



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20260171MN000000EBBB

क	फ़ाइल संख्या FILE NO.	S/49-331/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-665-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	28.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024
च	* अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. M M Enterprises, Ground Floor, Shop No. 2, Alfa Arcade, Sumra Deli Char Rasta, Ashapura Ring Road, Bhuj, Kutch, Gujarat 370001



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)	बैगेज 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
	<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.
(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।
(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 M/s. M M Enterprises, Ground Floor, Shop No. 2, Alfa Arcade, Sumra Deli Char Rasta, Ashapura Ring Road, Bhuj, Kutch, Gujarat 370001, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024 (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 case involves an intricate and wide-ranging investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, which unearthed a large-scale, highly organized smuggling cartel operating through the Mundra Port. The investigation revealed that a common group of persons had established a sophisticated, multi-layered syndicate designed specifically to exploit the regulatory relaxations and procedural flexibilities inherent in the Special Economic Zone (SEZ) to Domestic Tariff Area (DTA) clearance mechanism. This syndicate was created for the primary purpose of importing prohibited and restricted goods—specifically high-value foreign-brand electronic cigarettes and various types of toys requiring mandatory Bureau of Indian Standards (BIS) compliance—by resorting to gross and calculated mis-declaration of description, quality, quantity, and value. While the broader investigation covered a staggering 18 import consignments involving eight different importers, the specific subject of this adjudication is the consignment imported in the name of M/s. M.M. Enterprises (IEC: BMEPM3625G) covered under DTA Bill of Entry No. 2012895 dated 26.08.2022.

2.1 The genesis of the case lies in specific, actionable intelligence gathered by the DRI suggesting a systematic and predatory abuse of the "self-assessment" and "trusted trader" schemes that underpin modern customs operations within the SEZ. The intelligence indicated that a smuggling cartel was utilizing front companies to move prohibited contrabands into the domestic market. Analysis of system data revealed that Vehicle No. GJ12BV0610 was carrying the import consignment imported through



Container No. TLLU4615592. Acting swiftly upon this intelligence, DRI officers, in coordination with the Surat Regional Unit, intercepted the truck near Palsana Chokdi on the National Highway on 01.09.2022.

2.2 The vehicle was found to be carrying Container No. TLLU4615592, which had been cleared from the SEZ Warehouse Unit of M/s. Empezar Logistics, Mundra, and was supposedly destined for a godown in Bhiwandi. Upon interception, the driver, Shri Chuna Singh Rawat, was questioned regarding the nature of the cargo. The preliminary inquiry and the recovery of incriminating documents from the driver—including e-way bills featuring unrelated entities—corroborated the intelligence that the container did not merely contain the declared items but was a vessel for contraband. Given the complexity of the concealment, the vehicle was escorted to ICD Sachin, where DRI officials requested the assistance of mechanical labor and equipment to de-stuff the entire container for an exhaustive examination in the presence of two independent arbitrators (Panchas). During the process, a person named Mr. Parvez Alam arrived at ICD Sachin, introducing himself as the representative of the actual buyers, Shri Mohammad Asif Sathi and Shri Sarfaraj Kamani, confirming the syndicate's oversight of the transit.

2.3 The rigorous examination of the impugned goods at ICD Sachin was conducted under Panchnamas dated 01/02.09.2022 and 19.10.2022. This process revealed a masterclass in smuggling techniques. Amidst the declared cargo of "Head Massagers" and "Exercise Books," officers recovered 107 cartons marked with the brand "DK123 XXL." Upon opening these cartons, they discovered a total of 85,600 pieces of electronic cigarettes of the "Yuoto" brand. These were found in a wide array of flavors clearly designed to appeal to younger demographics, 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, Milk, and Coffee. These goods, falling under CTH 85434000, are strictly prohibited for import in terms of DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes Act, 2019.

2.4 Furthermore, the examination revealed 89,000 pieces of silicon "Pop up" toys falling under CTH 9503. These items were imported in direct violation of Policy Condition 2 of Chapter 95 of the Customs Tariff. This policy mandates that all imported toys conform to rigorous BIS standards, including IS: 9873 Part 1 (Safety aspects related to mechanical and physical properties),



Part 2 (Flammability), and Part 3 (Migration of certain elements). The importer failed to produce any valid BIS compliance certificates, rendering the toys "prohibited goods" under Section 2(33) of the Customs Act, 1962. The examination also found excess quantities of declared items, such as 240 additional Head Massagers and 1,364 Exercise Books. These "filler" goods were strategically used to pad the container, ensuring that the prohibited items remained shielded from the container doors and providing a facade of legitimacy during any casual visual inspection at the port or SEZ gate.

2.5 The investigation into the role and culpability of the noticees revealed a deep-rooted conspiracy characterized by a high degree of planning and division of labor. M/s. M.M. Enterprises, through its proprietor Shri Mohammed Tahir Hanif Menn, acted as a willing front for the syndicate. Shri Tahir Menn admitted that he allowed the smuggling cartel led by Shri Mohamammad Asif Sathi to use his firm's IEC and bank accounts in exchange for "rental" monetary benefits ranging from Rs. 15,000 to Rs. 50,000 per consignment. To further insulate the mastermind from detection, Shri Tahir Menn facilitated the creation of dummy firms like M/s. J.H. Enterprises in the names of domestic workers, such as Shri Juma Hamir Halepotra, demonstrating the predatory nature of the syndicate's recruitment.

2.6 A critical aspect of the syndicate's modus operandi was the "crossing" operation, a tactical maneuver designed to disrupt the surveillance of enforcement agencies. After a container was cleared from the Mundra SEZ, the syndicate would monitor its movement in real-time via "Wheelseye" tracking links. To evade detection by agencies tracking e-way bills or container numbers, the syndicate would arrange for the "crossing" of goods at intermediate locations like Navsari or Surat. This involved transloading the contraband from the original container into secondary vehicles, effectively breaking the digital and physical trail between the port of entry and the final destination. In the present case, Shri Parvej Alam was dispatched specifically to oversee this transloading just before the vehicle was tactically intercepted.

2.7 During the investigation, it was revealed that the smuggling cartel had utilized the IEC of M/s. M.M. Enterprises for successful importations in the past. Shri Tahir Menn, Shri Asif Sathi, and Shri Parvez Alam all confirmed in their voluntary statements that a total of 265 cartons (comprising 125 and 140 cartons respectively) had been imported in July and August 2022. These consignments contained approximately 212,000 pieces of electronic cigarettes.



Although these goods had already been disposed of in the domestic market and were not available for physical seizure, the Adjudicating Authority held them liable for confiscation under Section 111, noting that the proceeds of these past crimes were laundered through the same dummy accounts.

2.8 The individual roles in this well-oiled machinery were established through various voluntary statements recorded under Section 108:

- a. Shri Mohammad Asif Sathi (The Mastermind): Sathi was the architect and financier of the racket. He coordinated directly with overseas suppliers in China (such as "Mrs. Shelly") and finalized deals through firms like "AH International Trading Co." and "HK Longcheng Trade Co." He managed the financial trail, collecting cash from domestic purchasers and depositing it into dummy firm accounts to facilitate outward remittances, thereby bypassing legitimate forex regulations.
- b. Shri Mohammed Tahir Menn (The Facilitator): As the proprietor of M.M. Enterprises, he lent the "credibility" of a local business to the cartel. He introduced Shri Baldevsinh to Sathi to handle port-side logistics and was actively involved in monitoring the location of trucks via shared GPS links. He admitted that his firm never conducted any actual business in the goods imported but served merely as a conduit for Sathi's contrabands.
- c. Shri Sarfaraj Kamani (The Associate): A close partner of Sathi, Kamani was involved in the loading phase in China and was identified as a joint owner of the Bhiwandi godowns. Evidence confirmed his participation in planning the import of counterfeit goods and mobile phone accessories infringing the Intellectual Property Rights (IPR) of brands like Vivo, Oppo, and Realme.
- d. Shri Baldevsinh Vala (The Logistical Operative): Operating through M/s. Kalpana Exim, Vala was the operative who manipulated the shipping documents and invoices provided by the overseas suppliers. For ensuring the smooth clearance of prohibited items, he charged Sathi a premium of approximately Rs. 17 Lakhs per container—a fee far exceeding any legitimate forwarding commission.
- e. Shri Samir Sharma (The Customs Broker): A G-Card holder of M/s. Al Cargo Services, Sharma misused the SEZ Online portal's sub-login functionality. He filed the Bills of Entry despite knowing that the descriptions were false. To facilitate the exit of the trucks from the SEZ



*[Handwritten signature]*

gate, he submitted e-way bills featuring unrelated parties, ensuring the actual destination remained masked.

2.9 The investigation also highlighted gross professional negligence on the part of the then-Preventive Officer, Shri Vipin Sharma. Charged with the statutory duty to verify the physical cargo against the invoice, Sharma submitted an examination report stating he had "inspected the lot." The subsequent seizure of nearly 175,000 units of prohibited or un-declared cargo from that very container proved that no meaningful physical examination was ever performed. This "casual approach" provided the syndicate with a virtual "green channel," directly enabling the entry of prohibited contrabands that pose a risk to national health and child safety.

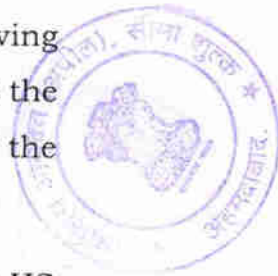
2.10 Under the Customs Valuation Rules (CVR), 2007, the Adjudicating Authority rejected the transaction values declared in Bill of Entry No. 2012895. Rule 12 was invoked because the significant mis-declaration rendered the declared values—and the associated invoices—fraudulent. Consequently, the value was re-determined using the "Best Judgment Method" under Rule 9. A government-approved Chartered Engineer assessed the market price of the seized goods at approx. Rs. 21.67 Crores, compared to a declared value of approx. Rs. 4.43 Lakhs.

2.11 On the basis of the investigation, Show Cause Notice dtd. 31.08.2023 was issued to the appellant and other persons. Consequently, the Adjudicating Authority passed the following order in respect of the appellant.

**IN RESPECT OF GOODS IMPORTED AND CLEARED THROUGH BILL OF ENTRY NO. 2012895 DT. 26.08.2022:**

(i) He ordered for absolute confiscation of total 85600 pcs. Of E-Cigarettes falling under HS Code 85434000 imported by M/s. M. M. Enterprises having market price of Rs. 20,54,40,000/- being prohibited goods in violation of the provisions of Section 111(d), 111(f), 111 (1) 111(m) 111(n) and 111(o) of the Customs Act, 1962.

(ii) He ordered for absolute confiscation of 89000 pcs. of toys falling under HS code No. 95030020 imported by M/s. M. M. Enterprises cleared having market price of Rs. 60,03,940/- being prohibited goods in violation of the provisions of Section 111(d), 111(f), 111 (1) 111(m) 111(n) and 111(o) of the Customs Act, 1962.



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(iii) He ordered for absolute confiscation of total 15000 pcs of Small Head Massager, 34100 Exercise Book, 6000 Hair Straightener, 200 Empty Cartons Boxes mis-declared in respect of quantity, value, other material particulars having total market price of total Rs. 52,99,192/- and used for concealment of prohibited goods i.e. E-Cigarettes, and Toys as mentioned at point (i) & (ii) above, under the provisions of Section 111(m), 111(1) and 119 of the Customs Act, 1962.

(v) He ordered to confiscate total 265 cartons (125+140) of E-Cigarettes containing total 212000 pcs. Cigarettes imported by then in the month of July and August, 2022 having market price of Rs. 50,88,00,000/- cleared through 02 import consignments under the provisions of Section 111(d), 111(f), 111 (1) 111(m) 111(n) and 111(o) of the Customs Act, 1962.

(vi) He imposed penalty of Rs. 50,00,000/- (Fifty Lakhs only) upon M/s. M.M. Enterprises under Section 112(a) (i) 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 argues that the adjudicating authority failed to appreciate the factual reality of the case, which involves the bonafide lending of an Import Export Code (IEC). The appellant firm asserts that the proprietor, Shri Tahir, lent the IEC to Shri Mohammad Asif Sathi for a promised fee of Rs. 25,000 per container for what he believed were legitimate imports. They contend there is no evidence of connivance or knowledge regarding the concealment of prohibited e-cigarettes, as the proprietor was not part of the WhatsApp communication groups used to coordinate the transactions and never received any payment for the lending.

3.2 A significant legal challenge is raised regarding the scope of the Show Cause Notice (SCN) versus the final Order-in-Original (OIO). The appellant submits that while the SCN proposed penalties under the broad Section 112(a), the adjudicating authority exceeded its jurisdiction by specifically imposing a penalty of Rs. 50,00,000 under Section 112(a)(i). Citing various Supreme Court



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and High Court precedents, the appellant maintains that an order cannot go beyond the foundation laid in the SCN, and doing so violates the principles of natural justice and the doctrine of audi alteram partem.

3.3 The appellant further challenges the jurisdiction of the authority based on statutory timelines prescribed under Section 28(9) of the Customs Act, 1962. They argue that since the notice was issued on August 31, 2023, it was required to be adjudicated within six months. Because the OIO was not issued until October 25, 2024—and no findings regarding a formal extension were provided—the appellant contends the proceedings should be deemed concluded as if no notice had ever been issued.

3.4 Finally, the firm asserts that the penalty is illogical and unreasonable because the investigation itself identified Shri Mohammad Asif Sathi as the mastermind and actual beneficiary owner. The appellant claims they lacked the financial capacity or contacts to orchestrate such an import and that lending an IEC is not inherently an illegal activity under the Foreign Trade Policy. Consequently, they argue that while the confiscation of the prohibited goods may be proper, the personal penalty on the appellant firm is without authority of law and should be set aside.

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 12.01.2026 following the principles of natural justice wherein Shri Anil Gidwani, Advocate, appeared for the hearing and he 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 Before going into the merits of the case, I find that the appeal has been filed with a delay of 27 days. The appellant has filed the application for condonation of delay. Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if



sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of 27 days beyond the initial sixty-day period, but within the extended thirty-day period. The Appellant has attributed the delay to the reason that they the appellant had been traveling out of country on routine basis due to his business due to which the appeal could not be filed with prescribed period of 60 days. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice.

5.2 Now coming to the merits of the case, I find that the core of the dispute lies in the nature of the seized 85,600 E-Cigarettes and 89,000 Toys. The Appellant's contention that these goods should be allowed redemption on payment of fine is legally untenable for several. The import of Electronic Cigarettes is not merely restricted but is strictly prohibited under the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (PECA). Section 4 of the PECA 2019 clearly states that no person shall, directly or indirectly, produce, manufacture, import, export, transport, sell, distribute or advertise e-cigarettes in India. Furthermore, DGFT Notification No. 20/2015-2020 dated 26.09.2019 revised the Import Policy of E-cigarettes (including all forms of Electronic Nicotine Delivery Systems [ENDS], Heat Not Burn Products, e-Hookah, and similar devices) to "Prohibited."

Under Section 2(33) of the Customs Act, 1962, "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force. Since PECA 2019 is a special legislation aimed at protecting public health (specifically preventing nicotine addiction among the youth), it overrides general trade provisions. **The Hon'ble Supreme Court in Sheikh Mohd. Omer vs. Collector of Customs (1983 (13) E.L.T. 1439 (S.C.))** held that the term "prohibited goods" is of wide amplitude and includes any goods imported in violation of any condition or restriction. In the case of e-cigarettes, where the prohibition is absolute, there is no provision in law to allow their entry into the domestic market through



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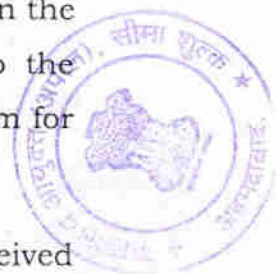
redemption. Allowing redemption would effectively mean regularizing a criminal act under the PECA 2019.

5.3 Regarding the 89,000 Toys, these were found to be non-compliant with the Bureau of Indian Standards (BIS) requirements. As per DGFT Notification No. 33/2015-2020, the import of toys is subject to mandatory compliance with Indian Standards and must bear the Standard Mark under a Licence from BIS. Toys without the requisite BIS certification and marking are treated as "prohibited goods" because they pose a direct safety hazard to children. Public health and safety cannot be compromised for commercial interests. Therefore, these toys cannot be allowed for home consumption under Section 125 of the Customs Act, as that would result in the release of substandard and potentially dangerous products into the hands of children.

5.4 Absolute confiscation is the rule for items that are deleterious to the health and safety of the nation. The adjudicating authority has correctly relied on the principle that the power to grant redemption under Section 125 is discretionary, and such discretion cannot be exercised in favor of goods that are legally banned by a central statute like PECA 2019. Consequently, I find that the absolute confiscation of both the E-Cigarettes and the Toys under Section 111(d) of the Customs Act, 1962, is legally sound and must be upheld.

5.5 The Appellant's primary defense is that they were "IEC providers" for a commission and were unaware of the e-cigarettes. This argument is legally fallacious. The Importer-Exporter Code (IEC) is a unique identification issued by the DGFT, and its use carries a heavy legal responsibility. Lending an IEC to a third party to allow them to import goods under a dummy name is a direct violation of the Foreign Trade Policy and an act of abetment in smuggling. In the instant case, the Appellant admitted to providing signed documents to the mastermind, Shri Asif Sathi. This act of "lending" created the legal platform for the smuggling cartel to operate.

5.6 The findings in the OIO clearly show that the Appellant received monetary benefits (₹25,000/- per transaction). This proves a quid pro quo for facilitating illegal activities. The claim of "innocence" is negated by the fact that the Appellant also created another dummy IEC (M/s J H Enterprises) for the mastermind. This demonstrates a clear intent to subvert the regulatory framework.



5.7 Section 119 of the Customs Act, 1962, provides that any goods used for concealing smuggled goods shall also be liable to confiscation. In this case, the massagers and exercise books were specifically used to create a "cover" for the e-cigarettes and toys. The quantity of declared goods was also found to be in excess, further indicating a deliberate attempt to mis-declare. I find that these goods are not merely dutiable items but tools of concealment, and their confiscation is legally mandatory.

5.8 The Appellant's primary contention is that as a mere "IEC holder" who was not the actual owner of the goods, they should be spared from heavy penalties. This argument is fundamentally flawed. Section 112(a)(i) of the Customs Act, 1962, is designed to penalize 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. By providing their IEC, pre-signed documents, and digital signatures to a smuggling cartel, the Appellant committed an act of active facilitation and abetment.

5.9 An IEC is not a tradable commodity; it is a statutory authorization. The Appellant, Shri Mohammed Tahir Menn, admitted in his statement dated 15.09.2022 that he allowed Shri Asif Sathi to use his IEC for a monetary consideration of ₹25,000/- per container. This admission proves that the Appellant voluntarily placed their legal identity at the disposal of a third party, knowing fully well that such an arrangement is used to bypass the strict regulatory oversight of the Customs Department. Section 114AA was introduced specifically to penalize the use of false and fabricated documents in export or import transactions. In this case, the Bill of Entry was filed using the Appellant's IEC, falsely declaring the goods as "Hair Straighteners" and "Exercise Books." Since the Appellant knowingly provided the documents that were used to make these false declarations, they are squarely covered under Section 114AA. The intent to deceive the department is evident from the fact that the Appellant was not a one-time offender; investigations revealed that his IEC was used for at least 212,000 past units of illegal imports. This "systematic lending" for profit constitutes a high degree of culpability that warrants the maximum penalty.

5.10 The Appellant has attempted to retract their earlier admissions. However, it is a settled law by the **Hon'ble Supreme Court in K.I. Pavunny vs. Asstt. Collector (1997) and Surjeet Singh Chhabra vs. UOI (1997)** that a statement recorded before a Customs Officer under Section 108 is a valid piece of evidence, even if retracted later, provided it was given voluntarily. The



Appellant's statement was detailed, mentioning specific names like Asif Sathi, Hanif Kapadia, and the commission amounts. Such granular detail cannot be "coerced." The statement clearly establishes that the Appellant was aware that the goods being imported were not their own and that they were acting as a "front" for a smuggling syndicate. In cases of smuggling, direct "eye-witness" evidence is rarely available. The Hon'ble Supreme Court in Collector of Customs vs. D. Bhoormull (1974) laid down that the Department is not required to prove its case with "mathematical precision" but on the basis of "preponderance of probability." Given that (i) the container was filled with 85,600 pieces of prohibited e-cigarettes, (ii) the goods were hidden behind declared items, and (iii) the Appellant has admitted to lending their IEC for profit, the probability of the Appellant's active involvement in the fraud is overwhelming.

5.11/ The Appellant's claim that they were "ignorant" of the contents of the container does not absolve them of liability. In the eyes of the law, an IEC holder is the Importer of Record and is responsible for every single item declared or found in a consignment imported in their name. Ignorance of the law is no excuse, and "willful blindness" to the illegal activities of a business associate (Asif Sathi) is equivalent to knowledge. Therefore, the penalty of ₹50,00,000/- imposed under Section 112(a) and 114AA is commensurate with the gravity of the offense and is hereby upheld.


5.12 The evidence collected by the DRI, including the statements under Section 108, proves that the Appellant was a vital cog in a well-organized smuggling syndicate. The lending of an IEC is not a "bonafide" business practice but a calculated risk taken for illegal gain. The absolute confiscation of prohibited goods and the imposition of penalty are fully justified.


6. In view of the detailed discussion above, I find no merit in the appeal filed by M/s. M M Enterprises. The findings of the Adjudicating Authority in QIO No. MCH/ADC/AKM/175/2024-25 dtd. 25.10.2024 are well-reasoned and supported by substantive evidence.



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7. The Appeal filed by M/s. M M Enterprises is hereby rejected.

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

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

F. No. S/49-331/CUS/MUN/2024-25  
5567

Date:28.01.2026

By Speed post /E-Mail

To,  
M/s. M M Enterprises,  
Ground Floor, Shop No. 2, Alfa Arcade,  
Sumra Deli Char Rasta, Ashapura Ring Road,  
Bhuj, Kutch, Gujarat 370001



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.