



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथीमंजिल 4th Floor, हड्डों बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN- 20250471MN0000000ABF

क	फाइलसंख्या FILE NO.	S/49-452/CUS/MUN/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-001-25-26
ग	पारितकर्ता PASSED BY	SHRI AKHILESH KUMAR Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	04.04.2025
च	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. MCH/ADC/MK/284/2024-25 dated 06.02.2025 issued by the Additional Commissioner, Customs, Mundra
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT: 	M/s. Santosh A.D.V. Tyres, Under Sarangpur Bridge, Sarangpur, Ahmedabad-380002
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.
	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 दोप्रतियां। 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	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	द्वासरी 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)	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 रूपए.	(क) 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 रूपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए	(ख) 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 हजार रूपए.	(ग) 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।	(घ) 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 रूपये 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 M/s. Santosh A.D.V. Tyres, Under Sarangpur Bridge, Sarangpur, and Ahmedabad - 380002 (hereinafter referred to as the 'appellant' in terms of Section 128 of the Customs Act, 1962 against the Order - In - Original No. MCH/ADC/MK/284/2024 – 25, dated 06.02.2025 (herein after referred to as the 'impugned order') issued by the Additional Commissioner, Customs, Mundra (herein after referred to as the 'adjudicating authority').

2 Briefly stated, facts of the case are that the appellant have imported below mentioned consignment at Mundra Port :

Sr. No.	Bill of Entry & Date	Declared goods	Quantity	Declared value (Rs.)
1	9649517, dated 13.01.2024	Old and used tyres for ADV size-12"	4575	37,98,137/-
2		Old and used tyres for ADV size - 13"	5389	
3		Old and used tyres for ADV size - 14"	2512	
4		Old and used tyres for ADV size - 15"	5481	
5		Old and used tyres for ADV size - 16"	1044	
6		Old and used tyres for ADV size - 17"	380	
7		Old and used tyres for ADV size - 20" big	560	

2.1 On the basis of letter dated 29.03.2024 received from the Central Intelligence Unit, Customs House, Mundra, directions were issued to Docks Examination, Custom House, Mundra for examination/re-examination of the goods imported under Bill of Entry No. 9649517, dated 13.01.2024. Further, a Customs empanelled Chartered Engineer, Shri Tushar Zankat was appointed by the competent authority to survey the goods imported under the said Bill of Entry and to ascertain the actual value and description of goods. The Chartered Engineer vide his Survey Report dated 02.04.2024 concluded that the goods imported vide Bills of Entry No. 9649517, dated 13.01.2024 will not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. As per his report, the imported goods can be used in passenger car vehicles and Light Trucks and other. The Chartered Engineer has also valued the goods as per the current market details with respect to old and used tyres of various size and brands. He has also found that the importers have imported the goods by way of huge undervaluation. Further, in the Examination report it was also affirmed that the goods are old and used tyres.

2.2 In view of the report submitted by Docks Officer in the system and Chartered Engineer Survey Report, it appeared that the appellant had imported the goods covered under the Bill of Entry No. 9649517, dated 13.01.2024 by way of mis-declaration of description, mis-classification and under valuation of the goods. Thus, and thus by doing so the appellant has contravened the provisions of Section 46 of the Customs Act and Foreign Trade Policy condition prescribed by DGFT. In absence DGFT license for import of restricted i.e. old and used tyres, goods become restricted/prohibited. Therefore, the said goods could not be allowed for home consumption and appeared liable for confiscation. The same were seized vide Seizure Memo dated 22.04.2024 under Section 110 (1) of the Customs Act, 1962.

2.3 The appellant had filed Writ Petition before the Hon'ble High Court of Gujarat under Special Civil Application No. 3583 of 2024 in February - 2024 for a direction to the Customs authorities for allowing clearance of goods covered under Bill of Entry No. 9649517, dated 13.01.2024 by assessing the same. The Hon'ble High Court vide order dated 04.03.2024 directed the appellant to make representation before the Commissioner of Customs as well as Deputy Commissioner of Customs Department.

2.4 The appellant vide letter dated 15.06.2024 submitted an application for provisional clearance and provisional assessment of the goods before the Commissioner of Customs and Deputy Commissioner of Customs. The Adjudicating authority vide impugned order rejected the appellant's application for provisional release. The appellant submitted the impugned order before the Hon'ble High Court in pending Writ petition and prayed for allowing the application for provisional release of the goods. The Hon'ble High Court has disposed off the Writ Petition on 03.03.2025 with a direction that the appellant herein may file appeal against the order for rejection of application for provisional release within 2 weeks and the appeal may be decided by the Appellate authority within 4 weeks from submission of the appeal. The present appeal has been filed by the appellant in this office on 12.03.2025. In pursuance of the order dated 03.03.2025 of the Hon'ble High Court, the appeal is taken up for disposal.


3-3-2025 The appellant has filed the appeal on the following grounds:-

- As mandated by the Board under Circular No. 35/2017 - Cus, the seized goods were required to be released provisionally subject to the conditions referred to in the said circular. Various adjudication orders made by the Additional Commissioner in charge of

Mundra Customs also show that the old and used tyres are not "prohibited" for import because the Additional Commissioner would not have allowed clearance of such goods for home consumption upon levying fine and penalty if import thereof was prohibited. The Petitioner craves leave to refer to and rely upon a series of such orders passed by the Additional Commissioner of Customs in charge of Mundra Customs itself at the time of the present appeal.

- The goods in question may have been tyres for truck/bus/car when they were manufactured, but they are no longer usable on such fast moving vehicles because of wear and tear. Declaring the goods as old and used tyres for animal driven vehicles, and not declaring them as old and used truck/bus/car tyres is not a "mis-declaration" while filing the bill of entry.
- There is no evidence of similar goods imported at a higher price and there are no contemporaneous imports of similar goods made at the same commercial level at about the same time at higher price. Mis-declaration of value is only an allegation, which could be easily explained away by the Petitioner in the adjudication proceedings.
- There is no violation of Para 2.31 of the FTP also, because the goods in question are not in the nature of "second-hand goods". Second hand means goods having had a previous owner and not new, but goods which can be used for the same purpose. The old and used tyres imported by the Petitioner cannot be used for the same purpose for which they were manufactured inasmuch as they cannot be used on fast moving vehicles, or on vehicles like truck and bus carrying a heavy load. These goods are now fit and capable of being used only on bullock carts/camel carts and slow moving vehicles like tractor-trolleys. These goods are "used goods", but no authorization is required for import of such used goods under Para 2.31 of the FTP.
- The decision for not releasing the goods in question on provisional basis is not in accordance with the scheme of Section 110A of the Customs Act read with Circular No. 35/2017 - Cus. dated 16.8.2017. The impugned decision is also contrary to the practice followed by Mundra Customs and the adjudication orders in respect of the release and clearance for home consumption of similar goods.
- The impugned order made by the Additional Commissioner is illegal, arbitrary and unreasonable in the facts of the present case. The goods are not "prohibited" for import,

and there are several binding precedents in respect of releasing seized goods on provisional basis that the Additional Commissioner had to follow without any reservations. The objections raised in the impugned order for rejecting the Petitioner's application have been considered by the Hon'ble Gujarat High Court and also by the Hon'ble Madras High Court in regard to similar goods, namely old and used tyres; and therefore the Additional Commissioner had no jurisdiction to raise such objections when the Courts of Law have directed to release similar goods despite the Customs objections of same nature.

➤ Reliance is placed on the following case laws:-

- (i) Kadri Enterprises 2017 (347) ELT 240 (Guj.),
- (ii) Black Gold Technologies V/s. UOI- 2020 (374) ELT 507 (Mad.).
- (iii) M/s. Eagle Impex V/s. Commissioner of Customs, Kandla 2017 (350) ELT 107.

➤ The observation of the Additional Commissioner about mis-declaration of the goods in terms of value is also incorrect and contrary to the valuation scheme under Section 14 of the Customs Act, and the impugned decision for not allowing provisional release of the goods on the basis of alleged mis-declaration in value is therefore liable to be set aside.

The only basis that the observation of mis-declaration in value is the report of the Chartered Engineer appointed by the Customs Department, but this report itself is unreliable and having no evidentiary value in this proceedings. It is not established as to who appointed the Chartered Engineer and what was the brief given to him: it is very doubtful whether the Chartered Engineer himself visited the port and actually examined the goods at the port inasmuch as no details of his visit and actual verification of the goods are disclosed in the report or otherwise; and there is no material or evidence in the Chartered Engineer's report for even *prima facie* establishing that similar old and used tyres usable for slow moving vehicles and animal driven vehicles were sold or offered for sale in course of the international trade at a higher price as suggested in his report. The observation of the Additional Commissioner about mis-declaration in terms of value of the goods based on the Chartered Engineer's report is nothing but an assumption or a presumption, which is not supported by any credible or reliable evidence.

- Reliance is placed on the following case laws:-
 - (i) Eicher Tractors Ltd. 2000 (122) ELT 321
 - (ii) D.R. Polymers Ltd. V/s. Commercial of Customs, ICD, TKD, New Delhi reported in 2004 (166) ELT 393 (Tri. Del.),
 - (iii) Narayan International V/s. Collector of Customs 1992 (58) ELT 126 (Tribunal)
 - (iv) Vintel Distributors P Ltd. 2002 (149) ELT 145 (Tri. Chennai).
 - (v) Elite Packaging Industries 1992 (60) ELT 311 (Tribunal),
 - (vi) Do Best Infoway -2004 (166) ELT 424 (Tri. Del.)
 - (vii) Commissioner of Customs V/s. Gokul Metalizers Pvt. Ltd. 2009 (235) ELT 87 (Tri. Ahmd.)

4. Personal hearing in the matter was held in virtual mode on 01.04.2025. Shri Amal P. Dave, Advocate, appeared for personal hearing. He reiterated the submissions made at the time of filing appeal.

5. I have carefully considered the Memorandum of Appeal, the arguments advanced during the course of personal hearing and the material available on record. The issue before me for determination is whether the impugned order rejecting the application of the appellant for provisional release of the goods seized under Seizure Memo dated 22.04.2024, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1. The Deputy Commissioner, Import Assessment (Group II), Custom House, Mundra has vide letter dated 27.03.2025 forwarded comments on the appeal filed by the appellants. It has been submitted that the provisional release of the consignment was denied by the Competent Authority as per the provisions of Notification No. 35/2017, dated 16.08.2017 due to policy restrictions i.e violation of Para 2.31 of Foreign Trade Policy condition. It is further submitted that without DGFT Authorisation, the impugned goods i.e old and used tyres are prohibited for import.

6. It is observed that the appellant has imported consignment of goods declared as 'Old and used tyres for ADV (Animal Driven Vehicle) comprising of seven different sizes ranging from 12" to 20" under Bill of Entry No. 9649517, dated 13.01.2024 filed at Mundra Port. The said consignment was examined/re-examined with the assistance of Customs empanelled Chartered

Engineer, Shri Tushar Zankat. He vide his Survey Report dated 02.04.2024 concluded that the goods imported vide Bill of Entry No. 9649517, dated 13.01.2024 could not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. As per his report, the imported goods can be used in passenger car vehicles and Light Trucks and other. He has also valued the goods as per the current market details with respect to old and used tyres of various size and brands, and found that the goods were undervalued. Further, in the Examination Report, it was also mentioned that the goods are old and used tyres.

6.1 In view of the report submitted by Docks Officer in the system and Chartered Engineer Survey Reports, it appeared that the appellant had imported the goods covered under the Bill of Entry No. 9649517, dated 13.01.2024 by way of mis-declaration of description, misclassification and undervaluation of the goods and had thereby contravened the provisions of Section 46 of the Customs Act and Foreign Trade Policy condition prescribed by DGFT. In absence of DGFT license for import of restricted goods i.e. old and used tyres, the said goods become restricted/prohibited. It appeared that the said goods could not be allowed for home consumption and also appeared liable for confiscation. The same were accordingly seized vide Seizure Memo dated 22.04.2024 under Section 110(1) of the Customs Act, 1962.

6.2 It is further observed that the appellant filed an application dated 15.06.2024 for provisional release and provisional assessment of impugned goods before the adjudicating authority. The adjudicating authority vide impugned order rejected the appellant's application for provisional release of goods on the ground that the impugned goods are mis-declared in terms of description as old and used tyres for Animal Driven Vehicle instead of Old and used truck/bus/car tyres and also in terms of value as reported by the Chartered Engineer. The adjudicating authority has further held that the imported goods are also mis-classified under CTH 401202090-others, so as to avoid the restriction imposed on import of Old and Used Retreated or used pneumatic tyres. It is also held by the adjudicating authority that the imported goods 'Old and Used Tyres for A.D.V purpose' have been imported in violation of Para 2.31 of Foreign Trade Policy condition, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for Import but the appellant had not produced any authorization issued by DGFT for importation of the used and old tyres. In view of the same, the adjudicating authority has held that the goods have been rendered as prohibited.

6.3 It is observed that the import of old/second hand goods is governed by the Foreign Trade Policy and the relevant Para 2.31 is reproduced as under :-

Import Policy for Second Hand Goods:

2.31 Second Hand Goods

Sl.No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
I. Second Hand Capital Goods			
I(a)	i. Desktop Computers; ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops; iii. Air Conditioners; iv. Diesel generating sets	Restricted	Importable against Authorisation
I(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
I(c)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare
I(d)	All other second-hand capital goods {other than (a) (b) & (c) above}	Free	
II. Second Hand Goods other than capital goods			
III.	Second Hand Goods imported for the purpose of repair/refurbishing / re-conditioning or re-engineering	Restricted	Importable against Authorisation
		Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

As per the impugned order, the impugned goods i.e old and used tyres as per the description confirmed by the Chartered Engineer fall under the category of 'Second Hand Goods other than Capital goods' as per Sl No. II of Table above and are restricted items which require DGFT Authorisation for import. The appellant has not produced any authorization from DGFT for import of impugned goods.

6.4 The appellant has on the other hand placed reliance on the following two orders passed by the Customs Authorities at Customs, Mundra on similar issues:-

- (1) OIO No. MCH /ADC/AK/231/2023-24, dated 06.01.2024 issued by the Additional Commissioner of Customs, Gr-II, Mundra in case of M/s. Indo Nippon Trading Company.
- (2) OIO No. MCH /53/AC/NSM/Gr-II/2023-24, dated 18.04.2023 issued by the Assistant Commissioner of Customs, Gr-II, Mundra in case of M/s. IM Enterprises.

On going through the above orders, it is observed that in both the cases, similar goods i.e 'Old and Used tyre for ADV' were found to have been imported without DGFT Authorisation at Mundra Port. Further, the said goods were also found to be mis-declared in terms of value and held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. However, the adjudicating authority gave an option to the importers in both the above cases to redeem the goods on payment of redemption fine under Section 125 of the Customs Act, 1962. The present case being similar in nature, I am of the considered view that the rejection of application for provisional release of goods by the adjudicating authority is not in accordance with decisions in quasi-judicial proceedings followed in the same jurisdiction. The impugned order is not legally sustainable.

6.5 It is observed that the Hon'ble High Court of Gujarat, Ahmedabad vide Oral Order dated 06.11.2015 in the SCA No. 8492 of 2015 (Civil Application No. 9587 of 2015) in the matter of M/s. Kadri Enterprise Vs Union of India reported at 2016 (331) ELT 358(Guj), has allowed the clearance of similar goods subject to the following conditions. The relevant part of the Order is



"18. For the foregoing reasons, the application succeeds and is, accordingly, allowed. The respondents are directed to forthwith permit assessment and clearance of the goods imported by the applicant petitioner under Bills of Entry No.17 and 18 dated 16.03.2015 in accordance with the provisions of the Customs Act, 1962, subject to the following conditions

i. the customs authority shall depute a surveyor to check whether the tyres are reusable with or without retreading;

ii. the petitioner shall not clear any goods which are not reusable;

iii the responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused."

6.5.1 In another case , the Hon'ble High Court of Gujarat, Ahmedabad vide Oral Order dated 10-02-2021 in the SCA No. 2350 of 2021 in the case of M/s. K S Trading Co., Vs. UOI, in para 2(5), has ordered that,

"the situation being identical in the matter, of SCA 8492 of 2015 (Civil Application No. 9587 of 2015), similar interim directions are issued subject to similar conditions as referred in SCA 8492 of 2015, viz. (i) the customs authority shall depute a surveyor to check whether the tyres are reusable with or without retreading; (ii) the petitioner shall not clear any goods which are not reusable; (iii) the responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused."

6.6 As discussed in the above said Oral Order dated 10-02-2021, vide para 3 thereof, the Hon'ble High Court of Gujarat, Ahmedabad has allowed clearance of the goods as per the conditions referred in Special Civil Application No. 8492 of 2015. The Hon'ble High Court of Gujarat, vide Order dated 07.09.2022 in case of SCA No. 6957 of 2021, by clubbing all SCAs, has disposed off all pending SCA's including SCA No. 8492 of 2015 & 2350 of 2021 in terms of the interim orders issued on the subject issue. Therefore, considering the facts of the case, decisions of the Hon'ble High Court, Gujarat for release of goods. I am of the considered view that the goods which are similar in this case, can be released provisionally on the same conditions as prescribed by the Hon'ble High Court of Gujarat, Ahmedabad in SCA No. 8492 of 2015 read with SCA No. 2350 of 2021.

6.7 In view of the above, considering the facts of the case and decision of the Hon'ble High Court of Gujarat cited above and taking into account the Board's Circular No. 35/2017 - Cus., dated 16.8.2017, I set aside the impugned order and allow the provisional release of the seized goods subject to the following conditions:-

- (1) Furnishing a bond equivalent to the value of the goods as determined by the adjudicating authority.
- (2) Providing a Bank Guarantee equivalent to 15% of value of goods as determined by the adjudicating authority.

- (3) Payment of duty amount pertaining to seized goods before provisional release.
- (4) The appellants shall not clear any goods which are not reusable
- (5) The responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused.

7. The appeal filed by the appellant is disposed in above terms.

Akhilesh Kumar
45 April, 2025
(AKHILESH KUMAR)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 04.04.2025

F.No. S/49-452/CUS/MUN/2024-25

By Registered Post A.D./E-Mail

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Copy to :-

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