



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20250771MN0000111DB3

क	फ़ाइल संख्या FILE NO.	S/49-33 & 34/CUS/JMN/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)	JMN-CUSTM-000-APP-062 & 063-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.07.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	20/ADC/2023-24 dated 20.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	04.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) M/s Noble Traders, Shri Asif Rafik Talu Soda street, Old cloth market Upleta-360490 (2) Shri Asif Rafik Talu, Power of Attorney Holder of M/s. Noble Traders, Soda Street, Old Cloth Market, Upleta-360490, District- Rajkot.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods 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 दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	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 हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में 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 की 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

The present appeals have been filed by M/s Noble Traders, Talu, Soda street, Old cloth market, Upleta-360490, (hereinafter referred to as the 'Appellant No. 1') and Shri Asif Rafik Talu, Soda street, Old cloth market, Upleta-360490, (hereinafter referred to as the 'Appellant No. 2') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 20/ADC/2023-24 dated 20.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Hon'ble CESTAT, Ahmedabad vide Order No. A/11322-11328/2022 dated 31.10.2022 in the matter of M/s. Noble Traders, Upleta has set aside the Order-in-Appeal No. JMN-CUSTM-000-APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses

2.1 Brief facts of the case are that Preventive section, Hqrs, Customs (P), Jamnagar gathered intelligence indicating smuggling of huge quantities of imported worn clothing/garments by the appellant. The import of "Worn clothing and other Worn articles" falling under Chapter Heading 63090000 of the Customs Tariff Act, 1975 (hereinafter referred to as 'the CTA' for the sake of brevity) is restricted under ITC (HS) vide DGFT Notification No.7/2004-09, with effect from 27.10.2004 read with para 2.17 of Foreign Trade Policy and such goods can be imported only against a valid import license/authorization/permission granted by the DGFT.

2.2 Acting upon the intelligence, the Officers of Customs (P), Jamnagar carried out search of the godown premises of the appellant No 1 owned by Smt. Nasimaben Rafikbhai Talu on 09.12.2016 in presence of Shri Riyaz Rafik Talu, (son of Smt. Nasimaben Rafikbhai Talu). During the course of search, a huge stock of imported worn clothing (hereinafter referred to as 'the said goods') stacked in bales were found. It was found that the worn clothing bore labels of various foreign countries and appeared imported goods. It was further found that some of the clothing were uncut, some were cut and the rest were wipers/cotton rags. Shri Riyaz Rafik Talu, (son of Smt. Nasimaben Rafikbhai Talu, proprietor



of M/s Noble Traders), informed that his younger brother, Shri Asif Rafik Talu (Appellant No 2) is the power of attorney holder of M/s Noble Traders (Appellant No 1). He further informed that they were engaged in the business of purchase and sale of worn clothing, blankets, towels, bed sheets etc. and that the godowns located in their business premises belong to M/s Noble Traders (appellant No 1), and M/s Sapna Sari Centre commonly. He further informed that Shri Asif Rafik Talu (appellant No 2) is proprietor of M/s. Sapna Sari Centre. No documents related to purchase and sale of the said goods were made available at the time of search. During the search operation, Shri Riyaz Rafik Talu, in presence of the panchas stated, inter alia, that the stock of two firms namely, M/s Noble Traders (appellant No 1) and M/s Sapna Sari Centre were lying in the common godown premises; that the owner of M/s. Noble Traders (appellant No 1) is Smt. Nasimaben Rafiqbhai Talu (his Mother) and owner of M/s. Sapna Sari Centre is Shri Asif Rafik Talu (appellant No 2) (his younger brother); that the work of both the firms were being looked after by Shri Asif Rafik Talu (appellant No 2); that the goods were being procured from M/s. Om Sidhdhi Vinayak, Kandla and also from local market; that bifurcation of the goods of each firm could be given by Shri Asif Rafik Talu (appellant No 2); that the books of accounts and price of the goods would be produced by Shri Asif Rafik Talu (appellant No 2). Since Shri Riyaz Rafik Talu could not produce any documents indicating legal import of the said foreign goods, the same i.e. Worn clothing and wipers/cotton rags weighing 6,03,897 kgs. belonging to M/s. Noble Traders (appellant No 1) and, M/s. Sapna Sari Centre combined were detained under regular Panchnama dated 09/10.12.2016. The said detained goods were, then, handed over to Shri Riyaz Rafik Talu, son of the proprietor of M/s Noble Traders (appellant No 1) under Supratnama dated 09/10.12.2016 for safe custody.

2.3 During the course of further investigation, statements of various suppliers from whom the said foreign origin goods were said to have been procured were recorded as under:

2.4 Statement of Shri Iqbal Kadarbhai Dalu, proprietor of M/s Star Traders, Jamnagar recorded under Section 108 of Customs Act, 1962 on 14.12.2016 wherein he stated that he is engaged in the business of purchase and sale of old imported clothing's; that he purchases goods from Chennai, Panipat and Coimbatore. He confirmed that the invoices were issued to M/s Noble Traders (appellant No. 1), Upleta; that 'old and used worn clothes' mentioned in the invoices pertaining to sale of goods to M/s. Noble Traders



Handwritten signature or initials.

(appellant No 1), Upleta means old and used cut clothings.

2.5 Statement of Shri Mahmadali N Meman, Proprietor of M/s New Kamal Rajkot was recorded under Section 108 of Customs Act, 1962 on 14.12.2016, wherein he stated that they have never sold uncut goods to M/s. Noble Traders (appellant No 1), Upleta; that in the past they had once purchased the uncut goods from M/s. Noble Traders (appellant No 1), Upleta, however the same were returned back to M/s. Noble Traders (appellant No 1) as they could not be sold.

2.6 A statement of Shri Asif Rafik Talu (appellant No 2), Power of Attorney Holder of M/s. Noble Traders (appellant No 1) was recorded under Section 108 of the Customs Act, 1962 on 19.12.2016 wherein he inter alia stated that he was the power of attorney holder of M/s. Noble Traders (appellant No 1) and submitted copy of letter of power of attorney dated 10.07.2012; that the godown is joint property of family with five partners. He further stated that he was looking after all the activities of both the firms, viz. M/s Noble Traders (appellant No 1), Upleta and M/s Sapna Sari Centre, Upleta; that they were engaged in purchase/sale of old garments and they purchased the goods mainly from Jamnagar, Gandhidham, Ahmedabad, Rajkot, Panipat and Upleta and also that they were engaged in importing old clothing; that they were selling the goods in local market; that he knew that old clothing were imported and bore "Made In....." labels with the name of the foreign country; that on their purchase invoices, the description given for the goods is "old and used cloth"; that he was not aware whether any customs duty had been paid on the goods purchased by them from the local markets. He further stated that he was at Delhi at the time of search; that he had read the Panchnama of search proceedings and agreed with the details shown in the detention Panchnama dated 9/10-12-2016; that wearable garments mean garments without cut and could be worn/reused; that mutilated cloths mean that there were 2 to 4 cuts having length of 4" and wipers/cotton rags mean pieces of garments; that he had purchased uncut cloths @Rs. 40 To 110 per kg., mutilated cloths @ Rs. 20 to 30 per Kg and Wipers/cotton rags @ Rs. 05 to 07 per kg.; that they were selling these goods with margin of Rs. 2 to 5, Rs. 1 to 2 and Rs 0.20 to 0.50 per kg. respectively; that he knew that the goods falling under Chapter headings 6309 and 6310 are restricted goods under the Exim policy. He further stated that there was no firm wise marking on the goods but he could differentiate them and identify which goods belong to M/s Noble Traders (appellant No 1) and which goods belong to




M/s Sapna Sari Centre.

2.7 Shri Asif Rafik Talu (appellant No 2), Power of Attorney Holder of M/s. Noble Traders (appellant No 1), submitted certain relevant documents relating to purchase and sale of the said goods on 19.12.2016. Further documents were also submitted on 21.12.2016 and 23.12.2016. It was found during the scrutiny of these documents that the purchase of worn clothing in respect of some consignments were supported by Bills of Entry as they had been directly imported by M/s Noble Traders (appellant No 1) under payment of duty, fine and penalty. However, no supporting import documents relating to the procurement of 101095 kgs of old and used uncut clothes as well as 80600 kgs of wipers/cotton rags were produced loaded by M/s. Noble Traders (appellant No 1), Upleta.

2.8 A team of officers again visited the premises of M/s. Noble Traders (appellant No 1) on 06.01.2017 to verify the stocks with reference to the statement of Shri Asif Rafik Talu recorded under Section 108 of Customs Act, 1962 and documents submitted by him.

2.9 Verification was carried out in presence of Panchas and Shri Asif Rafik Talu (appellant No 2), the power of attorney holder of M/s Noble Traders (appellant No 1). During the course of verification, the panchas witnessed marking of various foreign countries on the old & worn clothing under verification showing that the goods were of foreign origin. On being asked, in presence of the panchas, Shri Asif Rafik Talu (appellant No 2) provided godown wise bifurcation of the goods belonging to M/s. Noble Traders (appellant No 1) and that of M/s. Sapna Sari Centre. Shri Asif Rafik Talu (appellant No 2) also stated the price of the goods as Rs. 76 per kg for 'worn clothing Uncut', Rs.27/- for 'worn clothing- cut (but not as per norms)' and Rs. 8 per kg for 'wipers/cotton rags'.

2.10 Therefore in absence of any licit documents, restricted goods of foreign origin weighing 1,81,695 kgs and valued at Rs. 83,28,020/- of M/s. Noble Traders (appellant No 1) were placed under seizure under Section 110 of the Customs Act, 1962 vide panchnama dated 06.01.2017 for safe custody under the reasonable belief that the said goods had been smuggled into India and were liable to confiscation under the provisions of the Customs Act, 1962. Thereafter, the seized goods were handed over to Shri Asif Rafik Talu (appellant No 2) of



M/s. Noble Traders (appellant No 1) under Supratnama dated 06.01.2017. The details of the goods placed under seizure pertaining to M/s. Sapna Sari Centre were recorded as per Annexure- A to the Panchnama dated 06.01.2017 and the details of the goods placed under seizure pertaining to M/s. Noble Traders (appellant No 1) recorded as per Annexure- B to the Panchnama dated 06.01.2017. Samples of the goods were also drawn which were sealed in presence of panchas and in presence of Shri Asif Rafik Talu (appellant No 2).

2.11 To verify the facts and genuineness of transportation, inquiry was also made with Road Transport Office, Palanpur with regard to vehicle Number GJ-08-U-1277 as Lorry Receipt submitted by Shri Asif Rafik Talu (appellant No 2) of M/s. Noble Traders (appellant No 1) suggest that this vehicle appeared to be used frequently for transportation of the goods said to be acquired by M/s. Noble Traders (appellant No 1). In response to a letter dated 29.12.2016, the RTO, Palanpur vide letter dated 04.01.2017 provided the details of the vehicle revealing that as per their records, vehicle No. GJ-08-U-1277 was a Tanker and owner of the same is Shri Ramesh chandbhai Maljibhai Desai residing at Jagana, Desaiwas, Palanpur, Banaskantha. The Officers of the Customs (Prev), Hdqr., Jamnagar visited the address of the owner for questioning him, however could not found on the said address. Inquiry made with villagers revealed that the person was not living in the village since last 15 to 18 years.

2.12 During the course of inquiry regarding other two vehicles frequently used to transport the goods to M/s. Noble Traders (appellant No 1), Upleta, a statement of Shri Kaushik K. Acharya, owner of truck No. GJ-12-X-2595 and GJ-12-U-8754 was recorded on 06.01.2017 wherein he, inter alia, stated that he was doing local transportation of the goods from various units of KASEZ up to Gandhidham, GIDC only: that he had never transported the goods from KASEZ to Jamnagar, Upleta or Rajkot; that they transport Plastic granules and old cloths from KASEZ to Gandhidham local areas. On being shown the details submitted by M/s. Noble Traders (appellant No 1) wherein it was mentioned that transportation of goods had taken place through two of his trucks bearing No. GJ-12-U-8754 and GJ-12-X-2595, he said that his trucks had never transported any goods to Jamnagar, Upleta or Rajkot.

2.13 A statement of Shri Iqbal Kadarbhai Dalu, proprietor of M/s Star Traders, Jamnagar was recorded under Section 108 of Customs Act, 1962 on 11.04.2017 wherein he inter alia stated that the goods had been described as



'old used clothing' in the invoices issued towards goods sold to M/s. Noble Traders (appellant No 1); that invoice did not mention that the goods were imported; that no Bills of Entry, customs invoices or import documents were available with him and he could not produce the same. He also stated that the goods sold to M/s. Noble Traders (appellant No 1) were not imported one.

2.14 A statement of Shri Irfan Ahmad Jumani, proprietor of M/s Golden Store, Upleta was recorded under Section 108 of Customs Act, 1962 on 17.05.2017 wherein he inter alia stated that he had sold worn clothing and wipers/cotton rags to M/s. Noble Traders (appellant No 1); that there was no mention about payment particulars of import duty or Bills of entry in the Invoices. He further stated that while purchasing these goods from their supplier, there is no mention about payment of import duty and they were not supplied any Bills of Entry or documents evidencing payment of Customs duty.

2.15 A statement of Shri Asif Rafik Talu (appellant No 2), Power of Attorney holder of M/s. Noble Traders (appellant No 1) recorded under Section 108 of the Customs Act, 1962 on 17.05.2017 wherein he inter alia stated that he had no further Bills of Entry to produce except what was submitted earlier. He further stated that the goods purchased by them from local markets and purchase documents did not mention about the details of import duty payment or Bills of Entry number nor there was any mention regarding the details of legal import.

2.16 A reference was made to the Directorate General of Foreign Trade regarding this case, the seizure of the said goods and also seeking clarification on the release of the said goods considering the restrictions imposed on their import. The Directorate General of Foreign Trade, New Delhi vide letter F. No. 01/89/214/002/AM-02/PC-2[A]/Vol-1 dated 26.05.2017 replied as under: "....it is informed that the import of "Worn Clothing \& others and Worn articles" are "restricted" under 63090000 for import. No authorization had been given for import of these items by DGFT. Hence these were unauthorized imports. It was therefore requested that Customs [Prev.] may take appropriate action under Customs Act."

2.17 The Investigation into the matter culminated into issuance of Show Cause Notice No. VIII/10143/JC/O\&A/2017 dated 07.06.2017 to the Appellant calling him as to why:

(i) the imported worn clothing falling under Chapter Heading 6309 of the CTA, weighing 1,01,095 kgs valued at Rs. 76,83,220/- and the imported wipers/



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cotton rags falling under Chapter Heading 63101020 of the CTA, weighing 80600 kgs valued at Rs. 6,44,800/- [(totally weighing 181695 kgs valued at Rs. 83,28,020/- (Rupees Eighty-three lakhs twenty-eight thousand and twenty only)] seized from the godown of M/s. Noble Traders (appellant No 1), Upleta should not be confiscated under section 111 (d) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon M/s Noble Traders (appellant No 1), Upleta under Section 112(a) and Section 112(b) of the Customs Act, 1962.

(iii) Personal penalty should not be imposed upon Shri Asif Rafik Talu (appellant No 2) power of attorney holder of M/s Noble Traders, Upleta under Section 112(a) and Section 112(b) of the Customs Act, 1962.

2.18 During the first round of litigation matter was adjudicated vide the Order-in-Original No. 19/Joint Commissioner/2017-18 dated 30.01.2018/ 26.02.2018 issued by the Joint Commissioner, Customs (Prev), Jamnagar which was upheld vide Order-in-Appeal No. 'Order-in-Appeal-JMN-CUSTM000-APP-74-80-19-20 dated 30.05.2019' and in subsequent litigation the Hon'ble CESTAT vide its common Order No. A/11322-11328/2022 dated 31.10.2022 has set aside the Impugned Order-in-Appeal-JMN-CUSTM-000APP-74-80-19-20 dated 30.05.2019 passed by the Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after allowing the cross examination of the witnesses.

2.19 The Appellant, initially, vide their reply dated 14/08/2017 has requested for cross examination of Panch witnesses as well as other persons including officers of the department. However, during the remand proceedings, the Appellant through their Advocate Shri Amal Dave's letter no. NIL dated 26.10.2023 and dated 01.11.2023 submitted that they wish to Cross Examination only two Panch witnesses in connection with the Panchnama Proceedings of 9/10.12.2016 and they did not want to cross examine other persons. Accordingly, by following the Hon'ble CESTAT's directions, the Cross Examination of both the Panchas (1) Shri Mustakbhai Yunusbhai sharif and (2) Shri Lakhmanbhai Kanjibhai Panera by Shri Amal dave Advocate and Shri Sudhanshu Bissa on behalf of Shri Asif Rafik Talu (appellant No 2), Power of Attorney Holder M/s. Noble Traders (appellant No 1), Upleta and also Proprietor of M/s. Sapna Sari Centre, Upleta was conducted on 05/01/2024. During the Cross Examination, Shri Mustakbhai Yunusbhai Sharif and Shri Lakhmanbhai




Kanjibhai Panera interalia stated that they were called for from petrol pump of Shri Lakhmanbhai Panera in the morning at the time of commencement of Panchnama; that after signing they left the place and came back upon calling at the time of completion of Panchnama proceedings in the midnight of 10.12.2016. Shri Mustakbhai stated that he attended a marriage in between period and Shri Lakhmanbhai stated that he was at his petrol pump in between time; that they were not present at the time of stock taking and not witnessed weighment of goods on 09.12.2016; that they did not see the goods and also labels of foreign make on it. Both of them said that since it was governmental work they signed the documents. On being asked Shri Mustakbhai stated that Shri Sarfaraz Abla, Shakil Ghanchi, Sadiq Ghanchi, Javedbhai Patel, Rafikbhai Hakka, Mori Vasim Ibrahim and Rajab Jiva Makwana were present at a place where he was attending marriage ceremony.

2.20 The adjudicating authority after granting personal hearing and considering the outcome of Cross examination and further submission made by the appellant in the matter passed the following order:

(i) He confiscated the seized foreign origin goods viz. worn clothing falling under CTH 63090000, weighing 1,01,095 kgs. valued at Rs.76,83,220/- and wipers/ cotton rags falling under CTH 63101020, weighing 80,600 kgs valued at Rs.6,44,800/-, totally weighing 1,81,695 kgs. together valued at Rs.83,28,020/- (Rupees Eighty-Three Lakh Twenty-Eight Thousand and Twenty only) seized from the godown premises of M/s. Noble Traders Upleta under Section 111(d) of the Customs Act.

(ii) He offered the Directors, traders, for redemption of the goods under Section 125(1) of the Customs Act, 1962 upon payment of a fine of Rs.11,00,000/- (Rupees Eleven Lakhs only) which shall be in addition to duties and charges payable under Section 125(2) of the Customs Act, 1962. Further, as per the provisions of Section 125(3) of the Customs Act, 1962, if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.

(iii) He imposed penalty of Rs.8,00,000/- (Rupees Eight Lakhs only) on M/s. Noble Traders, Soda Street, Old Cloth Market, Upleta, District- Rajkot under Section 112 (a) & Section 112 (b) of the Customs Act.



(iv) He imposed penalty of Rs.2,00,000/- (Rupees Two Lakhs only) on Shri Asif Rafik Talu, Power of Attorney Holder of M/s. Noble Traders, Soda Street, Old Cloth Market, Upleta, District- Rajkot, under Section 112 (a) & Section 112(b) of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellants have filed the present appeals wherein they have submitted grounds which are as under: -

3.1 The Appellant has submitted that the impugned order passed by the Additional Commissioner is ex-facie illegal and unsustainable in the eyes of law because the findings given by the adjudicating authority are devoid of merits and without jurisdiction. The adjudicating authority has not considered the substantial arguments raised by the appellant at the time of filing preliminary reply dated 28.08.2017 and also in the final reply filed by the appellant. The adjudicating authority even after recording the fact that the panch witnesses have denied having any knowledge about the contents of the panchnama dated 09.12.2016 has held that the panchnama proceedings were proper and legal. The appellant submits that the action of the adjudicating authority in relying upon the panchnama dated 09.12.2016 despite there being a clear doubt regarding the manner in which the panchnama proceedings were carried out is illegal and bad in law. The Adjudicating Authority has also not considered the submissions of the appellant that there was no evidence on record to even remotely suggest that the goods seized by the department under panchnama dated 09.12.2016 were in the nature of foreign brand uncut old and used clothing and wipers/cotton rags. The Adjudicating Authority has also accepted the fact that the search officers had only counted the bales and goods were not checked by individually opening each and every bale. Despite recording these findings, the Adjudicating Authority has confirmed the imposition of penalty on the appellant and also held that the goods were liable for confiscation. The appellant submits that the evidence in form of legal purchase of these goods from the local suppliers was discarded by the Adjudicating Authority without giving any findings on this fact. The Adjudicating Authority has also failed to consider the fact that it was the case of town seizure and the burden to prove that the goods were imported or smuggled was on the revenue which the revenue had failed to establish in the present case. Therefore, the impugned order passed by the Adjudicating Authority is devoid of merits and deserves to be set aside in the interest of justice.




3.2 The Additional Commissioner has committed an error in recording the findings at para 22(1) & para 22(2) of the order holding that panchnama proceedings cannot be vitiated because the panch witnesses had signed the panchnama dated 09.12.2016. The adjudicating authority in para 22(2) has again referred to the fact that panchas have also not disputed or objected the seizure proceedings that were carried out on 04.01.2017. The adjudicating authority has held that if there was any infirmity or irregularity in carrying out panchnama proceedings, the panchas ought to have objected or challenged such proceedings at the material time when the panchnama was being drawn. On this basis, the adjudicating authority has reached to a conclusion that the panchnama dated 09.12.2016 was drawn in presence of the panchas and the panchas were aware about the contents of panchnama.

3.3 The appellant has submitted that the above findings given by the adjudicating authority are devoid of merits and are required to be set aside. It is an admitted fact that the panch witnesses namely Shri Mustak Yunusbhai Sharif and Shri Lakhmanbhai Kanjibhai Panera during their cross-examination dated 05.01.2024 have clearly stated that there was a marriage in the village on 09.12.2016 and Shri Mustak Yunusbhai Sharif was present in the marriage during the entire day. Shri Lakhmanbhai Kanjibhai Panera deposed that he was not well on that day and therefore, he went to the panchnama premises only to sign the panchnama. The panchas have also denied having seen the goods seized under panchnama and also denied having any knowledge about the goods being of foreign brands. The panchas have stated during the cross-examination that they were told by the Officers of Customs that their signatures were required for the purpose of Government work.

3.4 In the light of above facts, the appellant has submitted that whether the panchas have put their signatures on the panchnama dated 09.12.2016 or in panchnama dated 04.01.2017, is not enough or conclusive to conclude that the panchnama was drawn in a proper manner. Once the sanctity of the panchnama is tainted by the depositions of the independent panchas obtained during cross examination, no reliance can be placed on such panchnama proceedings which otherwise casts a shadow of doubt in the manner in which it was taken. It is a fact on the record that the pancha witnesses were not present during the entire proceedings when the panchnama was drawn, the adjudicating authority could not have simply upheld the correctness of panchnama merely on



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the ground that the panchas have signed the panchnama. When the pancha witnesses have pleaded their ignorance about the contents in the panchnama, no sanctity can be attributed to such panchnama proceedings. However, the Adjudicating Authority instead of discarding the panchnama dated 09.12.2016, has attempted to justify the correctness of the panchnama which was drawn in the absence of independent panchas. The appellant submits that when the panchas have not seen the process of stock taking and also not seen examination of the goods by opening of bales, the adjudicating authority could not have held that the contents of the panchnama were correct and undisputable. Therefore, the impugned order passed by the Adjudicating Authority deserves to be set aside in the interest of justice.

3.5 The adjudicating authority has also committed a mistake in holding that the pancha witnesses ought to have objected or challenged the panchnama at the time when the panchnama was being drawn if the same was drawn in their absence. The appellant submits that the case has been made out against the appellant and not against the panch witnesses. The panchas had signed on the panchnama only because the departmental officers told them that it was for government work and no harm will be caused to them. Therefore, the panchas had no occasion to dispute the panchnama proceedings as they were not even aware of the entire proceedings. Further, panch witnesses are the witnesses of the department who were claimed to be present during the entire panchnama proceedings. But during the cross-examination, the appellant had brought on record the fact that the entire panchnama proceedings were undertaken in the absence of panch witnesses. Therefore, there is no question of the panch witnesses raising any objection regarding the manner in which the panchnama proceedings were carried out by the department.

3.6 In the case of B.D. Goel versus Ebrahim Essa Sodha reported in 2014 (306) E.L.T. 337 (Bom.), the Hon'ble High Court held that the assessee cannot be charged with the allegation of smuggling on the basis of panchnama when during the cross examination of panchas, the version of the panch is contradictory to the panchnama. In case of Commissioner of C. Ex. & S.T., Lucknow versus Anand Kumar Alias Babu reported in 2015 (325) E.L.T. 609 (Tri. - Del.), it was the case of the department that the assessee was caught smuggling gold in the presence of two independent witnesses and the panchnama was drawn. However, during the cross examination of one of the panch, it was revealed that the panch was not present at the time when the assessee was




apprehended by the departmental officers. Department's contention was that it had intimation about smuggling of gold and hence, they have called the pancha for the same. However, the panch deposed in cross examination that the person apprehended by the departmental officer was already present. The Hon'ble Tribunal held that the deposition of panch was contradictory to the case of the department and therefore, no sanctity can be attributed to the panchnama. The Hon'ble Tribunal dropped the charges of smuggling of gold holding that the panchnama was doubtful and there was no cogent evidence to support the case of the department. In case of Commissioner of C. Ex., Ahmedabad-III vs. Baroda Rolling Works reported in 2009 (238) E.L.T. 495 (Tri. - Ahmd.), the Hon'ble Tribunal held that the panchnama cannot be considered to be reliable evidence when it was drawn in the absence of the independent panchas. In the said case also, panchnama witnesses were not present at the time when the panchnama was drawn and were called subsequently and their signatures were obtained. In another case of Ashok Kumar Versus Commissioner of Customs, New Delhi reported in 2003 (158) E.L.T. 441 (Tri. - Del.), the Hon'ble Tribunal observed that the panch witness during the cross examination stated that he was not present during the time when the assessee was apprehended by DRI officers and he had only signed papers given by the DRI officers without knowing the contents of the papers. The Hon'ble Tribunal held that depositions of the panch witness proved the falsified case of the department and therefore, no reliance could be placed on the panchnama.

3.7 In the present case also, the panch witness have testified that they were not present during the panchnama proceedings and they have not seen any imported goods having foreign brand labels on the goods. The panch witnesses have contradicted the panchnama dated 09.12.2016 and therefore, the appellant submits that no reliance can be placed on the panchnama dated 09.12.2016. Since the Adjudicating Authority has heavily relied upon the contents of the panchnama dated 09.12.2016, the impugned order passed by the Adjudicating Authority deserves to be set aside in the interest of justice.


3.8 The Adjudicating Authority has committed a grave error in holding at para 22(3) and 22(4) of the order that the validity of panchnama cannot be challenged by the appellant because the family members of the appellant no. 2 were present during the time when the panchnama proceedings were carried out. The Adjudicating Authority has held that the family members of the appellant no. 2 were present on 09.12.2016 when the panchnama was drawn at the



warehouse premises of the appellant and he has confirmed that the labels on clothing's were of foreign brands and these goods were uncut worn clothing and wipers/cotton rags. The adjudicating authority held that all the details like number of bales and weight of the bales were known to the appellant. The adjudicating authority further held that appellant no. 2 had acknowledged receipt of panchnama. Therefore, the adjudicating authority has concluded that none of the persons had disputed the facts regarding quantity of bales and its weight and working or methodology adopted to arrive at total quantity of goods.

3.9 The appellant submits that the findings given by the adjudicating authority are ex-facie illegal and unsustainable because the appellant at the time of filing the reply dated 28th August, 2017 and also at the time of recording of statement had specifically submitted that on the day of 09.12.2016, the appellant no. 2 was also attending the marriage in the village, and therefore, he was not present when the panchnama was being drawn at the premises of the appellant. Further, the appellant has never accepted the fact that the entire quantity of seized goods was in the nature of imported goods and was in unmutilated condition. In fact, the appellant in the reply had specifically submitted that none of the bales found at the premises of the appellant's warehouses were opened by the departmental officers and that no examination of the goods was carried out by the departmental officers.

3.10 The adjudicating authority has also categorically admitted these facts in para 22(3) of the impugned order. The Adjudicating Authority has recorded the findings that only number of bales and weight of the bales was counted by the investigating officers and the bales were never opened to see if all the clothing had foreign brand labels on them or if the bales were containing imported goods. The appellant submits that to hold that the goods were of imported in nature and were restricted for import, the investigating officers ought to have opened up each and every bale containing all types of old and used clothing. The officers should have segregated the clothing which had foreign labels on them. Otherwise, the old and used clothing which is not imported by the appellant cannot be said to be "restricted" if they have been purchased from the local market having no foreign brand labels on them. But the officers have never opened the bales and have not taken the exercise of segregating the old and used clothing having foreign labels on them. The officers have simply counted the bales and multiplied the weight of one bale with number of bales to conclude that all the goods were having foreign labels on them and they were




imported goods.

3.11 The appellant submits that it is clear that the investigating officers have not checked the bales by individually opening them and examining every piece of clothing to ascertain that the entire quantity of the goods were foreign brand clothing and were uncut. This, itself raises a clear doubt regarding the manner in which the panchnama proceedings have been undertaken by the department. This fact is further corroborated with the depositions of the panchas who have also deposed not having seen any foreign brand labels on the goods and they were not present during the stock taking. The Adjudicating Authority, despite recording that the only bales were counted and goods were not physically checked, held that all the goods were imported in nature. The adjudicating authority has taken into consideration immaterial facts that the family members of the appellant no. 2 were present at the ceremony and therefore the applicant had signed the panchnama. The appellants submit that merely because the panchnama is signed by the respondent would not absolve the investigating officers from following due process of law, as the serious allegation of smuggling against the goods is made out against the respondent. These allegations must be established beyond reasonable doubt, which the department has failed to prove in the instant case. The Adjudicating Authority has only relied upon the fact that the panchnama was signed by the respondent and on this basis, the entire goods were held liable for confiscation. The appellant submits that the action of the Adjudicating Authority is a purported determination of liability without considering the actual facts brought out by the appellant in the present case. Therefore, the impugned order passed by the Adjudicating Authority deserves to be set aside in the interest of justice.

3.12 The adjudicating authority has committed a grave error in holding at para 22(5) of the order that the panchnama proceedings dated 09.12.2016 cannot be said to be vitiated because the panchnama dated 09.06.2016 and supratnama dated 04.01.2017 were carried out by two different group of officers, and the appellant or the panchas have not raised any dispute regarding the methodology adopted for carrying out panchnama. The appellant has submitted that the above findings recorded by the adjudicating authority are fallacious and absolutely irrelevant because the presence of two different officers on 09.12.2016 and 04.01.2017 is not a relevant factor to conclude that panchnama proceedings were carried out in a proper manner. The appellant has disputed the panchnama proceedings on the ground that it was undertaken in the absence of independent



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panchas, as the panchas were not present during the entire day of 09.12.2016. From panchnama dated 09.12.2016 and also supratnama dated 04.01.2017, nothing is coming out on record that all the goods having quantity of 181695 kgs were physically checked by the departmental officers in the presence of panchas and that the entire quantity of old and used clothing found was uncut and having foreign labels on it. In fact, the panchnama dated 09.12.2016 has only referred to the quantity determined in terms of number of bales and it is nowhere stated that each and every bale was opened in the presence of panchas and the appellant; and all the goods found inside each and every bale were having foreign labels on them and were in uncut condition. Therefore, the appellant submits that merely because the panch witnesses and the proprietor of the appellant firm have put their signatures on the panchnama; this cannot be a ground to validate the panchnama proceedings. The appellant submits that merely counting bales and holding that the goods contained in the bales were of a particular nature is an act based upon eye-estimation, and therefore, the panchnama dated 09.12.2016 cannot be a reliable piece of evidence to conclude against the appellant that the goods were of imported nature and these goods were restricted for import.

3.13 The appellant has submitted that various judicial forums have consistently held that the stock verification cannot be done merely on the basis of eye-estimation. In case of Commr. of C. Ex., Haldia vs. Shri Badri Narayan Alloys & Steels Ltd. reported in 2018 (8) G.S.T.L. 79 (Tri. Kolkata), the Hon'ble Tribunal held that stock taking is required to be conducted in a proper manner, which should be supported by some material such as, weighment slip, counting slip etc., and it cannot be on the basis of eye estimation or otherwise. Similar view was taken by the Hon'ble Tribunal in case of Raika Ispat Udyog Pvt. Ltd. v. Commissioner of Central Excise, Raipur reported in 2016 (340) E.L.T. 598 (Tri.-Del.) and it was observed that the department had taken the rough estimation of the goods on the basis of number of bundles and the average weight of the bundle to conclude that the assessee had clandestinely cleared the goods. The Hon'ble Tribunal held that such rough estimation by counting bundles and taking average weight was not correct because no evidence was produced to corroborate with the theory of the department that there was shortage of goods during stock taking. In cases like Surya Wires Pvt. Ltd. vs. Commissioner of Cus., C. Ex. & S.T., Raipur 2021 (376) E.L.T. 550 (Tri. - Del.), Shree Rolling Mill vs. Commr., Central Tax, C. Ex. & Cus., Raipur 2021 (377) E.L.T. 883 (Tri. - Del.), Shree Nakoda Ispat Ltd. vs. Commissioner of Central Excise, Raipur 2017 (348)




E.L.T. 313 (Tri. - Del.), Unique International Ltd. vs. Commissioner of C. Ex., Chandigarh 2016 (344) E.L.T. 555 (Tri. - Chan.), it has been held that the department cannot conduct stock taking only by eye estimation.

In the present case, the Adjudicating Authority himself has observed that the officers have counted the bales, and the weight of goods was determined on such basis. However, the bales were not opened to confirm whether the goods contained in bales were imported. Therefore, the entire process of stock taking was improper and therefore, the panchnama proceedings could not have been relied upon by the Adjudicating Authority to hold that the goods were imported uncut old and used clothes. Therefore, the appellant submits that the impugned order passed by the Additional Commissioner deserves to be set aside in the interest of justice.

3.14 The Additional Commissioner has committed a grave error in holding that the quantity of the goods cannot be disputed by the appellant because the appellant during investigation had stated that these goods weighing 181695 kgs were procured by the appellant from local market. The adjudicating authority on this basis has concluded that since the appellant itself admitted the procurement of goods, therefore, the quantity of goods seized from the appellant's premises cannot be disputed by the appellant. The appellant has submitted that these findings rendered by the adjudicating authority are irrelevant because the appellant had disputed the allegation of the department that the quantity of 181695 kgs was that of "imported goods" in "uncut" condition. On the contrary, the appellant has only stated in the reply that the goods were procured/purchased from suppliers based in Upleta, Jamnagar, and Ahmedabad etc. In fact, the appellant had also brought on record the authority discarded the invoices produced by the appellant showing purchase of the said goods from local suppliers and also discarded the statements and letters submitted by the suppliers of the appellant regarding sale of such goods; and held that these invoices/statements were not in the nature of valid import documents. When the appellant's suppliers from whom the appellant had procured these goods are not foreign based suppliers, it is not understood how the appellant could have in possession the import documents regarding purchase of these goods.

3.15 The appellant submits that statements of the concerned persons of these two suppliers were also taken by the department and they deposed that



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they have been selling goods to the appellant. In these circumstances, the goods were not imported goods and they were not smuggled by the appellant. Thus, the adjudicating authority had no jurisdiction to confirm the imposition of penalty and confiscation of the goods. Thus, the impugned order passed by the adjudicating authority is devoid of merits and deserves to be set aside in the interest of justice.

3.16 The appellant has submitted that the whole basis of show cause notice is that the above referred goods were liable for confiscation since there were no documents for establishing their legal import is ex-facie incorrect. These goods have not been imported by the appellant, but they have been purchased by the appellant from various suppliers whose details have been given to the Adjudicating Authority, and therefore the burden to prove that the said goods were imported legally and that customs duty thereon was paid was not on the appellant. The Suppliers have also confirmed that they had sold and delivered such goods to the appellant and therefore, the genuineness of the transactions between such suppliers and the appellant could not have been doubted.

3.17 The appellant has submitted that since the goods were admittedly found outside the customs area at the warehouse premises of the appellant, the presumption is that they are duty paid goods. Therefore, the Adjudicating Authority has committed an error in holding that documents for import and duty payment for such goods were still required and burden was on the appellant to provide such import documents. Furthermore, the nature of the goods is also not what has been alleged in the show cause notice. In other words, the goods seized by the Customs department are not "imported" worn clothing, and therefore also, the foundation of the show cause notice that these goods fall under CTH No. 63096310 of Customs Tariff and were therefore "restricted goods" is fallacious and misconceived. Proper documents like invoices received from local suppliers for these goods were available and produced by the appellant during inquiry, and such purchase documents were also accounted for in books of account of the appellant, and therefore impugned order is without merits and deserves to be set aside in the interest of justice.

3.18 The appellant has submitted that it is settled legal position of law that in case of town seizure of the goods, the burden to prove that the goods are smuggled, lies on the department. In case of A.K. Hamsa Mohideen vs. Commissioner of Customs, Chennai reported in 2004 (171) E.L.T. 327 (Tri. -



Chennai), the Hon'ble Tribunal observed that some electronic goods were confiscated and the adjudicating authority imposed redemption fine and penalties on the assessee. The Hon'ble Tribunal held that electronic goods were easily available in the market and that these goods were non-notified under Section 123 of the Customs Act, 1962 and therefore, the burden to prove that they are smuggled goods was with the Customs and the burden was not discharged by the department. The Hon'ble Tribunal held that confiscation was ordered on the grounds that the goods were of foreign origin and that the goods were not covered by any bills for their licit import. The Hon'ble Tribunal held that merely because the goods were of foreign origin, it cannot be said that the goods were smuggled into the country. The burden of proving that the goods are smuggled into the country is on the department and this burden was not discharged by the department. The Hon'ble Tribunal held that there was no material to sustain the order of confiscation of the goods and imposition of penalty and the order for confiscation and penalty was set aside by the Hon'ble Tribunal. This decision rendered by the Hon'ble Tribunal was upheld by the Hon'ble Madras High Court in case of Commissioner of Customs, Chennai Vs A.K. Hamsa Mohideen reported in 2012 (276) E.L.T. 503 (Mad.)

3.19 In another case of *Sadbhavana vs. Commissioner of Customs, Indore* reported in 2003 (158) E.L.T. 652 (Tri. - Del.), the confiscation and penalty was set aside by the Hon'ble Tribunal holding that the initial burden to prove the smuggled character of the goods was on the Department and especially when such goods are freely available in the open market. The Hon'ble Tribunal held that mere non-production of the bill by the assessee could not lead to an inference that he had smuggled those goods. It was on the Department to prove the smuggled character of the goods, especially when these are available for sale and purchase in the open market. Similar view was taken by the Hon'ble Tribunal in case of *V. Muniyandi vs. Commissioner of Customs, Chennai* reported in 2004 (167) E.L.T. 215 (Tri. - Chennai). In another case of *Ashok Premji Patel vs. Commissioner of Customs, Mumbai* reported in 2003 (157) E.L.T. 568 (Tri. - Mumbai), the Hon'ble Tribunal set aside the confiscation and penalty holding that it was the case of town seizure and the provisions of Sec. 111(d) of the Customs Act were not attracted as it is a town seizure.

3.20 In the present case also, goods were seized as a part of town seizure and the department has failed to discharge the burden of prove that the goods were smuggled by the appellant and therefore, the confiscation and penalty is



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not warranted in the present case. Therefore, the impugned order for confiscation of the goods and imposition of penalty may be set aside in the interest of justice.

3.21 The adjudicating authority has committed a grave error in holding that the legality of panchnama cannot be challenged merely because the panchas have stated during cross-examination that they were not present during the panchnama proceedings. The adjudicating authority has wrongly held that the panchas are not selected by the investigating officers when panchas show their inability to be present during panchnama proceedings. The adjudicating authority has further concluded that the appellant could not have relied on the isolated evidence of cross-examination to submit that panchnama was not carried out in proper manner. The adjudicating authority held that the evidence of cross-examination of panchas should have been corroborated by the appellant with the cross-examination of investigating officers. The appellant submits that the findings given by the adjudicating authority are devoid of merits and required to be discarded. The adjudicating authority has assumed that in the present case also, the investigating officers could not have Shri Mustakbhai Yunusbhai Sharif and Shri Lakhmanbhai Kanjibhai Panera as panch witnesses, if these persons had expressed their inability to remain present during the proceedings. On this basis, the adjudicating Authority has presumed that in the present case also, the panchas would have been present there. However, the adjudicating Authority has not discarded the depositions made by the pancha witnesses, who have clearly stated that they were not present during the panchnama proceedings, as they were attending marriage in the village. Therefore, the depositions made by pancha witnesses during the cross-examination are required to be given preference over the assumptions made by the Adjudicating Authority in the impugned order. Further, the adjudicating authority has wrongly held that the appellant should have crossexamined the investigating officers to corroborate with the depositions made by the panchas. The appellant submits that when the panchas have deposed that they were not present during the panchnama proceedings, this fact itself raises a serious doubt on the manner in which the panchnama proceedings have been undertaken by the department. Once the panchnama proceedings TORTED are tainted due to the depositions made by the panchas, there is no necessity to corroborate with the cross-examination of departmental officers.

3.22 Further, as per Section 9(D) of the Central Excise Act, 1944 read



with Section 138(B) of the Customs Act, 1962, the adjudicating authority is empowered to conduct Examination-in-Chief of the witnesses. Therefore, if adjudicating authority felt that the averments of panchas during the cross-examination were not sufficient to discard the evidence of panchnama proceedings, the adjudicating authority himself could have called the departmental officers to conduct Examination-in-Chief. However, no such cross-examination was undertaken by the adjudicating authority and the depositions of panchas made during cross-examination were discarded by the adjudicating authority without any cogent reasons.

3.23 On the contrary, the adjudicating authority has held that the entire submission of the appellant that panchnama were made out during were proceedings carried out without the presence of the Adjudicating Authority was incorrect and was an attempt to mislead the adjudicating authority. The appellant submits that the pancha witnesses who are witnesses who have been brought by the Department for the purpose of the purpose of carrying out the panchnama proceedings and when these witnesses have contradicted themselves the facts stated by themselves, the Adjudicating authority has called out the depositions of employees as an afterthought. The Adjudicating Authority has no jurisdiction in law to conclude the case against the assessee when their own witnesses testified against the department during the cross-examination. As soon as the contents of the panchnama are assailed by the fact witnesses, the fact that the panchnama becomes unreliable and violable. Therefore, even if it assumed that investigating officers would have given different version of the cross examination during cross examination regarding how pan it was conducted on that the panchnama would still be a tainted panchnama piece of evidence and cannot be relied upon on. Therefore, the appellant submits that cross-examination of the investigating officers was a not relevant in the fact since the pancha witnesses since the outcome of the cross-examination of witnesses of pancha witnesses case. cannot be called as afterthought and the impugned order passed by the Additional Commissioner upholding the validity of panchnama proceedings deserves to be set aside in the interest of justice.

3.24 The Adjudicating Authority has committed a grave error in holding that the goods were liable for confiscation. There is also no justification and merit in imposing penalty on the appellant under Section 112(a) and (b) of the Customs Act. The appellant has not imported the goods seized on 04.01.2017, and therefore the goods could not be considered to have been imported illegally or

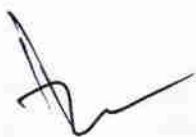


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without filing any Bill of Entry, or in violation of the provisions of the Customs Act as well as the FTP. The appellant had in its possession bills for the entire quantity of goods lying at godown premises on 9.12.2016 including 181695 kgs of goods seized on that day. The purchase bills of these goods show the goods as "old and used clothing". The goods seized are actually old and used clothing, and therefore they could not be considered to have been imported in contravention of any of the provisions of the Customs Act or any other law for the time being in force for invoking Section 111(d) of the said Act. Further, the local suppliers had also confirmed the sale of goods to the appellant. The appellant submits that the revenue has failed to discharge the burden of proof that the goods were imported in nature and they were brought into India without payment of customs duty. Therefore, the impugned order holding that the order holding that the goods were liable for confiscation deserves to be held that the goods seized by the Customs deserves to be set aside in the interest of justice.

3.25 The appellant has submitted that imposition of penalties on the appellants is also unreasonable and arbitrary and is also unreasonable because the appellants have not done anything nor have omitted to do anything, which act or omission would render goods liable for confiscation, and therefore there is no justification in imposing penalty also for. Section 112(a) provides for penalty on any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable for confiscation under section. Section 111, or abets doing or omission of such an act. This part of section of Section is pressed in service by the Revenue section in this section case against case of the but however, the appellants have not done anything or omitted anything which would render the goods would render liable to under. Section 111(a) of the case, section of the case is not applicable in the instant case. When this section is not attracted to the instant case in the present case, the entire basis for imposing penalty on the appellants is unsustainable.

3.26 Section 2 of the provides penalty for section provides penalty for any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods whatsoever which he knew or had reason to believe that were liable to confiscation under section 111 of the Act. Now, it is not even shown in the show cause notice as to how the appellant was concerned in the activities like carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, and that the appellant had dealt with the goods with knowledge or reason to believe that they were liable to




confiscation. In absence of any such evidence, penalty under section 112(b) is not sustainable. The appellant has submitted that penalty under section 112(a) and section 112(b) is applicable under two different situations, but the Adjudicating Authority has not given any findings as to which of these provisions have been violated by the appellants in the instant case. Therefore, the penalties imposed on the appellees deserve to be set aside in the interest of justice.

3.27 The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited vs reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with knowledge that he was required to act otherwise; penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified. Therefore, confiscation of the goods and imposing penalty on the appellants deserves to be set aside in the interest of justice.

3.28 The Adjudicating Authority has committed a grave error in invoking the provisions of section 125(2) of the customs act to hold that the redemption fine of Rs. 11,00,000/- is required to be paid in addition to duties and other charges. The appellant submits that there was no proposal in the show cause notice regarding recovery of any duties from the appellant. The show cause notice had only proposed to confiscate the goods having quantity of 1,81,695 kgs valued at Rs. 83,28,020/- under section 111(d) of the act and proposed to impose penalties on the appellants under section 112(a) & (b) of the customs act. However, the show cause notice had not referred to the provisions of section 125(2) of the customs act to charge and recover any duty or charges from the appellant. Therefore, the Adjudicating Authority has no jurisdiction to hold that duty shall also be payable by the appellant in addition to redemption fine under section 125(2) of the act. The Adjudicating Authority has exceeded jurisdiction and decided the issues which were not present in the show cause notice. Therefore, the impugned order is beyond the scope of the show cause notice and deserves to be set aside in the interest of justice.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.06.2025, following the principles of natural justice wherein Shri Sudhanshu Bissa and



Amal Dave, Advocate, appeared for the hearing and re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs (Preventive), Jamnagar and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- (i) Whether the adjudicating authority, in the remand proceedings, correctly appreciated the evidence adduced during cross-examination of the Panchas and whether its findings are sustainable in light of the CESTAT's specific directions.
- (ii) Whether the department has successfully discharged its burden of proving the alleged illegal import/smuggling of goods.
- (iii) Whether the confiscation of goods and imposition of penalties under Section 112(a) and (b) of the Customs Act, 1962, are justified.
- (iv) Whether the impugned order suffers from a violation of the principles of natural justice and is a non-speaking order.

5.2 I find that the Hon'ble CESTAT, Ahmedabad, in its Final Order No. A/11322-11328/2022 dated 31.10.2022, explicitly remanded the matter, specifically directing the adjudicating authority to allow cross-examination of witnesses and to decide the case afresh. This remand was based on the observation that the department's case relied solely on the Panchnama and statements of witnesses whose cross-examination was crucial. The cross-examination of Panchas (Shri Mustakbhai Yunusbhai Sharif and Shri Lakhmanbhai Kanjibhai Panera) on 05.01.2024 yielded critical information:

- Both Panchas stated they were not present when the Panchnama was drawn, and were elsewhere.
- They admitted to signing the Panchnama only because they were asked to do so by Customs Officers, without knowing its contents or the quantities involved.
- They denied seeing the seized goods physically.




5.3 These depositions directly contradict the evidentiary value and sanctity of the Panchnama. A Panchnama drawn in the absence of independent witnesses, or where the witnesses have no knowledge of its contents, loses its evidentiary value. The Hon'ble Bombay High Court in *B.D. Goel vs Ebrahim Essa Sodha* [2014 (306) E.L.T. 337 (Bom.)] held that the assessee cannot be charged with smuggling solely based on a Panchnama where cross-examination reveals contradictions. Similarly, in *Anand Kumar vs Commissioner of C. Ex. & S.T., Lucknow* [2015 (325) E.L.T. 609 (Tri. - Del.)], it was held that if Panchas were not present during the proceedings, no sanctity can be attributed to such Panchnama.

5.4 The adjudicating authority, in the impugned order, dismisses these critical depositions by merely stating they are "insufficient to prove that the Panchnama proceeding was incorrect". This is a clear misappreciation of evidence and a failure to adhere to the spirit of the CESTAT's remand order. When the very foundation of the department's case (the Panchnama) is shaken by the direct testimony of the Panchas themselves, the burden shifts back squarely to the department to provide irrefutable evidence of illegal import. The adjudicating authority cannot simply discard such crucial evidence.

5.5 In cases of seizure of goods outside the Customs area, the initial burden is on the department to prove that the goods are smuggled/illegally imported. Once a credible Panchnama is drawn, the burden may shift to the Appellant. However, when the Panchnama itself is rendered unreliable by cross-examination, the primary burden remains with the department.

5.6 The department's only other assertion is that the goods had "foreign labels" and were "uncut/unmutilated," which indicates imported nature. However, the Appellants claimed to have purchased these goods locally and even provided purchase bills. The department's bald assertion that these local purchase bills are "not in the nature of import documents, and therefore, the invoices cannot be accepted" without providing any evidence of their falsity or contradiction, is insufficient. The Hon'ble Madras High Court in *Commissioner of Customs, Chennai Vs. A.K. Hamsa Mohideen* [2004 (171) E.L.T. 327 (Tri. - Chennai)] held that if the department fails to produce any evidence to prove smuggling, the order of confiscation and penalty cannot be sustained. Since the Panchnama is discredited, and the department has not provided any other concrete evidence (such as import documents, foreign suppliers, or intelligence




reports) to prove that these specific goods were illegally imported, it has failed to discharge its burden of proof.

5.7 Confiscation under Section 111 and penalties under Section 112 of the Customs Act, 1962 are contingent upon the goods being illegally imported or smuggled. If the department fails to prove the fundamental allegation of illegal import/smuggling, then the goods cannot be held liable for confiscation, and consequently, no penalties can be imposed.

5.8 Given the infirmities in the Panchnama and the department's failure to independently prove the imported or smuggled nature of the goods, the very basis for confiscation and penalties collapses. There can be no question of mens rea (intentionality) for smuggling when smuggling itself has not been proven.

5.9 The CESTAT remanded the matter specifically to allow cross-examination and to decide the case afresh. While cross-examination was conducted, the impugned order, by summarily dismissing the crucial evidence from cross-examination without a proper reasoned analysis of why the Panchas' statements are unreliable, fails to comply with the spirit of a "speaking and reasoned order." The adjudicating authority was bound to give proper weight and reasoning to the cross-examination evidence, especially when it directly impeaches the primary evidence. This amounts to a failure to follow the remand directions adequately and consequently a violation of natural justice.

6. In view of the detailed discussions and findings above, I find that the impugned order passed by the adjudicating authority is legally unsustainable. The adjudicating authority has failed to correctly appreciate the crucial evidence that emerged during the cross-examination of the Panch witnesses, which significantly weakened the evidentiary value of the Panchnama. Consequently, the department has failed to discharge its burden of proving the illegal import/smuggling of goods.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) I hereby set aside the Order-in-Original No. 20/ADC/2023-24 dated 20.02.2024.

(ii) I hold that the department has failed to establish that the seized goods were illegally imported or smuggled into India.



(iii) Consequently, the confiscation of 1,01,095 kgs of worn clothing and 80,600 kgs of wipers/cotton rags is hereby set aside.

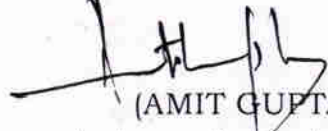
(iv) The redemption fine of ₹11,00,000/- imposed on M/s. Noble Traders (appellant No 1) is hereby set aside.

(v) The penalty of ₹8,00,000/- imposed on M/s. Noble Traders (appellant No 1) under Section 112(a) and (b) of the Customs Act, 1962, is hereby set aside.

(vi) The penalty of ₹2,00,000/- imposed on Shri Asif Rafik Talu (appellant No 2) under Section 112(a) and (b) of the Customs Act, 1962, is hereby set aside.

(vii) Any amounts deposited by the Appellants towards redemption fine or penalties shall be refunded to them with applicable interest, in accordance with law.

The appeals filed by M/s. Noble Traders (appellant No 1) and Shri Asif Rafik Talu (appellant No 2) are hereby allowed with consequential relief, if any.


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-33 & 34/CUS/JMN/2024-25

Date: 04.07.2025

By Registered post A.D/E-Mail

To,
M/s. Noble Traders,
Soda Street, Old Cloth Market,
Upleta-360490, District- Rajkot.

Shri Asif Rafik Talu,
Power of Attorney Holder of M/s. Noble Traders,
Soda Street, Old Cloth Market,
Upleta-360490, District- Rajkot.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs (Preventive), Jamnagar.
4. Guard File.