सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN – **20260171MN00000090E5**

क	फ़ाइल संख्या FILE NO.	S/49-308/CUS/MUN/24-25
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-804-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/412/AC/NSM/Gr.2/2024-25 dated 22.09.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. JMD International, 132, Pocket-16, Sector 24, Rohini, Delhi 110085

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 है.
	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)	वैगेज़ 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 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 हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 सम्बंन्ध 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	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 हज़ार 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 रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(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 हज़ार 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.	

कार्यालय आयुक्त (अपील), सीमाशुल्क, अहमदाबाद

ORDER-IN-APPEAL

Appeal has been filed by M/s. JMD International, 132, Pocket-16, Sector 24, Rohini, Delhi 110085, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/412/AC/NSM/Gr.2/2024-25 dated 22.09.2024 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Import Section Group-2, Customs House, Mundra 2024 (hereinafter referred to as 'the adjudicating authority).

2. Facts of the case, in brief, are that the appellant Importers of "Ice Cream Sticks Birch Wood" under CTH 4421 of the first Schedule of Customs Tariff Act, 1975. The said Importer discharged the tax of IGST in terms of Serial No. 92A of Schedule-II or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate). An analysis of data (DAC No. 09 dated 27.12.2022) in respect of Import of miscellaneous articles of wood such as "Ice Cream Sticks", "Ice Cream Spoon", "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" etc. for the period 01-01-2021 to 15-12-2022, with regard to wrong claims of lower IGST rate @ 12% Adv under CTI 4421 instead of correct IGST @ 18% Adv on miscellaneous articles of wood by classification of goods in wrong IGST Schedules was carried out by the Data Analytics Cell of the Office of Chief Commissioner of Customs, Ahmedabad.

2.1 The appellant have been found to have filed the Bills of Entry as detailed hereunder for home clearance of the goods viz. "Ice Cream Sticks Birch Wood" under CTH 4421 of the first schedule of the Customs Tariff Act, 1975. The said Importer discharged the tax of IGST in terms of Serial No. 92A of Schedule-II or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate).

S. No.	BE No	BE Date	Qty. (in kgs.)	Assess Value (in)	Total duty paid (in)	Total payable (in)	Diff/ Short paid IGST (in) 4.
1	2712161	10-02-2021	1500	67167	16335	20808	4473
2	2805858	17-02-2021	32000	1313492	319441	406920	87479
3	2896980	24-02-2021	4500	184460	44861	57145	12295
4	3588795	16-04-2021	20200	824434	200502	255410	54907
5	3923897	12-05-2021	900	35377	8604	10960	2356
6	5189287	25-08-2021	2750	115020	27973 2797	35633	7660
7	5286062	02-09-2021	730	36084	8776	11179	2403
8	5767789	08-10-2021	13820	624187	151802	193373	41571
9	5831261	13-10-2021	1050	47424	11533	14692	3158
10	6121069	03-11-2021	900	37943	9228	11755	2527
11	6195358	10-11-2021	1050	125143	30435	38769	8335
12	6342174	20-11-2021	160	11109	2702	3442	740
13	6716829	17-12-2021	310	14753	3588	4571	983
14	7279553	29-01-2022	940	42947	10445	13305	2860
15	7343262	03-02-2022	2800	127927	31112	39632	8520
16	9239834	23-06-2022	600	52693	12815	16324	3509
17	9317662	28-06-2022	817	80132	19488	24825	5337
	TOTAL			3740291	909639	1158742	249103

2.2 Whereas, the rate of IGST leviable on the imported goods is as per Schedules-I to VI appended to IGST Notification No. 01/2017-Integrated Tax (Rate)-as amended. It was observed the Importer is classifying their imported miscellaneous goods as above under Serial No. 92A of Schedule-II or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate). Whereas, Serial No. 92A of Schedule-II of IGST Notification 01-2017-IGST(Rate) prescribes 12 % Adv IGST for goods viz. "Idols of wood, stone [including marble] and metals [other than those made of precious metals" for CTH 44, 68 or 63. Further, Serial No. 101 of Schedule-II also prescribes 12 % IGST on "Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware" under CTH 4421.

2.3 Whereas, other than Serial No. 92A and 101 Schedule-II of IGST Notification 01/2017-IGST(Rate), there is no other entry for CTH 4421 in Schedule II. The Serial No. 92A and 101 of Schedule-II have well defined list of articles of wood covered in entries. The miscellaneous items "Ice Cream Sticks" under CTH 44219190 and "Bamboo Sticks", "Straight Edge Wooden Ice Cream Sticks" etc. under CTH 44219990 does not merit to be included in Entry No. 92A or 101 of Schedule-II. Further, all the entries of wood in Schedule-I to VI of IGST Notification 01- 2017-IGST(Rate) have been mentioned in Table-I above. The subject miscellaneous goods do not merit to be included in any of the above entries of Table-I. Therefore, the imported goods which are not specified in any of Schedules I to VI need to be classified under residuary entry viz. Serial No. 453 of Schedule-III and leviable to IGST rate of 18% Adv. The description at Serial No. 453 of Schedule-III is - "Goods which are not specified in Schedule I, II, IV, V or VI". Analysis of the said Imports in CTI 4421 revealed that the appellant paid IGST @12% Adv on imported goods, by wrongly claiming them under Schedule-II (Serial No. 92A and 101), instead of Serial No. 453 of Schedule-III to Notification-01/2017-IGST(Rate) as amended. This leads to short payment of IGST. Accordingly, the IGST payable during the period from 01-01-2022 to 15-12-2022 as detailed above works out to Rs.249103/- as detailed in herein above.

2.4 Based on the above, the appellant was called upon to show cause to the Assistant Commissioner of Customs, Group-2, Custom House, Mundra, as to why:-

i. The goods having assessable value of Rs 37,40,291/- covered under Bills of Entry as detailed hereinabove, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

ii. The Serial No. 92A or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate) on the goods should not be denied and the same should not be re-assessed at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017;

iii. The differential duty worked out to Rs. 2,49,103/- (Rupees Two Lakhs Forty Nine Thousand One Hundred Three Only) for Bills of Entry as detailed

hereabove, should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

2.5 Consequently, the adjudicating authority passed the following order:

i. He ordered to confiscate the said imported goods having assessable value of Rs. 37,40,291/-covered under Bills of Entry as detailed here above, under Section 111(m) of the Customs Act, 1962; Since the goods were not available for confiscation, he did not propose confiscation.

ii. He ordered to deny the benefit of Serial No. 92A or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate) on the said imported goods and order to re-assessed them at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017;

iii. He ordered to demand and recover the differential duty worked out to RS. 2,49,103/- (Rupees Rupees Two Lakhs Forty Nine Thousand One Hundred Three Only) for Bills of Entry as detailed here above, under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

iv. He ordered to impose penalty of Rs. 2,49,103/- (Rupees Rupees Two Lakhs Forty Nine Thousand One Hundred Three Only) under Section 114A of the Customs Act, 1962. However, in case the appellant paid the duty within 30 days of the communication of the order, the amount of penalty payable is 25% of 2,49,103/- as per provisions of Section 114A of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Assistant Commissioner of Customs, Group-2, Custom House, Mundra.

3.1 The appellant has submitted that Adjudicating Authority erred in failing to appreciate that the demand is time-barred inasmuch as the notice was issued solely on the basis of data and documents already available with department and hence, there is no justification to invocate extended period by applying provisions of Section 28 (4) of Customs Act, 1962. Moreover, the issue also involves interpretation of entries and unless mala fide is alleged and proved, extended period is not invocable. Moreover, any IGST that is paid is available as ITC and hence, it is a revenue neutral situation. On this ground, extended period could not have been invoked. The appellant has submitted that they have correctly classified the items under 92A/101 of Schedule-II of IGST Notification No. 01/2017-IGST (Rate) inasmuch as the items under consideration cannot be excluded from the expression "other articles of wood; such as.." employed in Sl. No. 101.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 13.01.2026 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner of Customs, Group-2, Custom House, Mundra and the defense put forth by the Appellant in their appeal. It is observed that the Adjudicating Authority decided the matter ex-parte because the Appellant did not respond to the SCN or attend the personal hearings.

5.1 A perusal of the Impugned Order reveals that it was passed ex-parte. The Adjudicating Authority recorded that the Noticee did not submit a defense reply or appear for the personal hearings, necessitating an ex-parte decision based on available records. While the Department proceeded with the Order-in-

Original under the assumption of non-compliance/wilful suppression, the non-effective hearing notices raises a serious question regarding the observance of principles of natural justice. The cornerstone of all administrative and quasi-judicial proceedings is the principle of *Audi alteram partem* (hear the other side). The opportunity to file a reply and present one's case, either in writing or personally, is fundamental to a fair adjudication process.

5.2 The statutory provisions under the Customs Act place a high premium on the right to be heard. Section 122A of the Customs Act, 1962 states:

> *"(1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires."*

5.3 The use of the word "shall" makes it mandatory for the authority to grant a hearing. Furthermore, the proviso to Section 122A(2) allows for adjournment if sufficient cause is shown. In the instant case, the imposition of heavy civil liabilities, including duty demands, redemption fines, and penalties, carries serious civil consequences. It is a settled principle of law that any order involving civil consequences must be passed in strict adherence to the Principles of Natural Justice. An ex-parte order is an exception, not the norm, and should only be resorted to when there is willful and repeated non-cooperation, which must be conclusively recorded.

5.4 It is pertinent to observe that by concluding the proceedings ex-parte, the Adjudicating Authority did not get the opportunity to go through the submissions made by the Appellant. The essence of adjudication lies in the impartial consideration of the arguments presented by both the Revenue and the Noticee. In this case, since the Appellant's detailed written submissions and their specific arguments were not taken on record or deliberated upon due to the absence of a hearing, the Adjudicating Authority was effectively deprived of the material necessary to form a balanced and well-reasoned opinion. Consequently, the findings recorded in the Impugned Order are one-sided, based solely on the

investigation report, without the benefit of the counter-arguments which might have altered the final decision.

5.5 The Appellate Authority, in a situation where the Adjudicating Authority has passed an order without the benefit of the assessee's defence reply or appearance, and the assessee now appears before the Appellate Authority with a defence, finds it just and proper to afford a fresh opportunity. A plethora of decisions from the Hon'ble Tribunal (CESTAT) have consistently set aside ex-parte orders where the principles of natural justice were, or appeared to be, violated, and remanded the matter back to the Adjudicating Authority for a fresh decision after providing a proper hearing. The setting aside of an ex-parte order and remanding the matter is a justified course of action when sufficient cause, such as non-receipt of notice, is shown for non-appearance/non-submission of reply.

5.6 While the Adjudicating Authority followed the procedural requirement of granting three hearings, the substantive issues involved are complex and require a balanced examination of law and fact. The dispute hinges on whether "Ice Cream Sticks" and "Bamboo Skewers" are "Other articles of wood" under Sl. No. 101 of Schedule II (12%) or "Goods not specified elsewhere" under Sl. No. 453 of Schedule III (18%). Interpretation of Sl. No. 101 involves the principle of ejusdem generis, determining if the imported goods are of the same kind as the illustrative list (clothes hangers, spools, etc.). Such technical determinations regarding the "essential character" and "commercial parlance" of wooden articles cannot be robustly concluded without the importer's expert technical input and trade literature.

5.7 The Department invoked the five-year extended period under Section 28(4) of the Customs Act, 1962. For such invocation to be legally sustainable, the Department must prove "willful misstatement" or "suppression of facts" with an intent to evade duty. The Appellant argues that since the classification was based on a public notification and the goods were correctly described by name, the dispute is merely one of interpretation. If the Department

had access to the same data during the normal period of limitation, the charge of "suppression" becomes a high legal hurdle. These findings require a deep dive into the correspondence and the self-assessment records of the Appellant, which were not scrutinized due to the ex-parte nature of the order.

5.8 The Appellant's claim that any duty paid would be available as ITC is a significant legal defense. If established, it may negate the "intent to evade," as there would be no ultimate financial gain to the importer from short-paying IGST. This aspect requires verification of the Appellant's GST compliance and credit utilization, which was entirely omitted in the original proceedings.

5.9 The principles of natural justice, specifically the maxim "Audi Alteram Partem" (hear the other side), are the bedrock of administrative and quasi-judicial decision-making in India. In the context of the Customs Act, 1962, this is not merely a formality but a statutory mandate under Section 122A, which requires the Adjudicating Authority to give an opportunity of being heard to the party chargeable with duty or penalty. Classification of goods is often a complex exercise involving "interpretative rules" and "commercial parlance." When an order is passed without a defense reply, the authority lacks the benefit of the importer's justification for a specific entry. This results in a "unilateral assessment" that fails to address valid legal counter-points.

5.10 Even if an authority intends to confirm a demand, the process of evaluating a defense reply and addressing it in the final order is essential for the "reasoned decision" requirement. An order that ignores a potential defense—even if due to the party's absence—leaves the adjudication incomplete and susceptible to being termed "arbitrary." In matters involving differential duty and penalties, a remand is preferred over a summary decision at the appellate stage. It allows the original authority—the fact-finding body—to record fresh findings after examining the importer's evidence. This ensures that the Appellant's right to a fair trial is preserved without bypassing the initial stage of adjudication.

5.11 Fresh adjudication is necessary primarily because the findings in the impugned order regarding "willful misstatement" and the invocation of the extended period under Section 28(4) are one-sided and lack the requisite evidentiary depth. The Appellant has argued that the dispute is purely a matter of interpretation of entries in a tax notification. In such cases, if the description of the goods was accurately provided in the Bill of Entry, the claim for a specific tax rate is a legal claim, not a factual misstatement. The Adjudicating Authority must examine whether the Appellant had a bona fide belief in their classification, which can only be done after considering their defense.

5.12 The plea of revenue neutrality is a pivotal legal defense against the charge of suppression. If the Appellant is entitled to full Input Tax Credit (ITC) of the IGST paid, there is no ultimate loss to the exchequer and no financial incentive for the Appellant to evade tax. Courts have consistently held that in a revenue-neutral situation, the intent to evade cannot be presumed. The Adjudicating Authority failed to analyze this, as the ex-parte order did not account for the Appellant's GST-registered status or the eligibility for credit.

5.13 As an appellate authority, I find that confirming serious charges of fraud or suppression without a comprehensive counter-view results in a legally fragile order. A remand allows the fact-finding authority to verify the Appellant's GST records, correspondence with the department, and technical literature on the goods. This ensures that the final decision is based on a complete factual matrix rather than a default confirmation of the SCN.

5.14 To ensure that the "substantial justice" is not sacrificed at the altar of "technicalities," and considering the Appellant is now ready to participate in the proceedings, I find it fit to remand the case. This will allow the Adjudicating Authority to examine the classification on merits and the validity of the invocation of the extended period of limitation. Since the matter is being remanded on the preliminary ground of violation of principles of natural justice, I am not examining the merits of the classification or valuation at this stage. All issues remain open for the Adjudicating Authority to decide afresh.

6. In view of the above discussions and findings, and in the interest of natural justice:

(i) The impugned Order-in-Original No. MCH/412/AC/NSM/Gr.2/2024-25 dated 22.09.2024 is SET ASIDE.

(ii) The matter is REMANDED to the Adjudicating Authority for fresh adjudication.

(iii) The Adjudicating Authority shall provide the Appellant a reasonable opportunity to file a written submission and grant a Personal Hearing.

The appeal filed by M/s. JMD International is ALLOWED BY WAY OF REMAND.

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

F. No. S/49-308/CUS/MUN/24-25 Dt: 30.01.2026

By Registered post A.D/E-Mail

To,
M/s. JMD International,
132, Pocket-16, Sector 24,
Rohini, Delhi 110085

Copy to:
1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Mundra.
3. The Additional Commissioner of Customs, Custom, Mundra.
4 Shri Vikas Mehta, Consultant of M/s. JMD International (vikas@dlegal.in)
5. Guard File.