



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
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DIN - 20260371MN000000F8C2

क	फ़ाइल संख्या FILE NO.	S/49-271/CUS/JMN/2022-23
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-473-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. 14/Additional Commissioner/2022-23 dated 30.12.2022 bearing DIN 20221271MM000044804E
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. Shri Umesh Nandlal Pujara, Proprietor of M/s Jalaram Traders, Nand Bhavan, 3 Mombasa Society, 150 Feet Ring Road, Rajkot 360005



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)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक 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 :	
	सीमाशुल्क, केंद्रीय 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	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	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 को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

Shri Umesh Nandlal Pujara, Proprietor of M/s Jalaram Traders, Nand Bhavan, 3 Mombasa Society, 150 Feet Ring Road, Rajkot 360005 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order-in-Original bearing No. 14/Additional Commissioner/2022-23 dated 30.12.2022 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs(P), Jamnagar (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant in a rented godown has stored smuggled foreign origin cigarettes as per the intelligence received by the Directorate of Revenue Intelligence. Acting on such intelligence a search was conducted of the godown of Appellant under panchnama dated 07.08.2019. During the course of search, 10 bundles wrapped with PP woven bags of white colour the said godown. On opening the godown, another 82 bundles were found inside. All the bundles were containing smuggled foreign origin cigarettes viz. "Gudang Garam" brand of Indonesia and "Esse Light" brand of Korea.

2.1 Shri Umesh Pujara was asked to produce the import or purchase documents for the said cigarettes. But, he was unable to produce any document in support of legal and proper import or purchase of the cigarettes and stated that he had bought the said cigarettes from Delhi based importers. He further added that the Delhi based importers have illegally imported/smuggled foreign origin cigarettes without following the legal procedure and that he did not have any Bill of Entry, sales invoice or other similar document for the above said cigarettes. Thereafter, inventory of the said cigarettes was carried out by opening the bags and bundles. Each bundle contained a master carton and each master carton, contained smaller cartons (danda) and each smaller carton (danda) contained packets of cigarettes. The of the inventory are as per Table - 1 as below:

Description of goods	No. of Bundles	No. of Master Cartons of corrugated box in each bundle	No. of dandas in each bundle	No. of packets in each danda	No. of cigarettes in each packet	Total no. of cigarette sticks
GudangGaram	83	1	60	20	12	11,95,200
	1	1	55	20	12	13,200
Esse Light	2	2	80	10	20	64,000
	6	3	50	10	20	1,80,000
Total						14,52,400
Approximate Market Value (14,52,400* Rs. 20 per stick)						2,90,48,000

2.2 The appellant could not produce any document establishing legitimate import/purchase of the said goods such as Bills of Entry, sales invoice or other similar documents. Thus, the foreign origin cigarettes found in the godown appeared to have been smuggled into India without payment of customs duty and without following proper legal procedure. Therefore, the goods were placed under seizure vide Seizure Memo dated 07.08.2019 under the reasonable belief that the same were smuggled into India without payment of customs duty and without following proper legal procedure and the same are liable for confiscation under Section 111 of the Customs Act, 1962.

2.3 Further, search was carried out at the residence of the Appellant located at Nand Bhavan, 3 Mombasa Society, 150 Feet Ring Road, Near Raiya Circle, Rajkot, under Panchnama dated 08.08.2019, during which smuggled cigarettes of various brands (18120 cigarette sticks) valued at Rs. 3,62,400/- were also found and accordingly, the cigarettes of foreign origin were seized vide Seizure Memo dated 08.08.2019 as there was no legal document for the import/purchase of the same. The details of the seized cigarettes are as per Table - 2 as follows:



(Handwritten signature)

TABLE -2						
Description of goods	No. of Bundles	No. of Master Cartons of corrugated box in each bundle	No. of dandas in each bundle	No. of packets in each danda	No. of cigarettes in each packet	Total no. of cigarette sticks
Dunhill	1	1	19	10	20	3800
Marlboro	1	1	11	10	20	2200
Benson & Hedges	1	1	4	10	20	800
Hongmel	1	1	4	10	20	800
Black	1	1	2	10	20	400
American Legend	1	1	1	10	20	200
Salgon	1	1	1	10	20	200
The King	1	1	2	10	20	400
Double Happiness	1	1	3	10	20	600
Camel	1	1	3	10	20	600
Esse Light	1	1	24	10	20	4800
Davidoff	1	1	2	10	20	400
Elegance	1	1	5	10	20	1000
GudangGar am	1	1	3	20	12	720
555 Gold	1	1	3	10	20	600
Paris	1	1	1	10	20	200
More	1	1	1	10	20	200
Claopatra King Size	1	1	1	10	20	200

Total	18120
Approximate Market Value (18120 * Rs. 20/-)	Rs.362400

2.4 A search was also carried out at the shop of Shri Hitesh Nandlal Pujara (brother of Shri Umesh Pujara), located at 'Dazzel', Shop No. 23, Star Shopping Centre, 20, New Jagnath, Dr.Yagnik Road, Rajkot, vide Panchnama dated 08.08.2019 to find out incriminating documents/ smuggled cigarettes, if any. But, during the search, no such incriminating documents/ goods/ suspected persons etc. were found.

2.5 During the course of investigation, a Panchnama dated 08.08.2019 was drawn at DRI office, Jamnagar, with respect to size of the cigarettes, statutory warning size etc. Further, photographs of seized cigarettes were taken and samples were drawn in the presence of Shri Umesh Pujara.

2.6 During the investigation, statement of Shri Umesh Nandlal Pujara was recorded on 08.08.2019, under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that -

- M/s. Jalaram Traders is his proprietorship concern, which he started 5/6 years earlier.
- He is engaged in trading of chocolates, perfumes etc.
- He has one godown at street No. 2, Opp. Sant Krupa, Shiv Auto Centre, Anandpar, Navagam, District-Rajkot and the said godown has been rented from Shri DilipbhaiVasudevhaiSarvaiya, before 3 months without any rent agreement.
- On being shown the Panchnama dated 07.08.2019 drawn at his godown, wherein sticks of foreign origin cigarettes having market value of Rs.2,90,48,000/- (Rupees two crore, ninety lakh, forty eight thousand only) have been seized, he agreed with the contents of the Panchnama and also agreed that the foreign origin cigarettes of "GudangGaram" and "Esse Lights" brands found during the search Panchnama of his godown, had been placed under seizure vide Seizure Memo dated 07.08.2019 issued by the Intelligence Officer, Directorate of Revenue Intelligence, Jamnagar.
- On being shown Panchnama dated 08.08.2019 drawn at his residence wherein sticks of foreign origin cigarettes of various brands having market value of Rs.3,62,400/- (Rupees three lakh, sixty two thousand and four hundred only) have been seized, he agreed with the contents of the Panchnama.
- On being shown the Panchnama dated 08.08.2019 drawn at DRI office in respect of measurement of cigarettes & packages and statutory warning on the packages, he agreed with the contents of the Panchnama.



- On being asked about the seller from whom he had purchased imported "Gudang Garam" and "ESSE Lights" Cigarettes, he stated that he had purchased the said branded cigarettes seized from his godown from Shri Nasirbhai (Contact No. : +91 9891680313) having shop at No. 132, Ghadi Market, Chandni Chowk, Delhi. He said that Shri Nasir is also trading wrist watches in his shop and he had come into his contact when he visited Delhi the previous year.
- He started purchasing imported cigarettes from Shri Nasir after getting Navagam Godown on rent. Since then, he had purchased & received several consignments containing 5 to 10 bundles of imported cigarettes and had stored them in his godown at Navagam for sale in winter season (November-December). He had not maintained any stock register or accounts of purchase or sale of the goods.
 - He purchased Gudang Garam Cigarettes at the rate of Rs. 1290/- and Esse Lights at Rs. 780/- per danda (i.e. 200 cigarettes sticks).

- Regarding the payments, he said that he had to make advance payment for the imported cigarettes. He sent money to Shri Nasir through Angadia (courier) service viz. M/s P M Enterprise, opp. Imperial Hotel, Dr. Yagnik Road, Rajkot.
- On being asked, whether he purchased any other imported goods from Shri Nasir, he stated that except imported cigarettes, he had not purchased any other goods from Shri Nasir.
- On being asked whether he had purchased such cigarettes from any other person, he stated that the cigarettes seized from his residence were purchased from Shri Karim E Mavani @ Karimbhai, Crawford Market, Mumbai [Phone No. 022-23449801]. He has been purchasing cigarettes from Shri Karimbhai since one year. All the purchases of cigarettes from Shri Karimbhai were made by him during his personal visit to Mumbai. Payment was made to him in cash. No invoice was given to him by Shri Karimbhai.
- On being asked whether he has any duty payment document in respect of the foreign origin cigarettes, which were seized from his godown & residence, he replied in negative and stated that he did not have any document on the basis of which he could establish that the cigarettes were imported into India on payment of duty. Shri Nasir as well as Shri Karim had never given him any sale invoice or other documents. He further added that in future also, he would not be able to produce any such evidence regarding duty payment and compliance of other legal provisions.

2.7 Shri Umesh Nandlal Pujara was arrested on 08.08.2019 under the provisions of the Customs Act, 1962 for his involvement in smuggling of foreign origin cigarettes. He was produced before the Chief Judicial Magistrate, Jamnagar, on 09.08.2019, where he filed bail application. Hon'ble CJM rejected his bail application vide Order dated 09.08.2019 and remanded Shri Umesh Nandlal Pujara to judicial custody. Shri Umesh Nandlal Pujara again filed the bail application before the Hon'ble Sessions Judge, Jamnagar. The bail application was allowed by Hon'ble Sessions Judge vide Order dated 20.08.2019 subject to certain conditions.

2.8 From the above statement, it transpired that Shri Umesh Nandlal Pujara had purchased:

- 14,52,400 cigarette sticks having market value of Rs. 2,90,48,000/- (Rupees two crore, ninety lakh and forty eight

thousand only) seized from his godown, from Shri Nasirbhai having shop at No. 132, Ghadi Market, Chandni Chowk, Delhi and

ii) 18,120 cigarette sticks having market value of Rs. 3,62,400/- (Rupees three lakh, sixty two thousand and four hundred only) seized from his residence, from Shri Karim E Mavani, Crawford Market, Mumbai.

Therefore, searches were conducted by the officers of DRI at both the above said places.

2.9 A search was carried out by DRI Zonal Unit, Delhi, at the shop of Shri Nasir, Shop No. 132, Ghadi Market, Chandni Chowk, Delhi - 06. But after verification of the said address, it was learnt that the said shop was in the name of M/s Naveen Times, which was functioning in the basement and ground floor. Further, 1st floor was rented to Shri Himanshu Bansal, who was using the space for repairing of electronic items and 2nd floor was being used as godown by a person named Shri Mukesh. Nevertheless, a search was carried out under Panchnama dated 20.08.2019, but nothing incriminating was found in the said premises.

2.10 On further enquiry, it came to knowledge that Shri Nasir might be residing at 8912, Naya Mohalla, Azad Market, Delhi - 01 by the DRI, Delhi. Hence, a search of the said premises was attempted by DRI Zonal Unit officers. However, the search could not be conducted as the said premises belonged to one Mohmad Attiq and not to Shri Nasir Rasheed.

2.11 Searches were conducted by the officers of the Directorate of Revenue Intelligence, Mumbai, at the residence and shop of Shri Karim E Mavani under Panchnama both dated 13.08.2019 and 2,200 sticks of foreign origin cigarettes of different brands were recovered from the shop of Shri Karim E Mavani situated at Shop No. 154/155, MJP (Crawford) Market, Mumbai - 400 001. The details of the foreign origin cigarettes recovered from the shop of Shri Karim E Mavani are as per Table - 3 follows:



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TABLE - 3				
Description of goods	No. of dandas in each bundle	No. of packets in each danda	No. of cigarettes in each packet	Total no. of cigarette sticks
Esse Gold Label, KT&G	4	10	20	800
Esse Lights, KT&G	2	10	20	400
Marlboro Gold	3	10	20	600
Marlboro	1	10	20	200
Benson & Hedges	1	10	20	200
Total	11			2200
Approximate Market Value (2200 * Rs. 20/-)				Rs. 44,000

2.12 During the search on 13.08.2019 at the shop No. 154/155, MJP (Crawford) Market, Mumbai - 400 001, Shri Karim Mavani introduced himself as the retailer of the shop and Shri Nizar Merchant as his nephew. He said that both of them were involved in the trading of cigarettes. The officers of DRI found 2200 cigarette sticks of foreign origin of different brands in the shop. When the officers asked Shri Karim Mavani and Shri Nizar to produce documents for the said goods, both of them replied that they did not have any purchase/import documents for the same.

2.13 Statement of Shri Nizar Merchant S/o Shri Nadir Ali Merchant, 301, Bldg. No. E-5, Navyuvan Society, Sector IV, Shrishti Complex, Near Apna Bazar, Mira Road, Distt Thane - 401107 was recorded on 13.08.2019 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- He is residing at the above address since 2013 along with his parents, wife and one son.
- In 1997/98, he came to Mumbai and worked in Electronic items shop till 2005. Thereafter, he was at Nairobi, Kenya till 2014 and was working in a pulses/commodities godown. After returning from Kenya in 2015, he joined his uncle Shri Karim Mavani, who was having shop at Crawford Market and was dealing with cigarettes. Since January 2019, they had been operating from Shop No. 154/155 at Crawford (MJP) Market. Before that, they were operating from Shop No. 328, Crawford Market. They mostly dealt with ITC brand Cigarettes like Classic Mild, Gold Flake etc. and also in cigarette rolling papers.
- On being asked whether they dealt with imported cigarettes, he replied that they normally didn't deal with imported cigarettes, but sometimes they get imported cigarette cartons from individuals

claiming to have brought them while coming to India from abroad. Thus, they dealt with such kind of imported cigarettes occasionally.

- On being asked to explain about the 11 cartons of foreign made cigarettes (of the brands, Esse Gold Label, Esse Lights, Marlboro and Benson & Hedges) recovered under Panchnama from his uncle's shop by the DRI officers on 13.08.2019, he was not able to produce any documents showing legitimate purchase of the same. He admitted the facts and replied that the said cigarettes had been sold to them by individual persons claiming to have brought them from abroad while coming to India.
- On being asked whether he had any details of such persons who had sold the said imported cigarettes to him, he replied in negative and stated that he do not have any details of such persons.
- On being asked as to how can he claim that the cigarettes were brought by individuals coming to India from abroad when he did not have any details of the individuals who have sold the imported cigarettes to him, he did not have any answer.
- On being asked whether he was aware of any person by name Shri Umesh Pujara, he replied in affirmative and stated that he knew Shri Umesh Pujara, who was a resident of Rajkot since last one year or so. Shri Pujara had visited his shop twice or thrice as a customer and had bought from him some cigarettes as well as rolling papers.
- On being asked whether he or his uncle Shri Karim Mavani interacted with Shri Umesh Pujara, he replied that Shri Umesh Pujara interacted with him only. However, his uncle Shri Karim Mavani was also present when he had come. But the dealings with Shri Umesh Pujara had been done by him only. Shri Umesh Pujara was also in touch with him through whatsapp as well as phone calls (Mobile No. 7738883129 & 7400052643).
- On being shown the copy of Panchnama dated 08.08.2019, drawn at the residential premises of Shri Umesh Pujara, (NandBhavan, 3 Mombasa, Society, 150 Ft Ring Road, Near Raiya Circle, Rajkot), wherein 18,120 sticks of imported cigarettes of different foreign brands as per Annexure to the said Panchnama were recovered and seized by the DRI, Jamnagar, he put his dated signature on the said Panchnama in token of having seen the same.
- He was shown the statement of Shri Umesh Pujara dated 08.08.2019 recorded under Section 108 of the Customs Act, 1962, before the officer of DRI, Jamnagar, wherein, on being asked about the said imported cigarettes recovered from his residence, Shri Umesh Pujara



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had stated that the same were purchased by him from Shri Karimbhai and had given the details of their shop. On being further asked whether he sold the said imported cigarettes to Shri Umesh Pujara, he admitted that the said 18,120 sticks of foreign origin cigarettes of various brands were sold by him only without any invoice, bill etc. He put his dated signature on the said statement of Shri Umesh Pujara. He further stated that though Shri Umesh Pujara had said that the cigarettes were bought from Shri Karimbhai, he was the one who dealt with Shri Umesh Pujara and Shri Karimbhai was just present during the dealing with Shri Umesh Pujara.

- On being asked whether he has any documents showing that the said cigarettes have been legally imported into India after payment of Customs duty, he replied that as stated earlier the said cigarettes were sold to them by individuals claiming to have brought them from abroad while coming to India. He further added that he did not have any details of such persons, therefore, did not have any document showing that the said cigarettes have been legally imported into India after payment of customs duty and that he would not be able to produce the same in future as well.
- On being asked whether he had any stock of imported cigarettes anywhere else other than his shop, he replied that he did not have any stock of imported cigarettes anywhere else other than the shop No. 154/155 at Crawford (MJP) Market.

2.14 Shri Karim Mavani was shown the above statement of Shri Nizar dated 13.08.2019. He acknowledged the contents of the statement and put his dated signature on it. Both of them, Shri Karim Mavani and Shri Nizar could not produce any document such as Bills of Entry, Sales Invoice or other similar documents establishing legitimate import/ purchase of the said goods. Thus, the foreign origin cigarettes found in the shop of Shri Karim Mavani appeared to have been smuggled into India without payment of Customs duty and without following proper legal procedures. Therefore, the goods were placed under seizure vide Seizure Memo dated 14.10.2019.

2.15 A further statement of Shri Umesh Nandlal Pujara, Proprietor of M/s. Jalaram Traders, was recorded on 14.10.2019, under Section 108 of the Customs Act, 1962, wherein he stated that:

- On being shown Panchnama dated 13,08.2019 drawn at the shop of Shri Karim Mavani and Shri Nizar Merchant, situated

at Shop No. 154/155, MJP (Crawford) Market, Mumbai, and statement of Shri Nizar Merchant recorded on 13.08.2019 by the SIO, DRI, Mumbai, under Section 108 of the Customs Act, 1962, he put his dated signature on the last page of the statement and Panchnama in token of having read them.

- On being asked again from whom he had purchased 18,120 sticks imported cigarettes valued at Rs. 3,62,400/- seized from his residence vide Panchnama dated 08.08.2019, he reiterated his earlier statement that the said cigarettes were purchased from Shri Karim Mavani of Mumbai and that Shri Nizar Merchant was his nephew; that both of them did business of cigarettes and tobacco in their family shop and that the owner of the shop was Shri Karim bhai.
- On being asked that in his statement dated 08.08.2019, he had stated that he purchased "Gudang Garam" cigarettes from Shri Nasir, Shop No.132, Ghadi Market, Chandni Chowk, Delhi (Mobile No. 9891680313), while on verification carried out under Panchnama dated 20.08.2019, the said shop No. 132 was owned by M/s. Naveen Times and Shri Himanshu Bansal. He read the Panchnama and in token thereof, put his dated signature on the last page of the Panchnama.
- On being asked why he stated that the said Shop No. 132 was of Shri Nasir and what was name and correct address of Shri Nasir from whom he purchased the said cigarettes, he replied that he did not know the full name of Shri Nasir. He further stated that he had met him only twice. When he met Shri Nasir for the first time at shop No. 132, Ghadi Market, Chandini chowk, Delhi, Shri Nasir had informed him that watch shop belonged to him. In the second time also, he met Shri Nasir near the shop No. 132. He did not have any other address or phone number of Shri Nasir.
- On being asked how he came in contact with Shri Nasir and asked to give complete address and contact number of the person who introduced him to Shri Nasir, he replied that when he visited Delhi, he enquired in Bas Bazar, Delhi, about cigarettes where he was given reference of Shri Nasir. Thus, he came in contact with Shri Nasir.
- On being asked the full name and address of Angadia of Rajkot and the person with whom he dealt and whether the payment was made to Shri Nasir in advance or after receipt of the goods, he replied that



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the name of Angadia was M/s P M Enterprise, Dr. Yagnik Road, in street Opp. Imperial Hotel, Rajkot. He visited Delhi twice and every time before the dispatch of the cigarettes, he had made advance cash payment of approx. rupees 10 lakhs each. Thrice, he had sent money to Shri Nasir through M/s. P M Angadia. All the payments were made in advance. At a single time, payment of Rs. 5 lakhs to Rs.10 lakhs was made to Shri Nasir through the Angadia.

- On being asked about the details of delivery of the goods/consignment (seized from his godown) received by him, he replied that everytime, he received the cigarettes through Shree Transport Company, Opp. Yevla Building, Navagam, Rajkot. He did not have date wise consignment details but to the best of his memory, he received a total of 5 to 6 consignments of cigarettes through Shree Transport Company. He further stated that he used to receive lorry receipt or lorry receipt numbers from Shri Nasir on WhatsApp. He did not have copies of Lorry Receipts also. The transporter delivered the goods on the basis of Whatsapp copy of Lorry Receipt or lorry receipt number.

2.16. From the investigation, it transpired that the major quantity of cigarettes seized from Shri Umesh Nandlal Pujara, were purchased from Shri Nasir of Delhi who was absconding. In order to conduct further investigation, an extension for further time period of 6 months for issuance of Show Cause Notice was obtained from the Commissioner of Customs, Customs (Preventive), Jamnagar, in terms of first proviso to Section 110(2) read with Section 124 of the Customs Act, 1962, on 30.01.2020.

2.17 A further statement of Shri Umesh Nandlal Pujara, Proprietor of M/s. Jalaram Traders, was recorded on 06.02.2020, under Section 108 of the Customs Act, 1962.

- He was given to read his statement recorded on 08.08.2019. In token of having read the statement, he put his dated signature on the last page of the statement. He agreed that foreign origin cigarettes of "Gudang Garam" and "Esse Lights" found during the search Panchnama dated 07.08.2019 from his godown have been placed under seizure vide Seizure Memo dated 07.08.2019 issued by the Intelligence Officer, DRI, Jamnagar.
- He was further given to read Panchnama dated 13.08.2019 drawn at the shop of Shri Karim Mavani & Shri Nizar Merchant situated at

154/155, MJP (Crawford) Market, Mumbai and statement of Shri Nizar Merchant recorded on 13.08.2019 by the SIO, DRI, Mumbai. In token of having read the Panchnama and statement both dated 13.08.2019, he put his dated signature on the last page of the statement and Panchnama.

- On being asked whether he had any documents pertaining to purchase of the imported cigarettes seized from his godown on 07.08.2019 and from his residence on 08.08.2019, he replied that he did not have any document establishing legitimate purchase i.e. Bills of Entry, purchase Invoice, lorry receipt or any other document to establish legitimate purchase, transportation and storage of the imported cigarettes seized from his godown and residence.
- On being asked that in his statements dated 08.08.2019 and 14.10.2019, he had stated that he purchased cigarettes from Shri Nasir, Shop No. 132, Ghadi Market, Chandni Chowk, Delhi, whereas there was no such person in the said shop, he replied that after giving those statements, he found from further inquiry that the complete address of the shop was M/s. New Watch Emporium, 121, New Lajpat Rai Market, Delhi - 110 006 owned by Shri Abdulla Rasheed (Mobile No. 9822816555). He further submitted a print of the visiting card. He stated that to the best of his knowledge, Shri Nasir is the brother of Shri Abdulla Rasheed.
- On being asked how he had placed order of imported cigarettes to Shri Nasir, he replied that after meeting Shri Nasir personally, at Delhi, he contacted him on his mobile No. 9891680313 and through Whatsapp messages for that purpose. He further stated that as per the discussion, money was to be sent to Shri Nasir through M/s P M Angadiya and Shri Nasir was to send the cigarettes by Shree Transport Company.

On being asked whether he met or communicated with Shri Nasir after seizure of imported cigarettes from his godown and residence on 07.08.2019 and 08.08.2019, he replied in negative.



2.18 A statement of Shri Rajan Manishbhai Rajdev s/o Manishbhai Rajdev, authorised signatory of M/s. P. M. Enterprise, 16, Jagnath Plot, Opp. Trikam Rai Haveli, Dr.Yagnik Road, Rajkot, was recorded on 04.06.2020 under Section 108 of Customs Act, 1962, wherein he inter alia stated that:

- M/s P. M. Enterprise, 16, Jagnath Plot, Opp. Trikam Rai Haveli, Dr.Yagnik Road, Rajkot, is proprietorship concern of his mother Smt.

Ritaben Manishbhai Rajdev and he is the authorised signatory.

- They are having franchise tie-up with M/s P. M Enterprise, 6, Rajput Para, Rajkot, which is the main firm owned by Shri Vrajesh Rajani.
- M/s P M Enterprise is having offices all over India and they are engaged in business of money transfer.
- Any person, who. wants to send money to other cities visit their office with money. They take money along with details like name of the city, name and mobile number of the recipient person to whom money is to be sent. After receiving money, they forward the details to the office of M/s P. M. Enterprise at Ahmedabad, who will communicate to their branch at the concerned city where money is to be delivered. The branch at the place of delivery of money will contact the recipient person on mobile and ask him to take money from their office. When the person arrives to receive money, he is identified by dialling his number which the money sender has given and after identifying the person, they deliver the money to him.
- Shri Umesh Pujara had transferred money through their office. He used to contact their staff Shri Kamlesh Thakkar for transfer of money to one person Shri Nasir of Delhi (Mobile No. 9861980313). Shri Umesh Pujara of M/s Jalaram Traders regularly sent money to Delhi. During the period from March-2019 to August-2019, Shri Umesh Pujara has sent at least 3 to 5 times money to Delhi. Each time, he sent an amount between Rs. 5 to 10 Lakhs to Shri Nasir of Delhi. Thus, he confirmed the contents of statement dated 08.08.2019 and 14.10.2019 given by Shri Umesh Pujara.

2.19 A statement of Shri Jaykishan Govindbhai Bala s/o Shri Govindbhai Bala, Manager of M/s. Shree Transport Company, Opp. Yevla Bidi, Rajkot-Ahmedabad Highway, Navagam (Anandpar), Rajkot, was recorded on 08.06.2020, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- He is the Manager of M/s Shree Transport Company, Opp. Yevla Bidi, Rajkot Ahmedabad Highway, Navagam (Anandpar), Rajkot.
- He read statement dated 08.08.2019 of Shri Umesh Pujara wherein Shri Pujara has stated to have received smuggled cigarettes through their transport office at Navagam. He agreed that Shri Umesh Pujara had received parcels from Delhi to Navagam through their transport service.
- Shri Umesh Pujara had received consignments/ parcels from Shri Nasir of Delhi approximately 6 times during the period July-2019 to

07.08.2019. Whenever the parcels came, their Navagam office in-charge Shri Deepak Sharma used to call Shri Umesh Pujara about arrival of the goods. Shri Umesh Pujara used to come to their transport office for taking delivery of the parcels.

- All these consignments received by Shri Umesh Pujara were under Kachcha Chit / Kachcha LR wherein the goods declared were "Motor Parts".
- He submitted following loading/ unloading memos and photocopies of gate passes under which they had unloaded the goods belonging to Shri Umesh Pujara:

Sr. No.	Kachcha LR No.	Loading / Unloading Memo & Date	Gate Pass No. & Date	No. of packages delivered	Date of Delivery
1	1905	2199/13.07.2019	2936/16.07.2019	5	16.07.2019
2	1909	2199/13.07.2019	2934/16.07.2019	5	16.07.2019
3	1945	3743/22.07.2019	2984/25.07.2019	5	25.07.2019
4	1951	3743/22.07.2019	2982/25.07.2019	5	25.07.2019
5	4751	3773/28.07.2019	8608/01.08.2019	10	01.08.2019
6	2624	3803/03.08.2019	8640/07.08.2019	10	07.08.2019

- Generally, when the goods are loaded from Delhi, loading memo is prepared wherein Lorry receipts numbers, consigner, consignee etc., are mentioned. But, if kachcha chit or Kachcha LR has been issued by their Delhi office, the same is not mentioned in the loading memo. Rather, the Kachcha LR number, particulars (i.e. description), markings, and number of packages are written on the loading memo at the time of unloading after the arrival of the truck at Navagam office. After unloading, when the receiver comes, he is given delivery of the goods on the basis of Kachcha Chit / Kachcha LR.
- The goods received by Shri Umesh Pujara on the basis of above mentioned Kachcha Chit / Kachcha LR were having "JT" mark (i.e. Jalaram Traders) and the same were not accompanied by any document i.e. invoice, bill, e-way bill, Pakka LR etc. They do not keep copies of Kachcha Chit / Kachcha LR.
- The goods delivered to Shri Umesh Pujara under the description "Motor Parts" were booked in the name of one person Shri Nasir, as intimated to their Delhi office by the person who came to book the goods for transport. The sender of the goods had not given bills / invoices or any other documents of the goods. Hence, further details were not available with him.
- As per the statement of Shri Umesh Pujara, the smuggled cigarettes seized from his godown, were transported from Delhi to Navagam, Rajkot, in their transport, M/s. Shree Transport Company. The goods

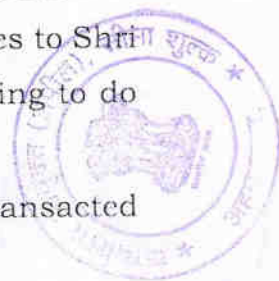


declared in kachcha LR were "Motor Parts" but he can say that the goods transported as "Motor Parts" may be cigarettes as Shri Umesh Pujara has not received any other consignments except as mentioned above.

2.20 Based on the new address given by Shri Umesh Pujara vide his statement dated 06.02.2020, a search was carried out at the shop of Shri Nasir Rasheed, Shop No. 121, New Lajpat Rai Market, Delhi - 110006 under Panchnama dated 22.07.2020 by the officers of the Directorate of Revenue Intelligence, Delhi. However, nothing incriminating was found during the search.

2.21 A statement of Shri Nasir Rasheed s/o Late Shri Rasheed Ahmad was recorded on 27.07.2020, under Section 108 of the Customs Act, 1962, by the officers of DRI, Delhi. He submitted the copy of his Aadhar Card No. 862465469564 as proof of identity & address and inter alia stated that:

- He is engaged in the business of spare parts of watches at his shop - New Watch Emporium at 121, New Lajpat Rai Market, Delhi. The shop belongs to himself and his brother Abdullah Rasheed.
- He was given to understand the contents of the Panchnama dated 07.08.2019, statements dated 08.08.2019, 14.10.2019 and 06.02.2020 of Shri Umesh Pujara, statement dated 04.06.2020 of Shri Rajan Manishbhai Rajdev (authorised signatory of M/s P M Enterprise, Rajkot) and statement dated 08.06.2020 of Shri Jaykishan Bala (Manager of M/s Shree Transport Company, Navagam, Rajkot).
- On being asked about statements of Shri Umesh Pujara wherein Pujara had stated that the seized cigarettes were bought from him (Shri Nasir) and about the price at which he sold the cigarettes to Shri Umesh Pujara, Shri Nasir Rasheed stated that he has nothing to do with these Panchnama and Statements.
- He neither knew nor met Shri Umesh Pujara and has never transacted with Shri Umesh Pujara.
- He is in the business of watch parts only and has nothing to do with the trading of cigarettes. He has never traded smuggled cigarettes.
- His mobile number was 9891680313, which he was using since last 10 years. Apart from this number, he does not use any other mobile number. The SIM Card of the mobile number is in his name.
- He does not know how to operate smart phone. Therefore, he does not use mobile internet data on the said SIM (i.e. 9891680313). He further stated that he has never used WhatsApp messenger on his mobile



number 9891680313 as he does not know how to operate WhatsApp.

- He does not have any email id. The email id of his shop is newwatchemporium@gmail.com which is used by Shri Abdulla, his younger brother & partner of the shop. DRI may send summons, letter or any other instructions to the said email id for which he will comply.

2.22 The statements of Shri Umesh Pujara and Shri Nasir Rasheed contradicted with each other. Therefore, for further inquiry, summons dated 03.08.2020 and 11.08.2020 were issued to Shri Nasir Rasheed, requiring him to give evidences and statements on 10.08.2020 and 20.08.2020 respectively. However, Shri Nasir Rasheed vide his letter dated Nil received vide email dated 07.08.2020 submitted that he is a senior citizen aged 63 years and is suffering from diabetes, blood pressure and hypertension and due to COVID pandemic he is unable to appear personally. He further informed that he already visited DRI office Delhi on 27.07.2020 and explained all the facts which should be read as his statement. Further, Shri Nasir Rasheed, vide his letters dated NIL received by post on 18.08.2020 and 24.08.2020, reiterated the contents of his earlier letter and expressed his inability to appear for giving further statement.

2.23 A further statement of Shri Umesh Nandlal Pujara, Proprietor of M/s. Jalaram Traders, was recorded on 11.08.2020, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- He was made to read the statement dated 04.06.2020 of Shri Rajan Manishbhai Rajdev (authorised signatory of M/s P. M Enterprise, Rajkot) wherein Shri Rajan Rajdev has stated that Shri Umesh Pujara had transferred amounts of Rs. 5 to 10 Lakhs to Shri Nasir of Delhi, at least 3 to 5 times during March-19 to August-19. Shri Umesh Pujara agreed with the statement given by Shri Rajan Manishbhai Rajdev.
- He was made to read the statement dated 08.06.2020 of Shri JaykishanBala (Manager of M/s Shree Transport Company, Navagam-Rajkot) wherein Shri JaykishanBala has stated that Shri Umesh Pujara had received six consignments under the name of "Motor Parts" under Kachcha Chits. Shri Umesh Pujara agreed with the statement given by Shri JaykishanBala and stated that Kachcha lorry receipts mentioned in the statements are pertaining to the cigarettes which he (Shri Umesh Pujara) purchased from Shri Nasir and received through Shree Transport Company and said that Shri Nasir had declared these consignments as "Motor Parts" (auto parts).



- He was made to read the search Panchnama dated 22.07.2020 drawn at the shop of Shri Nasir Rasheed, 121, New Lajpatrai Market, Delhi. Shri Umesh Pujara stated that it is the address where he met Shri Nasir.
- He was made to read the statement dated 27.07.2020 of Shri Nasir Rasheed wherein Shri Nasir Rasheed has stated that he did not know Shri Umesh Pujara and has never met or transacted with him or communicated with him on WhatsApp through his mobile No. 9891680313. Shri Umesh Pujara disagreed with the statement given by Shri Nasir Rasheed.
- Shri Umesh Pujara was shown the photograph from the Aadhar Card of Shri Nasir Rasheed and another photograph taken at the time of statement. Shri Umesh Pujara confirmed that the person in the photographs is Shri Nasir Raheed of Delhi whom he met at his shop No. 121, New Lajpat Rai Market, Delhi - 110006.
- As regards the denial of Shri Nasir Rasheed having sold cigarettes of "GudangGaram" and "Esse Light" seized from the godown, Shri Umesh Pujara reiterated that he had purchased the cigarettes from Shri Nasir Rasheed whom he identified from the photographs. Shri Umesh Pujara stated that apart from trading of watches and parts thereof, Shri Nasir is also engaged in purchasing and selling of smuggled cigarettes. After personally meeting him at his shop, they used to contact through WhatsApp on Shri Nasir's mobile number 9891680313. He had saved the number of Shri Nasir by the name "DELHI NASIR".
- As regards Shri Nasir's claim that he did not know to operate smart phone or WhatsApp messenger, Shri Umesh Pujara stated that he had communicated with Shri Nasir on his mobile number 9891680313 through WhatsApp messenger.
- On being shown print outs of 4 screenshots, in respect of WhatsApp communication, obtained from the mobile of Shri Umesh Pujara, he stated that those were the communication he had with Shri Nasir on his mobile number 9891680313.
- Shri Umesh Pujara was shown WhatsApp message received on 11.05.2019 from Shri Nasir. With respect to these Whatsapp messages, Shri Umesh Pujara stated that in the chit (received through Whatsapp), the details of cigarettes sold by Shri Nasir was mentioned and sent to him. On 11.02.2019, Shri Nasir messaged him the said chit which is to be understood as under:

1. "60 x 1330 = 798" means Shri Nasir sold to Shri Pujara 60

danda (240 sticks per danda) of GudangGaram cigarettes at the price of Rs. 1330/- per danda, total amounting to Rs. 79,800/ -.

2. "150 x 810 = 1215" means Shri Nasir sold to Shri Pujara 150 danda (200 sticks per danda) of Esse Light Cigarettes at the price of Rs. 810/- per danda, total amounting to Rs. 1,21,500/ -.
3. The total of both the above quantities of cigarettes is Rs. 2,01,300/- plus Rs. 200/- which he (Umesh Pujara) had to pay him towards earlier purchase of cigarettes. Thus, Nasir mentioned an amount of Rs. 2,01,500/-, which Umesh Pujara paid through M/s P M Enterprise.
4. There is also an entry / note dated 08.05.2019 on the top of the chit wherein it is written as "100 x 525". It pertains to purchase of 100 dandas of cigarettes from Shri Nasir. But he was unable to recollect the details of the brand.

- Shri Umesh Pujara stated that above mentioned screenshots and chits in the WhatsApp messages clearly show that Shri Nasir had sold cigarettes to him and sent him details through his WhatsApp No. 9891680313.
- On being asked about date-wise account of money sent to Shri Nasir through M/s P. M. Enterprise (M/s P. M. Angadia) and cigarettes received from Shri Nasir through Shree Transport Company, Navagam- Rajkot, Shri Umesh Pujara stated that he does not have any account of money sent to Shri Nasir and cigarettes received from him. He stated that he always sent money to Shri Nasir through M/s P. M. Enterprise and cigarettes were received through Shree Transport Company only.
- On being asked about any documents evidencing legitimate import or purchase of the cigarettes seized from his godown & residence, Shri Umesh Pujara stated that he does not have any document evidencing legitimate import or purchase of the cigarettes seized from his godown and residence.
- On being informed that the cigarettes seized from his godown and residence do not contain statutory warnings as per the provisions of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and rules framed thereunder, Shri Umesh Pujara agreed that the seized cigarettes do not contain statutory



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warnings as per Indian rules.

2.24 The seized cigarettes appears to be prohibited goods within the meaning of Section 2(33) of the Customs Act, 1962 read with import policy as the same do not contain statutory warning as specified under Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 as amended. Further violation of Section 2(33), 123 of the Customs Act, 1962, Section 7 of the COTPA, 2003, General Notes regarding import policy of "Cigarettes or any other Tobacco Products", Rule 3 of Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 etc. were done as detailed in the impugned order dated 30.12.2022.

2.25 Accordingly, a show cause notice was issued to the appellant that why 14,70,520 cigarette sticks having market value of Rs.2,94,10,400/- be seized and confiscated under the provisions of Section 111(d), (f), (i), (j), (k) & (l) of the Customs Act, 1962 read with Section 7 of the COTPA Act, 2003 and why penalty should not be imposed on him under Section 112(a) and Section 112(b) of the Customs Act, 1962. The said SCN was adjudicated by the adjudicating authority which ordered the confiscation of the said cigarettes and also imposed penalty on the appellant vide the impugned order dated 30.12.2022.

2.26 It is in the above context the Appellant has filed the present appeal in terms of Section 128 of Customs Act, 1962 before this appellate authority seeking to set aside the impugned order dated 30.12.2022 so passed by Additional Commissioner, Customs(P), Jamnagar.

3. SUBMISSIONS OF THE APPELLANT:

The appellant vide their appeal submitted the following submissions:

3.1 The impugned order is liable to be quashed and set aside on the following amongst grounds which are taken independent of and without prejudice to each other.

1. The appellant say and submit that the impugned order is passed in violation of the principles of natural justice inasmuch as the appellant has been denied cross-examination of the panchas and Shri Nasir based on which the appellant could have established that the goods under consideration were not of foreign origin and hence, not smuggled into India.




2. The appellant say and submit that Ld. Adjudicating Authority has erred in adjudicating the notice issued by DRI in the facts and circumstances where review petition in the case of Canon India Private Limited 2021 SCC SC 200 is pending before the Hon'ble Apex Court.
3. The appellant say and submit that Ld. Adjudicating Authority has duly admitted in para 49.3.6 of the impugned order that there is no explicit mention of the name of country where goods were manufactured. Therefore, on this basis, the appellant say and submit that onus to establish that goods were of smuggled nature is not discharged by department. Ld. Adjudicating Authority has referred to details of manufacturers and location of their plants outside India to assume that cigarettes were produced in any of these plants. However, it is a settled law that confiscation and penalty cannot be ordered on mere assumptions and presumptions. It is a matter of record that appellant had purchased the goods from Shri Nasir and had received them by road from Delhi. Hence, it was imperative for appellant to cross-examine Shri Nasir to ascertain the veracity of his statement and to prove wrong the assumption made in the SCN regarding smuggled nature of goods. However, by merely borrowing the information from website without relying upon any information received from the manufacturers, Ld. Adjudicating Authority could not have presumed that the goods were manufactured in such overseas plants in the backdrop of the facts and circumstances where the appellant had paid very meagre price as compared to the price if such goods were actually produced outside India.



4. The appellant say and submit that the impugned order is not tenable on any of the grounds, namely, valuation (not in accordance with Customs Valuation Rules, 2007), origin of goods (not established to be foreign), absence of corroborative evidence (to establish smuggled nature of goods) and formation of reasonable belief for seizure (and confiscation). Hence, it is submitted that the same is liable to be quashed and set aside.

4. **PERSONAL HEARING:**

A personal hearing was granted to the Appellant on 15.01.2026 following the principles of natural justice wherein Shri Vikas Mehta, Consultant appeared

and reiterated the submissions so made in the appeal and requested to drop the impugned order dated 30.12.2022 in its entirety.

5. DISCUSSION AND FINDINGS:

5.1 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal.

5.2 I find that the condition of pre-deposit stands fulfilled in respect of the above referred appeal, as the appellant has deposited the pre-deposit of 7.5% i.e. Rs.1,50,000/- vide TR-6/GAR7 Challan 28.02.2023 as prescribed under the Act.

5.3 That as the appeal has been filed by the instant Appellant, I restrict my findings to the instant Appellant i.e. Shri Umesh Nandlal Pujara, Proprietor of M/s Jalaram Traders, Nand Bhavan, 3 Mombasa Society, 150 Feet Ring Road, Rajkot 360005 only.

5.4 That on going through the said material, I find that there are two issues required to be decided in the instant appeal which are as follows:

- i. That 14,70,520 cigarettes said to be of foreign origin and having market value of Rs.2,94,10,400/- so seized from the godown and residence of the appellant are liable for confiscation as ordered vide the impugned order dated 30.12.2022 or not.
- ii. That whether the appellant is liable for penalty under Section 112(a) and (b) of the Customs Act, 1962.

5.5 Firstly, I take up the issue of confiscation of foreign origin cigarettes. On analyzing the evidence so available on record and so put forth by the appellant in their appeal, I observe that the appellant argued that the seized cigarettes do not bear the evidence to show that they have been manufactured outside India. I observe that it is not disputed that the cigarettes were seized and the Cigarettes have been notified under Notfn. No. 103/2016-Cus dated 25.07.2016 for the purpose of Section 1123 of the Customs Act, 1962 which reads as follows:



(Handwritten signature)

G.S.R.(E). – In exercise of the powers conferred by sub-section (2) of section 123 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 204/84 –Customs, dated the 20th July, 1984, the Central Government hereby specifies the following other classes of goods, for the purposes of the said section, namely:-

1. Silver bullion.
2. Cigarettes.

5.6 Moreover, it is well settled that any goods brought from a place outside India and which are liable for confiscation under any of the sub-sections of Section 111 of the Customs Act, 1962 shall be considered as smuggled goods.

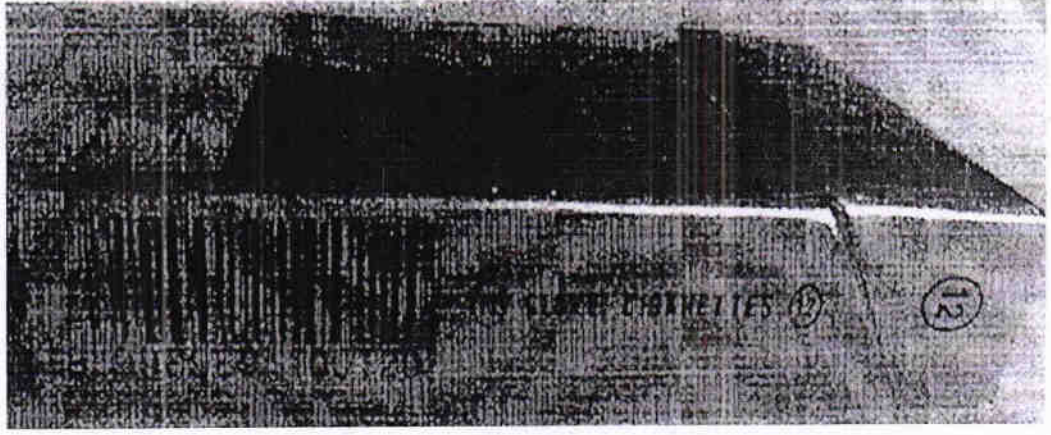
5.7 Further, I also find that it is an admitted fact that the appellant has bought the said cigarettes from Shri Nasir Rashid of Delhi and from Shri Karim Navani and Shri Nizar Merchant of Mumbai without any bill or challan and have paid for it in cash. It is also a fact that the appellant or from whom he is saying has bought the said cigarettes are having any records/details of the purchase of these cigarettes.

5.8 I find that the seized cigarettes were examined under Panchnama dated 08.08.2019, in presence of Shri Umesh Pujara and the photographs were taken of each and every side of the samples selected for opening. As per the said Panchnama total 6 photographs of "Gudang Garam" brand and 6 photographs of "ESSE Lights" brand were taken.

5.9 On referring to said photographs, I find that on the said samples, there is no explicit mention of the name of country they have been manufactured. However, I find that in one of the photograph of "Gudang Garam" the 13 Digit Bar Code is printed, which reads as 8 998989 100120 which is International Article Number and also known as European Article Number or EAN, which gives certain details related to the product. The relevant photograph which are placed on record are as follows:



[Handwritten signature]



5.10 Upon visiting the website <https://www.upcitemdb.com/> it is observed that EAN 8998989100120 is associated with "(10 Packs) Gudang Garam International 120 Stick Indonesian Filter High Class". Further, upon visiting the Website of the manufacturer i.e. PT. Gudang Garam Tbk. <https://www.gudanggaramtbk.com/en/kontak/> and thereafter locating their production facilities, it is observed that they have only two manufacturing facilities i.e. (1) at Gempol located at Desa Summersuko, Kecamatan Gempol, Kabupaten Pasuruan, Indonesia and (2) at Kediri located at Jl. Semampir II/1 Kediri 64121, Indonesia. Thus, upon verification of the EAN with the manufacturers website, it is very well be inferred that these brand of cigarettes i.e. "Gudang Garam" have been manufactured in Indonesia, which is obviously a place outside India.

5.11 Likewise, I observe that in the case of Super Slim ESSE Lights brand, I find that the Bar Code is printed of which reads as 8801 1967 which is an 8 digit International Article Number and also known as European Article Number or EAN. The Code 880 belongs to South Korea. The relevant photograph is inserted as follows:



Upon visiting the manufacturer website i.e. M/s. KT&G Corporation KT&G (originally "Korea Tobacco & Ginseng" and later "Korea Tomorrow & Global Corporation" located at Beotkkot Street 71, Daedeok-gu, website <https://en.ktng.com/global?mode=GLOBAL> it is found that the company has manufacturing plants apart from South Korea in Indonesia and Russia only.

5.12 Therefore, from the above there is no iota of doubt left and is established that these brand of cigarettes have been manufactured at a place outside India.

5.13 Once it is established that the seized cigarettes are manufactured at a place outside India and the appellant during the course of investigation have deposed that he is not having any documents reflecting to the fact that the purchases made are illicit. On the contrary the appellant has not maintained any account of purchase and sale, nor any invoices of purchase/sale and have made payments transactions in cash by angadia and not by normal banking channels reflect to illicit import of the said cigarettes.

5.14 Moreover, I also find that the seized cigarettes are prohibited goods within the meaning of Section 2(33) of the Customs At, 1962 read with the import policy as the same do not contain any statutory warning as specified under Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 as amended and health warning specifications prescribed by the COTP Amendment Rules, 2018. Therefore, are liable for complete confiscation under the provisions of Section 111(d), (f), (i), (j), (k) and (l) of the Customs Act, 1962 read with Section 7 of the COTPA Act, 2003 as discussed by the adjudicating authority in the impugned order dated 30.12.2022 which are very clearly discussed at length in the impugned order dated 30.12.2022 alongwith other relevant facts particularly the statements so tendered by the appellant and the co-noticees.

5.15 Further, the pleas put forth by the appellant in their appeal and in absence of any corroborative evidence and mere contention of the appellant does not qualify for acceptance.

5.16 Now I come to the second issue i.e. whether the appellant is liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. I find that it has been proved beyond doubt that in the foregoing paras that the appellant was involved in buying and selling of foreign origin cigarettes, storing in his rented godown, storing the prohibited imported cigarettes and knowing that these goods are liable for confiscation under different sub-clauses of Section 111 of, the Customs Act, 1962. Therefore, I find that appellant to be liable for penalty under Section 112(a)(i) and Section 112(b)(i) of the Customs Act, 1962 for violation of the said sub-clauses of Section 111 of the Customs Act, 1962. However, I am of the considered view that penalty of Rs. 20,00,000/- ordered by the adjudicating authority in the impugned order is excessive. Therefore, I reduce the penalty to Rs. 15,00,000/-.

5.17 Therefore, in light of the above discussions the defense so taken by the appellant in their appeal application does not come to the rescue of the appellant



or finds any merits in the instant matter.

6. In view of above the appeal filed by the appellant is disposed off in the above terms.

सत्यापित/ATTESTED
Amit
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

A. Gupta
(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-271/CUS/JMN/2022-23

Date: 31.03.2026

By Registered post A.D

To,

Shri Umesh Nandlal Pujara,
Proprietor of M/s Jalaram Traders,
Nand Bhavan, 3 Mombasa Society,
150 Feet Ring Road, Rajkot 360005



Copy to:

1. The Principal Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad
2. The Principal Commissioner, Customs(Prev.), Jamnagar
3. The Additional/Joint Commissioner of Customs, Customs(Prev), Headquarter, Jamnagar
4. Guard File