



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20250571MN000000ADF2

क	फ़ाइल संख्या FILE NO.	S/49-377/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-023-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	14.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADÇ/AKM/263/2024-25, dated 20.01.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	14.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Smart Impex Solutions (IEC No.-BEKPJ6657R) 103/88, behind Jainex Parivahan, Village-Bhanrola, Sector-14, IMT Manesar, Gurugram, Harayana-122505



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर. 6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो, पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) शोक 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 होना 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

M/s Smart Impex Solutions (IEC No.-BEKPJ6657R) 103/88, behind Jainex Pavvahan, Village-Bhanrola, Sector-14, IMT Manesar, Gurugram, Harayana-122505 (hereinafter referred to as the 'Appellant') have filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original bearing No. MCH/ADC/AKM/263/2024-25, dated 20.01.2025 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed Bill of Entry No. 6893089, dated 15.07.2023 with the help of M/s. Aura Clearance Service (hereinafter referred as 'CHA'). The goods were declared as 'Digital Multifunctional Device (VAKA BR 700)' having total assessable value of Rs.27,10,807/- under the CTH 84433100 in their Bill of Entry.

2.1 On the basis of National Customs Targeting Centre (NCTC) alert, the aforesaid Bill of Entry filed by the Appellant was put on hold for examination of the goods. On examination of the goods at Saurashtra CFS on 28.07.2023, it was observed that the goods were stuffed in Container No. GESU5758240. Total 46 units/nos. were found which were same as declared in Bill of Entry. No concealment was observed during examination. However, prima facie some cleaning and scratch marks were observed on the goods which indicated that the goods might be old/used in nature. To ascertain the same, the goods were again examined vide Panchnama dated 01.08.2023 in presence of Shri Ram Bhagat Authorized representative of M/s. Smart Impex Solutions and Govt. approved Chartered Engineer Shri Tushar Zankat.

2.2 During the examination, goods were inspected by Chartered Engineer Shri Tushar Zankat, who vide his report dated 09.08.2023 reported that the manufacturer of the items imported was declared as 'VAKA' and Model BR700. He found these items with some used marks and opined that excellent refurbishment services were provided to these items prior to its shipment. Based upon the observations, he concluded that the items were old, used and recently

refurbished. Further, as per Para-2.31 of Foreign Trade Policy, 2023 read with DGFT Notification No. 05/2015-2020 dated 07.05.2019, Electronics and Information Technology Goods (Requirement of compulsory Registration) Order, 2021, all electronics and IT Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 are restricted for import and require authorization. Import of such goods without valid authorization and without mandatory BIS certification as well as labelling is therefore, prohibited.

2.3 During the investigation, the CHA submitted the copy of Bill of Entry, Invoice, packing list, Bill of Lading, BIS Certificate and Sale and purchase agreement. On perusal of the documents, it was observed that in the BIS Certificate, Manufacturing Unit is Vaka Manufacturing address at FZ-LLC S01-06 SHED No. 01 AL HAMRA INDUSTRIAL ZONE - FZ RAK, UNITED ARAB EMIRATES DUBAI, and Model: [Brand->VE- Vaka Enterprises (with Device), Models->VAKA BR 100, VAKA BR 106, VAKA BR 106, VAKA BF 115, VAKA BR 700].

2.4 Meanwhile the Appellant vide letter dated 31.07.2023 requested for shifting the cargo into domestic container so as to avoid heavy detention charges which was granted to them on the same date. A Summon was issued to the Importer on 16.08.2023 to appear on 28.08.2023. However, to further facilitate the Importer, they were informed to come even before the scheduled date with prior approval of the Officer. The Importer vide its letter dated 23.08.2023 requested for adjournment. A Summon was issued again on 25.08.2023 to the Importer to appear on 04.09.2023. Shri Pawan Kumar, authorized by the Importer appeared on 04.09.2023 for recording a Statement.

2.5 A Statement of Shri Pawan Kumar was recorded on 04.09.2023 under Section 108 of the Customs Act, 1962. Shri Pawan Kumar in his Statement inter alia stated that he is working as Business Development Manager; that his qualification is B.Tech and he is looking after the sales and rental of zerox/photocopier machines which is acquired through local purchase and import; that the Importer firm is engaged in the business of sales, service and rentals of Multifunctional Photocopier/Zerox Machines; that the importer firm was in need of some Digital Multifunctional Device for their business; that they found that the Supplier M/s Atlantic International Trading FZ LLC, UAE is

selling these products; that an agreement with the supplier was made to supply the said goods and accordingly the goods were supplied by the Supplier; that he perused the Bill of Entry Bill of Lading, Invoice and Packing List of M/s. Atlantic International Trading FZ LLC and said that the documents are correct and goods were properly described in the documents and payment had also been made for the new goods that he knows that if these goods are new, import is allowed and used goods of these items are considered as 'Restricted' for importation; that he perused the Report of Chartered Engineer and agreed with the report of Chartered Engineer that goods are old and refurbished that this was happened due to not sending the proper goods by their supplier as per their purchase order; that they have paid the amount for the new goods however imported goods were treated as used and old goods however, they would like to rely upon some case laws as mentioned hereunder:-

- i. Supreme Court of India in SLA(C) No. 7565/2021 in case of Delhi Photocopies has granted stay over the confiscation of these goods and ordered to provisionally release on the same terms that have been indicated in all the other cases.
- ii. High Court of Madras in MP No. 24911 of 2022 and WMP Nos. 23849 & 23850 of 2022 in case of M/s. BE Office Automation Product Pvt. Ltd., Jammu directing to release the goods on payment of enhanced duty.

2.6 The outcome of the investigations is as under :-

- (i) The goods viz. 'Digital Multifunctional Device' imported by the Appellant are used and refurbished in view of the Chartered Engineer's Report; Appellant also agreed with the Chartered Engineer's Report. It was further revealed that the Appellant had deliberately not mentioned the description of goods as 'old and used Refurbished Digital Multifunctional Device' and made willful misstatement, while filling the bill of entry. Provisions of Section 46 (4) of the Customs Act, 1962, warrants the importer to make and subscribe to a declaration as to the truth of the contents of Bill of Entry and the provisions of Section 46 (4A), inter-alia, warrants the importer, who presents the Bill of Entry, to ensure the accuracy and completeness of the information given in the Bill of Entry. Therefore, such mis-declaration of description by the Appellant with an intent to wrongfully evade policy restrictions amounted to contravention of the provisions of Section 46 (4) and Section 46 (4A) of the Customs, Act 1962.

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(ii) Such used and refurbished goods comes under the category of second-hand goods and has been mentioned as 'Restricted' under Para-2.31 of the Foreign Trade Policy, 2023;

(iii) Such restricted second-hand goods can be imported on Authorization only as defined under para 2.31 of the Foreign Trade Policy, 2023 and the Appellant failed to submit any Authorization in respect of the said import and thus the said import is considered as un authorized import which makes the said imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962;

(iv) The Appellant has rendered themselves liable for penalty under Section 112 of the Customs Act, 1962 for contravention of the provisions of law as discussed above;

2.7 Therefore, the Appellant was issued a Show Cause Notice No. CUS/SIIB/13/2023-Gr 5-6-O/o Pr Commr-Cus-Mun dtd. 13.10.2023 wherein it was proposed as to why :-

i. The said goods viz. 'Digital Multifunctional Device', valued at Rs.27,10,807/-, imported by them, which are found used and refurbished should not be considered as 'un-authorized' second hand goods and 'Restricted Goods as defined under Para-2.31 of the Foreign Trade Policy, 2023 as they failed to produce any authorization in this respect from the competent authority:

ii. Such un-authorized, restricted goods should not be confiscated under Section 111(d) and 111(m) read with Section 2(25) and Section 46 of the Customs Act, 1962;

iii. They should not be penalized for importing such restricted, unauthorized goods under Section 112(a)(i) of the Customs Act, 1962 for contravention of the provisions of law as discussed above;

2.7 The case was earlier adjudicated vide O-I-O No. MCH/ADC/AK/248/2023-24 dated 05.02.2024, against which the Appellant had filed appeal before the Appellate Authority in terms of Section 128 of the Customs Act, 1962. The Appellate Authority had allowed the appeal by way of

remand to the adjudicating authority with a direction to detailed examination of goods as per CBIC Circular 07/2020-Cus. dated 05.02.2020 and pass the speaking order afresh after following principles of natural justice. The adjudicating authority has accordingly conducted the remand proceedings and passed the impugned order wherein he has ordered as under :-

- (i) He held the impugned goods liable for confiscation under Section 111 (d) & 111(m) of the Customs Act, 1962 of value Rs. 27,10,807/-. However, he gave an option to the Appellant to re-export the same on payment of redemption fine of Rs. 2,50,000/ under Section 125 of the Customs Act, 1962 in lieu of confiscation. The re-export to be made within a period of 120 days from the date of receipt of the order. However, if the Appellant does not submit any documents/ willingness to send back/ re-export the impugned goods within 120 days from receipt of this order, the said impugned goods would be liable for absolute confiscation and further action as per the instructions and guidelines contained in CBIC disposal Manual, 2019
- (ii) He imposed a penalty of Rs. 2,00,000 on the importer under Section 112 (a) (i) of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted as under :-

- The adjudicating authority wrongly held that impugned old and used 'Refurbished Digital Multifunctional Device' and as per para 2.31 of Foreign Trade Policy, goods require authorization from DGFT. Importer at the time of recording the statement on 04.09.2023 stated that used items are considered as 'Restricted' for importation and that he perused and agreed with the report of Chartered Engineer that goods are old and refurbished and that the Importer neither during the course of investigation nor during the course of adjudication have submitted authorization license for import of Old and Refurbished Digital Multifunctional Device. He stated that he found it of utmost importance to mention that there is a rationale, logic and principle behind imposition of a restriction and that there is no leeway in observance of the conditions made necessary for import of such




restricted items which have to be complied scrupulously. He noted that with concern that in the case before him importer has failed to overcome the barrier imposed by Government in the form of an authorization from DGFT. He stated that he found that it is not in dispute that the importer is not in possession of the necessary authorization from DGFT and that it is also not in dispute that goods are Old & Used which is certified by Chartered Engineer and also accepted by importer.

- The learned Additional Commissioner erred in holding that the impugned goods are "prohibited goods. He wrongly relied on order in the case of Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Ors: (1970) 2 SCC728 it was held that the words 'any prohibition' mean 'every prohibition' and that restriction is also a type of prohibition In S. B. International Ltd. And Ors. v. Asstt. Director General of Foreign Trade and Ors.: (1996) 2SCC 439, and on the order of the Supreme Court of India in UNION OF INDIA & ORS. V M/S. RAJGROW IMPEX LLP & ORS [Civil Appeal NO 2219 of 2021 @ SLP (C) No 1037 of 2021. The facts and circumstances of those case were different and were distinguishable. Reference was made of order in case of judgement of Supreme Court of India in UNION OF INDIA & ORSVS M/S. RAJGROW MPEX LLP & ORS [Civil Appeal NO 2219 of 2021 @ SLP (C) No 1037 of 2021] He wrongly held that It is clear that the goods in question are improperly imported and fall in the category of 'prohibited goods', the provisions contained in Chapter XIV of the Customs Act, 1962 come into operation and the subject goods are liable to confiscation apart from other consequences A bare reading of the provision of Sec on 125(1) of the Customs Act, 1962 makes it evident that a clear distinction is made between 'prohibited goods' and 'other goods' It has rightly been pointed out, the later part of Sec on 125 obligates the release of confiscated goods (i.e., other than prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods; and it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in this provision that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation. As discussed above, the imported goods would appropriately constitute to be "prohibited goods", there remains no issue for permitting the release of goods provisionally as requested by the importer. Further, in the facts and circumstances of the case, the learned



Additional Commissioner wrongly held that he don't find it appropriate to exercise discretion under sec on 125 of the Customs Act, 1962 to give the importer an option to redeem the goods on payment of redemption fine. In support he contended that said importer has failed to ensure compliance with respect of the restriction imposed through the Import Policy. Therefore, he held that he found that the acts and omissions of the importer have rendered the said goods liable for confiscation under section 111(d) of the Customs Act, 1962. The impugned goods were wrongly confiscated and the condition of re-export of the said goods for redemption has been wrongly imposed. It has been consistently held by various authorities that the old and used MFDs were liable to be redeemed for home consumption on payment of fine and the department had been allowing option to redeem the said goods for home consumption on payment of fine.

- The learned Additional Commissioner erred in relying on the value certified by the Chartered Engineer. It was submitted that the Chartered Engineer had failed to certify the actual/depreciated value of the impugned goods and that charging of the GST on the value of new goods is wrong and that the GST is to be assessed on the actual/depreciated value of the impugned goods. The learned Chartered Engineer on the other hand certified that the impugned goods are old and used and on the other hand recommended that value equal to the new goods and the learned Additional Commissioner erred in accepting the value of the new goods as the value of the said goods even after holding the same as old and used goods.
- Re-examination of goods was carried out at Saurashtra CFS, Mundra on 28.11.2024 in presence of Shri Mehul Gadhvi authorized representative of the importer, Shri Ajayrajsinh Jhala, Empanelled Chartered Engineer and representative of Saurashtra CFS, mundra. Shri Ajayrajsinh Jhala, Empanelled Chartered Engineer, thoroughly inspected the machines. After physical and visual examination of the goods informed that goods appear to be refurbished. Shri Ajayrajsinh Jhala further vide his report dated 19.12.2024 reported that: The goods are Old and Used, Refurbishments, Cleanings & bought back to excellent condition very near to the New Machine. Based on wear-tear, generation of technology and present condition and status of goods, the total current estimated average C&F value assessed by CE of Identical/Similar goods in the market, in his



considered opinion, the values furnished appears to be (Average Approx.) 32,200 USD. Assessable value of goods as per CE report, after adding insurance, comes out to be Rs. 27, 10,807/-. The value has been wrongly determined. The department determined the value on their own on suggestion of a Chartered Engineer without any cogent reason and without putting the Appellant to Notice. It is well settled that the transaction value is the assessable value unless the department brings on record concrete evidences showing that identical goods were imported from the same country at the time and place of importation at price higher than the declared transaction price. There is no such evidence on record/mentioned in the impugned Order-in-Original. The Chartered Engineer had not given the reason or evidence showing how the value of the old and used goods was same as that of new goods. There is nothing on record to show that goods of like kind and quality were available with the supplier of the goods in the country of export at the said price at the time of export of those goods from the country of export or the goods of like kind or quality were imported by some other importer at this price at the time and place of importation



Goods were wrongly confiscated and the condition of re-export of the said goods for redemption has been wrongly imposed. It has been consistently held by various authorities that the old and used MFDs were liable to be redeemed for home consumption on payment of fine and the department had been allowing option to redeem the said goods for home consumption on payment of fine. With due regard it is humbly submitted that MFDs imported by M/s B.E. Office Automation Products Pvt. Ltd., 10A Gangyal Industrial Area, Phase-3, Jammu (J&K), vide the impugned Bill of Entry were identical to the goods cleared/covered under the Final Order No. A/61016-61017 /2019-CU [DB] DATED 13.11.2019 passed by the Hon'ble CESTAT, Chandigarh in above case in respect of the similar/identical goods imported at the ICD in Ludhiana reported as COMMISSIONER OF CUSTOMS, LUDHIANA VERSUS BE OFFICE AUTOMATION PRODUCTS PVT LTD. (VICE VERSA) - 2019 (11) TMI 1091-CESTAT CHANDIGARH wherein after considering all the issues and factual and legal position of the case and discussing the settled legal position on the impugned issues involved allowed clearance of the impugned goods giving an option to the importer to redeem the goods on payment of fine @10% of the declared value and penalty @ 5% of the declared value and appropriate duty.

Relevant Paras are produces below.

- The appellants have sought relief relying on the decision of Hon'ble Apex Court. The Revenue has sought to rely on the Para 9 and 13 of the Hon'ble Apex Court order to seek imposition of redemption fine equal to the market value of the goods. It is seen that the Hon'ble Apex Court approved the decision of the Tribunal. Perusal of the Para 9 and 13 of the Hon'ble Apex Court decision does not indicate that Hon'ble Apex Court has sought to enhance redemption fine equal to market value of the goods. The Tribunal had directed release of goods at redemption fine of approximately 10% of the assessable value of the goods and imposition of penalty at the rate of 5% of the assessable value of the goods. In that context, the Revenue has inappropriately attempted to rely on and the selectively pick up words, out of context from the decision of Hon'ble Apex Court.
- The view that the impugned goods were liable to redeemed for home consumption on payment of fine has been further confirmed from the Final Order 21020/2019 DATED 19.11.2019 by the Hon'ble CESTAT in the case of Pypyc Techserve Pvt. Ltd. V Commissioner of Customs reported in 2019 (11) TMI 906 CESTAT BANGALORE wherein also MFDs were allowed to be cleared for home consumption on payment of redemption fine of 10%, duty and penalty In the above said Order of the Hon'ble CESTAT the various case laws decided by various Tribunal benches, High Courts and Supreme Court have been considered.
- The Additional Commissioner wrongly held that as the subject goods have been found to be "prohibited" and liable for confiscation, he was justified in declining the request of the importer for provisional release of goods. The learned Additional Commissioner erred in not releasing the impugned goods provisionally as requested by the appellant. It was humbly submitted that the goods be re-examined by the Chartered Engineer for the purpose of valuation etc. as held by the learned Commissioner (Appeals) and the learned Commissioner (Appeals) remanded the case for fresh adjudication. The learned Commissioner (Appeals) had not denied the provisional release of the impugned goods and the release of the impugned goods on payment of fine as per law. In the catena of decisions of the higher authorities MFDs have been held to be liable for release on



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payment of duty, fine and penalty and the higher authorities held that the identical goods have been provisionally released in various decisions as the matter whether the goods are prohibited or not as per Meity Notification dated 01.04.2020 and dated 18.03.2021 are under consideration of higher authorities (the Hon'ble Supreme Court and various High Courts). For clearance of these old and used goods the importer relied upon some case laws as mentioned as follows. (i) Supreme Court of India in SLA(C) No. 7565/2021 in case of Delhi Photocopies has granted stay over the confiscation of these goods and ordered to provisionally release on the same terms that have been indicated in all the other cases. (ii) High Court of Madras in MP No. 24911 of 2022 and WMP Nos. 23849 & 23850 of 2022 in case of M/s. BE Office Automation Product Pvt. Ltd., Jammu directing to release the goods on payment of enhanced duty The Hon'ble Supreme Court of India in SLA(C) No. 7565/2021 in case of Delhi Photocopies has granted stay over the confiscation of these goods and ordered to provisionally release on the same terms that have been indicated in all the other cases. (ii) High Court of Madras in WP No. 29673 of 2023 in case of M/s. Simple Machines directed to release the goods by way of provisional release on payment of enhanced duty It was submitted that it is well settled that the impugned MFDs are not manufactured in India and thus the same has been allowed to be imported in old and used condition subject for the above said restriction of authorization from DGFT. The appellant has applied to DGFT for issue of authorization but the DGFT has not responded as yet. The copy of letter written to DGFT is submitted enclosed. Further, the matter of non-issue of authorization was brought to the Notice of the Hon'ble Supreme Court also in the case of Atul Automation (supra) reported as Commissioner of Customs Vs. M/s. Atul Automatioon Pvt. Ltd. reported in 2019 (365) E.L.T 465 Supreme Court wherein also the old and used MFDs were imported without authorization and the import of said goods was restricted requiring authorization from DGFT The same position is in the present case. Hon'ble Supreme Court in that case directed the Customs to release the goods provisionally leaving it to the DGFT whether to confiscate the goods or not. The learned Additional Commissioner erred in not ordering for release of the impugned goods as per the order of the Hon'ble Supreme Court also in the case of Atul Automation (supra) reported as Commissioner of Customs Vs. M/s. Atul Automatioon Pvt. Ltd. reported in 2019 (365) E.L.T. 465



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- The Additional Commissioner erred in not making reference in regard to liability to confiscation of the impugned goods to DGFT and in not seeking the opinion of DGFT in this regard and in confiscating the impugned goods without seeking the opinion of the DGFT who are the competent authority to authorize import or otherwise of the impugned goods and to impose prohibitions and restrictions in respect of the import of any goods. It was submitted that even otherwise, even if there is any violation of the policy, it is well settled that action for violation of any of the provisions of the Foreign Trade Policy is to be taken by the DGFT and not by the Customs department. In case the customs is of the opinion that there is violation of any of the provisions of the Foreign Trade Policy, the Customs department is required to refer the matter to DGFT before taking any action. There is nothing on record to show that any reference in this regard was made by Customs to DGFT and that the opinion of DGFT was sought.

- The impugned goods are not liable to confiscation on the ground of violation of Para 2.31 of the Foreign Trade Policy BIS certificate is required for the import of the impugned goods, multifunction photocopier/printer under the provisions of Electronics and IT (requirement for compulsory registration) order, 2012. The manufacturer and suppliers of the impugned goods have got themselves registered under BIS in respect of the impugned goods. Hence, the impugned goods are not prohibited goods. The appellant relied on the 2021 (9) TMI 770 CESTAT CHENNAI COMMISSIONER OF CUSTOMS, CHENNAI VERSUS M/S. SP ASSOCIATES, SRK OVERSEAS, DELHI PHOTOCOPIERS, EXCEL COPIERS, CITY OFFICE EQUIPMENTS, ATUL AUTOMATION PVT LTD. AND SKYLARK OFFICE MACHINES. C.1 The learned Additional Commissioner erred in not giving an option to redeem the said goods for home consumption after confiscation. It was submitted that even if the goods were liable to confiscation an option to redeem the same for home consumption on payment of fine is required to be given as the impugned goods are not prohibited goods. Even if presumed that the said goods are prohibited, the learned Additional Commissioner has the discretion to give or not give an option for redemption of goods but after giving an option to redeem the impugned goods for home consumption on payment of fine. It was submitted that Further in case of 2022 (2) TMI 367 CESTAT CHANDIGARH BE OFFICE AUTOMATION PRODUCTS PVT LTD VERSUS C.C. ICD PATPARGANJ as held that the impugned goods old and used



MFDs are not prohibited and ordered to release the goods for home consumption on payment of fine and penalty. It was also submitted that the Hon'ble Tribunal in the case of Value Marks Traders Pvt. Ltd. v. Commr of Customs - 2019 (369) E.L.T. 721 (Tri. Chennai) held that as there is no absolute ban on import of MFDs, there is no reason as to why option should not be given for redemption of the same on payment of fine.

- The Additional Commissioner wrongly imposed condition of re-export after giving option to He had no authority to impose conditions for redemption. Reliance was placed on the following case laws- a.) 1994(72) CUS/SIIB/SCN/13/2023-Gr 5-6-0/0 Pr Commr-Cus-Mundra 1/2611863/2025 ELT 724(Tribunal) b.) 2001(138) ELT 724(Tribunal) As per settled case laws the impugned goods are liable to be redeemed for home consumption on payment of fine of 10% and penalty of 5% .
- The Hon'ble Tribunal in the case of B.E. Office Automation Products Pvt. Ltd v.CC (Prev) Amritsar vide Final Order No. C/A/477-188/2012-CU[DB] dated 25.06.2012 reduced redemption fine to 10% and penalty to 5%. In the Final Order 21020/2019 DATED 19.11.2019 by the Hon'ble CESTAT in the case of Pypye Techserve Pvt. Ltd. V. Commissioner of Customs reported in 2019 (11) TMI 906 CESTAT BANGALORE old and used MFDs were allowed to be cleared for home consumption on payment of redemption fine of 10%, duty and penalty
- The Hon'ble Supreme Court in the case of Delhi Photocopiers (SLA 7565/2021) stayed the confiscation of the goods imported after amendment of CRO on 18.03.2021 and ordered to release the said goods provisionally The importer vide their letter dated 07 11.2023 submitted their request letter for provisional release of the imported goods. The importer submitted that they had applied for the DGFT license. In the absence of the DGFT License. The importer relying on the Supreme Court of India's ruling in Civil Appeal No. 1057 of 2019 titled as Commissioner of Customs versus M/s. Atul Automations Pvt. Ltd. Also, relied on SLP No. 7565/2021 in the case of M/s. Delhi Photocopiers vs. The Commissioner of Customs (Gr.5) Chennai-II & Ors wherein the Apex Court allowed for provisional release of impugned goods as of the importer in similar circumstances as of the importer's.



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➤ The learned Additional Commissioner wrongly held that the importer has mis-declared the description of goods of the imported goods. Importer has not mentioned the goods as 'Old & Used Refurbished Digital Multifunctional Device' and that therefore, the goods are liable for confiscation under section 111(m) of the Customs Act, 1962. The learned Additional Commissioner wrongly held that the importer has mis-declared the description of goods of the imported goods in as much as the importer has not mentioned the goods as 'Old & Used Refurbished Digital Multifunctional Device' and wrongly held that the said goods are liable for confiscation under section 111(m) of the Customs Act, 1962 on this ground mis-declaration of old and used goods as new /fresh goods.. The importer had ordered for/purchased new Digital Multifunctional Device. The supplier by mistake sent 'Old & Used Refurbished Digital Multifunctional Device. It is a case of misspent of goods. No prudent businessman will purchase old and used goods at the price of new goods and declare the same as new. The learned Additional Commissioner wrongly held that the restricted goods in absence of authorization from DGFT authorization are prohibited goods and liable for absolute confiscation. The Appellant relies on order of the Hon'ble Supreme Court in the case of Commissioner v. Atul Automations Pvt. Ltd. 2019 (365) E.L.T. 465 (S.C.) wherein it was held that the impugned goods be released even if no authorization has been issued by the DGFT. On one hand he has held that he found that the importation of impugned goods is restricted as per import policy issued by DGFT Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as FT (D&R) Act, 1992) states that all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of FT (D&R) Act, 1992 shall be deemed to be prohibited under Section 11 of the Customs Act, 1962, he wrongly held that the if goods are restricted or regulated for import or export, they are prohibited goods even if there is no complete prohibition and in the instant case the imported goods are restricted as per import policy and imported without any licence issued by DGFT, thus, are "prohibited goods" The declared value was the transaction value as mentioned in the invoice issued by overseas supplier and hence wrongly confiscated under Section 111(m) of the Customs Act, 1962.

➤ Goods were wrongly confiscated under section 111(d) as the impugned

goods were not liable to be confiscation under Section 111(d) of the Customs Act, 1962. It is wrongly held that the importer has failed to ensure compliance with respect of the restriction imposed through the Import Policy. The importer has complied with respect of the restriction imposed through the Import Policy. The view find support from the Order in 2021 (9) TMI 183 CESTAT CHENNAI -COMMISSIONER OF CUSTOMS VERSUS M/S S.P ASSOCIATES, ARIHANT ENTERPRISES, EXCEL COPIERS, CITY OFFICE EQUIPMENTS, PHOTOFAX SYSTEMS, SKYLARK OFFICE MACHINES, STAR COPIERS, SRK OVERSEAS, RANK OFFICE AUTOMATION, PRIUS TECHNOLOGIES, GENUINE COPIER SYSTEMS AMAR ENTERPRISES, ATUL AUTOMATION PVT LTD., DELHI PHOTOCOPIERS, KUTTY IMPEX, PHOTO FAX SYSTEM, GEE KAY COMPUTERS AND BEST MEGA INTERNATIONAL). E.1 The impugned goods were not liable to be absolutely prohibited goods for import and were thus not liable to be confiscated absolutely as held by the Hon'ble Supreme Court in the case of Commissioner v. Atul Automations Pvt. Ltd. 2019 (365) E.L.T. 465 (S.C.) The same were wrongly confiscated absolutely.



The learned Additional Commissioner wrongly relied on order In the case of Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Ors: (1970) 2 SCC728 1983 (13) E.L.T. 1439 (S.C.) wherein it was held that the words 'any prohibition' mean 'every prohibition' and that restriction is also a type of prohibition. The said case laws was considered in (2023) 2 Centax 118 (Tri.-Mad) -RAJAN RAN Versus COMMISSIONER OF CUSTOMS, CHENNAI wherein jewellery and foreign was absolutely confiscated by the adjudicating authority holding that the same was prohibited. The Hon'ble Tribunal set aside the order of the Commissioner E.3. The learned Additional Commissioner wrongly relied on the order of the Supreme Court of India in UNION OF INDIA & ORS. V M/S. RAJGROW IMPEX LLP & ORS [Civil Appeal NO 2219 of 2021 @ SLP (C) No 1037 of 2021] held that any goods imported in contravention of a license is Prohibited and are to be absolutely confiscated, with the only relaxation being re-export of goods after payment of redemption fine and penalty in that case the peas imported without license. In that case redemption for home consumption was denied as injury to the importer, if at all, would have been of some amount of loss of profit, which could always be measured in monetary terms and, usually, cannot be regarded as an irreparable one and the inconvenience which the importers were going to suffer because of the

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notifications in question was far lesser than the ultimate impact on national interest as the markets of India were going to be flooded with excessive quantity of the said imported peas/pulses and hence the goods in question were to be held liable to absolute confiscation but with a relaxation of allowing re-export, on payment of the necessary redemption fine and subject to the importer discharging other statutory obligations

- Even if the impugned goods are held to be confiscated in the facts and circumstances the learned Additional Commissioner was required to use his discretion to give option to redeem on payment of fine and penalty. Reliance in this regard is placed on the order 2023(385) ELT 657 (All) wherein gold was allowed to be redeemed for home consumption on payment of fine and penalty
- The judgement of Supreme Court of India in UNION OF INDIA & ORS. V M/S. RAJ GROW IMPEX LLP & ORS [Civil Appeal NO 2219 of 2021 @ SLP (C) No 1037 of 2021] is not applicable in this case as in this case the release of impugned goods-MFDs would not harm the Indian economy as in the case of M/S. RAJ GROW IMPEX LLP & ORS. Rather the present case is covered by the order of the Hon'ble Supreme Court in Commissioner v. Atul Automations Pvt. Ltd. 2019 (365) E.L.T. 465 (S.C.) wherein the impugned Goods MFDs were allowed for clearance for home consumption and is distinguished in Paras 44.6, 45.5, 46.4, 47 1.1, 48.1, 48.2, 67.4, 67.4.1, 67.4.2, 67.4.3, 75 of this order-in case of M/S. RAJ GROW IMPEX LLP & ORS.
- As the impugned goods are not liable to be confiscated under Section 111(d) and 111(m) of Customs Act, 1962, no penalty is imposable under Section 112(a) of the Customs Act, 1962 and the penalty wrongly imposed is liable to be set aside. Redemption fine also has been wrongly imposed for re-export which may please be set aside.
- Even if presumed but not admitted that the impugned goods are liable to be confiscated and liable to be released for home consumption on payment of fine. There are number of decisions of the Tribunal and High Court that fine penalty is discretion of the authorities but discretion should be exercised judicially and in consistent manner. Therefore, the amount of fine and penalty needs to be substantially reduced. The amount of



redemption fine and penalty imposed are on higher side and merits reduction. As per facts on record the goods on examination have been found to be old and used as declared and have been imported for re-use and not for recycling. There is no suppression of facts or misdeclaration on the part of Appellant importer to evade payment of duty Old and used Photocopiers and old and used Digital Multifunction Printing & Copying Machines are not openly traded in usual course of trade. It is difficult to buy / sell them in any market, anywhere at any time. Profit margin on these goods is very meagre. The Hon'ble Tribunal in the case of Navpad Enterprises v. Commissioner of Customs- 2009 (235) ELT 376 (Tri-) held that Tribunal in the case of old and used photocopier violation of EXIM and in enhancement of value has been holding that 10% redemption fine and 5% penalty is reasonable, that Tribunal should not deviate and should have reduced the redemption fine to 10% and penalty to 5% of the value of the goods. The above order of the Hon'ble Tribunal was later on affirmed by the Hon'ble Kerala High Court reported in 2009(240) ELT 336. The Hon'ble Tribunal in the case of the Appellant itself in B.E. Office Automation Products Pvt. Ltd. v. CC (Prev) Amritsar vide Final Order No. C/A/177-188/2012-CU[DB] dated 25.06.2012 relying on the above decisions reduces redemption fine to 10% and penalty to 5%. It is prayed that the redemption fine and penalty be reduced 10% and 5% respectively.

It is well settled that judicial discipline should be followed by all the judicial and quasi-judicial authorities and that the decisions of the higher authorities are binding on the subordinate authorities. For the view that the order of the higher authorities are binding, the Noticee relies on the following case laws. a.) Union of India v. Kamalakshi Finance Corporation Ltd.- 1991 (55) ELT 433 (SC).

PERSONAL HEARING:

4. A personal hearing was granted to the Appellant on 30.04.2025 following the principles of natural justice wherein Shri B.L. Yadav, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal. He also filed additional submissions as under :-

- The appellant imported Multifunction Devices and the impugned goods

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were absolutely confiscated by the id Additional Commissioner of Customs, Mundra, Kutch, Mundra Port & SPL Economic Zone, Mundra on the basis of the Chartered Engineer report that the goods were not new but were refurbished and on alleged violation of the provisions of DGFT, Ministry of Electronics and Information Technology (MeitY) and BIS ignoring the case laws cited before him in support of the contention that the impugned goods found old and used were liable to be redeemed on payment of duty, fine and penalty or were liable to be provisionally released and that the value declared being of new goods, the actual value of the old and used was less and various case laws were cited as mentioned in the order and are not cited now again here for the sake of brevity. The Ld. Additional Commissioner determined the same value even after finding that the Impugned goods were old and used and absolutely confiscated the impugned goods in violation of the judicial discipline by ignoring/not following the decisions/judgments of higher authorities

- On appeal having been filed, the Ld. Commissioner of Customs (Appeals), Ahmedabad, duly considered the pleas raised by the appellant and remanded the case to the Adjudicating Authority requiring the Adjudicating Authority to bring on record certain details, as mentioned in the order, which are necessary to ascertain the extent of mis declaration of goods which have bearing on the liability of imported goods for confiscation and asked the Adjudicating Authority to cause detailed examination of goods as per Circular No. 7/2020-Cus
- The appellant requested the learned Additional Commissioner to determine value considering that the impugned goods were old and used whereas the value declared was that of new goods and to allow redemption of the goods on payment of duty, fine and penalty or to provisionally release the goods in view of the order/decisions of Hon'ble Supreme Court and various High Courts. But the learned Additional Commissioner vide Order in Original No.MCH/ADC/AKM/263/2024-25 Dated 20.01. 2025 ignoring the directions in the remand order and the settled case laws did not reduce the value and instead of giving an option to redeem the impugned goods or provisionally releasing the goods, absolutely confiscated the impugned goods and imposed penalty
- In view of the grounds of appeal and in view of the settled case laws it is



humbly submitted that the impugned order is liable to be set aside, the transaction value being correct is liable to be accepted in absence of any evidence to the contrary warranting rejection of the transaction value and the impugned goods are liable to be redeemed on payment of fine, duty and penalty or to liable to be released provisionally as per law in view of the order of the Hon'ble Supreme Court and of various High Courts cited in the appeal memorandum. Also, even recently in the following case laws release of the like kind of goods on payment of duty, fine and penalty or provisional release of the old and used MFDs have been allowed. Absolute confiscation of the impugned goods contrary to the following case laws is violation of judicial discipline and violation of Article 14 of the Constitution in not treating equally the similarly placed.

- The Hon'ble Supreme Court in the case of Atul Automation Ltd. Versus Commissioner of Customs (Port) vide order dated 14.05.2024 in Petition(s) for Special Leave to Appeal No(1). 13580/2024 () 2024(1) TMI 836-MADRAS HIGH COURT-M/S SKYLARK OFFICE MACHINES VERUS THE ADDITIONAL COMMISSIONER
- In the case of appellant itself in respect of like kind of goods reported as 2024 (9) TMI 847 MADRAS HIGH COURT M/S SAGAR COPIERS, M/S MARUTI ENTRPRISES, M/S SMART IMPEX SOLUTIONS VERSUS COMMISSIONER OF CUSTOMS-ORDER DATED 30.04 2024
- In the case of appellant itself in respect of like kind of goods reported as 2024 (9) TMI 1065 MADRAS HIGH COURT-M/S SMART IMPEX SOLUTIONS M/S S.K IMPEX, M/S SIMPLE MACHINES M/S SP ASSOCIATES VERSUS COMMISSIONER OF CUSTOMS ORDER DATED 18.04.2024
- 2024 (1) TMI 406 MADRAS HIGH COURT - M/S. ATUL COMMODITIES PRIVATE LIMITED VERSUS THE COMMISSION OF CUSTOMS (CHENNAI II) IMPORT, THE ADDITIONAL COMMISSIONER OF CUSTOMS (GR-5), THE DEPUTY COMMISSIONER OF CUSTOMS (GR-S), CHENNAI-order dated 18:12 2023



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- 2024 (9) TMI 630 MADRAS HIGH COURT M/S SALIM ENTERPRISES, M/S ARKA BUSINESS SOLUTIONS VERSUS THE COMMISSIONER OF CUSTOMS, THE ADDITIONAL COMMISSIONER OF CUSTOMS (GR-S). THE DEPUTY COMMISSIONER OF CUSTOMS (GR-5), CHENNAI Order dated 10.09.2024
- 2024 (9) TMI 333 - MADRAS HIGH COURT-M/S. CANN OFFICE EQUIPMENT PRIVATE LIMITED VERSUS THE COMMISSIONER OF CUSTOMS, THE ADDITIONAL COMMISSIONER OF CUSTOMS (GR-51, THE DEPUTY COMMISSIONER OF CUSTOMS (GR-5), CHENNAI-03.09.2024
- 2024 (5) TMI 812 CESTAT BANGALORE COMMISSIONER OF CUSTOMS, BENGALURU VERSUS M/S SRI BANASHANKR TRADERS
- P-R-O NO. KOL/CUS/PORT/ADC/Gr.5/07/2025 dated 21.03.2025 of the Additional Commissioner of Customs Kolkata allowing provisional release of the like goods relying on the order of the various higher authorities ordering provisional release of such goods in case of party itself.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 25.02.2025. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 20.01.2025 as 20.01.2025. Hence the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the TR-6/GAR7 Challan No.8007 dtd 05.03.2024 towards payment of pre-deposit of Rs. 30,000/- which is more than @7.5% of the disputed amount of penalty i.e Rs. 2,00,000/-, under the provisions of Section 129E of the Customs



Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal.

5.1 On going through the material available on record, I find that following issues are to be decided in the instant appeal:-

- i. Whether the impugned order wherein the adjudicating authority has rejected the request of the Appellant for provisional release of goods in the facts and circumstances of the case, is legal and proper or otherwise.
- ii. Whether the impugned order wherein the adjudicating authority has ordered for confiscation of the goods under Section 111(d) and 111(m) of the Customs Act, 1962 and imposition of redemption fine of Rs. 2,50,000/- under Section 125 of the said Act for re-export, in the facts and circumstances of the case, is legal and proper or otherwise.
- iii. Whether the impugned order wherein the adjudicating authority has imposed penalty of Rs. 2,00,000/- on the Appellant under Section 112(a)(i) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.



5.2 Firstly, I take up the issue of provisional release of goods. In this regard, the Appellant has filed additional submissions wherein they have submitted a copy of Provisional Release Order No. KOL/CUS/PORT/ ADC/Gr.5/07/2025 dated 21.03.2025 of the Additional Commissioner of Customs, Kolkata in their own case. On going through the said order for provisional release, it is observed that the Additional Commissioner has allowed provisional release of the like goods relying on the order of the Hon'ble Supreme Court dated 28.11.2024 in case of M/s. Atul Automation Pvt Ltd. The Appellant has placed reliance on the said order. However, I find that the adjudicating authority has no occasion to consider the same during the adjudication proceedings. Hence, I find that entire facts are not available on records to decide the issue on the basis of submissions made by the appellant. Copy of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the adjudicating authority for passing speaking order on the above submissions made by the Appellant becomes sine qua non to meet the ends of justice.

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Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing fresh order after considering the submissions made by the appellant as discussed above in the light of the order of the Hon'ble Supreme Court dated 28.11.2024 in case of M/s. Atul Automation Pvt Ltd and also by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. - Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. Accordingly, the appeal filed by the appellant is allowed by way of remand.



Amit Gupta
(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-377/CUS/MUN/2024-25
8/5

Date: 14.05.2025

By Registered post A.D/E-Mail

To,

M/s Smart Impex Solutions (IEC No.-BEKPJ6657R)

103/88, behind Jainex Parivahan,

Village-Bhanrola, Sector-14, IMT Manesar,

Gurugram, Harayana-122505

सत्यापित/ATTESTED

[Signature]
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

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