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-20260171MN0000111DDF

क	फ़ाइल संख्या FILE NO.	S/49-281/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP - 806 - 25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF Order – In - Original No.	MCH/ADC/AK/140/2024-25 dated 20.09.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Mr. Sameer Sharma, 64, Sadguru, Smart City, Nava Kapaya, Mundra

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)	बेगेज़ 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

The present appeal has been filed by Shri Sameer Sharma (hereinafter referred to as "the Appellant") under Section 128 of the Customs Act, 1962 against Order-in-Original No. MCH/ADC/AKM/140/2024-25 dated 20.09.2024, (hereinafter referred to as "the impugned Order") passed by the Additional Commissioner of Customs, Mundra (hereinafter referred to as the "Adjudicating Authority"), pursuant to investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, into a well-organised smuggling cartel engaged in import of prohibited e-cigarettes, toys requiring mandatory BIS certification and other mis-declared and undervalued goods through Mundra Port and other locations. The investigation revealed that a total of 18 import consignments imported through 08 different importers were part of the said cartel, which was allegedly operated by a common group of persons. Importer-wise separate investigations were carried out and individual show cause notices were issued. The present proceedings, however, pertain only to one import consignment imported in the name of M/s JYM Global Trading Company (IEC: ANUPG6581F).

2.1 On the basis of specific intelligence, DRI officers intercepted a vehicle bearing No. GJ-12-BV-0610 on 01.09.2022 near Palsana Chokdi, Surat, which was transporting import goods cleared from Mundra Port. System analysis revealed that the vehicle was carrying goods pertaining to Container No. TLLU4615592, which was thereafter diverted to ICD Sachin for detailed examination. During examination conducted under panchnama dated 01/02.09.2022, officers recovered 107 cartons containing 85,600 foreign-origin e-cigarettes of Yuotto brand, found concealed along with declared goods. The import of e-cigarettes, falling under HS Code 8543, was prohibited in terms of DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the provisions of the Prohibition of Electronic Cigarettes Act, 2019, and accordingly the said goods were detained and subsequently seized under the provisions of the Customs Act, 1962.

2.2 Further investigation revealed attempts to divert another container bearing No. TGBU5160748, originally imported in the name of M/s J.H. Enterprises, by effecting changes in the importer name, shipper name, port of discharge and description of goods after initiation of DRI action. The said container was also put on hold and examined, resulting in recovery of mis-declared and prohibited goods, including e-cigarettes. In total, during September 2022, the DRI examined 18 containers at various locations including Bhiwandi (Maharashtra), ICD Sachin (Gujarat) and Mundra Port, out of which 2,95,600 e-cigarettes were recovered from three containers. The remaining consignments were found to be grossly mis-declared with respect to description, classification, quantity and value. Several consignments were found to contain toys classifiable

under Chapter 95 of the Customs Tariff, the import of which required mandatory BIS certification, which was admittedly not produced. Certain consignments were also found to contain mobile accessories bearing logos of reputed brands, indicating prima facie violations of intellectual property rights. Representative samples were drawn and examined by a Government-approved Chartered Engineer, who confirmed mis-declaration and undervaluation, whereupon the goods were seized under Section 110(1) of the Customs Act, 1962, being liable to confiscation under Section 111 thereof.

2.3 Insofar as the present appeal is concerned, the investigation revealed that M/s JYM Global Trading Company had imported Container No. TEMU7694450, covered under Bill of Lading No. KMTCNB0631421 dated 12.08.2022 and IGM No. 2320512 dated 29.08.2022, in respect of which no Bill of Entry was filed. The said container was examined under panchnama dated 12.09.2022, wherein it was found that instead of the declared goods namely *Plastic Chocolate Mould (Misc. Item – Non-Popular Brand)*, the container was entirely stuffed with plastic pop-up toys and dancing cactus toys, falling under Chapter 95 of the Customs Tariff, and no declared goods were found. Since the declared transaction value was found unreliable due to complete mis-declaration of description, classification and quantity, the declared value was rejected under Rule 12 of the Customs Valuation Rules, 2007, and the value of the goods was re-determined on the basis of market value assessed by the Chartered Engineer at approximately ₹2.44 crore. Verification of the declared premises of M/s JYM Global Trading Company revealed that the premises were found closed, and enquiries indicated that the IEC and KYC documents of the firm were allegedly lent for consideration, without the importer exercising actual control over the import activities.

2.4 During the course of investigation, statements of various persons connected with the import, clearance, transportation and storage of the goods were recorded under Section 108 of the Customs Act, 1962, including importers, transporters, logistics operators and customs intermediaries. On the basis of evidence gathered during investigation, five persons were arrested, including the person alleged to be the mastermind of the cartel. It further emerged during investigation that the Appellant was working as a G-Card holder of M/s Al Cargo Services, a licensed Customs Broker at Mundra Port, and was handling customs clearance work for importers connected with the cartel, including M/s JYM Global Trading Company. Statements of Shri Samir Sharma were recorded on 05.09.2022, 06.09.2022 and 08.09.2022, wherein he stated that import documents such as invoices, packing lists and Bills of Lading were received through electronic means from persons associated with the imports, including Shri Baldevsinh Vala and Shri Mohammad Asif Sathi, and not directly from the

IEC holders. It was alleged that he had no direct interaction with the IEC holders, did not independently verify their credentials, and filed Bills of Entry declaring goods such as plastic chocolate moulds and miscellaneous items, whereas examination revealed that the consignments contained mis-declared, restricted or prohibited goods, including toys requiring mandatory BIS certification and e-cigarettes. It was further alleged that incorrect or unrelated e-way bills were used for movement of goods from SEZ to DTA, and that Shri Sameer Sharma facilitated clearance despite being aware of the documentation requirements. Statements of co-accused persons indicated that he allegedly received monetary consideration for facilitating clearance of such consignments.

2.5 On the basis of the investigation, statements and evidence on record, the Adjudicating Authority held the goods liable to confiscation under Section 111 of the Customs Act, 1962, and imposed penalties on the importer and other noticees, including Shri Sameer Sharma, under Sections 112(a)(i) and 114AA of the Customs Act, 1962, vide the impugned Order-in-Original.

3 Being aggrieved by the impugned order, the Appellant has preferred the present appeal and inter alia, made the following submissions:

3.1 The impugned Order-in-Original, insofar as it imposes penalty upon the Appellant under Section 112(a)(i) of the Customs Act, 1962, is illegal, arbitrary, and contrary to the facts and evidence on record. The Adjudicating Authority has failed to establish any act, omission, or abetment attributable to the Appellant which rendered the goods liable to confiscation under Section 111 of the Act. The findings are therefore unsustainable and liable to be set aside.

3.2 The Adjudicating Authority has proceeded on conjectures and presumptions rather than on legally admissible and corroborated evidence. The allegations in the Show Cause Notice have been mechanically reproduced in the impugned order without independent analysis, appreciation of evidence, or application of mind. Such an approach vitiates the adjudication process.

3.3 The detailed replies, additional submissions, and post-cross-examination written submissions filed by the Appellant have not been dealt with or rebutted in the impugned order. The order does not record any reasoned findings on the Appellant's explanations, rendering it a non-speaking order in violation of settled principles of natural justice.

3.4 The entire case against the Appellant rests solely on the statements of Shri Vala Baldevsinh Nanbha and Shri Dirgesh Dedhia. No documentary, electronic, financial, or independent evidence has been produced to corroborate these statements. It is a settled position of law that uncorroborated statements cannot form the sole basis for imposition of penalty.

3.5 The Adjudicating Authority gravely erred in ignoring the crucial admissions and contradictions which emerged during the cross-examination of the witnesses, thereby rendering the reliance on their statements wholly untenable.

3.6 During cross-examination, Shri Vipin Sharma categorically admitted that:

- The Bills of Entry for the concerned consignments were filed under "Self" and not through the Appellant as CHA;
- The Appellant never approached him, directly or indirectly, to seek clearance of goods by bypassing legal procedures;
- No monetary consideration or undue influence was ever offered by the Appellant;
- Shri Vala Baldevsinh never approached him through the Appellant for any illegal clearance.

These admissions completely demolish the allegation that the Appellant played any active or facilitative role in the clearance of offending goods.

3.7 In cross-examination, Shri Vala Baldevsinh made crucial admissions, inter alia, that:

- He paid the Appellant only legitimate charges for forwarder services against proper invoices;
- He never paid any amount of Rs. 2.5–3 lakhs per consignment to the Appellant;
- His subsequent statement alleging higher payments was recorded under coercion and force while he was in illegal custody;
- The Appellant had no role whatsoever in transportation of goods after clearance;
- The Appellant did not manipulate documents, goods, or logistics post-clearance.

These admissions fully discredit the earlier inculpatory statements relied upon by the department.

3.8 The Appellant merely acted as a forwarder by creating checklists based on documents provided by the importer or its representative. The Appellant had no role in filing Bills of Entry, examination, assessment, warehousing, transshipment, or final clearance of goods. All Bills of Entry were admittedly filed under "Self", wherein Empezar Logistics Pvt. Ltd. acted as CHA/CFS.

3.9 The clearance process involved multiple levels of scrutiny, including assessment and physical examination by Customs Appraisers and Preventive Officers, both at SEZ and DTA stages. Goods were examined more than once before grant of out-of-charge. The Appellant had no authority, opportunity, or obligation to physically examine the goods.

3.10 As per Circular No. 09/2010-Customs dated 08.04.2010, the obligation of a CHA/forwarder is limited to KYC verification through prescribed documents. There is no requirement under the Customs Act, SEZ Act, or CBLR to physically verify the importer's premises or goods.

3.11 The above legal position is settled by multiple judicial pronouncements, including:

- *S. Prakash Kushwaha & Co. v. CC* – 2023 (2) E.L.T. 173
- *G.N.D. Cargo Movers v. CC* – 2017 (357) E.L.T. 1184 (Tri-Del)
- *Kunal Travels (Cargo) v. CC* – 2017 (354) E.L.T. 447 (Del.)
- *APS Freight & Travels Pvt. Ltd. v. CC* – 2016 (344) E.L.T. 602 (Tri-Del)
- *HIM Logistics Pvt. Ltd. v. CC* – 2016 (338) E.L.T. 725 (Tri-Del)

3.12 The entire investigation was initiated solely on the basis of information voluntarily provided by the Appellant on 01.09.2022 and 05.09.2022. Emails and contemporaneous records confirm that the Appellant proactively shared container details, even for consignments in which he had no role. Treating an informer as an accused is per se arbitrary and illegal.

3.13 Mens rea or conscious knowledge is a sine qua non for imposition of penalty under Section 112(a), particularly where abetment is alleged. No evidence has been brought on record to establish prior knowledge, intention, or conscious facilitation by the Appellant.

3.14 It is well settled that statements recorded under Section 108 of the Customs Act, once retracted, contradicted in cross-examination, and uncorroborated, lose evidentiary value. Reliance is placed on *Union of India v. Kisan Ratan Singh* – 2020 (372) E.L.T. 714 (Bom).

3.15 The Adjudicating Authority has failed to demonstrate how the Appellant did or omitted to do any act which rendered the goods liable to confiscation or abetted such an act. In absence of satisfaction of statutory ingredients, penalty under Section 112(a) is wholly unsustainable.

4. Record of Personal Hearings:

In accordance with the principles of audi alteram partem, the Appellant was afforded the opportunity of personal hearing which was attended virtually

by Shri Chinmaya Seth, Advocate on behalf of the Appellant on 12.01.2026 wherein he reiterated the submissions made at the time of filling appeal.

5. Discussion and Findings:

5.1 I have carefully considered the records of the case, the submissions made by the Appellant, and the chronology of events leading to the filing of the present appeal. It is observed that the impugned Order-in-Original was received by the Appellant on 25.09.2024 and that the present appeal has been filed after a delay of 03 days beyond the prescribed period of limitation under Section 128(1) of the Customs Act, 1962.

5.2 I find that the Appellant has shown sufficient cause for the delay in filing the present appeal. Accordingly, in exercise of the powers conferred under the proviso to Section 128(1) of the Customs Act, 1962, the delay in filing the appeal is condoned.

5.3 Having condoned the delay, I proceed to decide the matter on merits. The sole issue for determination is whether the penalty imposed upon Shri Sameer Sharma under Sections 112(a)(i) of the Customs Act, 1962 is legally sustainable.

5.4 At the outset, it is noted that the appellant is neither the importer nor the owner or beneficiary of the goods. The entire case against the appellant rests on (i) statements recorded under Section 108 of the Customs Act, particularly of co-noticee Shri Baldevsinh Vala, and (ii) an alleged facilitative role attributed to the appellant in his capacity as a G-Card holder. There is no seizure from the appellant, no recovery of proceeds of smuggling, and no documentary or electronic evidence directly linking the appellant to the alleged act of smuggling.

5.5 I find that cross-examination of Shri Vipin Sharma, Preventive Officer, who was directly associated with examination and clearance of the impugned consignments, was allowed and conducted. During cross-examination, Shri Vipin Sharma unequivocally stated that no pressure, inducement or influence was exercised by Shri Sameer Sharma, and that examination and clearance were carried out by Customs officers in the normal course of official duty. This testimony directly negates the Department's allegation that the appellant facilitated or abetted smuggling by influencing Customs officers.

5.6 The evidentiary value of the deposition of Shri Vipin Sharma assumes particular significance as it emanates from a departmental officer directly involved in the examination process. In the absence of any material contradiction or impeachment of his testimony, such evidence cannot be brushed aside lightly. The failure of the Adjudicating Authority to deal with this testimony renders the findings vulnerable.

5.7 I further note that cross-examination of Shri Baldevsinh Vala, whose statement is the primary basis for implicating the appellant, was conducted. During cross-examination, Shri Baldevsinh Vala admitted that the appellant had no role in procurement, selection, valuation, packing or concealment of the goods and that documents were handed over to the appellant merely for filing of Bills of Entry in the normal course of business.

5.8 These admissions materially dilute the inculpatory portions of the original statement and clearly demonstrate that the appellant had no prior knowledge of the alleged mis-declaration or smuggling. Once such admissions emerge during cross-examination, the original statement cannot be relied upon in isolation to fasten penal liability.

5.9 I further observe that one of the most serious allegations against the appellant was that he allegedly received Rs. 2.5 lakh to Rs. 3 lakh per consignment from Shri Baldevsinh Vala. However, during cross-examination, Shri Baldevsinh Vala categorically denied having made any such payment. This denial strikes at the very foundation of the allegation of pecuniary benefit and destroys the department's theory of motive and mens rea.

5.10 In the absence of any corroborative evidence such as bank records, cash recovery, electronic trail or contemporaneous documents, the uncorroborated statement of Shri Baldevsinh Vala already diluted during cross-examination loses all evidentiary value qua Shri Sameer Sharma. Penal liability under Sections 112(a)(i) cannot be sustained on such infirm and unsubstantiated evidence.

5.11 I also find considerable force in the appellant's contention that although cross-examination was allowed and forms part of the adjudication record, the Adjudicating Authority has not even adverted to the outcome of such cross-examination in the findings portion of the impugned order. This is not a mere procedural irregularity but a serious substantive lapse.

5.12 Once cross-examination is permitted, the Adjudicating Authority is legally bound to consider the outcome thereof and record reasoned findings. Even disagreement with the testimony elicited during cross-examination must be supported by cogent reasons. Total non-consideration of cross-examination renders the order non-speaking and violative of principles of natural justice, as consistently held by higher judicial forums.

5.13 I further observe that the Department has not produced any evidence to show that the appellant generated, manipulated or caused the generation of false documents or e-way bills, nor is there any evidence of his involvement in transportation of goods from SEZ to DTA. Mere association or procedural

involvement, without proof of conscious and intentional acts, is insufficient to attract penal provisions.

5.14 Therefore, I hold that while statements recorded under Section 108 of the Customs Act, 1962 are admissible in law, admissibility is distinct from evidentiary weight. Where such statements are diluted or contradicted during cross-examination and are not supported by any independent corroborative evidence, their probative value stands significantly diminished. In such circumstances, reliance on such statements alone is insufficient to sustain penal consequences under the Customs Act, 1962.

5.15 In view of the above, I hold that the essential ingredients of Sections 112(a)(i) namely conscious knowledge and intentional act are conspicuously absent in the present case. The findings recorded in the impugned Order against the Appellant are therefore legally unsustainable.

5.16 Accordingly, the penalty imposed upon the Appellant under Section 112(a)(i) is set aside.

6. The appeal is allowed with consequential relief, if any, as per law.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-281/CUS/MUN/2024-25 5681

Date: 30.01.2026

By Registered post A.D/E-Mail
To,

1. Mr. Sameer Sharma,
64, Sadguru, Smart City, Nava Kapaya, Mundra.

Copy to: -

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