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 - 20250971MN000000FD5E

क	फ़ाइल संख्या FILE NO.	S/49-106/CUS/MUN/2023-24
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-186-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.09.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/121/2023-24 dated 17.07.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Capital Sales, (Jaliwala), Shop No 73,Near Masobadada Masjid, Navabazar, Vadodara-390001

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)	बैगेज़ 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.	

ORDER-IN-APPEAL

Appeal has been filed by M/s. Capital Sales,(Jaliwala), Shop No 73. Near Masobadada Masjid, Navabazar, Vadodara-390001, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/121/2023-24 dated 17.07.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant has filed Bill of Entry No. 5598660 dated 20.04.2023 for import of goods declared as "Wire Mesh (For civil construction usage only)" declaring the same under CTH 73141990. Other details of Bill of Entry are as under:

S No	Bill of Entry/Date	Declared Assessable Value	Declared Wrong CTH	Correct CTH
1	5598660 dated 20.04.2023	7,46,498/-	73141990	76169100

2.1 The consignment was put on hold by the officers of Special intelligence & Investigation Branch (SIIB), Custom House Mundra for examination due to suspecting concealment/mis-declaration. The goods were examined by the SIIB officers in presence of authorised representative of the CHA under panchnama dated 25.04.2023. It was found that there was no concealment in as much as only wire mesh was found in the consignment. Quantity was also verified since counting of rolls was found as declared in the Bill of Entry, Invoice and Packing List. The goods have been classified under CTH 73141990 which is a classification for goods made of Iron and Steel. At the time of examination, PMI test was conducted in presence of representative of the CHA to ascertain composition of the mesh. 4 random samples were selected for PMI testing. PMI results are as under:

SI No	Composition found
1	Al-99.65%, Fe-0.229%, Zn-0.016%
2	Al-99.67%, Fe-0.235%, Zn-0.015%
3	Al-99.68%, Fe-0.226%, Zn-0.015%
4	Al-99.69%, Fe-0.229%, Zn-0.012%

2.2 Therefore, PMI testing confirmed primarily that the goods are made of Aluminium and not of Iron and Steel, as has been declared by the Appellant. Further, samples were also drawn and sent to the CRCL laboratory, Kandla for testing to ascertain exact composition of the goods. Since the goods appeared mis-declared and mis-classified after PMI test conducted during examination, the goods were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 27.04.2023. Test report dated 17.05.2023 was received from CRCL, Kandla. Results of the test report stated as "It is composed of Aluminium. It does not answer for iron". Therefore, the goods were found mis-declared and mis-classified. As explained above, the goods imported are found to be "Aluminium Wire Mesh", however, the Appellant declared the goods to be "Wire Mesh" and classified the goods under CTH 73141990. Aluminium Wire Mesh is correctly classifiable under CTH 76169100. Hence, the Appellant has imported the goods by way of mis-declaration/mis-clasification in terms of CTH since the declared CTH is 73141990 while the correct CTH would be 76169100.

2.3 Since the goods appeared mis-classified and mis-declared, summons dated 22.05.2023 was issued to the Appellant M/s Capital Sales Jaliwala to appear for statement on 24.05.2023. Shri Taher Iqbalbhai Bangdiwala, proprietor of M/s Capital Sales appeared for statement. In his statement dated 24.05.2023, Shri Taher Iqbalbhai Bangdiwala submitted, interalia, that:

(a) He ordered for wire mesh -Mesh Size 14X14, Wire Diameter 0.38 (approx.). He ordered for Steel wire mesh.

(b) He perused Test Result dated 17.05.2023 in respect of Test Memo No.586 dated 27.04.2023 vide which CRCL Kandla has certified that the goods imported vide Bill of Entry No.5598660 dated 20.04.2023 are of Aluminium and that he agreed with the contents of the test report.

(c) He accepted test report and that he did not want to challenge the test report. The report was acceptable to him.

(d) The mis-declration was not deliberately done by them but the Appellant sent the goods of aluminium not ordered by them.

(e) The value is much higher in case of aluminium goods.

(f) He never imported aluminium wires mesh in the past and it is first consignment. In the past, testing of imported goods was done in respect of Bill of Entry 3122301 dated 01.11.2022 wherein the goods were found to be of alloy of Iron, Nickel, Chromium and no discrepancy was noticed.

(g) He agreed that the goods are Wire Mesh of Aluminium and that he was ready for the valuation of goods accordingly.

(h) The NIDB data, if available, for similar or identical goods, may be taken for valuation.

(i) He did not insist on SCN (Show Cause Notice) or Personal Hearing in the matter and requested for re-assessment and conclusion of enquiry.

(j) That the goods may be released to avoid heavy demurrage and detention charges.

2.4 Further, a letter dated 31.05.2023 received over email whereby the Appellant requested again that they accept that the goods are of Aluminium and that they do not need any SCN/PH in the matter. As the goods were found mis-declared in terms of description and classification, the assessable Value declared by the Appellant is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence, to re- determine correct value as per Customs Valuation Rules, 2007, NIDB data was searched. As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007.

2.5 As per Rule 4 of CVR, 2007, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; and As per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods for three months was retrieved from ICES 1.5. On perusal of the retrieved data, data of similar items [Rules 5 of the Customs Valuation Rules (CVR), 2007] in terms of description, mesh size and country of origin was found. As per the NIDB data, values of two mesh sizes are found to be Rs. 176 per KG and Rs.320.64 per KG for mesh size 18x16 and 14x14, respectively. Quantities of 14x14 mesh and 18×16 mesh size are found as 14.219 MTS and 6.781 MTS, respectively. Accordingly, values for the mesh sizes 14x14 & 18x16 are Rs. 45,59,180/- & Rs. 11,93,456/-, respectively. Therefore, total value of the consignment comes out to be Rs 57,52,636/- as against declared value and redetermined value as Rs. 57,52,636/- are liable for confiscation under section 111(m) of the Customs Act, 1962. Further, for this act of commissions on their part, the Appellant

appeared liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

2.6 Consequently, the Adjudicating Authority passed the following order:

i. She ordered to reject the declared CTH i.e. 73141990 by the Appellant and confirmed and ordered to re-assess of Bill of Entry No. 5598660 dated 20.04.2023 under Section 17 (4) of the Customs Act, 1962 with correct CTH as 76169100.

ii. She ordered to reject the declared assessable value Rs 7,46,498/- of the goods imported vide BE No. No. 5598660 dated 20.04.2023 and re-determine the same at Rs 57,52,636/-under Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules 2007. Further, she ordered to re-assess the said Bill of Entry accordingly.

iii. She ordered to recover differential duty of Rs. 15,50,902/- from the Appellant alongwith applicable interest.

iv. She confirmed and ordered for confiscation of the goods pertaining to Bill of Entry No. 5598660 dated 20.04.2023 valued at Rs 57,52,636/- as Goods declared are in contravention of Section 46 of the Act and are therefore liable for confiscation under Section (m) of the Customs Act, 1962. However, she gave an option to re-deem the goods in lieu of confiscation under provision of section 125 of customs Act, 1962 on payment of Redemption Fine of Rs.6,00,000/- (Rs. Six Lakh only).

She imposed a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on the Appellant under section 112(a) of Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

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

3.1 The order passed by the Adjudicating Authority is in violation of principles of natural justice, and is also unreasonable and arbitrary because the data and material used by him for fastening liabilities on the appellant were not disclosed before passing the order nor in the order itself. The appellant waived

issuance/service of a notice and also opportunity of personal hearing because the report of CRCL, Kandla shown to the appellant when his statement was recorded on 24 5.2023 indicated that imported Wire mesh were of aluminium and not of steel; and the appellant was informed during recording of the statement that the classification of the goods would be changed in view of this report and Customs duties applicable for Wire mesh of aluminium under Chapter 76 of the Customs Tariff would be applied for assessment of Customs duties. The appellant agreed to this proposition because of the report of CRCL, and waived show cause notice and personal hearing; but the appellant had never been informed at any point of time that value of the goods would be enhanced and the enhancement would be about 7 times the price actually paid by the appellant, and accordingly, the impugned order for enhancement of value from Rs.7,46,498/- to Rs.57,52,636/- is in violation of the principles of natural justice.

3.2 The appellant has never been intimated about any data or evidence of contemporaneous imports at higher price, and therefore also there is a violation of principles of natural justice because the Adjudicating Authority has ordered enhancement of value of the goods on the basis of some data and material that had never been disclosed nor made available to the appellant during the adjudication or even after passing the order. Even in the order, no details or evidence about imports of similar goods imported at the same commercial level and at about the same time in substantially similar quantities but at a higher price, are referred to. No details of any bills of entry of contemporaneous imports or the Ports where contemporaneous imports at higher price were made or the suppliers of such contemporaneous imports or the importers of such goods in India are recorded or disclosed. Thus, there is an overall unreasonableness and arbitrariness in the decision making process followed by the Adjudicating Authority, and the impugned order enhancing value of the imported goods is in violation of principles of natural justice also.

3.3 Moreover, the fact that the appellant has been importing similar goods (i.e. Wire mesh of iron and steel) from the same Chinese supplier for last several years and the goods sold and supplied by the Chinese vendor in past were iron/steel wire mesh has a:so been kept out of consideration in the adjudication. When the appellant has explained during recording of his statement that he ordered for steel wire mesh and that the goods of aluminium were wrongly supplied by the vendor, it was incumbent upon the Adjudicating

Authority to have verified the details of the order placed by the appellant for the goods in question and also the details of the orders placed in past and supplies made by the Chinese vendor against such past orders. The appellant's explanation that the Chinese supplier had wrongly delivered goods of aluminium is also not considered at all though this fact was borne out from record of the case; and therefore also the orders of the Adjudicating Authority about confiscation of goods and also for imposition of penalty is unreasonable and arbitrary. The appellant therefore submits that the impugned order about enhancement of value of the goods deserves to be quashed and set aside, and the liabilities of differential duty and excessive fine and penalty based on illegally enhanced value of the goods also deserve to be quashed and set aside, in the interest of justice. The impugned order about differential duty and other liabilities is made on the basis that the value of the imported goods was Rs.57,52,636/-, and the demand for differential customs duty and also excessive redemption fine and penalty are on the basis of value enhanced by the Additional Commissioner. But the enhancement of value of the imported goods from Rs.7,46,498/- to Rs.57,52,636/- is ex- facie unauthorized, unjustified and illegal, because there is no basis in law nor in facts for loading value of the imported goods multifold. There is no evidence at all to even suggest that the appellant has made any payment to the Chinese supplier in excess of the invoiced price, and there is also no evidence on record to establish that the normal price of aluminium wire mesh (assuming that the imported goods were made of aluminium) was as high as over Rs.57 lakhs for assessing custom duties and other liabilities thereon.

3.4 There is no evidence of any contemporaneous imports of similar goods imported at about the same time and at same commercial level but at a price as high as Rs.57.52 lakh (rounded off), and there is also no evidence on record to show that the price actually paid by the appellant to the Chinese supplier was not the sole consideration for the goods in question. For all these reasons, the impugned order about enhancement of value of the goods imported by the appellant deserves to be quashed and set aside, with all consequential reliefs and benefits to the appellant.

3.5 Assuming without admitting that the goods imported by the appellant were not steel wire mesh but they were aluminium wire mesh, it is an undisputed fact in this case that the invoiced price for the goods purchased by the appellant had been $450 per ton and that the total price charged by the

Chinese supplier for the goods sold to the appellant was $8910. There is no suggestion in the present case that the appellant had paid any money over and above the invoiced price to the Chinese supplier, and it is not the case of the Customs Department that the appellant had made to the Chinese supplier payment of any amount higher than the invoiced price i.e. Dollars 8910, for the goods in question. It is thus an undisputed fact in the present case that the appellant has paid $8910 to the Chinese supplier for purchasing 19.8 tons of wire mesh, and therefore the price so actually paid by the appellant was the transaction value under Section 14 of the Customs Act for assessment of custom duties. The transaction value of goods under assessment is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. In the present case it is an admitted fact that the appellant has paid only the invoice value to the foreign supplier and it is also an admitted fact that the appellant has not paid any further amount over and above the agreed price, and therefore the invoice value has been the transaction value i.e. the price actually paid for the goods in question when sold for export to India. The Customs duty was therefore required to be assessed on such transaction value, and enhancement of the transaction value is therefore wholly illegal and without jurisdiction.

3.6 Rule 4 of the Customs Valuation Rules provides that the price actually paid or payable for the goods when sold for export to India was the transaction value, and the transaction value shall be accepted unless any of the situations covered under the proviso to Rule 4(2) or under Rule 4(3) of these Rules existed; and it is also a settled legal position by virtue of a number of judgments rendered by the Hon'ble Supreme Court and various High Courts and also the decisions of the Appellate Tribunal that the price actually paid or payable could be rejected for re- determining the transaction value of imported goods for assessing duties thereon only if the price paid or payable was not the sole consideration or that there was any extra commercial considerations that played role in arriving at the transaction value between the parties; and it is also a settled legal position that the transaction value could be replaced by re-determining it by price of any contemporaneous import of similar goods sold to anyone in India at the same commercial level and in substantially the same quantity. If any of the circumstances or situations contemplated under proviso to Rule 4(2) or Rule 4(3) of the Valuation Rules existed, then only the transaction value declared by the importer could be rejected and thereupon the transaction value has to be re-determined by going through these rules sequentially.

3.7 The Hon'ble Supreme Court has held in the case of Eicher Tractors Ltd. 2000 (122) ELT 321 that the price actually paid for importing any goods was the value for assessing duties unless it was established that the price so paid was not the sole consideration and that the transaction was tainted by any extra commercial consideration. In the present import, however, it is not even the case of the Revenue that the appellant had paid any extra money or consideration, or that the price paid by the appellant for purchasing the goods from the foreign based supplier was not the sole consideration or that the price was influenced by any other consideration, and thus the genuineness of the price actually paid by the appellant is not under any doubt or dispute in this case. Therefore, as held in cases like D.R. Polymers Ltd. V/s. Commissioner of Customs, ICD, TKD. New Delhi reported in 2004 (166) ELT 393 (Tri.Del.), Narayan International V/s Collector of Customs 1992 (58) ELT 126 (Tribunal), Vintel Distributors P. Ld. 2002 (49) ELT 145 (Tri. Chennai), Elite Packaging Industries 1992 (60) ELT 311 (Tribunal), Do Best Infoway 2004 (166) ELT 424 (Tri. Del.) and Commissioner of Customs V/s. Gokul Metalizers Pvt. Ltd. 2009 (235) ELT 87 (Tri. Ahmd.) by the Hon'ble CESTAT, the price of the imported goods could be discarded and value re-determined only when there were instances of imports of similar goods at same commercial level and in substantially the same quantity but at higher price, and such imports a higher price should also be from the same country of origin and purchases should also be from the same type of supplier i.e a manufacturer or a trader etc. In the present case, admittedly, there is not a single instance of import of similar goods in substantially the same quantity and at same commercial level from the same country of origin at higher price and therefore here was no reason nor any justification in discarding the transaction value i.e. the price actually paid by the appellant for the goods in question for assessing duties thereon. Therefore the impugned order is contrary to the settled legal position about valuation of imported goods and therefore wholly illegal and liable to be set aside.

3.8 The Additional Commissioner has referred to Rule 5 of the Customs Valuation Rules and ordered for enhancement of value of the imported goods on the basis that contemporaneous data of import of identical or similar goods for 3 months retrieved from ICES indicated that value of two mesh sizes was found to be Rs.176 per Kg for Mesa size 18/16 and Rs.320.64 per Kg for Mesh size 14/14. The Additional Commissioner has determined transaction value of

Rs.45,59,180/- for the goods of Mesh size 18/16 and that of Rs.11,93,456/- for the other Mesh size, the re- determined value thus aggregating to Rs.57,52,636/. But no data or any details claimed to have been derived from ICES from NIDB data are disclosed in the adjudication, nor are such details and data made available to the appellant even at this stage. While enhancing value of the goods imported by the appellant, it was incumbent upon the Additional Commissioner to establish that the price of Rs.176/- per kg and Rs.320.64 per kg was in respect of concerned two mesh sizes and that the goods imported at such higher price were exported from the same country i.e. from China; that the goods were sold and supplied at such higher price at the same commercial level i.e. by the manufacturers (and not by traders); hat the goods were sold and supplied in similar quantities and the payment terms were also similar compared to the quantity and payment terms in the appellant's case; and thus it was incumbent upon the Adjudicating Authority to establish that the prices of Rs.176 per kg and Rs.320.64 per Kg being applied in the appellant's case were with regard to similar goods imported in India in contemporaneous manner. But the Additional Commissioner has not referred to any such facts or evidence while passing the impugned order also for establishing that the excessively higher prices being applied for assessing duties on the goods imported by the appellant were with regard to similar goods imported in contemporaneous manner. Not supplying any information and data to the appellant about the imports made at higher price and not referring full details of contemporaneous imports even in the Order now passed, is an action in violation of principles of natural justice, and wholy illegal and without jurisdiction. In the facts of the present case, the impugned order enhancing the value of the goods imported by the appellant from Rs.7,46,498/- to Rs. 57,52,636/- is without any justification, without any basis and without any authority in law; and hence liable to be set aside.

3.9 The appellant submits that Aluminium wire mesh of similar mesh size are actually sold in the local trace in India at much lower price; and therefore the price of Rs. 176 per kg and Rs.320.64 per Kg taken as the basis by the Additional Commissioner is on face of it unjustified and impermissible. The goods actually sold in the trade within the country carry a higher price because the goods sold in the local trade not only include the value of the goods but also the taxes paid thereon and other elements of expenditure like transportation cost as well as profit of the traders. Bu even after considering all such heads of expenditure, the prices at which Aluminium wire mesh of the concerned two Mesh sizes are actually sold in the country are much lower than Rs.176 per kg

and Rs.320.64 per Kg. Even the qualified Chartered Engineers have certified that the price of the goods in question, even if they were considered to be Wire mesh of aluminium was 0.45 USD per Kg. The invoices and bills for sale of similar Aluminium wire mesh in the local market also indicate that the actual sale price of these goods was much lower than what the Additional Commissioner had ordered. However, the assessable value of the imported goods is enhanced by the Additional Commissioner without any evidence and without any substantiation. Consequently, the impugned order regarding enhancement of assessable value of the goods imported by the appellant and also resultant demand for differential customs duty aggregating to Rs.15,50,902/- deserves to be quashed and set aside in the interest of justice.

3.10 The Adjudicating Authority has ordered confiscation of the imported goods on the ground that they were mis-declared under CTH 73141990, whereas the goods were Aluminium Wire mesh meriting classification and higher rate of duty under CTH 76169100. But there was no "mis-declaration" on the appellant's part in declaring the goods under CTH 73141990, because the appellant had ordered for Steel Wire Mesh which fall under the above referred classification, and the sales documents supplied by the Chinese vendor also referred to the goods as Wire mesh with HS Code 731419; and therefore the appellant had no reason to believe that the goods received by him were Aluminium Wire mesh. The CRCL, Kandia has reported that the goods were Aluminium; but there is no evidence on record showing that the appellant knew that the goods classified under HS Code 731419 by the Chinese supplier in all sales documents were actually Aluminium wire mesh. Therefore, notwithstanding the report of the Customs laboratory, there was no deliberate or intentional mis-declaration of goods by the appellant in this case. The goods ordered were Wire mesh of steel and the price charged by the Chinese supplier from the appellant was also the normal price of Steel Wire mesh, and therefore also the appellant had no reason to suspect that the goods actually supplied by the vendor were made of aluminium. Under these circumstances, the penal order of confiscation of the goods is unjustified and improper.

3.11 In any case, the amount of redemption fine ordered by the Additional Commissioner is unjustified as too excessive; and the option to pay redemption fine of Rs.6 lakhs is not in proportion to the irregularity of the Chinese vendor in supplying wrong goods. When the appellant himself was not guilty of any omission or commission, the Adjudicating Authority had no jurisdiction to fix

redemption fine as high as Rs.6 lakhs. The actual price paid for the goods is Rs.7,46,498/- and therefore also fine of Rs.6 lakns in lieu of confiscation of such goods is unreasonable, excessive and arbitrary. Moreover, the appellant has not declared the goods in the bill of entry as "Iron or Steel Wire mesh", but the goods are admittedly declared as "Wire mesh" with the HS Code in accordance with the documents supplied by the Chinese vendor. The appellant was under a bonafide impression that the goods actually fell under CTH 73141990 because the appellant had ordered for Steel Wire mesh, and the Chinese vendor had always sold and supplied Steel wire mesh to the appellant pursuant to the orders placed in past also. Therefore, the imposition of redemption fine of Rs.6 lakhs is unreasonable, in the facts of the present case.

3.12 In the above premises, the appellant submits that the Adjudicating Authority has not taken into consideration all the relevant facts and circumstances of the case while ordering confiscation and also while fixing excessive amount as redemption fine. The impugned order about confiscation and fixation of the quantum of redemption fine therefore deserves to be quashed and set aside; or suitably modified, in the interest of justice.

3.13 Imposition of penalty on the appellant under Section 112(a) of the Customs Act is also illegal and unjustified. The appellant has filed Bill of Entry with all requisite documents and therefore it is not a case where the appellant has not done anything which the appellant was expected to do as an importer. The appellant has not with-held any information or documents from the Custom authorities at the time of import and seeking clearance of the goods for home consumption. Therefore, the present one is also not a case where the appellant has omitted to do any act which the appellant was otherwise required to do. Section 112(a) of the Act comes into play for penalizing any person 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 of the Act. However, as aforesaid, the appellant has not been guilty of any omission or commission which would render the goods imported by the appellant liable to confiscation under Section 111(d) of the Act. The imposition of penalty on the appellant under this Section is therefore wholly illegal.

3.14 The Adjudicating Authority has imposed penalty on the appellant on the ground that there was "mis-declaration" of the goods while filing the bill of entry and that such mis-declaration was for avoiding payment of higher custom

duty applicable to goods of aluminium. But the Additional Commissioner has committed an error in as much as there was no deliberate mis-declaration by the appellant as regards the classification and applicable rate of duty claimed in the bill of entry. The appellant has ordered for Steel Wire mesh and the Chinese supplier has charged the price of Wire mesh of steel, and the HS code of the goods supplied was also shown as 741419 in all the export documents that accompanied the goods in question. The appellant was therefore under a genuine and bonafide impression that the goods received from the Chinese vendor were Wire mesh of steel, and therefore the appellant's action in declaring classification of the goods as Wire mesh under 73141990 was not in the nature of any "mis-declaration" as contemplated under the provisions of Section 11(d) as well as Section 112(a) of the Customs Act. Penalty of Rs.3 lakhs is wholly unjustified in the facts of the present case, and ingredients of Section 112(a) of the Customs Act are also not satisfied in this case when the appellant's conduct and bonafide impression are taken to consideration.

3.15 The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of M/s. Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty of conduct contumacious or dishonest and the error committed by the assessee was not bona-fide but was with a knowledge that the assessee was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bona-fide belief, even a token penalty would not be justified. This principle is applicable in the present case also, and accordingly the imposition of penalty also deserves to be set aside in the interest of justice.

3.16 The appellant submits that the order of the Additional Commissioner is even otherwise void in view of violation of principles of natural justice in the decision making process, unreasonable and arbitrary in view of the fact that no details or evidence of contemporaneous imports at a much higher price are disclosed in the adjudication nor recorded in the order, and also incorrect, impermissible and unreasonable in view of the fact that the appellant's bonafide conduct and impression about nature of the goods are kept out of

consideration while passing the impugned order. Therefore, the order about enhancement of value of the imported goods and also the liabilities of excessive redemption fine and penalty are even otherwise incorrect, unjustified and without justification in the facts of the present case.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.06.2025, following the principles of natural justice wherein Shri Amal P Dave, Advocate appeared for the hearing and he reiterated the submissions made in the appeal memorandum.

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.

5.1 On going through the material on record, I find that the following issues need to be addressed:

(i) Whether the Order-in-Original is vitiated by a violation of the principles of natural justice due to the non-disclosure of the National Import Database (NIDB) data and other material relied upon for the re-determination of the assessable value.

(ii) Whether the rejection of the declared transaction value and the re-determination of the assessable value at Rs. 57,52,636/- under Rule 5 of the Customs Valuation Rules, 2007, is legally sustainable and based on a proper application of the valuation methodology.

(iii) Whether the imposition and quantum of redemption fine of Rs. 6 lakhs and penalty of Rs. 3 lakhs under Section 112(a) of the Customs Act, 1962, are justified and proportionate, considering the facts and circumstances of the case, particularly the appellant's claim of unintentional mis-declaration and prompt payment of differential duty under protest.

5.2 The primary contention of the Appellant is that the re-determination of value, leading to a seven-fold increase in assessable value, was done in violation of principles of natural justice, specifically due to the non-disclosure of the NIDB data or other contemporaneous import evidence relied upon by the adjudicating authority.

5.3 Violation of Natural Justice i.e Non-disclosure of NIDB data is a critical procedural infirmity. Rule 12(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, mandates that if the proper officer has reason to doubt the truth or accuracy of the declared value, he shall intimate the importer in writing the grounds for such doubt and provide a reasonable opportunity of being heard. Furthermore, judicial pronouncements have consistently held that if the department relies on any data (such as NIDB data or contemporaneous import prices) to reject the transaction value and re-determine the assessable value, such data must be disclosed to the importer, and an opportunity must be given to the importer to examine and rebut it.

- The Hon'ble Supreme Court in CENTURY METAL RECYCLING PVT. LTD. Versus UNION OF INDIA [Civil Appeal No. 5011 of 2019, decided on 17-5-2019, reported in 2019 (367) ELT 3 (SC)] unequivocally laid down that the assessing officer, after conducting preliminary enquiry, ought to have intimated in writing the grounds for doubting the truth or accuracy of the declared value. It emphasized that reliance on foreign journals or market data without conducting inquiries and ascertaining details with reference to identical or similar goods, and without disclosing such material to the importer, is not permissible. This judgment is a cornerstone for valuation disputes and directly supports the Appellant's contention regarding non-disclosure of NIDB data.

- Similarly, the Hon'ble Supreme Court in Commissioner of Customs vs. J.D. Orgochem Ltd. [2008 (226) ELT 9 (SC)] reiterated the mandatory nature of the procedure under Rule 12 of CVR, 2007.

5.4 In the present case, the Appellant explicitly states that they were never informed of the proposed seven-fold value enhancement, nor were any details or copies of the NIDB data/contemporaneous imports provided to them. This constitutes a clear violation of the principles of natural justice and the mandatory procedure laid down in Rule 12 of CVR, 2007, as interpreted by the

Apex Court. The Appellant was deprived of a fair opportunity to examine the basis of the enhanced valuation and present their defence.

5.5 The adjudicating authority re-determined the value under Rule 5 of CVR, 2007. While Rule 5 (similar goods) can be applied after rejection of transaction value (Rule 3) and inability to apply Rule 4 (identical goods), the very basis of applying Rule 5, i.e., the NIDB data, was not disclosed. The cases cited by the Appellant, such as Eicher Tractors Ltd. 2000 (122) ELT 321 (SC), and various Tribunal decisions like D.R. Polymers Ltd., Narayan International, Vintel Distributors P. Ltd., Elite Packaging Industries, Do Best Infoway, Commissioner of Customs V/s. Gokul Metallizers Pvt. Ltd., consistently hold that transaction value should not be rejected or enhanced without cogent reasons and proper evidence. These judgments, read in conjunction with Century Metal Recycling, underscore the importance of transparency and due process in valuation. The Appellant's argument that their declared price of USD 450 per ton was the normal international price for such wire mesh also needs to be properly examined against disclosed data.

5.6 Given the significant procedural lapse and the direct impact on the assessable value, the re-determination of value without providing the underlying data is unsustainable. This necessitates a remand for proper re-adjudication of the valuation aspect.

5.7 The goods were indeed found to be Aluminium Wire Mesh instead of Iron/Steel Wire Mesh, which constitutes a mis-declaration of description. This mis-declaration renders the goods liable to confiscation under Section 111(m) of the Customs Act, 1962, as they do not correspond in a material particular with the entry made in the Bill of Entry. However, the quantum of redemption fine (₹6 lakhs) and penalty (₹3 lakhs) is directly linked to the re-determined assessable value of ₹57,52,636/-. If the valuation itself is flawed due to a violation of natural justice, then the fine and penalty, being proportional to that value, also become questionable.

5.8 The Appellant's contention that there was no deliberate mis-declaration, but rather a mistake by the supplier, and their immediate explanation to Customs, points towards a possible lack of mens rea or at least a less culpable intent. The Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa [1978 (2) ELT J159 (SC)] held that no penalty should ordinarily

be imposed unless the party acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct. While mis-declaration of goods is serious, the aspect of mens rea and the proportionality of fine/penalty need to be re-examined in light of a proper valuation. The Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai vs. Finesse Creation Inc. [2009 (248) ELT 122 (Bom.)] has also emphasized the proportionality of redemption fine.

5.9 Since the very basis of the quantum of fine and penalty (i.e., the re-determined value) is under question due to procedural infirmities, it would be appropriate to allow the adjudicating authority to re-examine the quantum of fine and penalty after a fresh and proper valuation exercise.

6. In view of the significant procedural lapse regarding the non-disclosure of NIDB data or other contemporaneous import evidence used for valuation, which constitutes a clear violation of principles of natural justice and the mandatory provisions of Rule 12 of CVR, 2007, the impugned order cannot be sustained. The valuation, and consequently the quantum of redemption fine and penalty, needs to be re-adjudicated after providing a fair opportunity to the Appellant. This appellate authority finds it appropriate to set aside the impugned order and remand the matter back to the adjudicating authority for a fresh adjudication on the issues of valuation, differential duty, redemption fine, and penalty, in strict compliance with the principles of natural justice and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The impugned Order-in-Original No. MCH/ADC/MK/121/2023-24 dated 17.07.2023 is hereby set aside.

(ii) The matter is remanded back to the adjudicating authority with the following specific directions:

(a) The adjudicating authority shall re-adjudicate the assessable value of the imported goods after providing the Appellant with all the NIDB data or any other contemporaneous import evidence relied upon for valuation.

(b) The Appellant shall be granted a reasonable opportunity to examine such data/evidence and to submit their rebuttal/justification for the declared transaction value.

(c) The adjudicating authority shall re-determine the assessable value strictly in accordance with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and the principles of natural justice, taking into account all submissions and evidence.

(d) Consequential to the re-determination of value, the adjudicating authority shall re-adjudicate the differential duty, interest, redemption fine, and penalty.

(iii) The adjudicating authority shall pass a fresh speaking order within three months from the date of communication of this order.

(iv) The appeal filed by M/s. Capital Sales (Jaliwala) is hereby allowed by way of remand.

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

F. No. S/49-106/CUS/MUN/2023-24 3669 Date: 19.09.2025

By Registered post A.D/E-Mail

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

To,
M/s. Capital Sales (Jaliwala),
Shop No.73, Near Masobadada Masjid,
Navabazar, Vadodara-390001.

Copy to:

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