



सीमा शुल्क(अपील) आयुक्त का कायलिय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
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DIN - 20251071MN00003303CB

क्र	फ़ाइल संख्या FILE NO.	S/49-136/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-381-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.10.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/135/2023-24 dated 02.08.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.10.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Torrent Electro India, A-36 Pvt. Shop No. 2, Ground Floor, Street No. 2, Paradise Shopping Plaza, Madhu Vihar, New Delhi-110092



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods 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/- (रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	(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 रुपए.	
(a)	(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)	(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 रुपए	
(ब)	(ब) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	(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 रुपए.	
(c)	(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)	(घ) इस आदेश के विरुद्ध अधिकरण के समाने, 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)	(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. Torrent Electro India, A-36 Pvt. Shop No. 2, Ground Floor, Street No. 2, Paradise Shopping Plaza, Madhu Vihar, New Delhi-110092, (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/135/2023-24 dated 02.08.2023 (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 on the basis of a special intelligence, the goods covered under Bill of Lading No. RPS 48924 dated 22.09.2022 in the container no. MSCU7278602, were put on hold and examined by the Officers of Special Intelligence & Investigation Branch (SIIB), Mundra at Ashutosh CFS, Adani Ports and SEZ, Mundra. The details of the cargo are as follows:

Name of the Exporter	Al Khat Al Aswad Computer Devices Tr LLC, Sharjah, UAE.
Name of the Consignee	M/s. Shri Khatushyam Tradelinks, Address: Industrial Plot No. 14T, Phase 1, sector 1, Kandla SEZ
Notify Party	M/s. Torrent Electro India, Address: A-36 Pvt. Shop No. 2, Ground Floor, Street No. 2, Paradise Shopping Plaza, Madhu Vihar, New Delhi-110092M/s.
For Delivery Apply to (Delivery Address)	M/s. Asian Worldwide Services India Pvt. Ltd., 4th Floor, building 239 P D'mello Road, Fort, Mumbai-400001
Item Declared	18 Pallets of LCD Monitor 1950, LCD Monitor Stand (Accessories), Stock ATX Cabinet

2.1 During the course of examination of the consignments under panchnama, a number of LCD screens of different sizes and CPU boxes without processor, RAM and hard disk) and LCD Panel Stands were found. During examination of cargo it was observed that the oldest LCD screen/CPU was manufactured in 2004 and newest was manufactured in the year 2020. Hence, the cargo was found to be mis-declared in terms of imported goods.

2.2 Summons under section 108 of the Customs Act, 1962 was issued to Proprietor/Director of M/s Khatushyam Tradelinks for recording statement/submission of documents in reference to goods covered under Bill of



lading No. RPS 48924 dated 20.09.2022. In response to the said summons, one Shyam Bhatia, S/o Shri Chandrakant Bhatia, aged 45 years, Proprietor of M/s Shri Khatushyam Tradelinks presented himself before SIB, Mundra for giving statement under section 108 of the Customs Act, 1962. Shri Shyam Bhatia, in his statement so recorded informed that M/s Shri Khatushyam Tradelinks, is a warehousing and trading unit located in KASEZ. The Letter Of Approval was issued on 28.12.2020; they provide warehousing services in KASEZ, Gandhidham. On being asked how he came in contact with M/s. Torrent Electro India, the notified party in the Bill of Lading, and what services is providing to the importer, he informed that he was approached by one Mr. Vishal Ghoghari (Contact No. 9825225462) from M/s. JZN Logistics, to provide warehousing to M/s. Torrent Electro India; he was told that the said firm is importing LCD monitors, Accessories and ATX cabinets and needs a warehouse for the said goods. As M/s Khatushyam Tradelinks did not have the required permissions for the said product, he applied for one time permissions for the same which was granted to him on 07.11.2022 from the Joint Development Commissioner, KASEZ. On being asked how he knew Shri Vishal Ghoghari and his role in the said import, he informed that Shri Vishal Ghoghari is a Customs Broker in M/s. JZN Logistics and he is known to him from last 9 months; that Shri Vishal Ghoghari had approached him for this particular consignment and was involved in documentation and coordination in clearance of cargo; that Shri Vishal Ghoghari had informed him that M/s. Torrent Electro India wants to import the LCD screens and ATX cabinets to sell in India. On being shown the Panchnama dated 14.02.2022 as per which the ATX cabinets and LCD screens were found to be old and used, Shri Shyam Bhatia stated that he had no idea that the cargo was old and used; that he was not informed about this fact by Shri Vishal Ghoghari; that he was approached by Shri Vishal Ghoghari only after the container had landed in Mundra and he was informed by Shri Vishal Ghoghari that they have used his name in consignee after the cargo had landed in Mundra. He further informed that they had planned to store in domestic containers. On being asked that as per the consignee the goods will be 100% re-exported, why he did he plan to clear the goods for domestic sales, he replied that Mr. Vishal informed that they should take the permission for warehousing and later he will help him to take permission for domestic sales. On being asked to provide a copy of quotation provided to M/s. Torrent Electro India he informed that he only had verbal communication for the same with Shri Vishal Ghoghari.

2.3



Summons under section 108 of the Customs Act, 1962 was issued

to Shri Vishal Ghoghari, named by Prop. of M/s Khatushyam Tradelinks to appear before SIIB, Mundra for recording his statement in the matter. Shri Vishal Ghoghari, S/o Shri Prakashbhai Ghoghari, Aged 34 years, Employee/card holder in M/s IZN Logistics, Plot No 484, Om Guru Shakti, Sector 1, Oslo Society, Gandhidham, Kutch, Gujarat 370201 (Contact No. 9825225462, email address:visualiznlogistics@gmail.com), residing at Plot No. 96, Sector No. 496, Divine Ville Society, Vershamedi Village, Anjar, Kutch, Gujarat PIN 370110; presented himself before SIIB for recording his statement. He was shown the statement of one Shyam Bhatia, Prop. of M/s Khatushyam Tradelinks in respect of import of consignment covered Bill of Lading No. RPS48924 dated 22.09.2022 said to be consisting of LCD Monitor Stand, Cabinets wherein Shri Shyam Bhatia has informed that the importer M/s Torrent Electro India has informed him for warehousing Ghoghari had introduced the importer M/s Torrent Electro India to him for warehousing services. In his response, he submitted that the importer M/s Torrent Electro India is a client whose reference was forwarded to him by his Mumbai Head Office; it was informed that the cargo consists of stock lot of assorted LCD Monitors and cabinets and it has to be cleared from KASEZ via Mundra Port; that he was directed to oversee the clearing operations of the consignment. On being asked why the goods were being taken to SEZ instead of clearing through EDI Port, he informed that he had earlier cleared a few consignments of food items through M/s Khatushyam Tradelinks, that his Head office must have forwarded the detail of the warehouse to importer who may have forwarded it to their overseas supplier for generating Bill of lading; that he was informed of it only after the B/L was issued from the port of loading. He further informed that as the permission for the said goods were not available with the SEZ unit so the Warehousing B/E was not filed and it took some time to get the permission from the office of Development Commissioner, meanwhile the cargo got incurred heavy detention and port Terminal storage charges, so they could not collect the DO from Shipping Line for the same. Meanwhile SIIB put containers on hold wherein upon examination, it was found that the goods are old and used.

2.4 Summons under section 108 of the Customs Act, 1962 was issued to the importer M/s Torrent Electro India for recording their statements in reference to goods imported vide Bill of Lading No. RPS 48924 dated 20.09.2022. In response to the said summons, one Shri Amit Kumar Gupta, Shri S/o Shri Ram Gupta, aged 37, claiming to be Authorized Representative of M/s Torrent Electro India (IEC AASTFG992N) (Contact No. 889900000, Address: Krishnalal



International Market, reading at 303, Chittor Apartment, City Light, Surat, Gujarat- 395007) presented himself for recording the statement. He informed that he is the beneficial owner of this consignment recorded his statement. He informed that he had ordered LCD Monitor, CPU cabinets etc from his supplier M/s Al-Khat Al-Awsat Computer Device Trading, LLC, Sharjah, U.A.E. On being shown copy of panchanama dated 14.02.2022/15.02.2022 wherein consignment covered under Bill of Lading No. RPS48924 dated 22.09.2022 has been found to contain old and used LCD Monitor and CPU cabinets, he informed that he had ordered old and used goods from the supplier in Dubai and that there is a huge market of old and used computer parts in India. On being asked whether he is aware that an authorization is required from DGFT as per Import policy for importing second hand band desktop computers, refurbished/re-conditioned spares of refurbished parts of Personal computers/Laptops, etc., he informed that he is not aware of the import policy and has only come to know about it when his consignment put on hold by SIIB Mundra. On being asked whether he is aware that the items imported by him will require compliance to BIS, he informed that he is not aware of the same. He further added that the items that are imported are of reputed brand and so they must be registered in India. To further added that he has suffered huge demurrage and detention on the consignment and does not want any show cause notice or Personal Hearing in the matter and is willing to pay any additional duty, fine and penalty that shall become payable.

2.5 The importing company M/s Torrent Electro India is a partnership firm and Shri Omdutt Sharma and Shri Vinay Prabhakar are its two partners. Vide letter dated 18.04.2023, both the partners had authorized M/s Amit Gupta (Adhar No. 9423 765 133) to appear on their behalf and on behalf of the importing company to attend and represent them in regards to Bill of lading No. RPS 48924; container no. MSCU7278692. They have further informed that Shri Amit Gupta is the sole beneficiary of the shipment. As the goods found were old and used electronic goods, an empaneled Chartered Engineer was instructed to inspect the goods covered under the B/L No.RPS 48924 dated 22.09.22 Container No. MSCU 7278692. The empaneled Chartered Engineer in his report bearing No. VCMUND/RAB/TI/EPCG/5379/III/2022-23 dated 01.03.2023 based on visual examination of the goods found to be old and used Computer CPUs with year marked as 2016 of make HP and Lenovo. These CPUs were opened and found to be incomplete and without RAM, HDD & Chip/Processors.



BEBQ, Lenovo, Sony, AOC, Samsung, IBM, NEC, HANNSG, Daewoo, LG, Philips, ACER etc. with year 2004 & 2009 to 2019. The CE has also opined that these goods are of mixed sizes as 2004 years ranging from 2003 to 2019 to this, these may be presumed to be refurbished make and lot. The CE has suggested the price of the items as per the report. The B/L No. RPS48924 dated 22.09.2022 has been amended vide O-I-O no. MCH/04/RNMK/DCMC/2023-24 dated 18.04.2023 w.r.t. the consignee name.

2.6 From the investigation conducted, it emerged that the items covered under B/L No. RPS 48924 dated 22.09.22 Container No. MSCU 7278692 are old and used CPU cabinets that are restricted as per DGFT Import Policy. The description of the goods as per the Bill of Lading is "340 HC FCL SIC18 Pallets of LCD Monitor 1950, LCD Monitor Stand (Accessories), Stock ATX Cabinet". Therefore, it appeared that the true nature/description of the goods are not declared to avoid detection. Shri Amit Gupta, confessed being the Beneficial Owner, ordered and imported a consignment covered under B/L No. RPS 48924 dated 20.09.22 Container No. MSCU 7278692, of old and used CPU and LCD panels using the IEC of IBC Holder M/s Torrent Electro India. Shri Amit Gupta or the IEC Holder M/s Torrent Electro India did not have any authorization issued by DGFT for importing such goods as prescribed in terms of para 2.31 Chapter 2 of Foreign Trade Policy 2015-2020.

2.7 Invoice No. AL/748 dated 09.09.2022 issued by the Overseas Supplier M/s. Al Khat Al Awsad Computer Devices TR, LLC, Sharjah, U.A.E., submitted by Prop. Of SEE Unit M/s Shri Khatushyam Tradelinks, the value of the goods is as following:

Description	Total PCs	USD Price	Subtotal USD
LCD Monitor 195Q	2976	10.00	29760.00
LCD Monitors Stand(Accessories)	1400	1.50	2100.00
Stock ATX Cabinet	361	6.00	2166.00
		Total USD Price	34026.00

The value of the goods ascertained by the Chartered Engineer in his inspection report is as following:




Description	Total PCs	USD Price	Subtotal USD
LCD Monitor 195Q	2976	15.00	44640.00
LCD Monitors Stand(Accessories)	1400	2.50	2800.00
Stock ATX Cabinet	361	22.00	7942.00
		Total USD Price	55382.00

2.8 The total value of the goods in India currency on the basis of CE Report comes to be around Rupees Forty-Five Lakh Eighty-Eight Thousand Three Hundred and Ninety-Eight only (as per the current exchange rate of USD = 82.81NR).

The IGM has been amended to reflect the name of the importer M/s. Torrent Electro India and port of delivery from INKDL6 TO INMUN1.

2.9 In light of the above investigation, the following was proposed by the investigation report:

- i) The item covered under the B/L No. RPS 48924 dated 22.09.22, Container No. MSCU 7278692 are liable for confiscation under section 111(d) of the Customs Act, 1962.
- ii) The value of the goods, for the purpose of deciding the adjudicating authority, for adjudication of confiscation of the goods, is Rupees 45,88,398/- (Rupees Forty Five Lakh Eighty-Eight Thousand Three Hundred and Ninety-Eight only)
- iii) The importer is liable to be penalized under Section 112(a)(i) of the Customs Act, 1962.
- iv) The beneficial owner Shri Amit Kumar Gupta is liable to be penalized under section 112(b)(ii) of the Customs Act, 1962.

2.10 As the Bill of entry was not filed with reference to the said consignment, the Investigation report is limited to the contravention of importing the goods without required Authorisation as per FTP. Shri K. S. Mishra, Authorised Advocate of M/s Torrent Electro appeared for personal hearing on 21.06.2023 and made his submission.



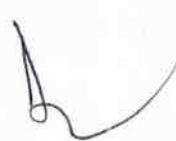
2.11 Consequently, the Adjudicating Authority passed the following order:

- a. She ordered to determine the assessable value of Rs.45,88,398/- of imported restricted goods covered under Bill of lading No. RPS 48924 dated 22.09.2022 as per the Valuation report of the Chartered Engineer.
- b. She ordered to confiscate the imported goods under section 111(d) of the Customs Act, 1962 of value Rs.45,88,398/-. However, he gave an option to redeem the goods on payment of fine of Rs.5,00,000/- (Rupees Five Lakh Only) under Section 125 of Customs Act, 1962 for re-export purpose only. As per Section 125(3), if the importer does not pay the fine within a period of one hundred and twenty days from the date of the order, such option to redeem the goods shall become void, unless an appeal against such order is pending and the importer would be liable for Disposal as per instructional and guidelines in CBIC disposal manual, 2019. The cost of destruction shall be borne by the importer.
- c. She also imposed a penalty of Rs. 2,00,000/ (Rupees Two Lakh Only) on the importer under Section 112 (i) of the Customs Act, 1962.
- d. She also imposed a penalty of Rs.1,00,000- (Rupees One Lakh Only) on the beneficial owner Shri Amit Kumar Gupta under Section 112 (b) (ii) of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. 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 Appellant has submitted that the impugned order has been passed in gross violation of principles of natural justice in so far as Adjudicating Authority has failed to address all the contentions raised by the appellant in the written submissions and the case laws referred during the personal hearing. The old and used goods other than Capital goods are restricted for import and allowed only against an authorization in terms of para. 2.31 of Foreign Trade Policy. We do not possess the required authorization. The goods imported by us, being




restricted for import, are liable to confiscation under Section 111(d) of the Customs Act, 1962 therefore, permissible for clearance under Section 125 ibid., on payment of redemption fine.

3.2 The Adjudicating Authority has erred in construing restricted goods and prohibited goods as same whereas, they are two different categories mentioned in the Foreign Trade Policy differently and separately. All the restricted goods mentioned in the policy, do not fall under the category of prohibited goods. In a single chapter, under different headings of ITC (HS) Classification of Import and Export Items, the restricted goods and prohibited goods are mentioned in different headings separately. For example, Chapter 2 of the ITC (HS) Classification of Import and Export items deals with the meat and edible meat offal. The goods falling under the heading 0201 (Meat of bovine animals, fresh or/and chilled) and 0202 (Meat of bovine animals frozen) are mentioned as "restricted" whereas, the goods falling under heading 0209 (pig fat, free of lean meat and poultry fat, not rendered or otherwise extracted, fresh, chilled, frozen, salted in brine, dried or smoked) are mentioned as "prohibited". In a single Chapter under different headings/sub-headings, different commodities are mentioned as restricted as well as prohibited against their respective headings/sub-headings. This clearly shows that the restricted goods are different from prohibited goods.

3.3 The term "prohibited goods" has been defined under Section 2 (33) of the Customs Act, 1962 as under- "Prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;" As per above definition, any goods, the import or export of which is subject to any prohibition under this act or any other law for the time being in force, is prohibited goods. The 'old and used' goods are not subject to any prohibition in the Foreign Trade Policy but subject to restriction therefore, they don't fall under the category of prohibited goods at all. Considering "restricted goods" as "prohibited goods" is illegal, improper and against the provisions of Foreign Trade Policy.

3.4 The Foreign Trade Policy and ITC (HS) Classification of Import and Export items mention four category of goods which are categorized as under -



- i. Prohibited goods- The goods which are prohibited for import or export and not allowed to be imported/exported. Such goods are wild animals, their parts, ivory, tallow, fats or oils of animal origin, fish, nail/tail and animal rennet etc. Such goods on import/export are absolutely confiscated and not allowed to be cleared for home consumption even on payment of fine.
- ii. Restricted goods- Restricted goods are those goods whose import/export is subject to certain restrictions and which are permitted for import against authorization. Such goods are mentioned in the Foreign Trade Policy as well as ITC (HS) Classification of Import & Export Items as restricted goods against respective entry and General Licensing Notes. The restricted goods are allowed to be redeemed on payment of redemption fine under Section 125 of the Customs Act, 1962.
- iii. The goods importable through Canalizing Agencies -The goods whose import is permitted through canalizing agencies viz. State Trading Enterprises & MMIC etc. Such goods, if improperly imported, are also allowed to be cleared on payment of redemption fine.
- iv. Freely Importable Items- The goods not covered under (i), (ii) and (iii) above are freely importable items. Import of such goods is permitted freely.

3.5 The goods in the instant case are old Monitors with accessories which are normally freely importable, but being old and used they are restricted for import in terms of para. 2.31 of the Foreign Trade Policy. The prohibited and restricted - both are different category of goods and they have been defined in Foreign Trade Policy and ITC (HS) Classification of Export & Import Items differently. Therefore, they should be treated differently. The adjudicating authority has grossly erred in treating restricted goods as prohibited goods.

3.6 It has been regular practice of the department to allow the restricted goods on confiscation and subsequent redemption on payment of redemption fine. Reliance is placed on following case laws on this issue which are discussed hereunder -




(a) M/s. BE Office Automation Products Pvt. Ltd. reported in 2022 (2) TMI 367 CESTAT Chandigarh: In this case, the goods imported were declared as "Old and used digital multifunctional devices with standard accessories and attachments". As per the extant Foreign Trade Policy, the goods were allowed to be imported under valid authorization which the importer failed to produce. Thus, the goods were confiscated but allowed to be redeemed on payment of redemption fine.

(b) M/s. Shri Amman Dhall Mill reported in 2022 (3) TMI 954 CESTAT Bangalore In this case, 'Canada Whole Green Peas' were imported from Canada. The said goods were subject to the Mandatory Compliance/ Requirement. The import of peas was restricted and the same was subjected to minimum import price (MIP) of Rs. 200/- CIF per kg, which is also subjected to an annual quota of 1.5 lakh MT, that too, through Kolkata Sea Port only. The goods were imported contravening the above provisions. hence, the goods were confiscated but allowed to be redeemed on payment of redemption fine.

(c) M/s. Kargawal Corporation reported in 2021 (10) TMI 129 - BOMBAY HIGH COURT In this case, three consignments of the restricted goods i.e., rough marble blocks were imported. Such goods were not allowed to be imported without specific import license issued by proper authority, i.e., the Director General of Foreign Trade. The goods were confiscated but were allowed to be redeemed on payment of redemption fine.

(d) M/s. Atul Automations Pvt. Ltd. and M/s. Parag Domestic Appliance reported in 2019(1) TMI 1324 -SUPREME COURT In this case, the imported goods were second hand Multi-Function Devices (Digital Photocopiers and Printers) imported without the required authorization. The Hon'ble Supreme Court observed inter-alia as under:



"9, unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that Section 11(8) and (9) read with Rule 17(2) of the Foreign Trade (Regulations) Rules, 1993 provides for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign

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Trade Act provides that any order of prohibition made under the Act shall apply mutatis mutandis as deemed to have been under Section II of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorization upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the customs authorities with fine under Section 112(a) of the Customs Act, 1962."

(e) M/s. Stoneman Marble Industries & Ors. reported in 2011 (1) TMI IS - SUPREME COURT 2011 (264) E.L.T. 3 (SC) -2011 (2) SCC 758 In this case, the goods required specific import authorization but the importer could not produce any such authorization. The goods were therefore confiscated but allowed to be redeemed on payment of redemption fine.

(f) M/s. Nathi Mal Rugh Mal reported in 2020 (3) TMI 650- CESTAT MUMBAI: In this case, the imported goods described as 'Khubkalan (Sisymbriumlrio) Hedge Mustard Seed] were restricted but were allowed to be cleared on redemption fine.

(g) M/s. Shivam International & Ors. reported in 2011 (6) TMI 75-CESTAT CHENNAI In this case also, restricted goods were cleared on payment of redemption fine.

3.7 The appellant has also relied on the Order-in-Original passed by the Additional Commissioner of Customs, ICD Patparganj, Delhi contained in F.No. VIV6/ICD/PPG/SIIB/Mindtree/30/2023 dated 10.04.2023 in the case of M/s. Mindtree Consultant wherein Incomplete Used Desktop Computer System without CPU, RAM and Hard-Disk' were allowed to be redeemed on payment of fine in terms of Section 125 of the Customs Act, 1962. Thus, it is evident from

the foregoing submissions that the Adjudicating Authorities and various Appellate fora have recorded their findings and held that despite the goods falling under the first limb of Section 125 of the Act, *ibid.* the goods have to be released on payment of redemption fine.

3.8 It is submitted that since the old and used goods fall under the restricted category, the import of such goods requires specific authorization. In absence of Such authorization the goods are liable to confiscation under Section 111(d) of the Customs Act, 1962 and importer is also liable to penalty to the tune of 10% of the duty sought to be evaded or Rs. 5000/- whichever is higher, in terms of Clause (ii) of Section 112 (a), *ibid.* The goods in the instant case have been confiscated and allowed to be re-exported on payment of redemption fine of Rs. 5,00,000 under Section 125 of the Act. As per Section 125 of the Act, the redemption fine should be commensurate to the margin of profit involved on the goods. The Adjudicating Authority has arbitrarily imposed Redemption Fine for re-export purposes only without ascertaining margin of profit involved in the instant case. In case of export, there is no margin of profit as the goods have not been allowed for home consumption. No market inquiry seems to have been carried out as no work-sheet of such inquiry has been supplied to them or has been placed on record. The value of the goods has been enhanced to three times of the declared value which has completely wiped-out the margin of profit involved in the goods. The basic purpose of imposition of redemption fine is to wipe out the margin of profit arising out of illegal transaction. The redemption fine can be imposed only when the goods are allowed to be redeemed for home consumption. We intend to clear the goods for home consumption on payment of appropriate redemption fine which should be calculated based on the margin of profit.

3.9 The Hon'ble CESTAT in the case of *Shankar Trading Co. vs. CC(Appeals)* reported in 1999 (106) ELT 456 (Trib.) have given the formula for arriving at the margin of profit and have observed that the Redemption Fine shall not exceed the margin of profit of the goods. The formula is reflected below-

Market Price-Landed Cost × 100

CIF

3.10 The Adjudicating Authority has grossly erred in arbitrarily imposing the Redemption Fine without ascertaining the margin of profit. In the premises, the

appellant prays that the Order-in-Original passed by the Adjudicating Authority may kindly be set aside and the goods may kindly be allowed to be cleared for home consumption on payment of appropriate redemption fine and penalty.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.06.2025, following the principles of natural justice wherein Shri K.S Mishra, Advocate appeared for the hearing on behalf of the appellant . He reiterated the submissions made at the time of filing appeal. He also filed additional submissions containing a compilation of following case laws/legal provisions and copies of Orders-In-Original wherein it is submitted that identical /same goods have been allowed clearance on payment of redemption fine.

- i) Commissioner of Customs V/s. Atul Automations Pvt. 01-03 Ltd.-2019 (365) E.L.T. 465 (S.C.)
- ii) BE Office Automation Products Pvt. Ltd. V/s. Commissioner of Customs, ICD Patparganj, New Delhi -2022-TIOL-120-CESTAT-CHD
- iii) Yakub Ibrahim Yusuf V/s. Commissioner of Customs, Mumbai 2011 (263) E.L.T. 685 (Tri.-Bom)
- iv) Commr. of Cus. (Preventive), West Bengal V/s. India Sales International - 2009 (241) E.L.T. 182 (Cal.)
- v) In Re: Ashok Kumar Verma - 2019 (369) E.L.T. 1677 (G.O.L.)
- vi) Opus Asia Technology Pvt. Ltd. V/s. Commissioner of Cus. (Sea), Chennai (Chennai) 2004 (168) E.L.T 72 (Tri.-
- vii) Chapter 2 of the ITC (HS) 2022 Classification of Import and Export items.
- viii) Order-in-Original No.01/AT/COMM/R/CUS/2020 dated 18.09.2020 passed by the Commissioner of Customs, Nagpur
- ix) Order-in-Original No.9/AS/ADC/Mindtree/ICD-PPG/2023-24 dated 10.04.2023 passed by the Additional Commissioner of Customs, ICD, Patparganj, Delhi
- x) HBL Power System Ltd. V/s. Commissioner of Customs Visakhapatnam- 2018-TIOL-2833-CESTAT-HYD
- xi) Selvam Industries Ltd. V/s. Commissioner of Customs, Tuticorin2021 (377) E.L.T. 458 (Tri.-Mad)
- xii) Sankar Pandi V/s. Union of India - 2002 (141) E.L.T. 635 (Mad.)
- xiii) Union of India v/s. Shankar Pandi -2018 (360) E.L.T. A214 (S.C.)
- xiv) Shankar Trading Co. V/s. Commissioner of Customs (Appeal), Trichy -



1999 (106) E.L.T. 456 (Tri.-Mad)

xv) General provisions regarding import and Export Chapter 2 of the Foreign Trade Policy, 2023

xvi) Order-In-Original No.44/PB/ADC/CUS/2022 dated 28.11.2022 passed by the Additional Commissioner of Customs, Nagpur

xvii) Order-In-Original No.295/AS/ADC/Wastetech/ICD-PPG/2023-24 dated 21.11.2023 passed by the Additional Commissioner of Customs, ICD, Patparganj, Delhi.

He further requested for clearance of impugned goods for home consumption on payment of redemption fine. He also requested that fine imposed is not commensurate with margin of profit , therefore same may be reduced.

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 as well as during hearing as well as in additional submissions.

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

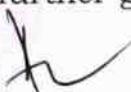
(i) That condonation of delay application so filed by the appellant is to be allowed or otherwise i.e. whether the appeal is time barred or not.

(ii) Whether the imported goods, being "restricted" under the Foreign Trade Policy, should be treated as "prohibited" goods for the purpose of absolute confiscation under Section 111(d) of the Customs Act, 1962.

(iii) Whether the condition imposed in the OIO to release the goods for re-export only on payment of Redemption Fine is legally sustainable.

(iv) Whether the quantum of Redemption Fine and penalties imposed is justified and requires modification.

5.2 Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient



cause is shown for the delay. In this case, the appeal was filed with a delay of 22 Day and not 17 days as mentioned by the appellant since the date of receipt of OIO is 16.08.2023 and date of filing appeal is 06.11.2023. The delay of 22 days is beyond the initial sixty-day period, but within the extended thirty-day period. The Appellant has attributed the delay to the reason that the appellant was dealing with severe internal family and financial disputes. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice.

5.3 The core of the dispute lies in the classification of the imported Old and Used CPUs and LCD Monitors under the Foreign Trade Policy (FTP). The Adjudicating Authority has held that since the goods are restricted (importable only against an Authorization in terms of Para 2.31 of FTP 2015-2020) and were imported without such authorization, they are deemed to be "prohibited goods" under Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 (FT(D&R) Act) read with Section 11 of the Customs Act, 1962. The Appellant, relying on judicial precedents, argues that there is a fundamental distinction between restricted and prohibited goods, and confined goods (which are restricted) cannot be absolutely confiscated as if they were prohibited goods.

5.4 I find substantial merit in the Appellant's contention based on the clear distinction established by the Hon'ble Supreme Court. Hon'ble Supreme Court in *Commissioner of Customs v. Atul Automations Pvt. Ltd.* [2019 (365) E.L.T. 465 (S.C.)] has explicitly upheld the principle that a harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will not detract from the redemption of such restricted goods imported without authorization upon payment of the market value. The Court categorically stated that "There will exist a fundamental distinction between what is prohibited and what is restricted.". This judgment directly applies to the instant case, as the goods were found to be restricted items for import (Second Hand Capital Goods without authorization under Para 2.31 of FTP).



5.5 Section 125 of the Customs Act, 1962 also draws a clear line. It provides that for prohibited goods, the adjudicating officer "may" give an option to redeem the goods, but for "any other goods" (which includes restricted goods), the officer "shall" give the owner an option to pay a fine in lieu of confiscation. The Supreme Court's ruling confirms that since the goods were restricted and not absolutely prohibited (like gold, arms, or narcotics), they fall under the "shall" category, requiring the option of redemption. While Section 3(3) of the FT(D&R) Act technically deems restricted goods to be "prohibited" for the purpose of initiating confiscation proceedings under Section 111(d) of the Customs Act, this is primarily to ensure customs enforcement. However, as the Supreme Court has clarified, when it comes to the remedy under Section 125, the underlying nature of the item (i.e., whether it is absolutely prohibited goods which pose a threat to health/welfare/morals, or merely restricted goods due to policy requirements) dictates the application of the 'may' or 'shall' clause and the overall approach to redemption. The goods here are not absolutely prohibited. The goods are held to be "restricted goods" and not goods subject to absolute prohibition. Confiscation under Section 111(d) is upheld, but the denial of the option for redemption for home consumption is not justified.

5.6 The OIO allows the option to redeem the goods for re-export purpose only. The Appellant objects to this condition, requesting clearance for home consumption. The CESTAT in HBL Power Systems Ltd. v. Commissioner of Customs, Visakhapatnam held that no section of the Customs Act, 1962, gives any officer the power to compel anyone to import or export or re-export. In the case of prohibited goods, the adjudicating authority has only two options: (a) to allow redemption on payment of fine; or (b) to not allow redemption. The condition for re-export was set aside. Further, once the goods are redeemed under Section 125, the customs control over them ceases. The importer can then dispose of the goods as permitted by law, including for home consumption, provided all other regulatory requirements (like BIS compliance, if any) are met or a suitable modification/exemption is obtained from the relevant authority (e.g., DGFT, BIS). The imposition of a condition that redemption is only for re-export is indeed beyond the scope of the Adjudicating Authority's power under Section 125. Thus, the condition that the goods must be redeemed for re-export purpose only is legally unsustainable and is hereby set aside. The Redemption is for re-export or home consumption, subject to the Appellant complying with all other relevant laws/rules/regulations for clearance for home consumption.



5.7 The OIO imposed a redemption fine of Rs. 5,00,000/- against a re-determined market value of Rs. 45,88,398/-. The fine is imposed for the violation of importing restricted goods without authorization and mis-declaration of the goods. The argument that redemption fine is not payable if goods are re-exported is based on the principle of wiping out the margin of profit (MOP). The primary purpose of the fine in the Customs Act is to offer an option to avoid confiscation, and technically, the discretion of the adjudicating authority to levy a fine is independent of whether the goods are subsequently re-exported or cleared for home consumption. The Supreme Court in Atul Automations Pvt. Ltd. allowed redemption on payment of market value for restricted goods. However, considering the gravity of the contravention (mis-declaration and unauthorized import of restricted goods) and the substantial difference between the declared value (Rs. 34,026 USD) and the re-determined value (Rs. 55,382 USD) for the purpose of the redemption, the imposed fine of Rs. 5,00,000/-, which is approximately 11% of the re-determined value (Rs. 45,88,398/-), appears reasonable and proportionate. The Redemption Fine of Rs. 5,00,000/- (Rupees Five Lakh Only) is therefore upheld.

5.8 The OIO imposed a penalty of Rs. 2,00,000/- on the Appellant/Importer under Section 112(a)(i) of Customs Act, 1962. Since the confiscation is upheld, the imposition of a penalty under Section 112(a)(i) of Customs Act, 1962 is warranted, as the Appellant did an act (unauthorized import of restricted goods by mis-declaration) which renders the goods liable for confiscation. The maximum penalty under Section 112(a)(i) of Customs Act, 1962 for restricted/prohibited goods is the value of the goods (Rs. 45,88,398/-) or Rs. 5,000/-, whichever is greater. The imposed penalty of Rs. 2,00,000/- (approx. 4.3% of the value) is reasonable but may be reduced, considering the magnitude of financial liability (redemption fine) already upheld. In light of the overall facts and circumstances, and to maintain proportionality, the penalty imposed on the importer is reduced from Rs. 2,00,000/- to Rs. 1,50,000/- (Rupees One Lakh fifty thousand only).

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

- (i) The Miscellaneous Application for Condonation of Delay is hereby allowed and the delay of 22 days in filing the appeal is condoned.




(ii) Confiscation: The confiscation of the impugned goods under Section 111(d) of the Customs Act, 1962, is hereby upheld.

(iii) Redemption Fine and Condition: The option to redeem the goods on payment of a Redemption Fine of Rs. 5,00,000/- (Rupees Five Lakh Only) is hereby upheld. However, the condition in the OIO that redemption is allowed for re-export purpose only is hereby set aside. The Appellant has the option to clear the goods for home consumption upon fulfilling all legal and regulatory requirements (e.g., obtaining DGFT Authorization, if feasible, or complying with the re-export policy, if not).

(iv) Penalty on Appellant : The imposition of penalty on M/s Torrent Electro India under Section 112(a)(i) of the Customs Act, 1962, is upheld, but the quantum is hereby reduced from Rs. 2,00,000/- to Rs. 1,50,000/- (Rupees One Lakh fifty thousand only)

6. The appeal filed by M/s. Torrent Electro India is hereby partially allowed.



सत्यापित/ATTESTED

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

F. No. S/49-136/CUS/MUN/2023-24

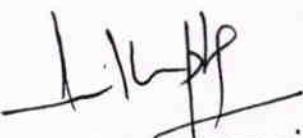
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By Speed post/E-Mail

To,
M/s Torrent Electro India,
A-36, Shop No. 2, Ground Floor,
Street No. 2, Paradise Shopping Plaza,
Madhu Vihar, New Delhi-110092

Copy to:

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


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

Date: 30.10.2025