सत्यमेव जयते

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 - 20260171MN00005555B2

क	फ़ाइल संख्या FILE NO.	S/49-271/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-664 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	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:	27.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Baldevsinh N. Vala, 74, Pratapsinh Devubha Pati, Near Nagbai Mataji Mandir, At Gadhethad, Upleta, Dist Rajkot- 360 460.

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- **(क)** रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा **(ख)** अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by Shri Baldevsinh N. Vala, 74, Pratapsinh Devubha Pati, Near Nagbai Mataji Mandir, At Gadhethad, Upleta, Dist Rajkot-360 460, (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.

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.

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."

2.5 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.

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:

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.

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.

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.

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 was issued to M/s. JYM Global and other persons involved including the appellant. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. JYM Global, 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. 8,00,000/- 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 first contends that the impugned order is a non-speaking order because it fails to address all the arguments and grounds presented during the initial adjudication. Furthermore, the appellant asserts that the penalty regarding the import of e-cigarettes is legally untenable because the original notice never specifically alleged that M/s. JYM Global Trading Company—the entity linked to this specific container—resorted to concealment or mis-declaration for such goods.

3.2 A significant portion of the appeal challenges the imposition of penalties under Section 114AA, arguing that the Adjudicating Authority failed to cite a single document to prove the appellant forged or fabricated shipper documents. The appellant claims that the authority misplaced its reliance on statements from various individuals, such as Shri Mohammad Tahir Menn and Shri Dirgesh Dedhia, as those statements pertain to different importers and containers (like M/s. M. M. Enterprise) rather than the goods imported by M/s. JYM currently under dispute.

3.3 The appellant further emphasizes a lack of professional expertise and intent, stating that unlike the Customs Broker, Shri Samir Sharma, the appellant was merely engaged for transportation and was not conversant with Customs procedures, valuation, or BIS compliance. The appellant maintains that they acted only as a messenger, passing documents from the beneficial owner to the Customs Broker under the broker's assurance. Since the appellant had no means to verify the accuracy of the documents provided by Shri Mohammad Asif Sathi, they argue they should not be held liable for penalties under Sections 112(a), 112(b), or 114AA.

3.4 Finally, the appeal challenges the evidentiary value of WhatsApp chats, asserting they cannot be used as evidence without a mandatory certificate under Section 138C of the Customs Act, 1962. The appellant alleges the investigation was incomplete and relied on "tampered" or "stray" chats while ignoring that messages had been deleted by others. Lastly, the appellant points out that since no Bill of Entry was ever filed for the goods imported by M/s. JYM, and there is no evidence of the appellant handling documents for that specific shipment, the order remains legally unsustainable. The appellant has placed reliance on the following case laws:-

(i) Arun Kumar v/s Commissioner of Customs, Mundra, 2024 (6) TMI 259 - CESTAT AHMEDABAD

(ii) Dell International Services India Private Limited, 2024 LiveLaw (Del) 749.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.12.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant appeared for the hearing 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 primary defense of the Appellant is that he was a mere logistical support provider with no knowledge of the illicit nature of the goods. However, a deep dive into the findings of the Adjudicating Authority reveals a much more sinister and proactive role. Under Section 112(a) of the Customs Act, 1962, 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, shall be liable to a penalty. The term "abets" and the phrase "knowingly concerned" used in Section 112(b) are critical.

5.2 In the case of **Collector of Customs v. D. Bhoormull [1983 (13) ELT 1546 (S.C.)]**, the Hon'ble Supreme Court held that the Department is not required to prove its case with mathematical precision but rather on the basis of "preponderance of probability." In the instant case, the probability of a "mere transporter" charging Rs. 17 Lakh per container for clearance work is non-existent. Such "hefty sums," as recorded in the statements of the mastermind Shri Asif Sathi, clearly indicate that the payment was not for logistics but for the "risk" and "manipulation" involved in smuggling prohibited goods.

5.3 Furthermore, the Appellant's role in "crossing" the containers—a process specifically designed to switch vehicles/documents after customs clearance but before reaching the destination to break the e-way bill trail—is a hallmark of professional smuggling syndicates. This is not a standard logistical practice. The Appellant's coordination with the Customs Broker Shri Samir Sharma, and his instructions regarding where to place E-cigarette cartons in a container (to avoid detection during a partial "gate" check), prove beyond doubt that he possessed "guilty knowledge" or mens rea.

5.4 The Appellant contends that his statements were coerced and that his retraction during cross-examination should nullify their effect. This argument is legally infirm. It is a settled position of law that statements recorded under Section 108 of the Customs Act are admissible as substantive evidence. Unlike a statement before a police officer under the CrPC, a statement before a Gazetted Officer of Customs is not hit by Section 25 of the Evidence Act. The Hon'ble Supreme Court in **Naresh J. Sukhawani v. Union of India [1996 (83) ELT 285 (SC)]** categorically held that:

> *"The statement made before the Customs officials is a material piece of evidence and can be used as substantive evidence to connect the person with the contravention of the provisions of the Customs Act."*

5.5 In the present case, the Appellant's statement was not an isolated confession. It was corroborated by the statement of the mastermind Shri Asif Sathi, the statement of the IEC provider Shri Mohammed Tahir Menn, the recovered WhatsApp communications, the actual physical discovery of prohibited toys in the container. The retraction made after 1.5 years during the adjudication stage is clearly a "well-planned afterthought." The Courts have consistently held that a retracted confession can still form the basis of a conviction/penalty if it is corroborated by other evidence. In **K.I. Pavunny v. Asstt. Collector (HQ), Central Excise [1997 (90) ELT 241 (SC)],** the Apex Court held that it is the duty of the court/authority to examine whether the confession was voluntary and true. The minute details provided by the Appellant regarding the "Mm" WhatsApp group, the specific amounts charged per container, and the logistical routes could only have been known to someone intimately involved in the operation. Thus, the retraction is rejected as a mere dilatory tactic.

5.6 The Appellant argues that the WhatsApp chats cannot be used as evidence without a Section 138C certificate. While procedural rigor is necessary, it is observed that in quasi-judicial proceedings, the "best evidence" rule applies. I find that the Adjudicating Authority correctly observed that during the investigation, Shri Mohammed Tahir Menn voluntarily surrendered his mobile device, and incriminating data was extracted in his presence, for which a certificate under Section 65B of the Evidence Act (read with 138C of the Customs Act) was indeed issued. Even otherwise, the statements recorded under Section 108, which refer to and explain the content of these chats, serve as independent evidence of the facts contained therein. The chats merely provide a corroborative timeline to the conspiracy admitted by the participants.

5.7 A significant ground raised by the Appellant is that since no Bill of Entry was filed for the container TEMU7694450, the provisions of Section 111(m) (mis-declaration in documents) cannot apply. This argument is a clever but unsuccessful attempt to escape the clutches of the law. Section 111(d) of the Customs Act provides for the confiscation of any goods which are imported or attempted to be imported contrary to any prohibition. The "import" of goods is complete the moment they enter Indian Customs Waters. The non-filing of a Bill of Entry does not "undo" the import; it merely indicates that the importer was waiting for a "favorable" time or had been spooked by the DRI's action in other similar containers of the same cartel.

5.8 The container arrived at the port with a manifest (IGM) that carried a false description ("Plastic Chocolate Mould"). This false entry in the IGM— which is a statutory document under Section 30—renders the goods liable for confiscation under Section 111(f). The Appellant's role in facilitating this "attempted" clearance is sufficient to attract penalty under Section 112. Smuggling does not require the completion of the "Home Consumption" process; the mere act of bringing prohibited/mis-declared goods into the country with an intent to clear them fraudulently is an offense.

5.9 The Adjudicating Authority relied on several landmark cases which I find are squarely applicable:

- **Surjeet Singh Chhabra v. UOI [1997 (84) ELT (646) SC**]: This case establishes that a confession before a Customs Officer is a binding admission. The Appellant's claim of "police-like" coercion is unsustainable because Customs Officers are not "Police Officers" within the meaning of the Evidence Act.
- **Assistant Collector of Customs v. Govindasamy Ragupathy [1998 (98) ELT 50 (Mad.)]:** This reinforces that statements under Section 108 are voluntary unless proven otherwise by the person making them. The Appellant failed to file any FIR or complaint regarding the alleged "unofficial detention" for 1.5 years, proving the coercion claim is an afterthought.

5.10 The Appellant has cited Arun Kumar v. Commissioner of Customs, Mundra and Dell International Services regarding WhatsApp evidence. However, those cases are distinguishable. In Arun Kumar, the chats were the only evidence and were uncorroborated. In the present case, the chats are backed by confessional statements of the mastermind, confessional statement of the Appellant, the physical seizure of 122,000 pcs of prohibited toys, evidence of financial flow ie Rs. 17 Lakh payment. When multiple streams of evidence (documentary, oral, and physical) converge to show a single truth, the technical deficiency in one stream (even if admitted) does not collapse the entire case.

5.11 Section 114AA was introduced specifically to penalize the use of false and incorrect material in the transaction of any business for the purposes of the Act. The investigation has clearly shown that the Appellant managed to "change/forge/fabricate" documents sent by shippers to show different descriptions, provided these fabricated documents to the Customs Broker, guided the cartel on how to "stuff" the containers to evade detection. These are "active" acts of using false documents. The Appellant cannot claim he was a "novice." His deep understanding of Customs procedures shows he was a professional "clearance facilitator" for smugglers. The penalty under 114AA is, therefore, fully justified.

5.12 The entire modus operandi of the syndicate was designed to bypass the BIS regime. Toys are regulated for safety (IS 9873). By mis-declaring them as "Chocolate Moulds," the cartel bypassed the mandatory safety testing required for children's products. This is not just a revenue offense but a violation of public safety regulations. The Appellant was the "Mundra-end" of the operation. Without his logistical expertise and his ability to manipulate the documentation and transportation, the mastermind Shri Asif Sathi could not have successfully moved these goods to the gray markets of Mumbai. The "facilitator" in such an organized crime is as culpable as the "investor." The quantum of penalty is extremely lenient given that the market value of the seized toys was over Rs. 2.44 Crores and that the Appellant was charging as much as Rs. 17 Lakh for a single container's clearance. There is no merit in the prayer for reduction of penalty. I hold that the Adjudicating Authority has correctly identified the Appellant's proactive and conscious role in the smuggling racket. The evidence on record—oral, documentary, and circumstantial—unambiguously points toward the Appellant's guilt. The legal defenses raised regarding the non-filing of the Bill of Entry and the technicalities of Section 138C are rejected as they do not mitigate the underlying fraudulent "attempt to import" prohibited goods.

6. In view of the detailed discussion above, I find no merit in the appeal filed by Shri Baldevsinh N. Vala. The findings of the Adjudicating Authority in OIO No. MCH/ADC/AK/140/2024-25 dtd. 20.09.2024 are well-reasoned and supported by substantive evidence.

7. The appeal filed by Shri Baldevsinh N. Vala is hereby rejected.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

सत्यापित/ATTESTED

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

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

F. No. S/49-271/CUS/MUN/2024-25 5572

Date:27.01.2026

By Speed post /E-Mail

To,
Shri Baldevsinh N. Vala,
74, Pratapsinh Devubha Pati,
Near Nagbai Mataji Mandir,
At Gadhethad,Upleta,
Dist Rajkot- 360460.

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.