-approved valuer Mr. Vikasraj Tilakraj Juneja and requested him to come to the airport to examine the concealed goods recovered from the international passengers. The valuer suggested that since the said material was in paste form, the same was required to be brought to a gold refinery to extract the real gold quantity and to ascertain the quality of the said gold-type dust, as they could not carry the machines to Surat Airport. Then, a person came forward and introduced himself as Shri Paragkumar Dhirajlal Dave (Shri Dave/P. D. Dave' in short), Police Sub-Inspector of Gujarat Police, then posted as PSI, Immigration Department. Surat Airport The officers introduced Shri Dave to Shri Uvesh, and on being asked. Shri Uvesh informed them that Shri Dave was the person whose photo was shown to him by Shri Salman in Sharjah and that was the person to whom he was scheduled to meet in the airport toilet after arrival at Surat Airport on 08.07. 2023. On being asked, Shri Dave submitted a copy of his identity card and AEP No. AMD0216942 in support of his identity.

2.9 In the meantime, Shri Vikrant Jariwala, an IT expert whose services were requested by DRI, arrived at the Customs airport, and Shri Dave voluntarily handed over his mobile phone to Shri Vikrant Jariwala for detailed examination. After examining the said mobile phone, Shri Vikrant Jariwala informed the officers that recent WhatsApp chat and other relevant data had been deleted by Shri Dave and could be retrieved by the RFSL, Surat Further, the officers searched the office premises of Shri Dave situated near the immigration counter and found nothing incriminating. They searched the Hyundai Aura Car of Shri Dave, parked in the Airport compound's parking area, and found nothing incriminating during the search

2.10 Thereafter, the officers called Gold Refinery viz. M/s Shree Ambika Touch Refinery, located at 113/114, 1st Floor, Amrut Shanti, Opposite Parekh Complex, Karva Road, Bhagal, Surat 395003 and informed Shri Ashokbhai, a concerned person of M/s Shree Ambika Touch Refinery, that 20 white coloured pouches weighing appx. 2 kilograms each appearing to be containing Gold in paste form were recovered from the passengers landed at Surat International Airport from Sharjah and that gold had to be extracted from gold paste by melting it. The officers reached M/s Shree Ambika Touch Refinery located at 113/114, 1st Floor, Amrut Shanti. Opposite Parekh Complex, Karva Road, Bhagal Surat around 09:00 hrs and Shri Ashokbhai started the process of extracting gold from the paste Shri Ashokbhai weighed all 20 serially marked white-coloured pouches and melted each white-coloured pouch one by one sequentially, after completion of the process, Shri Ashokbhai informed the net weight of Gold recovered,

and the same has been recorded in the table below The officers took custody of 38155 grams of gold extracted from all 20 white-coloured pouches and Net Weight of Gold extracted from Gold Paste comes to 38155 in gms as reflected in *Table B* of the impugned order.

2.11 During panchnama, the Shift In-Charge, CISF Unit ASG Surat, informed vide Seizure List that the CISF team had recovered 4670 grams (appx) of Gold in Paste form abandoned in the men's washroom at the immigration area on the 1 floor of Surat Airport on 08.07 2023 at 10:30 Hrs The Shift In Charge. CISF Unit ASG Surat, handed over the seized gold in paste form weighing approximately 4670 gm. duly sealed by the paper seal, to the DRI officers Further, the seized gold received from the CISF was forwarded to the officers present at Shree Ambika Touch Refinery. The officers handed over the 5 white pouches to Shri Ashokbhai who, in turn, weighed all 5 pouches and found gross weight as 4670 gm. Shri Ashokbhai melted each white-coloured pouch one by one sequentially, and after completion of the process, Shri Ashokbhai informed that the net weight of Gold recovered from 4670 grams of gold in paste form was 3882 grams, which was taken into custody by the officers, as reflected in *Table C* of the impugned order.

2.12 During panchnama, the officer showed the passenger's manifest of Air India Express IX-172 dated 07.07.2023 to Shri Uvesh, Shri Sakib, Shri Yasir and Smt Marufabanu, in which the name of Shri Uvesh Imtiyaz Shaikh, Shri Sakib, Shri Yasir Shaikh and Smt Marufabanu was mentioned at Sl. No. 159, 163, 160 & 161, respectively and all four of them put their dated signatures on the above passenger manifest as a token of having seen and agreed to the same.

2.13 Thereafter, Shri Vikasraj Juneja, Valuer and Shri Keyur Patel, a staff of his, came to the Airport and started the process of valuing the extracted gold as detailed in Tables B and C above. After completing the process, the valuer submitted his report, attached as Annexure A to the panchnama, wherein the purity and value of gold recovered from the passengers and abandoned pouches were detailed. The total weight of the gold recovered during the panchnama proceedings was 42037 grams, and the market value of the same was Rs 25,26,54,562/- (tariff value Rs. 21,20,34,628/-), which was calculated as per Notification No. 47/2023-Customs (N.T.) dated 30.06 2023 and Notification No. 50/2023-Customs (N.T.) dated 06.07.2023.

2.14 The method of weighing and the valuation used by the valuer was done as per standard operating procedure and in the presence of the panchas and the passengers who were satisfied and agreed with the weighing and Valuation and purity certificate dated 08.07 2023 given by the valuer and in token of the same, the Panchas and the

passengers put their dated signature on the said valuation report.

2.15 Further, the 42037 grams of Gold, as detailed in Table-B and TABLE-C above, were attempted to be smuggled by the passengers and had been placed under seizure under Section 110 of Customs Act, 1962 under a reasonable belief that the same was liable for confiscation under the provisions of Customs Act, 1962. Accordingly, the following goods were seized by the Senior Intelligence Officer, DRI, Surat, vide seizure memo DRI/AZU/SRU/B/INV-11/2023 dated 08.07.2023, under the provisions of Customs Act, 1962.

(i) 9 723 kg of pure gold having a market value of Rs. 5,84,38,050/- (Rupees Five Crores Eighty-Four Lakh Thirty-Eight Thousand Fifty only), recovered from gold paste attempted to be smuggled by Shri Mohamed Sakib Mustak Ahmad Atashbajiwala and

(ii) 28.432 kg of pure gold having a market value of Rs. 17.08.84,566/-(Rupees Seventeen Crores Eight Lakh Eighty-Four Thousand Five Hundred Sixty-Six only) recovered from gold paste attempted to be smuggled by Shri Uvesh Imtiyaz Shaikh

(ii) the Maroon Colour Duffle Bag of Brand "La Polo ™ International" used by Shri Sakib, Black Coloured Side Bag Brand "RichBaolong & Blue-Black colour Bagpack Brand "ROYAL MOUNTAIN COLLECTION used by Shri Uvesh Imtiyaz Shaikh and 5 black belts used to carry pouches containing gold paste

2.16 Further, 3882 grams of pure gold having a market value of Rs. 2,33,31,946/- (Rupees Two Crores Thirty-Three Lakhs Thirty-One Thousand Nine Hundred Forty-Six only), found abandoned in the men's washroom at the immigration area in 1 floor of Surat Airport on 08.07.2023 was seized by the Senior Intelligence Officer, DRI, Surat, vide seizure memo DRI/AZU/SRU/B/INV-11/2023 dated 08.07 2023 under the provisions of Customs Act, 1962.

2.17 Pursuant to the above, searches /examination were conducted by the officers of DRI at different premises. Also, statements of various person were recorded under section 108 of the Customs Act, 1962. Statements of the appellant were recorded on 09.07.2023, 11.07.2023, 12.07.2023, 21/22.07.2023 under section 108 of the Customs Act, 1962.

2.18 Therefore, after completion of investigation and examination, a Show Cause Notice bearing F. No. VIII/26-11/AIU/CUS/2023-24 dated 28.08.2023 was issued to the appellant, other 10 noticees, and any person(s) claiming ownership of the goods

found abandoned, calling upon them to show cause before the Additional Commissioner of Customs, Surat International Airport, Surat, as to why the said smuggled goods should not be absolutely confiscated under Section 111 of the Customs Act, 1962, and why penalties should not be imposed under Section 112(a) and (b) of the Customs Act, 1962.

2.19 The adjudicating authority, after following principles of natural justice, through the impugned order has passed the order as detailed below:-

(i) He ordered absolute confiscation of 9,723 grams of pure gold having market value of Rs. 5,84,38,050/- (Rupees Five Crores Eighty-Four Lakh Thirty Eight Thousand Fifty only), recovered from the gold paste attempted to be smuggled by Shri Mohamed Sakib Mustak Ahmad Atashbajiwala under the provisions of Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962.

(ii) He ordered absolute confiscation of the Maroon Colour Duffle Bag of Brand "La Polo T™ International" and one black belt, used to carry pouches containing gold paste, used for concealment of gold paste and recovered from Shri Mohamed Sakib Mustak Ahmad Atashbajiwala in his baggage, under the provisions of Section 119 of the Customs Act, 1962,

(iii) He imposed a Penalty of Rs. 3,00,00,000/- (Rs. Three Crores only) Shri Mohamed Sakib Mustak Ahmad Atashbajiwala under Section 112(b)(i) of the Customs Act, 1962,

(iv) He ordered absolute confiscation of 28,432 grams of pure gold having a market value of Rs. 17,08,84,566/- (Rupees Seventeen Crores Eight Lakh Eighty-Four Thousand Five Hundred Sixty-Six only), recovered from the gold paste attempted to be smuggled by Shri Uvesh Imtiyaz Shaikh under the provisions of Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962.

(v) He ordered absolute confiscation of the Black Coloured Side Bag of Brand 'RichBaolong & Blue-Black colour Bagpack of Brand ROYAL MOUNTAIN COLLECTION and 4 (four) black belts, used to carry pouches containing gold paste used for concealment of gold paste and recovered from Shri Uvesh Imtiyaz Shaikh in his baggage under the provisions of Section 119 of the Customs Act, 1962,

(vi) He imposed a Penalty of Rs 6,00,00,000/- (Rs. Six Crores onlyj upon Shri Uvesh Imtiyaz Shaikh under Section 112 (b)(i) of the Customs Act, 1962,

(vii) He ordered absolute confiscation of 3,882 grams of pure gold having market value of Rs. 2,33,31,946/ (Rupees Two Crores Thirty-Three Lakhs Thirty-One Thousand Nine Hundred Forty Six only), recovered from the gold paste found lying abandoned in the men's washroom at the immigration area on 1 floor of Surat Airport on 08.07.2023 which was attempted to be smuggled by any Person/Persons who claim ownership of goods under the provisions of Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962.

(viii) He imposed a Penalty of Rs 2,00,00,000/- (Rupees Two Crores only) upon any Person/ Persons who claim ownership of goods under Section 112(b)(i) of the Customs Act, 1962;

(ix) He imposed a Penalty of Rs. 10,00,00,000/- (Rupees Ten Crores only) upon Shri Salman Rafiqbhai Penwala under Section 112 (a)(i) and (b)(i) of the Customs Act, 1962,

(x) He imposed a Penalty of Rs. 10,00,00,000/- (Rupees Ten Crores only) upon Shri Mahmed Rizvanbhai Aiyubbhai Limbada, under Section 112 (a)(i) of the Customs Act, 1962,

(xi) He imposed a Penalty of Rs. 2,00,00,000/- (Rupees Two Crores only) upon Mohammed Tousique Siddique under Section 112 (a)(i) of the Customs Act, 1962,

(xii) He imposed a Penalty of Rs. 2,00,00,000/- (Rupees Two Crores only) upon Shri Farhan Patel under Section 112 (a)(i) of the Customs Act, 1962:

(xiii) He imposed a Penalty of Rs. 1,00,00,000/- (Rupees One Crore only) upon Shri Mohd. Sattar, under Section 112 (a)(i) of the Customs Act, 1962,

(xiv) He imposed a Penalty of Rs. 2,00,00,000/- (Rupees Two Crores only) upon Shri Yasir Shaikh under Section 112 (a)(i) and (b)(i) of the Customs Act, 1962.

(xv) He imposed a Penalty of Rs. 1,00,00,000/- (Rupees One Crore only) upon Shri Paragkumar Dhirajlal Dave under Section 112 (a)(i) of the Customs Act, 1962,

(xvi) He imposed a Penalty of Rs. 1,00,00,000/- (Rs. One Crore only) upon Shri Mohsin Shaikh under Section 112 (b)(i) of the Customs Act, 1962:

(xvii) He imposed a Penalty of Rs. 1,00,00,000/- (Rs. One Crore only) upon Shri Shabbir Ahmed Ismail Hatiya under Section 112 (b) (i) of the Customs Act. 1962.

3. Being aggrieved and dissatisfied with the impugned order, the appellant has preferred the present appeal on 19.03.2025, raising the following grounds in support of their defence which are produced as under:-

*"1 The adjudicating authority has imposed a penalty on the appellant under Section 112(b) of the Customs Act 1962 of the Customs Act, 1962, despite the absence of any direct evidence proving that he physically handled or received the smuggled gold. Any penal liability under Section 112(b) of the Customs Act 1962 cannot be brought upon the appellant unless possession, acquisition, carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing is proved on the part of the appellant. In the present case, no tangible evidence such as physical possession of gold, financial records indicating illicit transactions, or surveillance footage showing the alleged exchange has been presented. Hence, there can be no penalty imposed on the appellant u/s 112(b) of the Customs Act 1962.*

*2. The adjudicating authority has heavily relied upon the statements of co-noticees ic., passengers, recorded under Section 108 of the Customs Act. These statements were made under duress, and are without any corroborative evidence or cross-examination during adjudication to prove the authenticity of the same. It is also a settled law that incriminating statements obtained from co-noticees under pressure which are not corroborated cannot be used as the sole basis for imposing penalty on the appellant*

*3. The adjudicating authority has interpreted the deletion of WhatsApp messages from the phone of the appellant as an attempt to destroy evidence However, the mere act of deleting personal communications does not, in itself, establish involvement in smuggling of gold which has been seized in the instant case from the passengers. The gold under seizer by CISF personnel, said to be found abandoned from the male washroom cannot be established to have been brought by the three male passengers as there is no material on record of three male passengers to have been in the male washroom from were CISF personnel have said to have recovered the same, the fourth passengers being a female can be ruled out to have ever entered the said premises No incriminating messages were recovered from forensic analysis, and the authority has failed to demonstrate how this deletion amounts to abetment in smuggling of the seized gold. The entire penalty and the order have to be set aside on this ground itself*

*4. The appellant submits that he has not received any financial benefit from the alleged smuggling activities. The investigation did not uncover any substantial cash deposits, unexplained wealth, or money transfers linking him to the smuggling syndicate. The adjudicating authority despite acknowledging the lack of financial evidence has still*

*imposed a penalty, by arriving at the finding that non-monetary evidences are sufficient for penal liability which displays eagerness and prejudiced mind of the adjudicator.*

*5. The adjudicator has cited the movements of the appellant between the immigration counter and washroom as evidence of his involvement. However, CCTV footage does not show any direct act of receiving or handling smuggled gold at any time and appellant has provided a reasonable and verifiable explanation for his movements caused by medical reasons. The reliance on an ambiguous interpretation of CCTV evidence, without corroborative proof displays non-application of mind and eagerness on part of adjudicator to impose penalty on the appellant.*

*6. The adjudicating authority has denied the appellant inherent right to cross-examine the co-noticees whose statements have been relied and used against him which is in violation of settled law and established judicial precedents.*

*7. The penalty imposed under Section 112(b) is based on assumptions rather than factual evidence. The adjudicator has not established the essential elements required to prove abetment, including intent, active facilitation, or a direct link to the smuggling operation Since no concrete evidence has been presented, the penalty imposed on the appellant is legally unsustainable and must be set aside and appeal allowed on this ground itself.*

*8. The appellant reserves his right to add, amend, delete, any grounds and present further submissions and or judgements during the pendency of appeal or during personal hearing.*

*9. I am being a Police Officer of the rank of Class-III. Sub Inspector has low income and I have been under suspension since June 2023 I am not a businessman with GST or the main culprit. The criminal case is still pending with the Hon Court of the CJM, Surat, which is yet to be tried and proved The present order has been passed by the same Custom Department with bias and home pitch people I am deprived from the justice. I have two kids and my father, mother and brother were passed away. Hence, I don't have any money and property enough to deposit this huge I CR fine and pre-deposit of 7.5%, I can give you any alternate surety bond, cheque etc. being a government servant, my job is permanent and with pensionable benefits.*

*So I request to consider my present appeal without any pre-deposit If you are not authorised or wish to accept this appeal, kindly give me the written order from your end, so that I can approach the CESTAT and gradually to the Hon. Court for the same. Hence, please provide me any written order for this appeal . There are number of orders where*

*the Hon. Court has waived of the Pre-Deposit of 7.5%. Hence, I request to waive off it or give me any written order for the same. Recently Hon'ble Delhi High court in case of MOHAMMED AKMAM UDDIN AHMED & ORS. [W.P.(C) 1242/2022 & CM APPL. 3625/20221 (Judgment pronounced on 28.04.2023) waived the condition of mandatory pre-deposit considering financial position and the wherewithal of the Petitioners."*

**PERSONAL HEARING:**

4. In pursuance of principles of Natural Justice, Personal hearing in the above said two appeals was held on 17.03.2025, in virtual mode. The appellant appeared and attended for the hearing and re-iterated the submission made at the time of filing the appeal. The appellant also filed additional submission in his defence, same is mentioned hereunder:

*"(1). Financial Hardship and Inability to Make Pre-Deposit Money:*
*I most respectfully submit my severe financial hardship, due to which I am unable to pay the imposed fine of approximately ₹1 Crore or comply with the statutory pre-deposit requirement of 7.5%, or any further deposit that may arise in subsequent appellate proceedings.*

*1. I was under suspension from my regular government service for nearly two years, during which I initially received no salary and thereafter only subsistence allowance of approximately ₹25,000 per month without DA and other allowances.*

*2. Due to this prolonged financial crisis, I had to borrow substantial amounts from relatives, friends, and financial institutions to sustain my family.*

*3. I have availed two loans after my release on bail in 2024, with EMIs of approximately ₹29,000 and ₹4,500 respectively (Loan statements are enclosed herewith). My present net salary is approximately ₹53,000, from which EMIs, LIC premiums, medi-claim, children's education expenses, and household expenses are deducted, leaving virtually no surplus.*

*4. I have already incurred substantial legal expenses exceeding ₹12,00,000 to 14,00,000 in various proceedings including bail matters before CJM Surat, Sessions Court Surat, High Court of Gujarat, departmental inquiries, ACB DA Inquiry matters, and the present Customs SCN proceedings. In my absence my family had taken loan from various relatives and friends and expended money without my notice. Hence, these amounts were arranged through withdrawal from GPF (approx. ₹9,00,000), LIC (₹2,00,000), mutual funds, savings, and borrowings from relatives, which are still outstanding in my name.*

*5. I am presently posted at Diyodar (Vav/Tharad region), approximately 550 km away from my hometown Surat, resulting in dual household expenses for my family and my place of posting. My wife is working at present in Navsari VSG International School as a teacher cum admin clerk, but the primary financial responsibility remains on me. My daughter is pursuing cosmetology training with internship at ISAS, Ahmedabad, and my son studies in Class 8 (CBSE), and all their educational and personal expenses are dependent on me.*

*6. I have also incurred significant expenditure on medical treatment of my late father, mother, elder brother, and sister-in-law (Bhabhi) during their prolonged illnesses. They all passed away one by one and at present I am solo supporter to my extended family.*

*7. At present, I have no substantial savings except approximately ₹3,00,000 in GPF, ₹1,00,000 in LIC, and ₹50,000 in SIP, which are earmarked for my children's*

*future education and my daughter Nancy, who is 20 years old and in future have to save for her marriage expenses. And my son is yet 13 years whose 10th and 12th Science need handsome amount for his schooling, private tuition and books, stationaries etc. expenses.*

*8. I am the sole earning member supporting my entire family, and I am left with only about 7.6 years of service. I am presently not eligible for further loans due to heavy EMI commitments of ₹35,000–₹40,000 per month, and also due to short span of service.*

*9. Due to continuous financial and legal stress, I am also undergoing medical treatment for mental health issues.*

*In view of the above extreme financial hardship, I most humbly request your honour to kindly take a compassionate view and consider waiver of pre-deposit, or accept any alternative undertaking/assurance in lieu thereof, in the interest of justice. And may please be guide or issue me alternative way for the same. The said case was occurred during the discharge of my government duty and I was not a carrier or pax of the plane.*

*I assure your honour that I shall fully cooperate in the proceedings and provide all above evidentiary documents, if needed. In these circumstances, I am neither in a position to pay the penalty of ₹1 Crore nor comply with the statutory pre-deposit requirement. I am ready to provide all documentary proof (salary slips, loan statements, GPF details, etc.) and even furnish any reasonable undertaking in lieu of monetary pre-deposit.*

*(2). The Serious Legal and Factual Issues in the Case*

*The present case is based on highly questionable and unsubstantiated facts:*

*(i) Improbability of Alleged घटना*

*No reasonable person would attempt to cross an International Customs Check Post carrying 43 kg of gold in bags, which is practically impossible without detection. In the first Panchanama the accused dramatically try to cross the Custom Border Check Post with huge 43 KG weight bags are not believable and feasible. It was made out by the DIR IO and if they are authentic let me provide CCTV footages from the off boarding route to the ICP, Immigration to the Custom Checkpost. I had already requested for the CCTV footages, at that time through my advocate, which were not intentionally provided till date.*

*(ii) Failure of Controlled Delivery*

*Despite alleged prior reliable concrete intelligence, no controlled delivery was conducted at the stated location (male washroom), and I was not caught raid handed, raising serious doubts about the investigation and raid operation execution.*

*(iii) Non-Search of Male Washroom (ICP, Immigration) – Critical Lapse*

*• Panchanama records show searches of multiple areas but no search of the men's washroom, despite it being the alleged delivery point. And the accused already confessed it and the*

*• DRI had already received prior intelligence. They searched the whole floor, offices and premises of the Immigration check post during panchnama. But how come they did not search male washroom.*

*• Later, CISF personnel allegedly recovered "abandoned gold" (approx. 4.8 kg) without proper procedure. At that time the DRI and Custom teams were available down the floor then why the CISF officials without any due process, panchanam moved those abandon gold and tried to temper with the authentic evidence, is the big question.*

*• No independent panchnama or videography was conducted by authorized investigating officers at the spot of male washroom where the abandon gold was*

*scattered or found. No separate abandone gold incident/case was registered in this matter as per the apt sections of Custom Act or BNSS.*

*• This abandon gold was arbitrarily linked to the present case without evidence. It seems as to make propaganda of all muddamal in huge via press note or to save their hardship in register and executing a separate Panchanam with a independent case.*

*• There is no any mention on the seizure memo the where-about the abandon gold, and after the charge-sheet of 3500 pages, no single clarification about the where-about these abandon gold till date. I request you hon. Sir to provide me the information regarding the whereabout and evidence of possession of the said abandon gold muddamal.This creates serious doubt regarding the integrity of the entire seizure.*

*(iv) No Link Between "Abandoned Gold" and Accused*

*• Even in departmental inquiry, officers admitted that there is no connection between the abandoned gold and the accused.*

*• Despite this, it has been included in valuation and penalty.*

*(v) No Direct Evidence Against Me*

*• I was not present at the place of occurrence.*

*• No CDR or electronic evidence links me to any arrested accused at that time nor that Salman Penwala who showed my pic and conference calls, has no any CDR matched with me till date.*

*• My implication is based solely on retracted confessional statements, which have no evidentiary value unless corroborated.*

*(vi) The ICP, Immigration PI Baldanai and Co Staffs statements were intentionally not recorded even though they all were present at the time of occurrences of the said case and are key eye witness:*

*• I was posted at the ICP, Immigration PSI and not the Immigration Officer, Shri Baldanai PI was the Immigration Officer, and I was working under him. The DRI IO has neither recorded any single statements of my controlling officer nor any colleagues or staffs at my duty point.*

*• However, in my Departmental Inquiry Shri Baldanai and other police constable staffs have declared that the three accused were leaded by some DRI official from the entrance, where the plan arrived to the ICP, Immigration post and made immigration with these arrested accused. They also showed ID card to the ICP staffs. Hence, this clearly indicate the concrete evidence that the DRI official already caught the three accuse prior to enter at the Custom Check post.*

*• Hence, they draw a fake Panchanama showing that these three accused tried to cross the Custom Check Post with heavy bags of 43 KG Smuggling Gold and caught, which is farcical, dramatic and made out fact.*

*(vi) Violation of Natural Justice*

*• I was not provided opportunity for cross-examination of witnesses.*

*• Key documents, CCTV footage showing the entire rout of the initially arrested accused from the door of the plane to the ICP, Immigration to the Custom Check Post, and statements of wanted co-accused, recently surrendered, have not been provided despite repeated requests.*

*• Panch witnesses and DIR Officers Vikrant Singh and Satyendra Kumar themselves did not support the prosecution version in departmental proceedings. The DP is considered as the quasi judicial proceedings alike these present proceedings.*

*(vii) Premature Penalty*

*The criminal case is still pending trial before the competent court. Imposing such a huge penalty before adjudication of guilt is premature and violative of my fundamental rights. I am a government servant and the case occurred during the discharge of my duty.*

*(viii) Lack of Proper Sanction*
*Mandatory sanction/approval required in cases involving a government servant has not been properly followed by the IO and Charge-sheet (Criminal Case) filled officer till date. It is submitted that in absence of mandatory sanction under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 197 CrPC), the continuation of proceedings against me, as a government servant, is legally unsustainable, as the alleged acts are intrinsically connected with discharge of official duties. And the same is applicable with this present SCN proceedings.*
*4. Legal Rights and Proposed Action: If your good self has not considered my pre deposit waiver. I I am constrained to approach the Hon'ble High Court regarding: Pre-deposit Waiver Petition. Denial of cross-examination Non-supply of documents & Procedural irregularities, Violation of my fundamental rights of apt opportunity and justice etc.*
*5. Prayer: In view of the above facts and circumstances, I most humbly pray that your good office may kindly:*
*1. Consider waiver/relaxation of pre-deposit in view of extreme financial hardship, and guide me for the same.*
*2. Re-examine the case on merits, and may sent back to the Supdt. of Custom, Surat and Addl. Comm. Of Int Airport, Surat considering the serious factual inconsistencies and lack of evidence.*
*3. Provide all relevant documents, statements, and CCTV footage route of the said three accused off board from the plane till their arrest. .*
*4. Permit cross-examination of all the witnesses to ensure fair hearing.*
*5. Take a compassionate and न्यायसंगत view in the interest of justice."*

**DISCUSSION AND FINDINGS:**

5. I have carefully gone through the impugned order passed by the adjudicating authority and the defence reply/appeal filed by the appellant in the appeal memorandum and additional submission. Upon perusal of the aforesaid records and documents, the primary issue that arises for consideration is whether the adjudicating authority was justified in imposing penalty on the appellant under Section 112(a)(i) of the Customs Act, 1962, and whether such finding is fair, reasonable, and legally sustainable in the facts and circumstances of the case.

5.1 Before going into the merits of the case, it is observed from the Form C.A.-1 that the impugned order dated 04.02.2025 is shown to have been received on 04.02.2025 and that the present appeal has been filed on 19.03.2025. Accordingly, the present appeal has been filed within the normal period of 60 days prescribed for filing an appeal under Section 128(1) of the Customs Act, 1962.

5.2 With respect to the requirement of mandatory pre-deposit for filing the appeal, it is observed that the appellant has not paid the mandatory pre-deposit as required under Section 129E of the Customs Act, 1962. The appellant was informed by

this office vide letters-mails dated 01.01.2026 and 25.02.2026 to submit a copy of the TR-6 challan evidencing payment of the prescribed pre-deposit @ 7.5% of the penalty amount. The appellant was also clearly apprised that in the absence of such pre-deposit, the appeal would be liable for rejection for non-compliance with the provisions of Section 129E of the Customs Act, 1962. However, the appellant has, till date, failed to submit any proof of payment of the mandatory pre-deposit as required under the said provision. In the defence reply as well as in the additional submissions, the appellant has stated that due to poor financial condition and being under suspension, he is not in a position to make the mandatory pre-deposit.

5.3 I find that compliance with the requirement of mandatory pre-deposit under Section 129E of the Customs Act, 1962 is a statutory condition precedent for the admission and consideration of an appeal. The said provision is couched in mandatory terms and does not confer any discretion upon the appellate authority to waive or relax the requirement of pre-deposit on any ground, including financial hardship. In the present case, despite being specifically advised vide letters/e-mails dated 01.01.2026 and 25.02.2026, the appellant has failed to produce any evidence of having made the prescribed pre-deposit. The contention of the appellant regarding financial hardship and suspension from service, though noted, cannot be accepted as a valid ground for non-compliance with the statutory mandate, in the absence of any enabling provision under the law. It is a settled legal position that non-compliance with the mandatory requirement of pre-deposit renders the appeal liable to be dismissed at the threshold, without going into the merits of the case. Accordingly, in view of the clear non-compliance with the provisions of Section 129E of the Customs Act, 1962, the present appeal is not maintainable and is liable to be rejected.

5.4 On perusal of the legal provision under the 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 a 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.

5.5 I 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."*

5.6 I also rely upon the Order dated 06.12.2024 of Hon'ble High Court of Bombay in W.P. No. 476 of 2024 in the caser of Lalit Kulthia Vs. Commissioner of Customs (Appeals), Mumbai-III, which is reported as (2025) 28 Centax 135 (Bom.)/2025 (392) E.L.T. 436 (Bom.). Para 6 to 8 of the said Order are as under:

*"6. The relief the Petitioners seek contradicts Section 129E of the Customs Act, which contemplates a pre-deposit. In Kotak Mahindra Bank Pvt Ltd. v. Ambuj A Kasliwal and Others (2021) 3 SCC 549, the Hon'ble Supreme Court has held that even the High Court should not direct the appellate authorities to admit and hear appeals unaccompanied by the minimum pre deposit requirement under the statute. The Hon'ble Supreme Court held that discretion under Article 226 of the Constitution of India cannot be exercised against the mandatory requirement of statutory provision.*

*7. In Manjit Singh v. Union of India 2023 (383) E.L.T. 308 (Bom.) = (2022) 1 Centax 91 (Bom.) (Writ Petition No. 673 of 2020), decided by the Coordinate Bench of this Court on 18 October 2022, relief of waiver of the minimum pre-deposit of 7.5% of the penalty under Section 129E of the Customs Act was declined. This decision considers all the contentions raised in this Petition and discusses earlier precedents on the subject.*

*8. Therefore, based on the decision of the Hon'ble Supreme Court and this Court, no case is made to grant any relief to the Petitioners."*

5.7 I also rely upon the Judgment dated 14.03.2024 of Hon'ble High Court of Delhi in the case of G and S International Vs. Commissioner of Customs [(2024) 17 Centax 400 (Del.)], wherein it has been held, *"Unless Section 129E is complied with, the Appellate Authority cannot proceed to hear the appeal on merits. Therefore, the logical consequence of failure to comply with Section 129E, is the rejection of appeal on that ground. The law on the subject is not res integra."*

6. In view of the foregoing discussions and findings, I hold that the appellant has failed to comply with the mandatory requirement of pre-deposit as stipulated under Section 129E of the Customs Act, 1962. Since compliance with the said provision is a condition precedent for admission of the appeal, and in the absence of any proof of payment of the prescribed pre-deposit, the present appeal is not maintainable.

7. It is also observed that the appellant had filed an appeal dated 10.10.2024, which was received in the Appeal Section on 17.10.2024 and assigned Appeal No. S/49-188/CUS/AHD/2024-25. In the said appeal, the appellant submitted that, during the course of personal hearing before the adjudicating authority on 27.08.2024, a request was made for cross-examination of Noticee No. 07, Mohamed Sakib Mustak Ahmad Atashbajiwala, Noticee No. 06, Uvesh Imtiyaz Shaikh, and Noticee No. 08, Yashir Shaikh. However, the adjudicating authority, vide letter dated 18.09.2024, rejected the said request of the appellant. The adjudicating authority held that the persons whose cross examination have been sought in the subject matter are the people who were part of this gold smuggling racket. The main fact in the instant case is the connivance of Shri Paragkumar Dhirajlal Dave with the gold/gold paste smuggling syndicate members to smuggle gold/gold paste into India which is already on records based on documentary evidences Further, in your letter you have not mentioned any specific reasons for such cross-examination. Hence, the request for cross-examination is not maintainable as nothing new other than what is available on record is likely to come out of cross examination. It will merely delay the process of adjudication.

7.1 In the issue of cross-examination of certain persons and filing appeal thereof, I find that the adjudicating authority has rightly denied the cross examination of the above persons. All the facts and figures related to the case of the appellant is on record and supplied to the appellant. No new facts related to the case would emerge from the cross examination of the said person. The appellant has not brought forth any specific grounds or justification as to how cross-examination of the said persons would elicit any new or material facts relevant to the adjudication of the case. It is a settled position that cross-examination cannot be claimed as a matter of right in every case, particularly when

the case is founded on documentary evidence and no prejudice is demonstrated. In the present case, I find that no useful purpose would be served by allowing such cross-examination and that it would only result in delaying the adjudication proceedings. Accordingly, I hold that the denial of cross-examination by the adjudicating authority is justified and does not suffer from any legal infirmity. Therefore, the appeal of the appellant is liable for rejection.

**Order:**

8. Accordingly, in view of above discussion, the main appeal of the appellant is rejected at the stage of admission, for non-compliance with the provisions of Section 129E of the Customs Act, 1962, without going into the merits of the case.

8.1 Further, the appeal of the appellant for cross-examination of the aforesaid persons is also rejected, for the reasons recorded in the foregoing paragraphs.

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

F. No. S/49-315/CUS/AHD/2024-25
S/49-188/CUS/AHD/2024-25

Date: 30.03.2026

By email (as per Section 153(1)(c) of the Customs Act, 1962)

By Speed post.

Shri Paragkumar Dhirajlal Dave, PSI ( Immigration Department ),
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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 Additional Commissioner of Customs, Surat International Airport, Surat ( customs-suratairport@gov.in cus-ahmd-adj@gov.in)
4. The Assistant Commissioner / The Superintendent of Customs, ( Recovery / Disposal) Surat International Airport, Surat ( customs-suratairport@gov.in )
5. Guard File.