



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हड्डो भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN – 20250471MN0000666C6A

क	फाइल संख्या FILE NO.	S/49-388/CUS/AHD/22-23
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):	AHD-CUSTM-000-APP-017-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	25.04.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	33/AKS/ADC/SRT/2022-23, dated 15.12.2022
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Kailash Kumar Purohit, 304, Arihant Apartment, Near Jain Derasar, Amroli Char Rasta, Amroli, Surat



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 (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 imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(ब)	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 की एकट, 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/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application.

	If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	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 रुपए या उससे कम हो तो एक हजार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(ब)	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 रुपए से अधिक हो तो; दस हजार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

Order-In-Appeal

Shri Kailash Kumar Purohit, 304, Arihant Apartment, Near Jain Derasar, Amroli Char Rasta, Amroli, Surat (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order-In-Original No. 33/AKS/ADC/SRT/2022-23, dated 15.12.2022 (hereinafter referred to as 'the impugned order') passed by Additional Commissioner, Customs, Surat (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that a specific information was received about arrival of 7-8 parcels consignment of contraband / smuggled goods at Railway Parcel Office, Surat, through Train No.12450 Goa Sampark Kranti Express on 31.01.2022. The officers of Customs, Surat and officers of Directorate General of Revenue Intelligence, Surat Regional Unit visited Surat Railway Station and observed that the railway employees unloaded some parcel from parcel van / bogie of the said train and same were taken to the Railway Parcel office, situated near Platform no. 1 of Surat Railway Station.

2.1 During the course of examination, it was found that the consignment was booked by Shri Rajesh Kumar, Delhi and consigned to Shri Rajesh Kumar, Surat under Parcel Way Bill No. 2013-947233. The description of goods was declared as "Electronic Goods", having total declared weight of 402 Kg and fare / transport charge as Rs. 1,991/- On examination of all the 08 packages, the same were found to be containing total 3,34,000 cigarettes [80,000 Foreign Origin Cigarettes of Brand-DJARUM BLACK CLOVE (Market value- Rs. 16,00,000/-) concealed with 1,10,000 Indian Origin Cigarettes of Brand SHOOTER PREMIUM (Total value as per MRP- Rs.11,00,000/-) and 1,44,000 Indian origin cigarettes of Brand IG GOLD STAG (Total value as per MRP- Rs.7,20,000/-)] in total 31 brown cartons boxes.

2.2 During the course of examination, Shri Kailash Kumar Purohit (the Appellant) came to Railway Parcel Office, Surat to collect the consignment on behalf of Shri Sanjaybhai of Delhi, owner of the goods. However, the Appellant had shown his inability to produce legal purchase / import documents, i.e. Tax Bill / Tax Invoice / Bill of Entry etc. related to 3,34,000 cigarettes (80,000 Foreign Origin Cigarettes of Brand- DJARUM BLACK CLOVE concealed with 1,10,000 Indian Origin Cigarettes of Brand SHOOTER PREMIUM and 1,44,000 Indian origin cigarettes of Brand IG GOLD STAG). Further, none of the packets of Foreign Origin Cigarettes of Brand- DJARUM BLACK CLOVE had any retail sale price or maximum retail price either printed or embossed on it. Moreover, no mandatory and prescribed pictorial warning as per Rule 3 of the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 was found printed on any of the cartons / packets of Cigarettes. Further, name of the importer, month of manufacturing and maximum retail price as required under the Import Policy / Laws were also not found printed on any packet or cartons of DJARUM BLACK CLOVE Cigarettes.

2.3 Statements of the Appellant were recorded on 01.02.2022, 08.04.2022 and 06.07.2022 wherein, he, inter-alia, stated that he was engaged in the activity of trading of illegally imported / smuggled Foreign Brand Cigarette on commission basis; that Shri Sanjaybhai of Delhi is the owner and main person operating the illegal trading business of Foreign Brand Cigarettes and he worked as per his (Shri Sanjaybhai) instructions. Shri Sanjaybhai manages the supply of Cigarettes Consignments from Delhi. He (Shri Sanjaybhai) used to send the Cigarettes Consignments through railway parcel service. He used to receive the consignments and supply them further as per his directions. The Foreign Origin Cigarettes were being declared as Electronics Goods, Tea, Hosiery / Clothes, etc. in the name of dummy persons and are supplied in concealment with made in India Cigarettes to avoid being caught.

2.4 As no documents showing legal purchase / import related to 3,34,000 Cigarettes (80,000 Foreign Origin Cigarettes of Brand- DJARUM BLACK CLOVE concealed with 1,10,000 Indian Origin Cigarettes of Brand SHOOTER PREMIUM and 1,44,000 Indian Origin Cigarettes of Brand IG GOLD STAG) could be produced by the Appellant, the goods viz. 31 cartons containing 3,34,000 Cigarettes sticks of Foreign and Indian brand Cigarettes totally valued at Rs. 34,20,000/- (Market Value) were placed under seizure under Section 110 of Customs Act, 1962 under Seizure Memo dated 12.04.2022 on reasonable belief that the same were smuggled goods and were liable to confiscation.

2.5 The address of Shri Sanjaybhai was not provided by the Appellant. As per CDR / SDR of the Mobile No. 8017052259 of Shri Sanjaybhai, the same was found to be registered in the name of one Shri Sanjay Ghosh. Therefore, Summons was issued to Shri Sanjay Ghosh for appearance, however, the same was returned with a remark "No such person in this address".

2.6 It appeared that the said seized goods, i.e. 80,000 sticks of DJARUM BLACK CLOVE Cigarettes (out of total 3,34,000 seized cigarettes consignment) were of Foreign Origin and illegally imported into India through unauthorized route, without valid documents. They were further transported to Surat concealed with made in India Cigarettes under Parcel Way Bill No. 2013-947233 by mis-declaring the same as Electronics Goods in order to conceal the actual identity of the goods and to escape the eyes of law. The packets of said seized Foreign Origin DJARUM BLACK CLOVE Cigarettes did not bear the name of importer, month of manufacturing and its maximum retail price. This was violation of Notification No. 44 (Re-200) 1997-2002, dated 24.11.2000 issued under Section 5 of the Foreign Trade Development & Regulation Act, 1992 read with the Legal Metrology (Packaged Commodities) Rules, 2011. Further, the seized packets of the foreign origin DJARUM BLACK CLOVE cigarette did not have pictorial warning as mandated under Section 7 of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and Rules made there under.

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Further, as mentioned on the packets, it appeared that the seized consignment of Cigarettes, i.e. "DJARUM" brand was manufactured abroad which have been smuggled / imported, contrary to the prohibitions imposed by Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA). Thus, the said goods appeared to be "Prohibited Goods" within the meaning of Sec 2 (33) of the Customs Act, 1962 and thus liable for confiscation. The persons involved in this act of improper import of the said goods and further keeping and carrying it for sale, appeared liable for penalty under the Customs Act, 1962.

2.7 Shri Sanjaybhai (Sanjay Ghosh), who supplied the foreign origin Cigarettes was involved in the act of dealing, financing and transportation and had concealed his actual identity and disclosed non-existent / fake name of consignee and consignor. It further appeared that the persons involved had improperly imported the said consignment of 80,000 sticks of "DJARUM BLACK CLOVE" Cigarettes of Foreign origin valued at Rs.16,00,000/- into India with the intent to smuggle the said seized goods, which were otherwise prohibited for import. Therefore, it appeared that the said seized foreign origin cigarettes were illegally and improperly imported into India and transported further by concealing the same with made in India cigarettes, in violation of the provisions of Section 46 and 47 of the Customs Act, 1962 and were liable for confiscation under Section 111 (d) and 111 (i) of the Customs Act, 1962.

2.8 In the instant case, the packages of the seized imported Cigarettes DJARUM BLACK CLOVE were neither having any pictorial / text health warnings nor had year and date of manufacturing. Since the lawful condition of pictorial warning as well as month and year was not complied as per para 3 and 5 of Circular No. 09/2017-Customs, dated 29.03.2017 and in view of the above facts, the subject 80,000 imported cigarettes (Market Price Rs.16,00,000/-) appeared liable to absolute confiscation under Section 111 (d) and 111 (i) of Customs Act, 1962. Further, the 2,54,000 sticks of Made in India cigarettes (Market price of Rs.18,20,000/-) used for concealment of imported cigarettes also appeared liable to confiscation under Section 118 of Customs Act, 1962.

2.9 From the above facts, it emerged that imported 80,000 sticks of Foreign Origin Cigarettes valued at Rs. 16,00,000/-, were smuggled into India and further transported to Surat concealed with 2,54,000 sticks of Made in India Cigarettes (Market price of Rs.18,20,000/-). It appeared that Shri Sanjaybhai (Sanjay Ghosh) and the Appellant had intentionally done the smuggling activity. In the absence of whereabouts of Shri Sanjaybhai, the person involved in this smuggling activity, his statement could not be recorded. However, from the above discussed facts, it appeared that such person had deliberately committed the illegal act of smuggling to evade huge amount of applicable duty. The persons involved in the subject smuggling have contravened various provisions of the Customs Act, 1962 and other laws, as discussed above. Evasion of duty and circumventing of prohibition appeared to be the intention of persons involved in this



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smuggling. The said act of smuggling of cigarettes has rendered the subject 80,000 imported foreign origin cigarettes (Market Price Rs. 16,00,000/-) liable to absolute confiscation under Section 111(d) and 111(i) of Customs Act, 1962 and the 2,54,000 sticks of made in India Cigarettes (Market price of Rs. 18,20,000/-) used for concealment of imported Foreign Origin Cigarettes appeared liable to confiscation under Section 118 and 119 of Customs Act, 1962.

2.10 In view of the above facts, it therefore appeared that Shri Sanjaybhai (Sanjay Ghosh) and the Appellant knowingly indulged themselves in the act of possession, carrying, receiving, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with the above mentioned goods of Foreign Origin, for which they knew or had reasons to believe that the same were liable to confiscation and thereby rendered themselves liable for penal action under the provisions of Section 112 of the Customs Act, 1962.

2.11 The Parcel Way Bill No. 2013-947233 of the seized Foreign Origin Cigarettes found mention the name of the Consignor as Shri Rajesh Kumar Delhi and Consignee as Shri Rajesh Kumar, Surat. The Consignee Shri Rajesh Kumar, Surat could not be traced out due to lack of any address. The Appellant who went to Indian Railway Parcel office, Surat for taking the delivery of the goods informed that the said consignment of Cigarette belonged to one Shri Sanjaybhai (Sanjay Ghosh), Delhi and the Appellant came there as per his direction. As per the Appellant, the owner of said goods was Shri Sanjaybhai (Sanjay Ghosh), Delhi, however, the said person Shri Sanjaybhai, Delhi never appeared and claimed the ownership of seized goods. The SDR / CDR of Mobile No. 8017052259 showed that the same was registered in the name of one Shri Sanjay Ghosh of West Bengal who was also not traceable and also did not claim the ownership of the seized goods. Thus no one had claimed the ownership of said seized consignment of Foreign Origin Cigarettes.

2.12 Accordingly, a Show Cause Notice under F. No. VIII/10-128/O&A/ADC/SRK/2022, dated 28.07.2022 was issued to Shri Sanjay (Sanjay Ghosh), and the Appellant, or any other claimant of the said consignment of Cigarettes, proposing for confiscation of the seized 80,000 sticks imported Foreign Origin Cigarettes of "DJARUM BLACK CLOVE" brand value at Rs. 16,00,000/- placed under seizure vide Seizure Memo 12.04.2022 under Section 111 (d) and (i) of the Customs Act, 1962; proposing confiscation of the seized 2,54,000 Indian Origin Cigarettes (value as per MRP - Rs.18,20,000/-) used for concealment of Foreign Origin Cigarettes and placed under seizure vide Seizure Memo dated 12.04.2022, under Section 118 and 119 of the Customs Act, 1962. Further, the Show Cause Notice also proposed penalty under the provisions of Section 112 of the Customs Act, 1962 upon Shri Sanjay (Sanjay Ghosh), and the Appellant or any other claimant of the said consignment of Cigarettes.

[Signature]

2.13 The Adjudicating Authority, vide the impugned order, has passed order as detailed below:

- i. He has ordered absolute confiscation of the seized 80,000 sticks of imported Foreign Origin Cigarettes of "DJARUM BLACK CLOVE" brand value at Rs. 16,00,000/- under Section 111 (d) and (i) of the Customs Act, 1962;
- ii. He has ordered absolute confiscation of the seized 2,54,000 Indian Origin Cigarettes [1,10,000 Indian Origin Cigarettes of Brand SHOOTER PREMIUM (Total Value as per MRP – Rs. 11,00,000/-) and 1,44,000 Indian Origin Cigarettes of Brand IG GOLD STAR (Total value as per MRP - Rs. 7,20,000/-)] used for concealment of Foreign Origin Cigarettes mentioned at Sr. No. (i) above, under Section 118 and 119 of the Customs Act, 1962;
- iii. He has imposed penalty of Rs. 3,00,000/- upon Shri Sanjay (Sanjay Ghosh) under Section 112 (a) (i) of the Customs Act, 1962;
- iv. He has imposed penalty of Rs. 2,00,000/- upon the Appellant under Section 112 (b) (i) of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant have filed the present appeal. They have raised the below mentioned contentions, in support of their claims:

- The adjudicating authority has not justified the penalty imposed upon him under Section 112 (b) (i) of the Customs Act, 1962;
- The penalty imposed upon him may be set aside;

3.1 The Appellant have further submitted that due to ill health of his father at village, he had to visit his village in emergency situation. Thus, due to this unforeseen circumstances, he was unable to file the present appeal in the stipulated time period. In view of the above, the Appellant have requested that the delay of 18 days in filing the present appeal may be condoned.

4. Opportunities for personal hearing in the case were given on 10.01.2025, 03.02.2025, 17.02.2025, 18.03.2025. Due to transfer and change of Appellate Authority, another personal hearing was given on 23.04.2025. However, no person appeared on behalf of the Appellant. As sufficient opportunities for hearing have been given in the case, the case is being taken up for decision on the basis of the documents available on records.

5. Before going into the merits of the case, I find that as per appeal memorandum, the Appellant have not been filed the present appeal within statutory time limit of 60 days prescribed under Section 128 (1) of the Customs Act, 1962. In this regard, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond

60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

"SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

5.1.1 Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.1.2 In light of the above provisions of law and considering the submission of the Appellant and also considering the fact that delay is of less than thirty days, I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice in the present appeal.

6.1 I have carefully gone through the impugned order, appeal memorandum filed by the Appellant as well as the documents and evidences available on record.

6.1 I find that the Appellant have not challenged the absolute confiscation of the seized 80,000 sticks of imported Foreign Origin Cigarettes of "DJARUM BLACK CLOVE" under Section 111 (d) and (i) of the Customs Act, 1962 and absolute confiscation of the seized 2,54,000 Indian Origin Cigarettes under Section 118 and 119 of the Customs Act, 1962 used for concealment of Foreign Origin Cigarettes. It is also observed that Shri Sanjay (Sanjay Ghosh) have also not filed the appeal challenging the penalty imposed upon him under Section 112 (a) (i) of the Customs Act, 1962. Hence, so far as confiscation of seized goods and imposition of penalty upon Shri Sanjay (Sanjay Ghosh) are concerned, the order of the Adjudicating Authority have attained finality. Therefore, I am not required to record any findings on the issue of confiscation of goods and penalty imposed upon Shri Sanjay (Sanjay Ghosh).

6.1 Hence, the issue to be decided in the present appeal is whether the penalty imposed upon the Appellant in the impugned order under Section 112 (b) (i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

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7. It is observed that the adjudicating authority has imposed penalty upon the Appellant under Section 112 (b) (i) of the Customs Act, 1962. In this regard, it is relevant to refer the Section 112 of the Customs Act, 1962, which is reproduced below for ease of reference:

"112. Penalty for improper importation of goods, etc. -

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, deposition, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees] whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

PROVIDED that

(iii) xxx

(iv) xxx

(v) xxx



7.1 The findings of the adjudicating authority while imposing penalty upon the Appellant is as under:-

"29. Regarding the penalty of Shri Kailash Kumar Purohit, I find that Shri Kailash Kumar Purohit, had admitted in his statements recorded during investigation that he was involved in the act of dealing and transportation cigarettes of foreign origin into India and had done all this as per the direction and orders of Shri Sanjaybhai (Sanjay Ghosh) on commission basis. Further, I find that Shri Kailash Kumar Purohit has admitted the same in his written submission of the instant SCN and during the personal hearing. He himself has admitted that he has to sell the cigarettes on the instructions of Shri Sanjay bhai whom he never seen and since he was in need of money and he did what Shri Sanjaybhai said on phone. Thus, I hold that Shri Kailash Kumar Purohit has knowingly indulged himself in the act of possessing, carrying, receiving, keeping, selling and dealing with the above mentioned goods of foreign origin, for which he knew or had reasons to believe that the same were liable to confiscation under Section 111 of the Customs Act, 1962. Thus, I hold that he

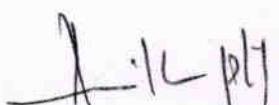
is liable for penal action under the provisions of Section 112 (b) of the Customs Act, 1962."

7.2 From the above, I find that that the adjudicating authority on the basis of the confessional statements of the Appellant has correctly arrived at the conclusion that the Appellant was involved in the activity of trading of illegal imported / smuggled Foreign brand Cigarette on commission basis. It is pertinent to mention that the Appellant has not retracted from his statement that Shri Sanjaybhai (Sanjay Ghosh) used to send the Cigarettes consignment through railway parcel and he used to receive the consignment and supply them further as per the directions of Shri Sanjaybhai; that the Foreign Origin Cigarettes were being declared as Electronic Goods, Tea, Hosiery / Clothes etc. in the name of dummy persons and were smuggled in concealment with made in India Cigarettes to avoid being caught. It is further observed that the Appellant in the appeal memorandum has not submitted any grounds contrary to the findings of the adjudicating authority. In view of the above, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings in the impugned order passed by the adjudicating authority.

8. In view of the above discussions, the findings and observations of adjudicating authority are required to be upheld.

9. Accordingly, the appeal filed by the Appellant is rejected.




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

Date: 25.04.2025

F. No. S/49-388/CUS/AHD/2022-23

By Registered post A.D

To,

✓ Shri Kailash Kumar Purohit,
 304, Arihant Apartment,
 Near Jain Derasar,
 Amroli Char Rasta,
 Amroli,
 Surat

सत्यापित/ATTESTED

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

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Additional Commissioner, Customs, Surat,
4. Guard File.

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