



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
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DIN - 20250771MN000000C244

क	फ़ाइल संख्या FILE NO.	S/49-35/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-101-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.07.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 21/ADC/2023-24 dated 20.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) Shri Asif Rafik Talu, Proprietor of M/s. Sapna Saree Centre, 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
(ब)	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 मर्दों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>द्वासरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	द्वासरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
द्वासरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए।</p> <p>(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;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रुपए</p> <p>(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 ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए।</p> <p>(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</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।</p> <p>(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.</p>				
6.	<p>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।</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



ORDER-IN-APPEAL

The present appeal has been filed by Shri Asif Rafik Talu (hereinafter referred to as the 'Appellant'), Proprietor of M/s Sapna Saree Centre, Soda street, Old cloth market, Upleta-360490, in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 21/Additional Commissioner /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. Sapna Saree Centre, Upleta has set aside the Order-in-Appeal-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, intelligence received by the Officers of HQ, Preventive, Customs (P), Jamnagar indicated that M/s Sapna Sari Centre, located near Reliance Petrol Pump, Upleta-Dhoraji Highway, Upleta, District Rajkot, was involved in smuggling substantial quantities of imported worn clothing and garments. The import of such goods, classified under Chapter Heading 63090000 of the Customs Tariff Act, 1975, is restricted under DGFT Notification No. 7/2004-09 dated 27.10.2004, read with para 2.17 of the Foreign Trade Policy, and requires a valid import license or authorization. Acting upon this intelligence, the officers conducted a search on 09.12.2016 at the godown premises of M/s Sapna Sari Centre, owned by the Appellant. During the search, worn clothing stacked in bales was found, many of which bore foreign labels and were visibly imported. The search, conducted under Panchnama dated 09/10.12.2016, revealed that the goods comprised uncut used garments, cut garments, and wipers/cotton rags. Shri Riyaz Rafik Talu, brother of the Appellant, present at the time of search, confirmed that the business belonged to his brother and that the premises were used jointly by M/s Sapna Sari Centre and M/s Noble Traders, for which the Appellant also held power of attorney. No documents supporting legal importation were produced, and hence, worn clothing and wipers/cotton rags weighing 6,03,897 kgs were detained and handed over under Supratnama dated 09/10.12.2016.

2.2 In a statement recorded under Section 108 of the Customs Act, 1962 on 19.12.2016, the Appellant admitted that the firm dealt in old clothing and




purchased goods from Jamnagar, Gandhidham, Ahmedabad, Rajkot, and Upleta. He further stated that the goods bore foreign labels and acknowledged that old, uncut clothing could be used for wearing, while mutilated goods had cuts of about 4 inches, and wipers were pieces of cloth. He admitted knowing that goods falling under Chapter Headings 6309 and 6310 are restricted under the Exim Policy. He submitted some documents relating to the purchase and sale of goods, but scrutiny revealed that 68805 kgs of uncut old clothing and 108450 kgs of wipers had no supporting Bills of Entry or import-related documentation. Verification carried out on 06.01.2017 confirmed that the goods were of foreign origin and were identifiable by their foreign markings. The appellant bifurcated goods belonging to both M/s Sapna Sari Centre and M/s Noble Traders and provided their valuation but could not produce legal purchase documents for the 1,77,255 kgs of goods valued at ₹60,96,780/-. Consequently, these goods were seized under Section 110 of the Customs Act, 1962 under the belief that they had been smuggled into India without payment of duty or proper authorization. The seized goods were handed over under Supratnama dated 06.01.2017, with details listed in Annexure A and B of the Panchnama.

2.3 Further investigation revealed that M/s Sapna Sari Centre had procured the goods from local markets. A statement from Shri Mahamadali Nurmamad Haji Meman, proprietor of M/s New Kamal, Rajkot, recorded on 30.05.2017, confirmed the sale of old clothing and mix mutilated wipers to M/s Sapna Sari Centre. He admitted he had never imported such goods, and his invoices did not mention import status, Bills of Entry, or duty payment. He clarified that his firm had sold only cut old clothing, not uncut or wearable items. A subsequent statement from the Appellant recorded on 17.05.2017 confirmed that he had no additional Bills of Entry to produce and that the goods in question were sourced from the local market without any documentation indicating duty payment or legal import. Based on these findings, it was concluded that the goods had been smuggled into India in contravention of import regulations, justifying their seizure and further legal proceedings under the Customs Act, 1962.

2.4 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."

2.5 The Investigation into the matter culminated into issuance of Show Cause Notice No. VIII/10-142/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 68805 kgs valued at Rs. 52,29,180/- and the imported wipers/ cotton rags falling under Chapter Heading 63101020 of the CTA, weighing 108450 kgs valued at Rs. 8,67,600/- [(totally weighing 177255 kgs valued at Rs. 60,96,780/- seized from the godown of M/s. Sapna Saree Centre, Upleta should not be confiscated under section 111 (d) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon Shri Asif Rafik Talu, Proprietor of M/s Sapna Saree Centre, Upleta under Section 112(a) and Section 112(b) of the Customs Act, 1962.

2.6 During the first round of litigation matter was adjudicated vide the Order-in-Original No. 17/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.

2.7 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, 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 the Appellant, 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.

2.8 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 68805 kgs. valued at Rs.52,29,180/- and imported wipers/ cotton rags falling under CTH 63101020, weighing 108450 kgs valued at Rs.8,67,600/-, totally weighing 177255 kgs. valued at Rs.60,96,780/- seized from the godown premises of M/s. Sapna Saree Centre, Upleta under Section 111(d) of the Customs Act.

(ii) He offered for redemption of the confiscated goods under Section 125(1) of the Customs Act, 1962 upon payment of a fine of Rs.9,00,000/- which shall be in addition to duties and charges payable under Section 125(2) of the Customs Act,1962.

(iii) He imposed penalty of Rs.6,00,000/- on Shri Asif Rafik Talu, Proprietor of M/s. Sapna Saree Centre, 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 Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

- The impugned order passed by the Additional Commissioner is ex-facie illegal, without jurisdiction, and unsustainable in law. The adjudicating authority failed to consider the preliminary reply dated 28.08.2017 and the final submissions made by the appellant. Despite recording that the



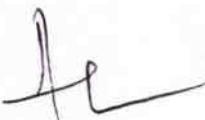
panch witnesses had denied knowledge of the contents of the panchnama dated 09.12.2016, the adjudicating authority erroneously upheld its legality. There was no evidence to suggest that the goods seized were of foreign origin or consisted of uncut old clothing or wipers. The authority admitted that the bales were merely counted, and no detailed examination of the goods was conducted, yet it proceeded to confirm penalties and confiscation. Legal purchase documents from local suppliers were ignored without findings. As the case involved a town seizure, the burden of proof lay with the Revenue, which failed to establish smuggling. Hence, the order deserves to be set aside in the interest of justice.

- The adjudicating authority erred in para 22(1) and 22(2) of the order by relying on the panchnama merely because the panch witnesses had signed it. It concluded that the panchas did not object to the proceedings during the search, thereby accepting the validity of the panchnama. However, this finding is devoid of merit as both panch witnesses—Shri Mustak Yunusbhai Sharif and Shri Lakhmanbhai Kanjibhai Panera—during cross-examination dated 05.01.2024, categorically stated that they were not present during the search. One witness was attending a wedding, while the other was unwell and had merely signed the document at the request of customs officials. They denied seeing any goods or foreign brand labels and confirmed that they were told their signatures were needed for “government work.”
- The mere signature of the panch witnesses on the panchnama does not bestow legality or sanctity to the document. Once the depositions of the panchas reveal that they were unaware of the contents and not present during the proceedings, the entire panchnama becomes unreliable. The adjudicating authority erred in upholding its correctness despite the absence of independent witnesses during the alleged search and seizure. When the panchas did not observe the stock-taking or opening of the bales, the correctness of the recorded contents could not have been presumed.
- The authority wrongly held that the panchas should have raised objections during the drawing of the panchnama. The appellant submits that the case is not against the panch witnesses but against the appellant, and the panchas had no reason to object as they were unaware of the details. Their signatures were obtained under the pretext of official formalities. Once it was established during cross-examination that the panchas were not present during the search, there was no basis to expect objections from




them at the time.

- The appellant relies on the judgment in B.D. Goel v. Ebrahim Essa Sodha [2014 (306) E.L.T. 337 (Bom.)], wherein the Hon'ble Bombay High Court held that a panchnama cannot be relied upon when the cross-examination of panchas contradicts its contents. Similarly, in Commissioner of C. Ex. & S.T., Lucknow v. Anand Kumar alias Babu [2015 (325) E.L.T. 609 (Tri.-Del.)], the Tribunal rejected the panchnama when the panch revealed that he was not present during the alleged apprehension. In C.C.E., Ahmedabad-III v. Baroda Rolling Works [2009 (238) E.L.T. 495 (Tri.-Ahmd.)], it was held that panchnames signed later by absent panchas could not be relied upon. In Ashok Kumar v. Commissioner of Customs [2003 (158) E.L.T. 441 (Tri.-Del.)], it was ruled that signatures on documents without knowledge of contents do not establish a valid panchnama. Similarly, in the present case, the panchas denied having seen imported goods or foreign labels, and hence, no reliance can be placed on the panchnama dated 09.12.2016.
- The adjudicating authority also wrongly held in para 22(3) and 22(4) that the validity of the panchnama could not be questioned as family members of the appellant were present. It was further stated that the appellant himself was aware of the brands and types of goods. However, the appellant had clearly stated in the reply dated 28.08.2017 and during the statement that he was attending a marriage on the relevant day and was not present during the search. He never admitted that the entire stock was of imported uncut clothing. The authority itself noted that only bales were counted and not opened. Without physical inspection and segregation of garments with foreign labels, no conclusion could be drawn about the goods being of imported nature or falling under restricted categories.
- The investigating officers did not open and check each bale to examine the nature of the goods. This fundamental lapse casts serious doubt on the manner of the panchnama and seizure. The panch witnesses corroborated this by testifying that they did not observe any foreign labels or attend the search. Despite this, the adjudicating authority relied on immaterial facts such as the presence of family members and the appellant's acknowledgment of the panchnama. Mere receipt of the panchnama does not discharge the department's burden of proving serious charges of smuggling. The department failed to conduct due diligence in verifying the nature of goods, and the authority's reliance on assumptions rather than




evidence has rendered the order legally untenable.

- The Adjudicating Authority erred in concluding that the panchnama dated 09.12.2016 was valid, merely because it was carried out by a different group of officers and no objections were raised at that time. The appellant reiterates that the core objection is that the panchas were not present throughout the day, and there is no record confirming that each bale was opened and examined in their presence. The panchnama merely refers to the number of bales without substantiating the nature or condition of the goods inside. As held in several decisions—Badri Narayan Alloys (2018 (8) GSTL 79), Raika Ispat (2016 (340) ELT 598)—stock verification based on eye-estimation lacks evidentiary value. The bales were neither opened nor the contents physically verified in a manner consistent with law. Hence, the panchnama is unreliable and cannot support a finding of restricted or imported goods.
- The finding that the appellant cannot dispute the quantity of seized goods since they admitted local procurement is misplaced. The appellant has always contended that the goods were locally purchased from suppliers in Gujarat, with supporting documents and purchase registers produced. The Adjudicating Authority, however, ignored these materials and used the appellant's admission of quantity as implied admission of smuggling. This is a misapplication of law and facts. When invoices and supplier confirmations are on record, the appellant's case of local procurement cannot be disregarded. Discarding such evidence without proper reasoning renders the order unsustainable.
- The entire show cause notice is premised on the absence of import documents. However, the appellant never imported the goods; they were purchased locally. The suppliers have confirmed these transactions. Therefore, the burden of proving the imported nature and smuggled character of the goods lies on the department. In town seizures, the department must discharge this burden, which it has failed to do.
- Since the seizure occurred at the appellant's warehouse (i.e., outside customs area), the presumption is that goods are duty-paid. The Adjudicating Authority incorrectly placed the burden of proof on the appellant to establish legal import. Additionally, the department's assumption that the goods were covered under CTH 6309.63.10 and thus restricted is unsupported. The invoices and purchase records submitted by the appellant during the inquiry clearly show local purchase and accounting in books of accounts.




- The settled legal position—A.K. Hamsa Mohideen (2004 (171) ELT 327) and upheld in 2012 (276) ELT 503 (Mad.), Sadbhavana (2003 (158) ELT 652), and Ashok Premji Patel (2003 (157) ELT 568)—is that the burden of proof in town seizure lies on the department. Mere non-production of import bills does not establish smuggling
- The Adjudicating Authority erred in rejecting the depositions of panch witnesses who clearly stated under cross-examination that they were absent during panchnama proceedings due to a marriage function. The authority wrongly presumed the presence of panchas and faulted the appellant for not cross-examining departmental officers. However, once the department's own witnesses discredit the proceedings, further corroboration is not necessary.
- As per Section 9D of the Central Excise Act, read with Section 138B of the Customs Act, the Adjudicating Authority could have summoned departmental officers for Examination-in-Chief but failed to do so. Instead, it incorrectly treated the panchas' testimony as an afterthought, which is contrary to the established legal standards. Thus, the panchnama stands vitiated.

The appellant has purchase bills for the entire quantity of goods, including the 181,695 kg seized. The goods are old and used clothing purchased locally, and not imported in violation of any law. There is no evidence of smuggling or non-payment of customs duty. Hence, invoking Section 111(d) is unjustified. The burden of proving that goods were of foreign origin and smuggled has not been discharged by the department.

- Section 112(a) imposes penalty only when an act or omission renders goods liable to confiscation. In this case, the appellant neither imported the goods nor committed any act that would attract Section 111. Thus, penalty under Section 112(a) is unsustainable.
- Penalty under Section 112(b) applies when the person knowingly deals with goods liable for confiscation. The department has not demonstrated that the appellant had knowledge or reason to believe that the goods were smuggled. The show cause notice lacks such allegations. The Adjudicating Authority failed to specify under which sub-clause of Section 112 the appellant was penalized, making the penalty order legally untenable.
- As held by the Hon'ble Supreme Court in Hindustan Steel Ltd. (1978 ELT J159), penalty should not be imposed unless the act was contumacious or dishonest. There is no finding in this case that the appellant acted with



deliberate intent or malafide conduct. Therefore, both confiscation and penalty are unjustified and deserve to be set aside.

- The Adjudicating Authority erred in invoking Section 125(2) to order payment of duties and charges in addition to redemption fine. The show cause notice neither proposed recovery of duties nor invoked Section 125(2). The authority exceeded its jurisdiction by introducing new grounds in the adjudication order. This action is ultra vires, and the impugned order is liable to be set aside on this ground alone

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.06.2025, following the principles of natural justice wherein Shri Amal P. Dave and Shri Sudhanshu Bissa, 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 appeal 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 Panchi 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. 21/Additional Commissioner/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) the confiscation of 68805 kgs of worn clothing and 108450 kgs of wipers/cotton rags and consequently, redemption fine of Rs. 9,00,000/- is hereby set aside.

(v) The penalty of Rs. 6,00,000/- imposed on Shri Asif Rafik Talu, proprietor of M/s Sapna Saree Centre, Upleta under Section 112(a) and (b) of the Customs Act, 1962, is hereby set aside.

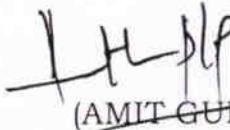
(vii) Any amounts deposited by the Appellant towards redemption fine or penalties shall be refunded to them with applicable interest, in accordance with law.

The appeal filed by Shri Asif Rafik Talu is hereby allowed with consequential relief, if any.



संसदीय विभाग/ATTESTED

अधीक्षक/SUPERINTENDENT
संसदीय विभाग (अपील्स), अहमदाबाद
CUSTOMS (APPEALS) AHMEDABAD


(AMIT GUPTA)

Commissioner (Appeals),

Customs, Ahmedabad

F. No. S/49-35/CUS/MUN/2024-25 Date: 10.07.2025

By Registered post A.D/E-Mail 

To,

Shri Asif Rafik Talu,
Proprietor of M/s. Sapna Saree Centre,
Soda Street, Old Cloth Market,
Upleta-360490, District- Rajkot.

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.