



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**  
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DIN - 20260171MN00005075DD

क	फ़ाइल संख्या FILE NO.	S/49-234 /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-656-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	23.01.2026
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:	23.01.2026
	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Hanif Kapadia, 2704, A-Wing Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगों 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 <sup>nd</sup> 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 रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.
(घ)	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
(च)	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 ।
(द)	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.

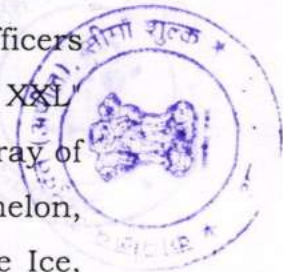


**ORDER-IN-APPEAL**

Appeal has been filed by Shri Hanif Kapadia, 2704, A-Wing Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AK/140/2024-25 dated 20.09.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present matter pertains to a complex, multi-layered investigation and the subsequent seizure of import goods relating to eighteen (18) separate consignments processed through eight (08) distinct importers. These activities were identified by the Directorate of Revenue Intelligence (DRI) as part of a highly organized and systematic operation managed by a common smuggling cartel. The investigation was precipitated by specific, actionable intelligence gathered by the DRI, which indicated that a transport vehicle moving toward Mumbai was laden with concealed foreign-brand electronic cigarettes that had been cleared through Mundra Port. Following a rigorous analysis of system data by the DRI Gandhidham unit, Vehicle No. GJ12BV0610 was identified as the carrier of Container No. TLLU4615592. The vehicle was intercepted by the DRI Surat Regional Unit on September 1, 2022, near Palsana Chokdi on the National Highway.

2.1 A meticulous search of Container No. TLLU4615592 was conducted in the presence of two independent Panchas and documented under the Panchnama dated September 1/2, 2022. During the examination, officers recovered 107 cartons containing a total of 85,600 units of "DK123 XXL" (Yuotto brand) electronic cigarettes. These products were found in an array of flavors designed for the domestic market, including Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, and Milk Coffee.



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2.2 The investigation established that these electronic cigarettes fall under HS code 85434000. Their importation is explicitly prohibited vide Notification 20/2015-2020 dated September 26, 2019, and the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019. Consequently, the entire consignment was detained and later formally seized under the provisions of the Customs Act, 1962, as the goods were knowingly used for concealment and represented a direct violation of national health and trade policies. This interception served as the catalyst for a wider inquiry into the syndicate's use of multiple dummy entities and "benami" importers to facilitate illegal trade.

2.3 The specific scope of this impugned order focuses on an import consignment associated with M/s. JYM Global Trading Company (IEC No. ANUPG6581F) involving Container No. TEMU7694450. In this instance, the goods were declared in the manifest and IGM No. 2320512 as "754 carton Floor Clean MOP (Misc. Item non-popular brand)" under HS Code 96039000. However, physical examination conducted by DRI officials under the Panchnama dated September 12, 2022, revealed a total absence of the declared moulds or mops.

2.4 Instead, the container was found to be entirely stuffed with 98,000 pieces of "Pop-up Toys" and 24,000 pieces of "Dancing Cactus" toys. It was observed that the importer deliberately refrained from filing a Bill of Entry (B/E) for this specific consignment. This was identified as a strategic omission—a "wait and watch" tactic—intended to evade interception after the syndicate realized that the DRI had already initiated enforcement actions against their other containers at Mundra Port. By withholding the B/E, the cartel attempted to distance the entity from the physical goods once they became "hot."

Beyond the gross mis-declaration of the items, these toys were found to be in direct contravention of Policy Condition 2 of Chapter 95 of the Customs Tariff. This regulation is a critical safety safeguard, mandating that all imported toys (under EXIM Codes 95030010, 95030020, 95030030, and 95030090) must be accompanied by certificates demonstrating compliance with Bureau of Indian Standards (BIS) safety norms. These standards include:

- IS: 9873 (Part 1): Safety aspects related to mechanical and physical properties.
- IS: 9873 (Part 2): Flammability requirements.



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- IS: 9873 (Part 3): Migration of certain elements (ensuring no toxic heavy metals are present).
- IS: 15644: Safety of Electric Toys (specifically relevant to the "Dancing Cactus" models).

2.6 The investigation confirmed that no such compliance certificates were produced. In the absence of mandatory BIS compliance and NABL accredited lab testing, the toys were classified as "offending goods." They were held liable for absolute confiscation under Sections 111(d), 111(f), and 111(m) of the Customs Act, 1962, as they posed a potential risk to public safety and bypassed essential quality control protocols designed to protect children.

2.7 The DRI investigation identified Shri Asif Sathi as the primary architect and beneficial owner of the smuggling racket. Acting as the mastermind, he utilized a network of front or "benami" entities to import prohibited, restricted, and grossly undervalued products. The syndicate's operational methodology involved the acquisition of Import Export Codes (IECs) from various firms by offering fixed monetary benefits to the proprietors—ranging from INR 15,000 to INR 50,000 per consignment—in exchange for their signatures on blank or fraudulent import documents.

2.8 Shri Asif Sathi effectively remained "behind the curtain," managing the operations through a sophisticated logistical chain. He utilized encrypted communication and WhatsApp groups, such as the group named "Mm," to coordinate with associates. These communications included instructions on how to "stuff" containers to hide prohibited items like e-cigarettes and managing the "crossing" of containers—moving goods from one vehicle to another after customs clearance—to avoid tracking through e-way bills.

2.9 Several key associates were found to have facilitated these illegal clearances:

- a. Shri Baldevsinh Vala (M/s. Kalpana Exim): Acted as the primary logistical coordinator at Mundra. He was instrumental in forging documents provided by foreign suppliers, manipulating invoice values, and ensuring the smooth transition of goods from the SEZ to warehouses in Bhiwandi.
- b. Shri Samir Sharma (G-Card Holder, M/s. Al Cargo Services): Misused sub-login IDs on the SEZ online portal—a practice deemed unauthorized under the SEZ Act—to file clearances for dummy importers without ever



verifying the genuineness of the IEC holders. He allegedly received between INR 2.5 lakh to INR 3 lakh per consignment for facilitating these high-risk clearances.

- c. Shri Mohammed Tahir Menn: Acted as a primary coordinator, introducing the mastermind to customs clearers and managing the administrative needs of the dummy firms, including M/s. MM Enterprises and M/s. JH Enterprises.
- d. Shri Hanif Kapadia: A business associate of Shri Asif Sathi who managed firms in China, such as M/s. AH International Trading Co. Limited and M/s. HK Longcheng Trade Co. Limited. These entities were used to route mis-declared and undervalued goods to India, providing the necessary international leg of the smuggling operation.

2.10 The financial infrastructure of the cartel was designed to obscure the true source of funds. Cash deposits and bank transfers from domestic purchasers were funneled through the accounts of dummy firms to settle liabilities with foreign suppliers. This "closed-loop" financial system allowed the syndicate to bypass traditional banking scrutiny. When the DRI initiated its crackdown in September 2022, the syndicate attempted desperate evasive maneuvers. For example, in the case of Container No. TGBU5160748, the importers in connivance with the shipper attempted to change the port of discharge from Mundra to Jebel Ali, Dubai, and even changed the name of the importer to "Sasco Global Logistics" to divert the contraband and avoid seizure. These efforts were unsuccessful as the DRI had already flagged the containers.

2.11 Due to the systematic and gross mis-declaration in terms of description, classification, and quantity, the transaction values declared in the associated invoices (such as Invoice No. YY2022117) were rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The investigation noted that actual transaction values were unavailable because the goods found bore no relation to the goods declared. A formal redetermination of value was performed in accordance with Rule 9 (Residual Method), utilizing market price assessments provided by a government-approved Chartered Engineer, Shri Kunal Ajay Kumar. The value of the toys found in the JYM Global consignment was reassessed at INR 2,44,20,000/-.

2.12 On the basis of the investigation, Show Cause Notice dtd. 30.08.2023 was issued to M/s. JYM Global Trading Company and other persons involved. Consequently, the Adjudicating Authority confirmed the



liability of the goods for confiscation and the imposition of significant personal penalties on M/s. JYM Global Trading Company, Shri Asif Sathi, Shri Hanif Kapadia, and other accomplices under Sections 112(a) and 114AA of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. Vide impugned order, following penalties were imposed on the appellant.

(A) IN RESPECT OF OFFENDING GOODS I.E. TOYS, IMPORTED WITHOUT MANDATORY BIS:

- (i) He imposed penalty of Rs. 10,00,000/- on the appellant under section 112(a)(i) of the Customs Act, 1962.

(B) IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:

- (i) He imposed penalty of Rs. 5,00,000/- upon appellant under Section 114(AA) of the Customs Act, 1962.

**SUBMISSIONS OF THE APPELLANT:**

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The Appellant contends that the impugned order dated September 20, 2024, is legally flawed because the Respondent failed to properly appreciate the factual matrix and legal submissions presented. A primary procedural grievance is the denial of a fair opportunity for a personal hearing, which the Appellant argues violates the principles of natural justice and the doctrine of audi alteram partem. Despite multiple requests to schedule a common hearing for five related Show Cause Notices arising from the same investigation, the Respondent allegedly refused further opportunities, claiming that prior notices had already been issued. The Appellant maintains that procedural fairness is a fundamental requirement for any judicial or quasi-judicial decision to be valid.

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3.2 Regarding the merits of the case, the Appellant asserts that the Department failed to bring any evidence on record to show his involvement in the alleged mis-declaration or undervaluation of goods<sup>5</sup>. In his statement, the Appellant clarified that his only business association with Mr. Asif Sathi was through M/s. Astrum Trading Pvt. Ltd., a company that never obtained an IEC or engaged in import/export activities. He categorically denied owning, operating, or financing any of the foreign or domestic entities implicated in the investigation, such as M/s. ASH or M/s. AH International Trading Co. Limited. The Appellant argues that the Department failed to verify these ownership claims with overseas authorities in China or Hong Kong as he had suggested.

3.3 The Appellant further challenges the Respondent's reliance on the statement of Mr. Tahir Menn, arguing that it lacks concrete evidence and is based on mere assumptions regarding the initials of company names. He contends that he was wrongly denied the opportunity to cross-examine Mr. Memn, which is a violation of Section 138B of the Customs Act and settled legal precedents. The appeal emphasizes that statements recorded during an investigation cannot be used as evidence without first summoning the witness for examination before the adjudicating authority to prove the truth of the contents.

3.4 Finally, the Appellant argues that penalties under Sections 112(a) and 114AA of the Customs Act are not applicable. He asserts that there is no evidence of "abetment" or "mens rea," as he had no knowledge of the contents of the containers nor did he receive any consideration for the alleged offences. Since the Appellant did not sign, use, or cause the use of any false import documents, he maintains that the essential ingredients for a penalty—namely knowledge and the intentional use of false material—are entirely absent in this case.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh , Advocate, appeared for the hearing on behalf of the appellant and re-iterated the submissions made at the time of filing the appeal.



**DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The core of the Appellant's defense rests on the claim that he was merely a "service provider" or a "facilitator" who acted as an intermediary between the foreign supplier and the local logistics agents, and therefore, should not be held liable for the specific misdeclaration in the Bill of Entry. To address this, it is essential to analyze the statutory architecture of Section 112(a) of the Customs Act, 1962. Unlike the criminal standard of "proof beyond reasonable doubt," the liability under Section 112 is triggered by the "act of omission or commission" or the "possession/concern" with goods that are liable to confiscation.

5.2 Section 112(a) penalizes 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, or abets the doing or omission of such an act. The term "abetment" here is not used in the narrow sense of the Indian Penal Code but encompasses any intentional aid, encouragement, or conspiracy that leads to the illegal importation. The evidence on record indicates that the Appellant was instrumental in identifying "shell" entities to act as importers. By providing the financial and logistical backbone to these dummy importers, the Appellant "aided" the creation of a fraudulent paper trail.

5.3 The Appellant argues that he had no knowledge of the concealment of E-cigarettes within the "miscellaneous goods." The fact that the Appellant was using multiple IECs of entities with no real business operations (dummy importers) and was coordinating with a driver on a non-standard route (intercepted near Surat for a Mundra-destined container) provides sufficient circumstantial evidence of guilty knowledge.

5.4 Furthermore, the goods in question—E-cigarettes—are prohibited items. Under the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019, any involvement in the import chain is a statutory violation. When such goods are concealed in a consignment declared as "Miscellaneous Goods," it

attracts Section 111(m) (goods do not correspond in respect of value or any other particular with the entry made) and Section 111(d) (goods imported contrary to any prohibition). Once the goods are liable to confiscation under Section 111, any person "concerned" with them becomes liable to penalty under Section 112. The Appellant's contention that he is not the "importer" is a technicality that does not shield him from the expansive reach of Section 112.

5.5 The Appellant has vehemently contended that the statements recorded under Section 108 of the Customs Act, 1962, were coerced and subsequently retracted, rendering them inadmissible. This argument necessitates a deep dive into the legal status of such statements. It is a well-settled legal principle that a Customs Officer is not a "Police Officer" within the meaning of Section 25 of the Indian Evidence Act, 1872. Consequently, a confession or a statement made before a Customs Officer is not hit by the bar of Section 25 and is admissible in evidence.

5.6 Regarding the "retraction," the mere fact that a statement is retracted at a later date does not automatically wash away its evidentiary value. The Appellant's retraction came significantly after the initial statement was recorded, often appearing as an "afterthought" coached by legal counsel. The initial statement of the Appellant was not a mere admission of guilt but a detailed narrative of the modus operandi, involving specific names (like Shri Parwej Alam), specific locations, and financial figures that only an insider could know. The details provided in the statement were subsequently corroborated by:

- (a) The recovery of E-cigarettes from the very container the Appellant was coordinating.
- (b) Digital evidence retrieved from the Appellant's mobile phone, including WhatsApp messages discussing "miscellaneous" clearings at Mundra.
- (c) The statements of co-accused which, though of a co-accused, provide a "seamless corroboration" to the Appellant's own admissions.

5.7 When the statement of the Appellant is read in conjunction with the statement of Shri Parwej Alam, it forms a complete chain of events leading to the smuggling attempt. The Appellant's role as the "coordinator" who remained in the background while others did the physical handling is a classic trait of syndicate leaders. The law does not require the person to be physically present



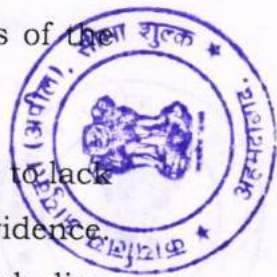
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at the port of entry to be liable under Section 112. Furthermore, in **Surjeet Singh Chhabra vs. Union of India [1997 (89) ELT 646 (SC)]**, the Apex Court held that a confession made before a Customs Officer, even if retracted, binds the person making it if it is voluntary. The Court emphasized that the Customs Act is a special self-contained code, and the procedures for investigation and statement recording under Section 108 are judicial proceedings for the purpose of Sections 193 and 228 of the Indian Penal Code. Therefore, the sanctity of these statements is much higher than a statement made to a police officer. Consequently, I find that the Adjudicating Authority (AA) was perfectly justified in relying upon the Section 108 statements to establish the Appellant's culpability.

5.8 The Adjudicating Authority (AA) correctly applied the principle of abetment. In **Vishnu Kumar v. Commissioner of Customs, New Delhi [2010 (260) E.L.T. 356 (Del.)]**, the Hon'ble Delhi High Court emphasized that "intentional aid" through acts or omissions constitutes abetment. By arranging for dummy IEC holders and facilitating the transport of concealed cargo, the Appellant provided the essential infrastructure for smuggling. The argument that he was not the "importer" on record is irrelevant for the purpose of Section 112 penalty.

5.9 Section 114AA provides for a penalty where a person knowingly uses false documents. The use of "dummy" importers and the filing of false declarations regarding the nature of the cargo (Miscellaneous Goods vs. E-cigarettes) were done at the behest of the syndicate where the Appellant played a pivotal role. When a person is the "mastermind" or "creator" of a valuation/misdeclaration scheme, individual liability is fixed regardless of the corporate or importer identity.

5.11 The Appellant cited cases where penalties were set aside due to lack of evidence. However, in those cases, there was a lack of corroborative evidence. In the present appeal, the DRI has provided a mountain of evidence, including the Call Data Records (CDR) showing frequent communication between the Appellant and the truck driver at the time of interception. Financial trail of payments made to clear the "Miscellaneous Goods" at Mundra Port. The specific involvement in 18 similar consignments identified as part of the Gandhidham investigation.



5.12 The evidence proves beyond a preponderance of probabilities that Shri Hanif Kapadia was not a bystander but an active participant in a smuggling cartel. The goods were "prohibited" and "misdeclared," making them liable to absolute confiscation. The penalties imposed are proportionate to the gravity of the offense (smuggling of banned items like E-cigarettes which have health implications and are strictly prohibited).

6. In view of the detailed discussions and findings above, I find no merit in the appeal filed by Shri Hanif Kapadia. The Adjudicating Authority has correctly evaluated the evidence and the role of the Appellant in the smuggling syndicate.

7. The Appeal filed by Shri Hanif Kapadia is hereby rejected.

सत्यापित/ATTESTED  
*Rubal*  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील्स), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD

*Amit Gupta*  
(AMIT GUPTA)  
Commissioner (Appeals),  
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F. No. S/49-234 /CUS/MUN/2024-25  
5551

Date: 23.01.2026

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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.