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 - 20251171MN0000806405

क	फ़ाइल संख्या FILE NO.	S/49-37/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-409-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	18.11.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/264/2023-24 dated 23.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	18.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Rarex Global LLP, EPIP UPSIDC Site V, Surjapur Industrial Area, Great Noida, Gautam Buddha Nagar, UP-201310

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** प्रतिसां, 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 M/s. Rarex Global LLP,EPIP UPSIDC Site V, Surjapur Industrial Area, Great Noida, Gautam Buddha Nagar, UP-201310 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/ADC/AK/ 264/2023-24 dated 23.02.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Customs, Customs, Mundra.

2. Facts of the case, in brief, are that the Appellant, filed Bill of Entry No. 9484324 dated 31.12.2023 through their CHA M/s Rajesh Tripathi (ACWPT6271ECH002) for import of "Fuel Oil"(CTH-27101990). The details declared in the Bill of entry are as under:

(Amt in Rs.)

Bill of Entry No. & Date	Description of goods	Qty. in MTS	Ass. value declared	Duty Payable declared
9484324 dtd. 31.12.2023	Fuel Oil	184.635	53,91,874/-	13,20,470/-

2.1 The said Bill of Entry was examined by the officers of docks examination officers on 04.01.2024 in the presence of Authorized Representative of Custom Broker and representative samples were drawn from the consignment. Samples were forwarded to Central Excise & Customs Laboratory (CECL), Vadodara for testing purpose under TM No.1199127 dated 04.01.2024. The goods/cargo of the said bill of entry were stuffed in 9*20 feet Containers. The Chemical Examiner Grade-II, CECL, Vadodara vide Test Report Lab No. RCL/Mundra/IMP/4983/08.01.2024 dated 19.01.2024 has submitted his report stating that-

"The sample as received is in the form of blackish brown oily liquid. It is composed of mixture of hydrocarbon more than 70% by we having following constants:

Density @ 15 Deg. C=0.8649 g/ml

Flash Point by COC=164 Deg. C;

Kinematics Viscosity @ 50 Deg. C=32.8Cst

Ash content =0.49% by wt.;

Water Content t=Nil

Sediment =0.64% by wt.

Acidity (inorganic)= Nil

GCV=10568 Cal/gm

Sulphur =0.169%

PCBs, mg/kg=0.114

PAHs, Percentage-0.00063

Lead Content, PPM=55.24

Arsenic Content, PPM=0.035

Cadmium + Chromium + Nickel, PPM=64.86

Above tested parameters sample/r does not meet the requirements of Fuel Oil IS: 1593:2018, in respect of Ash content, sediment content. It is off specification fuel oil/waste oil. The sample was further tested as per Circular 33/2001-Cus dated 04th June, 2001. It is hazardous waste".

2.2 From the above reports, it appeared that the imported cargo had been declared as "Fuel Oil" and classified under Tariff Item 27101990 ITC (HS), however on testing: it is revealed that the samples of the imported goods are off specification fuel oil/waste oil. The import of the waste is governed by the Hazardous and Other Waste (Management and Trans boundary Movement) Rules, 2016. As per definition given a Rule 3(39) in Part I of Notification dated 04.04.2016 Issued by the Ministry of Environment, Forest and Climate Change notified as "The Hazardous and other waste (Management and Transboundary) Rules 2016 'Waste Oil means any oil which includes spills of crude oil, emulsions, tank bottom sludge and slop oil generated from petroleum refiners, installations or ships and can be used as fuel in furnaces for energy recovery, if it meets the specifications laid down in Part-B of Scheduled V of "The Hazardous and other waste (Management and Transboundary) Rules 2016".2.4 Waste oil is covered under Schedule IV under Rule 6(1)(ii) and 6(2) of Hazardous & Other Waste (Management and Transboundary Movement)Rules, 2016 issued by the Ministry of Environment, Forest and Climate Change. The waste oil figures at Sr. No. 20 of the Schedule IV of the listed recyclable hazardous wastes. Import of Waste oil is restricted as authorization of Central or State Pollution Control Board or Registration under the provisions of Hazardous and other waste (Management and Transboundary) Rules 2016is required. The imported Off Specification Fuel Oil/Waste Oil with declared valued of Rs.53,91,874/- appeared to be classifiable under Custom Tariff item27109900 and imported in violation of the provisions of Hazardous and other waste (Management and

Transboundary) Rules 2016 read with the provisions of Section 11 of the Customs Act, 1962 and hence appeared liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962.The Appellant for such acts of commission/ omission also appeared liable for penalty under Section 112 (a) (i) of the Customs Act,1962.

2.3 The appellant vide letter dated 19.02.2024 submitted their consent to decide the matter on merit and requested for waive of Show Cause Notice and Personal Hearing in the matter. However, the importerhas requested for release of goods for re-export purpose.

2.4 Consequently, the Adjudicating Authority passed the order as under:

i. He ordered to reject the declared classification i.e. 27101990 of the goods imported vide Bill of Entry No. 9484324 dated 31.12.2023.

ii. He ordered to classify the goods imported vide Bill of Entry No. 9484324 dated 31.12.2023 under CTH 27109900.

iii. He ordered for confiscation of the goods imported vide Bill of Entry No.9484324 dated 31.12.2023 declared as "Fuel Oil" weighing 184.635 MTS having Assessable Value of Rs.53,91,874/- imported vide Bill of Entry No. 9484324 dated 31.12.2023 under Section 111(d) &Section 111(m) of the Customs Act, 1962. However, he gave an option to the appellant to redeem the confiscated goods on payment of redemption fine of Rs.6,00,000/-(Rs Six Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

iv. He imposed a penalty of Rs.3,00,000/- (Rs. Three Lakhs only) on the Appellant M/s. Rarex Global LLP under Section 112 (a)(i) of the Custom Act,1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The Appellant has submitted that the order in original passed by the

Adjudicating authority is bad in law and is not a speaking order. The Adjudication order does not have any discussion and findings on the role of the appellant and how the penalty was imposable under the appellant.

3.2 It is submitted that the Adjudicating authority erred in not giving any findings of his, except citing the Test Report issued by the Chief Chemist, as to why the goods were liable for seizure. Secondly, the goods were not considered for seizure and hence were not seized by the authorities and hence the same were not liable for confiscation at all. It is submitted that the property vests with the Government only after the same gets seized under Section 110 of the Customs Act, 1962. Although the goods were held liable for confiscation, the same were not seized and hence the unless the goods were seized there could not be any confiscation under the Act. As per Section 126 of the Customs Act, 1962 the property of the goods upon confiscation shall vest in the Central Government. Under Section 126(2) it is clearly provided that upon confiscation, the officer shall take and hold possession of the goods. Thus, unless the goods are seized there cannot be any confiscation. It is submitted that the Hon'ble CESTAT, New Delhi in the case of Commissioner of Customs, Kandla v/s Sahil Trends reported in 2004(177) ELT 732 (Tri. Del) held that goods being not seized under Section 110 of the Customs Act, 1962 were not liable for confiscation and hence redemption fine was not imposable. It was also held therein that penalty was not imposable under Section 112. The relevant portion of the said decision is reproduced below:

"We note that the occasion for imposition of redemption fine can arise only if the goods are seized under Section 110. In the impugned order, though the goods have been held to be liable for confiscation there was no seizure of the goods. Consequently, there was no order to confiscate the goods. Unless the goods are seized there cannot be any confiscation thereof. In this connection, reference is invited to Section 126 of the Customs Act, which provides that, upon confiscation of the goods, the property shall thereupon vest in the Central Government. Section 126(2) provides that the officer adjudicating confiscation, shall take and hold possession of the confiscated goods. The effect of all these provisions clearly indicates that, unless the goods are seized there cannot be any confiscation thereof. Whereas for the purpose of imposition of penalty it only needs to be demonstrated that the goods are liable for confiscation and need not be actually confiscated.

Therefore, we hold that the adjudicating authority was right in imposing only the penalty and not imposing redemption fine.

4. In the judgment of the Apex Court cited in support of the appeals the facts are somewhat different, inasmuch as there was initial seizure and the goods were allowed to be released provisionally in terms of a bond. In the instant case, the goods have not been seized at all as these were unavailable ab initio. Therefore, the appeals of the Revenue on this point are without any merits and deserves to be rejected.

5. So far as the other ground viz. non-imposition of penalty under Section 112, is concerned, we note that, the penalty imposed under Section 114A of the Act is adequate and, therefore, there appears to be no case for imposition of a separate penalty under Section 112.

...""

It is therefore submitted that the Order-in-original suffers from infirmities and hence may kindly be set aside.

3.3 It is further submitted that since in the case of the appellant the declared value and quantity has been accepted and hence there is no misdeclaration on the said front. Further in the said case, the test reports did not clearly specify the nature of the goods and did not specify that the goods were misdeclared. The chemist did not follow the prescribed procedure in declaring the goods as Class A, B or C as per the Petroleum Act, 1934 and thus any other interpretation which is not explicit is erroneous. In the present case, there is a classification dispute. Such issues are not to be encumbered with penalties and fines, and that too, of very prohibitive nature. The appellant has relied on the decision of the Hon'ble CESTAT Mumbai in the case of Wockardt Ltd v/s Commissioner of Customs (Import) Mumbai reported in 2022(1) Centax 65 (tri. Bom) in which it was held that no penalty could have been imposed as "the issue involved is of classification dispute of the goods imported by the appellant. It is settled law that in case where the issue is related to interpretation of classification of the goods, penalty should not be imposed in such cases. The ratio of the various judgments on this issue cited by the appellant squarely applicable in the present case. Therefore, the mala fide intention to evade duty is not established in the present case, therefore the appellant is not liable for penalty under section 114A of Customs Act, 1962. Their case squarely falls under the said decision of the Hon'ble CESTAT Mumbai and hence the order in original imposing draconian penalties and fines is liable to be set aside as not

maintainable.

3.4 It is submitted that the appellant is a regular importer of similar goods from the different supplier in the past as well. All the consignments imported by the appellant in the past were tested and were allowed to be cleared as there was no such ash content or sediment was detected. The appellant received the goods from a supplier of repute and has no intention of contravening any provisions of any law of the land. The Adjudicating authority also did not discuss any deliberate attempt on the part of the appellant to contravene the provisions with any malafide intention. Thus it shows the bona fides of the appellant in importation of the goods in a licit manner. It is a well-known fact that in many cases of petroleum consignments there is always a variation in a few parameters for umpteen reasons beyond the control of the persons dealing in the petroleum products. This does not automatically mean that there was any deliberate attempt to contravene the provisions of the Act. It is not an allegation that the appellant had asked the supplier to send hazardous waste Besides, the authorities did not find any variation in the quantity, vale etc of the goods under import and this also shows that the appellant was having a bona fide intention to import the goods. The appellant has submitted that in the recent the appellant had imported the similar goods in the past and were allowed clearance after testing.

3.5 Appellant has no intention of mis-declaration or any mis-classification of the imported goods to evade the payment of Customs Duties. Appellant has submitted all the import documents. It is further submitted that change in classification from 27101990 to 27109900 does not alter the Tariff structure and hence there is no additional Customs Duty implication on the appellant due to the change in the classification. Hence the appellant cannot be saddled with the allegation of evasion of Customs duties by declaring a different classification. Merely because there is a minor change in the parameters which were noticed after testing the goods, it cannot be said that the appellant had a reason to believe that the goods were liable for confiscation. Now as regards Customs Circular 33/2001-Cus dated 4th June 2001 it is submitted that (https://taxinformation.cbic.gov.in/view- pdf/1001259/ENG/Circulars) as per para-1 of the said circular there are Four parameters where max limits are prescribed out of which two criteria viz. Acidity -Nil & Water Content -NIL (Though 1% max is allowed) are fulfilled and there is marginal difference as to Ash Content and Sediment. Just based on these two criteria, it has been

adjudicated as off specification though there is explicitly mentioned at para-3 of the said circular about further testing. Now as per para-3, "Products/furnace oil which has a viscosity greater than 370centistokes at 50 degree centigrade should be classified as off specification furnace oil / waste oil" whereas as mentioned in para 2.2. of the OIO Viscosity mentioned as 32.8 thus well within the limit. Going ahead with para-5 of the said circular: "Grade LV viscosity up to 80 centistokes should confirm to a maximum of 3.5% sulphur by weight" whereas as mentioned at para 2.2 of the OIO, Sulphur content is 0.169% which is well below the limit. As per sub-para 1 of Para-7 of the circular referred above, "Products/furnace oil having less than 66 'C flash point should be considered as off specification furnace oil / waste oil", whereas in the instant case Flash Point is 164 Deg C.

3.6 It is pertinent to note that the Honourable CESTAT Ahmedabad, in order reported in 2024(387)ELT 211 (Tri.-Ahmd) in respect of Gaurav Lubricants Industries Pvt. Ltd v/s Commissioner of Customs held that since CECL Vadodara did not have the facility to test the waste oil the said report could not be accepted. The appellant wishes to draw the kind attention of the Hon'ble Commissioner Appeals to the fact that it is thus seen that the test report was also not accepted by the Hon'ble CESTAT on technical grounds. The appellant is citing the said case law only to highlight the practical difficulties which arise in dealing with the petroleum products. In view of the same the order-in-original is not a reasoned order and hence liable to be set aside. It is therefore submitted that the penalty cannot be imposed on the Appellant under Section 112(a) of the Act as they had not done or omitted to do any act which act or omission would render such goods liable to confiscation under Section 111 or abetted the doing or omission of such an act as per the clarifications given above. Therefore, as no case made out against the Appellant to impose the penalty under Section 112(a) of the Customs Act 1962, the penalty imposed upon the Appellant is liable to be set aside and the impugned Order needs to be set aside.

3.7 The Adjudicating authority has allowed the appellant to re-export the goods after imposition of redemption fine of Rs. Six Lakhs. It is submitted that normally shipping lines grant a detention free period of 15 days and in the present case there is a delay on 15 days from the date of drawal of sample to the date of test report. Further, from the date of the order- in-original till date, the costs have gone up so high that it has become unviable for them to re-export. The appellant had initially decided to re-export the goods as the same were apparently not of the description sought by the appellant and the appellant had

initiated steps to re-export the goods and also requested for the same. The appellant had, with the same intention to save time, gave consent for waiver of show cause notice and hearing. However, in the meantime, the costs of detention, demurrage and other overheads have gone up to almost INR 98.84 Lacs as against the cost of goods i.e. INR 54 Lacs. The appellant is left with no other choice but to forgo the offer of redemption of the goods and not to claim the goods for re-export. For this the appellant has already written to the concerned jurisdictional Customs authorities in this regard communicating his desire not to take custody of the goods.

3.8 Against the said backdrop, and considering the venial nature of the breach that got committed totally unintentionally on the part of the foreign supplier of the appellant, it is submitted that the Adjudicating authority has imposed penalty and redemption fine without going into the said factors. It is submitted that the Adjudicating authority erred in relying only on the test report and without conducting any further investigation. It is further submitted that when the goods are ordered to be re-exported, no redemption find is imposable.

3.9 The appellant has relied on the decisions of the various appellate authorities in this regard

(a) 2021 (377) ELT 458 (Tri. -Che) SELVAM INDUSTRIES LTD V/S CC TUTICORIN

(b) 2002 (141) ELT 635 (MAD) SANKAR PANDI V/S UNION OF INDIA

(c) above decision was upheld by Apex Court in 2018(360)ELT A214(SC)

(d) 1999(113)ELT 776(SC) - Siemens Ltd v/s CC

3.10 However, since the appellant is no more interested in getting the possession of the goods, the imposition of redemption fine is inconsequential. Yet it is submitted view of the above plethora of decisions the redemption fine imposed by the Adjudicating authority while ordering re-export of goods is not legal proper and correct. As the appellant has already suffered immensely in financial terms, by not having the custody of the goods, the appellant fervently requests the Hon'ble Commissioner Appeals to kindly set aside/modify the impugned order and grant relief to the appellant by waiving the penalty imposed.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 16.10.2025, following the principles of natural justice wherein Shri Rahul Gajera & Ms Anshu Gupta, both Advocates appeared for the hearing and re-iterated the submissions made at the time of filing the appeal and further requested for reduction/waiver in redemption fine and penalty. They also made additional written submission which is detailed below:

4.1 The appellant filed Bill of Entry No. 9484324 for import of "Fuel Oil" (CTH-27101990) but adjudicating authority erred in reclassifying the imported goods as waste oil falling under CTH 27109900 on the ground that the appellant lacked authorization under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. (HWMR, 2016) The reclassification is entirely unjustified, as the Chemical Examiner's test report dated 19.01.2024 merely labels the product as "off-specification fuel oil/waste oil" without identifying or stating any specific hazardous characteristics. Under Part C of Schedule III of the said Rules, hazardous classification must be supported by the presence of defined properties such as flammability, reactivity, corrosivity, or ecotoxicity. However, the test report does not mention, test, or evaluate any of these mandatory parameters. In the absence of such findings, the goods cannot be legally categorized as "hazardous waste". Therefore, the classification under CTH 27109900 is unsustainable in law and fact. The goods merits declared classification CTH 27101990 as "Fuel Oil," as reflected in the Bill of Entry dated 31.12.2023.

4.2 The Adjudicating Authority erred in holding that the imported goods are "hazardous waste" on the premise that they did not meet the requirements of IS: 1593:2018 for Fuel Oil, particularly in respect of Ash Content and Sediment Content were beyond the prescribed standards. The definition of "waste oil" as per section 3(39) of HWMR Rules, means any oil includes spills of crude oil, emulsions, tank bottom sludge and slop oil generated from petroleum refineries, installations or ships and can be used as fuel in furnaces for energy recovery, if it meets specification laid down in part B of scheduled V either as such or after reprocessing. The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 clearly provides that such classification must be based on the specifications prescribed in Part B of Schedule V. The appellant has submitted that, as per the CECL Test Report dated 19.01.2024,

the product satisfied all parameters of Schedule V except for sediment content, which was reported at 0.64% against the permissible limit of 0.25%. Since every other parameter confirmed to the requirements. the goods cannot be treated as "hazardous waste" on that basis as, the said parameters pertain to waste oil & part III of hazardous waste. Further, deviation as per the report relates only to one of several criteria, the appellant's request for a re-test ought to have been allowed to arrive at a fair and conclusive finding.

4.3 The test report is not tenable. As per Rule 12 of Chapter 3 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016, sub-rule (8) clearly states that prior permission is required only for wastes not listed in Schedule III but exhibiting hazardous characteristics as defined under Part C. In the present case, the goods are not listed, and no hazardous characteristics have been identified by test report. Part C of Schedule III specifies all hazardous characteristics; however, the test report fails to establish the presence of any such characteristic. Therefore, the goods cannot be classified as hazardous waste. Moreover, the test report relied upon by the Adjudicating Authority lacks reliability and cannot form a valid basis for treating the goods as hazardous waste. Hence, the interpretation of the Adjudicating Authority based solely on such an unreliable test report is not tenable. Furthermore, Schedule V, Part B of HVWM Rules, 2016 prescribes the specifications for fuel oil derived from waste oil. The report highlights only one non-conforming parameter-sediment content which alone cannot justify classifying the product as waste oil, especially when all other parameters conform to the prescribed standards. Hence, the test report is not tenable, and a re-test is warranted to determine the true nature of the goods.

4.4 The appellant made a specific and justified request for re-testing the sample with reference to Schedule III, Part C parameters. No response to this request without any justification has deprived the appellant of the right to rebut and defend itself amounting to a procedural lapse.

4.5 The adjudicating authority itself allowed re-export of the goods. This acknowledges the absence of mala fide or deliberate violation by the appellant. In such a case, confiscation along with penalty and fine is contradictory, excessive, and not aligned with the object of Section 125 or 112(a)(i) of the Customs Act. Reliance placed following judgements below:

i. M/s. Global Enterprises v. CC (NS-V) 2019 (4) TMI 1050 CESTAT Mumbai. Held: The Tribunal held that since re-export of the goods was ordered, redemption fine and penalty cannot be sustained. Re-export itself involves financial consequences and acts as sufficient deterrence. Accordingly, penalty was set aside. and detriment was confined to re-export only.

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 Appellant argues the classification is flawed because the test report does not refer to or test for specific hazardous characteristics (e.g., flammability, corrosivity) as mandated by Part C of Schedule III of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HWMR, 2016). Only the Sediment Content exceeded the permissible limit of 0.25% (reported as 0.64%) for fuel derived from waste oil under Part B of Schedule V of HWMR, 2016. Since all other technical parameters like Kinematics Viscosity, Sulphur, and Flash Point were within the acceptable limits mentioned in the relevant Customs Circulars/Specifications, a minor deviation in one parameter does not automatically categorize the product as 'hazardous waste'.

5.2 The imported goods are a mixture of hydrocarbons and were declared as "Fuel Oil" (CTH-27101990). Since the test report shows the goods are "off-specification fuel oil/waste oil" and fail to meet the declared IS standards, the original classification is correctly rejected under Section 46(4A) and the goods are deemed as not corresponding with the entry in a material particular, thus liable to confiscation under Section 111(m) of the Customs Act, 1962. The legal provisions, specifically Rule 12 of Chapter 3 of the HWMR, 2016, make the import of wastes not listed in Schedule III but exhibiting hazardous characteristics under Part C of Schedule III subject to prior written permission of the Ministry of Environment, Forest and Climate Change. The finding that the goods are Waste Oil (a restricted item requiring authorization) and hence liable to re-classification under CTH 27109900 is sustainable, as the import without the requisite authorization or registration under the HWMR, 2016 clearly violates Section 11 of the Customs Act, 1962.

5.3 The request for re-test, specifically with reference to the mandatory parameters listed under Part C of Schedule III (Hazardous Characteristics), was essential to conclusively determine the product's classification as 'hazardous waste' and was arbitrarily denied, leading to a violation of natural justice. The Appellant relies on the CESTAT Mumbai ruling in M/s. Global Enterprises v. CC (NS-V) to assert that such a denial is a procedural lapse. They also cite Alka Petro Global Pvt Ltd v/s Commissioner of Customs, Kandla where denial of retest in oil cargo cases created serious doubt on the original test reports. The Appellant filed an application for re-test dated 28.06.2025, arguing the original test report (19.01.2024) was legally deficient as it failed to specifically test for or state the presence of any hazardous characteristics as mandated by Part C of Schedule III of the HWMR, 2016. Non-action on this request was argued to be a violation of natural justice.

5.4 The original test report was dated 19.01.2024, and the formal adjudication (OIO) occurred on 23.02.2024. The Appellant's request for re-test is explicitly dated 28.06.2025, which is over a year after the initial test and several months after the OIO was passed. The significant delay in raising this request and its timing, after the goods were confiscated and penalty/fine was determined, severely diminishes the force of the argument that its denial constitutes a fundamental breach of natural justice, and it appears largely as an afterthought in the course of filing the appeal. However, the fact remains that the original test report relied upon for classifying the goods as hazardous waste failed to document the presence of mandatory properties such as flammability, corrosivity, or ecotoxicity, as listed in Part C of Schedule III of HWMR, 2016. This technical deficiency in the original evidence, supported by the judicial view in Alka Petro Global Pvt Ltd v/s Commissioner of Customs, Kandla, warrants a lenient consideration in the quantum of fine/penalty imposed, rather than outright nullification of the OIO.

5.5 The Appellant has contended that the OIO itself permits re-export of the goods. The Appellant argues that once re-export is permitted, the imposition of a substantial Redemption Fine and Penalty is contradictory and excessive, as the re-export itself constitutes a sufficient financial deterrent. They rely on the CESTAT Mumbai judgment in M/s. Global Enterprises v. CC (NS-V), where the Tribunal explicitly held *that "since re-export of the goods was ordered, redemption fine and penalty cannot be sustained" and the detriment should be "limited to that of re-export of the said goods without having to redeem the goods and without being penalised".*

5.6 The argument that no fine/penalty is leviable when re-export is permitted is not universally accepted, as the offence of improper importation in violation of the law is already complete. However, the quantum of fine and penalty must reflect the gravity of the contravention, the degree of mens rea, and the absence of injury to the domestic market when re-export is mandated. The Redemption Fine and Penalty imposed are disproportionate and excessive given the mitigating circumstances and judicial precedents for cases involving a re-export mandate. In this case, the re-classification from CTH 27101990 to CTH 27109900 does not alter the Tariff structure, meaning there is no Customs Duty evasion implied by the mis-classification. The contravention is primarily a breach of the Hazardous Waste Rules, 2016 (a non-Customs law, making the goods prohibited under Section 111(d)). The specific permission to re-export ensures the goods do not enter the domestic stream, thereby mitigating the risk to the environment or to the domestic market, which is a key factor cited in judicial precedents for leniency. The CESTAT ruling in M/s. Global Enterprises directly supports the Appellant's plea for substantial reduction/waiver of fine and penalty when re-export is allowed. This is a binding precedent for the principle of proportionality in such cases. The bona fides of the Appellant are supported by their attempt to re-export from the beginning and the absence of any finding of revenue evasion. The fact that they initially gave up their claim due to prohibitive detention and ground rent charges (₹ 98.84 Lacs, which is almost double the declared value of ₹ 53.91 Lacs) further demonstrates that re-export already imposes a massive financial detriment.

5.7 Considering the absence of Customs Duty evasion, the explicit permission for re-export (which nullifies market access), and the enormous financial burden of detention and ground rent already incurred by the Appellant, the Redemption Fine of ₹ 6,00,000/- and Penalty of ₹ 3,00,000/- are excessive and disproportionate to the contravention, in line with the principle laid down in the M/s. Global Enterprises case. To balance the gravity of violating the mandatory Hazardous Waste Rules (which renders the goods liable to confiscation) with the mitigating factors of no revenue evasion and permitted re-export, a reduction is justified. Applying the requested reduction to both the Redemption Fine and the Penalty ensures a substantial punishment for the offence while acknowledging the principles of proportionality and judicial precedent. Given the absence of mens rea for duty evasion and the crushing financial burden already incurred due to the re-export condition and associated charges, the imposed fine and penalty are excessive. A reduction in redemption fine and penalty is deemed fair and balanced, serving as a deterrent for the

violation of the HWMR, 2016, while acknowledging the mitigating circumstances and legal precedents.

5.8 The Appellant, M/s. Rarex Global LLP, was found to have imported goods declared as "Fuel Oil" which were correctly re-classified as "Waste Oil" (CTH 27109900) because the consignment was off-specification and imported without the mandatory authorization/registration under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HWMR, 2016). This contravention renders the goods liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. While the Appellant's belated request for a re-test (dated 28.06.2025) appears as an afterthought submitted after the original adjudication (OIO dated 23.02.2024), the final findings acknowledge that the core charge of the offense (violating the HWMR, 2016) is established. The imposition of a penalty and fine is thus warranted. However, recognizing the significant mitigating factors—primarily the explicit condition for re-export only (which protects the domestic market) and the absence of any Customs Duty evasion —the initial Redemption Fine of ₹ 6,00,000/- and Penalty of ₹ 3,00,000/- are found to be excessive. Judicial precedents, such as the Tribunal's ruling in M/s. Global Enterprises, emphasize that when re-export is permitted, the associated financial detriment (including the admitted detention charges of approximately ₹ 98.84 Lacs) serves as sufficient deterrence. Accordingly, the Order-in-Original is confirmed as to the classification and confiscation, but the penalty and fine are proportionally reduced to ensure a just and equitable outcome.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The Order-in-Original No. MCH/ADC/AK/264/2023-24 dated 23.02.2024 is hereby partially upheld and partially modified to the extent that Redemption Fine is reduced from ₹ 6,00,000/- to ₹ 4,50,000/- (Rupees Four Lakh Fifty Thousand Only) and Penalty reduced from ₹ 3,00,000/- to ₹ 2,25,000/- (Rupees Two Lakh Twenty-Five Thousand Only).

7. The appeal filed by M/s. Rarex Global LLP is hereby partially allowed.

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

F. No. S/49-37/CUS/MUN/2024-25 Date:18.11.2025

By Speed post /E-Mail

To,
M/s. Rarex Global LLP,
EPIP UPSIDC Site V, Surjapur Industrial Area,
Great Noida, Gautam Buddha Nagar, UP-201310
(Email-info.rarex@gmail.com)

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.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD