



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-20260171MN000027982D

क	फ़ाइल संख्या FILE NO.	S/49-68/CUS/MUN/2025-26
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 - 809 - 25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/AKM/209/2024-25 dated 03.12.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Mr. Samir Sharma, 64, Sadguru, Smart City, Nava Kapaya, Mundra



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते 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)	बैगोज़ 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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, 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.
(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 हजार 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 हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
(a)	in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
(b)	for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER – IN – APPEAL

The present appeal has been filed by Shri Sameer Sharma (hereinafter referred to as “the Appellant”) under Section 128 of the Customs Act, 1962 against Order-in-Original No. MCH/ADC/AKM/209/2024-25 dated 03.12.2024, (hereinafter referred to as “the impugned Order”) passed by the Additional Commissioner of Customs, Mundra (hereinafter referred to as the “Adjudicating Authority”), pursuant to investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, into a well-organised smuggling cartel engaged in import of prohibited e-cigarettes, toys requiring mandatory BIS certification and other mis-declared and undervalued goods through Mundra Port and other locations. The investigation revealed that a total of 18 import consignments imported through 08 different importers were part of the said cartel, which was allegedly operated by a common group of persons. Importer-wise separate investigations were carried out and individual show cause notices were issued. The present Order-in-Original pertains to one import consignment imported in the name of M/s. J.H. Enterprises, Bhuj, through Container No. TGBU5160748 at Mundra Port.

2.1 Facts of the case, in brief, are that DRI developed specific intelligence that consignments cleared from Mundra Port were being used for clandestine import of concealed E-cigarettes. Earlier, on the basis of such intelligence, a vehicle carrying Container No. TLLU4615592 was intercepted near Surat on 01.09.2022 and, upon examination at ICD Sachin, 85,600 E-cigarettes of foreign origin were recovered. Subsequent investigations revealed that the said consignments were part of a larger syndicate importing goods through mis-declaration of description, classification, value and quantity.

2.2 Further intelligence revealed that Container No. TGBU5160748, imported in the name of M/s. J.H. Enterprises, declared as “Floor Clean Mop (Misc. Item Non-Popular Brand)” under HS Code 96039000, was also suspected to contain concealed E-cigarettes. It was further noticed that after initiation of DRI action, attempts were made by the cartel to change the shipper, importer, description of goods and even the port of discharge from Mundra to Jebel Ali (UAE) by preparing parallel Bills of Lading, allegedly to evade Customs scrutiny. Consequently, the said container was put on hold by DRI.

2.3 The container was examined at Mundra Port under panchnama dated 16/17.09.2022, which revealed gross mis-declaration and concealment. During examination, the following goods were found:



- 200,400 pieces of E-cigarettes (HS Code 85434000), import of which is prohibited under DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes Act, 2019;
- 80,000 pieces of toys (HS Code 9503) imported without mandatory BIS compliance;
- 14,000 LCD writing pads, 2,500 head massagers, and 2,712 floor clean mops, either not declared or mis-declared, and used for concealment of prohibited goods.

2.4 The total market value of the seized E-cigarettes was estimated at ₹48.09 crore, based on market price disclosed during investigation, while the value of toys was assessed at ₹64 lakh. The value of other mis-declared goods was determined on the basis of Chartered Engineer's valuation, aggregating to ₹45,86,760/-. The goods were seized under Section 110 of the Customs Act, 1962, after due examination and valuation.

2.5 During investigation, searches were conducted at the declared premises of M/s. J.H. Enterprises at Bhuj, and various incriminating documents were resumed. Statements of several persons connected with the import, transportation, clearance and storage of the goods were recorded under Section 108 of the Customs Act, 1962, including drivers, godown operators, logistics providers, importers, and Customs handling personnel.

2.6 The Appellant, a G-Card holder of Customs Broker firm M/s. Al Cargo Services, was found to be handling Customs clearance work of the concerned importers. His statements were recorded on 05/06.09.2022 and 08.09.2022 under Section 108 of the Customs Act, 1962. As per investigation findings, Shri Sameer Sharma was involved in filing Bills of Entry and handling clearance formalities on the basis of documents supplied by the main conspirators, despite the consignments being mis-declared and containing prohibited/restricted goods.

2.7 On the basis of evidence gathered, several key persons including Shri Asif Sathi (alleged mastermind), Shri Tahir Menn, Shri Sarfaraz Kamani, Shri Parvez Alam and others were arrested during the course of investigation. It was alleged that the cartel operated through dummy IEC holders, mis-used IECs of various firms including M/s. J.H. Enterprises, and systematically imported prohibited and restricted goods for domestic sale.

2.8 A Show Cause Notice dated 30.08.2023 was issued proposing confiscation of the seized goods under Sections 111(d), (f), (l), (m), (n) and (o) of the Customs Act, 1962 and imposition of penalties on M/s. J.H. Enterprises and other



noticees, including the Appellant, under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962.

2.9 The adjudicating authority, vide Order-in-Original dated 03.12.2024, adjudicated the matter by holding that the goods imported by M/s. J.H. Enterprises were liable for confiscation on account of mis-declaration, concealment and import of prohibited goods, and imposed penalties on the importer and other co-noticees, including the Appellant, for their respective roles in facilitating the import and attempted clearance of the offending goods.

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

3.1 The impugned Order-in-Original insofar as it imposes penalty upon the Appellant under Sections 112(a)(i) and 112(a)(ii) of the Customs Act, 1962 is bad in law, contrary to facts on record and liable to be set aside, as the same is based purely on assumptions and presumptions without any cogent evidence. The adjudicating authority has merely reproduced the allegations contained in the Show Cause Notice and has failed to deal with the detailed replies and submissions filed by the Appellant, which is evident from para 28.7 of the impugned order itself, rendering the order non-speaking and violative of principles of natural justice

3.2 It is submitted that admittedly the Appellant did not provide any services whatsoever in respect of certain consignments including Container No. TGBU5160748, nor was any document recovered from the Appellant pertaining to the said consignment. This vital fact has not been denied by the adjudicating authority. Hence, in absence of any role attributable to the Appellant, the impugned order deserves to be set aside on this ground alone.

3.3 The allegations against the Appellant, namely that he assured clearance of offending goods, failed to verify IEC holders, connived in submission of E-way bills, received ₹2.5-3 lakhs per consignment, and knowingly participated in misdeclaration and smuggling activities, are solely based on the statements of Shri Vala Baldevsinh and Shri Dirgesh Dedhia, without any independent corroboration. At the outset, it is submitted that these allegations are wholly incorrect and unsupported by documentary evidence.

3.4 The Appellant is a G-Card holder since 2014 and has been working at Mundra Port since 2015 under CHA M/s A.L. Cargo. His role was limited either to providing forwarder services (creation of checklist) or CHA services in unrelated cases. For the consignments forming subject matter of the present proceedings, the Appellant acted only as a forwarder for certain consignments and did not act as CHA at all. The Bills of Entry were admittedly filed under "Self"



by the importers/CFS, with M/s Empezar Logistics acting as CHA, and therefore the responsibility for clearance squarely lay with the importer and CFS.

3.5 It is further submitted that the Appellant is in fact the informer in the present case. The entire investigation was initiated solely on the basis of information voluntarily provided by the Appellant to DRI on 01.09.2022 and subsequently on 05.09.2022. Acting upon this information alone, DRI carried out searches and seizures. For several consignments, the Appellant neither had knowledge nor possession of documents. Despite this cooperation, he has been wrongly implicated.

3.6 The impugned order deliberately ignores the crucial role played by M/s Empezar Logistics and Customs officials in examination and clearance of goods. In SEZ procedure, goods are examined not once but twice by Customs officers, and Empezar was also required to conduct 100% examination before release. The Appellant had no statutory obligation to physically verify goods. There is also no allegation that the Appellant influenced any Preventive Officer or CFS to bypass procedure.

3.7 The finding that the Appellant received ₹2.5–3 lakhs per consignment is demonstrably false. Shri Vala Baldevsinh in his initial statement stated that only ₹5,000 per consignment was paid. Subsequently, after his arrest, a contradictory statement was recorded on 09.12.2022 alleging higher payments. During cross-examination, Shri Vala Baldevsinh categorically admitted that he never paid ₹2.5–3 lakhs per consignment to the Appellant and that such statement was recorded under force and coercion. He further confirmed that the Appellant had no role in transportation of goods post-clearance.

3.8 Similarly, in cross-examination, Preventive Officer Shri Vipin Sharma confirmed that the Appellant never approached him for clearance, never offered any monetary consideration, and that all Bills of Entry were filed under "Self", thereby conclusively establishing that the Appellant was not the CHA and exercised no influence over Customs processes.

3.9 None of the alleged master minds, namely Shri Sarfaraz Kamani, Shri Mohammed Tahir Menn, or Shri Mohammad Asif Sathi, have named the Appellant or attributed any role to him in their statements. The Appellant was not part of any incriminating WhatsApp group, never visited Dubai with the syndicate, and no search or seizure was conducted at his residence or office, clearly demonstrating absence of prior knowledge or mens rea.

3.10 The Appellant also submits that crucial Relied Upon Documents including RUD-3, RUD-12, RUD-30 and RUD-91 were never supplied despite repeated requests, causing serious prejudice to his defence.



3.11 It is settled law that penalty cannot be imposed solely on the basis of uncorroborated statements recorded under Section 108. Reliance is placed on *Union of India v. Kisan Ratan Singh* [2020 (372) ELT 714], wherein it has been held that statements without corroboration cannot sustain penal consequences. Further reliance is placed on *Commissioner of Customs v. Trinetra Impex Pvt. Ltd.* [2020 (372) ELT 332 (Del)] and *M.S. Exim Services v. CC, Ludhiana* [2021 (377) ELT 615], which categorically hold that penalties on CHA/forwarders require proof of conscious knowledge or mens rea, which is conspicuously absent in the present case. Additional reliance is placed on *S. Prakash Kushwaha & Co., G.N.D. Cargo Movers, Kunal Travels, APS Freight & Travels, and HIM Logistics*, clarifying that CHA obligations are limited to KYC verification and do not extend to physical verification of importer premises.

3.12 In absence of any mens rea, corroborative evidence, or active role, and in view of categorical dilution of allegations during cross-examination, the impugned penalties are wholly unsustainable and liable to be quashed.

4. Record of Personal Hearings:

In accordance with the principles of audi alteram partem, the Appellant was afforded the opportunity of personal hearing which was attended virtually by Chinmaya Seth, Advocate on behalf of the Appellant on 12.01.2026 wherein he reiterated the submissions made at the time of filing appeal.

5. Discussion and Findings:

5.1 I have carefully considered the records of the case, the submissions made by the Appellant, and the chronology of events leading to the filing of the present appeal. It is observed that the impugned Order-in-Original was received by the Appellant on 15.12.2024 and that the present appeal has been filed after a delay of 74 days beyond the prescribed period of limitation under Section 128(1) of the Customs Act, 1962.

5.2 On examination of the records, it is noticed that the Appellant had approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 3080 of 2025 on 10.02.2025. The said petition was disposed of by the Hon'ble High Court vide order dated 16.04.2025.

5.3 A perusal of the order dated 16.04.2025 passed by the Hon'ble High Court of Gujarat reveals that while disposing of the petition, the Hon'ble Court clarified that "*the time spent by the petitioner before the High Court in pursuing the said petition may be considered as bona fide for the purpose of delay, if any, in preferring the appeal in accordance with law.*"

5.4 From the records, it is observed that the Appellant has spent a period of 65 days in pursuing the matter before the Hon'ble High Court of Gujarat. After

excluding the said period, the effective delay attributable to the Appellant in filing the present appeal works out to only 9 days.

5.5 In view of the above facts and circumstances, and respectfully following the clarification issued by the Hon'ble High Court of Gujarat, I find that the Appellant has shown sufficient cause for the delay in filing the present appeal. Accordingly, in exercise of the powers conferred under the proviso to Section 128(1) of the Customs Act, 1962, the delay in filing the appeal is condoned.

5.6 Having condoned the delay, the appeal is admitted for disposal on merits. The sole issue for determination is whether the penalties imposed upon Shri Sameer Sharma under Sections 112(a)(i) and 112(a)(ii) of the Customs Act, 1962 are legally sustainable.

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

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

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

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



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

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

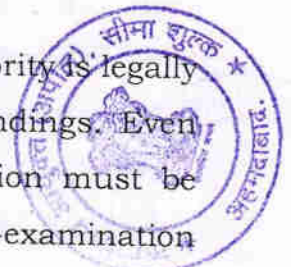
5.13 In the absence of any corroborative evidence such as bank records, cash recovery, electronic trail or contemporaneous documents, the uncorroborated statement of Shri Baldevsinh Vala already diluted during cross-examination loses all evidentiary value qua Shri Sameer Sharma. Penal liability under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

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

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

5.16 I further observe that the Department has not produced any evidence to show that the appellant generated, manipulated or caused the generation of false documents or e-way bills, nor is there any evidence of his involvement in transportation of goods from SEZ to DTA. Mere association or procedural involvement, without proof of conscious and intentional acts, is insufficient to attract penal provisions.

5.17 Therefore, I hold that while statements recorded under Section 108 of the Customs Act, 1962 are admissible in law, admissibility is distinct from evidentiary weight. Where such statements are diluted or contradicted during cross-examination and are not supported by any independent corroborative



evidence, their probative value stands significantly diminished. In such circumstances, reliance on such statements alone is insufficient to sustain penal consequences under the Customs Act, 1962.

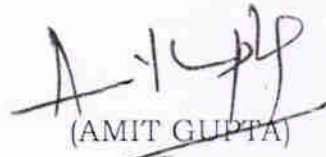
5.18 In view of the above, I hold that the essential ingredients of Sections 112(a)(i) and 112(a)(ii), namely conscious knowledge, and intentional act are conspicuously absent in the present case. The findings recorded in the impugned Order-in-Original against the Appellant are therefore legally unsustainable.

5.19 Accordingly, the penalties imposed upon the Appellant under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962 are set aside.

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

सत्यापित/ATTESTED

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


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

F. No. S/49-68 /CUS/MUN/2025-26
5661

Date: 30.01.2026

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

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

Copy to: -

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

