



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20260171MN00008808F9

क	फ़ाइल संख्या FILE NO.	S/49-244/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-662-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/140/2024-25 dated 20.09.2024
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.01.2026
	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Kalpana Exim, Office No. B-11, Hotel Indraprasth, Near Shakti Nagar Circle, Adani Port Road, Mundra (K) - 370 421.



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; पाँच 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.
(घ)	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.



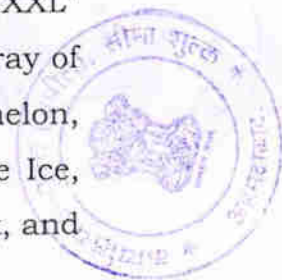
**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Kalpana Exim, Office No. B-11, Hotel Indraprasth, Near Shakti Nagar Circle, Adani Port Road, Mundra (K) – 370 421, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AK/140/2024-25 dated 20.09.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra.

2. Facts of the case, in brief, are that the present matter pertains to a complex, multi-layered investigation and the subsequent seizure of import goods relating to eighteen (18) separate consignments processed through eight (08) distinct importers. These activities were identified by the Directorate of Revenue Intelligence (DRI) as part of a highly organized and systematic operation managed by a common smuggling cartel. The investigation was precipitated by specific, actionable intelligence gathered by the DRI, which indicated that a transport vehicle moving toward Mumbai was laden with concealed foreign-brand electronic cigarettes that had been cleared through Mundra Port. Following a rigorous analysis of system data by the DRI Gandhidham unit, Vehicle No. GJ12BV0610 was identified as the carrier of Container No. TLLU4615592. The vehicle was intercepted by the DRI Surat Regional Unit on September 1, 2022, near Palsana Chokdi on the National Highway.

2.1 A meticulous search of Container No. TLLU4615592 was conducted in the presence of two independent Panchas and documented under the Panchnama dated September 1/2, 2022. During the examination, officers recovered 107 cartons containing a total of 85,600 units of "DK123 XXL" (Yuotto brand) electronic cigarettes. These products were found in an array of flavors designed for the domestic market, including Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, and Milk Coffee.

2.2 The investigation established that these electronic cigarettes fall under HS code 85434000. Their importation is explicitly prohibited vide Notification 20/2015-2020 dated September 26, 2019, and the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport,



Sale, Distribution, Storage and Advertisement) Act, 2019. Consequently, the entire consignment was detained and later formally seized under the provisions of the Customs Act, 1962, as the goods were knowingly used for concealment and represented a direct violation of national health and trade policies. This interception served as the catalyst for a wider inquiry into the syndicate's use of multiple dummy entities and "benami" importers to facilitate illegal trade.

2.3 The specific scope of this impugned order focuses on an import consignment associated with M/s. JYM Global Trading Company (IEC No. ANUPG6581F) involving Container No. TEMU7694450. In this instance, the goods were declared in the manifest and IGM No. 2320512 as "754 carton Floor Clean MOP (Misc. Item non-popular brand)" under HS Code 96039000. However, physical examination conducted by DRI officials under the Panchnama dated September 12, 2022, revealed a total absence of the declared moulds or mops.

2.4 Instead, the container was found to be entirely stuffed with 98,000 pieces of "Pop-up Toys" and 24,000 pieces of "Dancing Cactus" toys. It was observed that the importer deliberately refrained from filing a Bill of Entry (B/E) for this specific consignment. This was identified as a strategic omission—a "wait and watch" tactic—intended to evade interception after the syndicate realized that the DRI had already initiated enforcement actions against their other containers at Mundra Port. By withholding the B/E, the cartel attempted to distance the entity from the physical goods once they became "hot."

2.5 Beyond the gross mis-declaration of the items, these toys were found to be in direct contravention of Policy Condition 2 of Chapter 95 of the Customs Tariff. This regulation is a critical safety safeguard, mandating that all imported toys (under EXIM Codes 95030010, 95030020, 95030030, and 95030090) must be accompanied by certificates demonstrating compliance with Bureau of Indian Standards (BIS) safety norms. These standards include:

IS: 9873 (Part 1): Safety aspects related to mechanical and physical properties.

IS: 9873 (Part 2): Flammability requirements.

IS: 9873 (Part 3): Migration of certain elements (ensuring no toxic heavy metals are present).

IS: 15644: Safety of Electric Toys (specifically relevant to the "Dancing Cactus" models).



*[Handwritten signature]*

2.6 The investigation confirmed that no such compliance certificates were produced. In the absence of mandatory BIS compliance and NABL accredited lab testing, the toys were classified as "offending goods." They were held liable for absolute confiscation under Sections 111(d), 111(f), and 111(m) of the Customs Act, 1962, as they posed a potential risk to public safety and bypassed essential quality control protocols designed to protect children.

2.7 The DRI investigation identified Shri Asif Sathi as the primary architect and beneficial owner of the smuggling racket. Acting as the mastermind, he utilized a network of front or "benami" entities to import prohibited, restricted, and grossly undervalued products. The syndicate's operational methodology involved the acquisition of Import Export Codes (IECs) from various firms by offering fixed monetary benefits to the proprietors—ranging from INR 15,000 to INR 50,000 per consignment—in exchange for their signatures on blank or fraudulent import documents.

2.8 Shri Asif Sathi effectively remained "behind the curtain," managing the operations through a sophisticated logistical chain. He utilized encrypted communication and WhatsApp groups, such as the group named "Mm," to coordinate with associates. These communications included instructions on how to "stuff" containers to hide prohibited items like e-cigarettes and managing the "crossing" of containers—moving goods from one vehicle to another after customs clearance—to avoid tracking through e-way bills.

2.9 Several key associates were found to have facilitated these illegal clearances:

Shri Baldevsinh Vala (M/s. Kalpana Exim): Acted as the primary logistical coordinator at Mundra. He was instrumental in forging documents provided by foreign suppliers, manipulating invoice values, and ensuring the smooth transition of goods from the SEZ to warehouses in Bhiwandi.

Shri Samir Sharma (G-Card Holder, M/s. Al Cargo Services): Misused sub-login IDs on the SEZ online portal—a practice deemed unauthorized under the SEZ Act—to file clearances for dummy importers without ever verifying the genuineness of the IEC holders. He allegedly received between INR 2.5 lakh to INR 3 lakh per consignment for facilitating these high-risk clearances.

Shri Mohammed Tahir Menn: Acted as a primary coordinator, introducing the mastermind to customs clearers and managing the administrative needs of the dummy firms, including M/s. MM Enterprises and M/s. JH Enterprises.

Shri Hanif Kapadia: A business associate of Shri Asif Sathi who managed firms in China, such as M/s. AH International Trading Co. Limited and M/s. HK Longcheng Trade Co. Limited. These entities were used to route mis-declared and undervalued goods to India, providing the necessary international leg of the smuggling operation.

2.10 The financial infrastructure of the cartel was designed to obscure the true source of funds. Cash deposits and bank transfers from domestic purchasers were funneled through the accounts of dummy firms to settle liabilities with foreign suppliers. This "closed-loop" financial system allowed the syndicate to bypass traditional banking scrutiny. When the DRI initiated its crackdown in September 2022, the syndicate attempted desperate evasive maneuvers. For example, in the case of Container No. TGBU5160748, the importers in connivance with the shipper attempted to change the port of discharge from Mundra to Jebel Ali, Dubai, and even changed the name of the importer to "Sasco Global Logistics" to divert the contraband and avoid seizure. These efforts were unsuccessful as the DRI had already flagged the containers.

2.11 Due to the systematic and gross mis-declaration in terms of description, classification, and quantity, the transaction values declared in the associated invoices (such as Invoice No. YY2022117) were rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The investigation noted that actual transaction values were unavailable because the goods found bore no relation to the goods declared. A formal redetermination of value was performed in accordance with Rule 9 (Residual Method), utilizing market price assessments provided by a government-approved Chartered Engineer, Shri Kunal Ajay Kumar. The value of the toys found in the JYM Global consignment was reassessed at INR 2,44,20,000/-.

2.12 On the basis of the investigation, Show Cause Notice was issued to M/s. JYM Global and other persons involved including the appellant. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. JYM Global, Shri Asif Sathi, Shri Hanif Kapadia, and other accomplices under Sections 112(a) and 114AA of the Customs Act, 1962, for their roles in a "well-



hatched conspiracy" to defraud the national exchequer. Vide impugned order, following penalties were imposed on the appellant.

(A) IN RESPECT OF OFFENDING GOODS I.E. TOYS, IMPORTED WITHOUT MANDATORY BIS:

(i) He imposed penalty of Rs. 7,00,000/- on the appellant under section 112(a)(i) of the Customs Act, 1962.

(B) IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:

(i) He imposed penalty of Rs. 3,00,000/- upon appellant under Section 114(AA) of the Customs Act, 1962.

**SUBMISSIONS OF THE APPELLANT:**

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant focuses primarily on the basis that the impugned order is non-speaking and fails to address the specific defenses raised during adjudication. The appellant contends that the authority failed to produce any evidence linking them to the import or clearance activities of the goods in question, or proving their participation in any "whatsapp group" or communication with the beneficial owners. Consequently, they argue that no omission or commission rendering the goods liable for confiscation can be attributed to them.

3.2 Furthermore, the appeal asserts a significant violation of natural justice, as the entire investigation was allegedly conducted behind the appellant's back without recording their statement. The appellant emphasizes that there is no evidence of prior knowledge regarding the actual nature of the goods—a claim they argue could have been verified if their request for the cross-examination of key individuals, such as Shri Asif Sathi and Shri Samir Sharma,

had not been brushed aside without findings.

3.3 Lastly, the appellant highlights a critical factual discrepancy: since no Bill of Entry was ever filed for the goods imported by M/s. JYM, there was no occasion for the appellant to issue invoices for transportation or forwarding services. They point out that neither the Show Cause Notice nor the final order identifies any specific invoice issued by them related to this consignment. On these grounds, the appellant maintains that the findings of "knowingly" involving themselves in a smuggling conspiracy are unsubstantiated and the resulting penalties should be quashed.

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 10.12.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

**DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The Appellant's primary defense rests on the assertion that the Proprietor, Shri Abhalsinh Vala, was personally unaware of the day-to-day operations due to family issues, and that the alleged acts were committed solely by the Authorized Signatory, Shri Baldevsinh Vala. I find this line of reasoning legally untenable. In Indian law, it is a settled principle that a sole proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. Therefore, the "Appellant" (M/s. Kalpana Exim) and "Shri Abhalsinh Vala" are one and the same in the eyes of the law. Any liability incurred by the firm is a direct liability of the proprietor.

5.2 Section 147 of the Customs Act, 1962, provides a comprehensive framework for the liability of principals and agents. Section 147(2) explicitly states that any act done by an agent (including an Authorized Signatory) on behalf of the owner/importer shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner. Section 147(3)

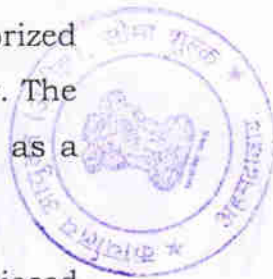


further clarifies that when a person is expressly or impliedly authorized to act as an agent, they are deemed to be the owner/importer for the purposes of the Act, without prejudice to the primary liability of the owner. In this case, Shri Baldevsinh Vala was the "Authorized Signatory"—a position of significant trust and legal agency. By granting him this authority, the Proprietor clothed him with the power to bind the firm. The law does not permit a proprietor to "outsource" authority while "insulating" themselves from the legal consequences of the misuse of that authority.

5.3 The Appellant argues that the Proprietor lacked mens rea because he was not physically present. However, in the context of economic offenses and the Customs Act, "knowledge" is often inferred from the circumstances of the business. Shri Baldevsinh Vala was not a runaway employee; he was the brother of the Proprietor and the de facto manager of the office located at Mundra. The evidence shows that M/s. Kalpana Exim was the chosen vehicle for managing a multi-crore smuggling operation. The firm provided the office space, the IEC-related logistics, and the transportation network. The Hon'ble Supreme Court in Collector of Customs vs. D. Bhoormull [1983 (13) ELT 1546 (SC)] noted that in smuggling cases, direct evidence is rarely available and "knowledge" can be inferred from the "preponderance of probability." It is highly improbable that a firm could be deeply embedded in a smuggling cartel (handling 18 different consignments) without the constructive knowledge of the proprietor.

5.4 Even if we were to accept the Proprietor's plea of ignorance, such ignorance constitutes a gross failure of "Due Diligence." A license to operate as a forwarder or a business entity at a port comes with statutory responsibilities. If a proprietor chooses to remain absent and fails to supervise his authorized agents, he cannot plead his own negligence as a defense against a penalty. The acts of Shri Baldevsinh Vala, committed in the course of his "authority" as a signatory, are squarely attributable to the firm/proprietor.

5.5 The investigation by DRI Gandhidham has meticulously pieced together the operational blueprint of a sophisticated smuggling syndicate where the Appellant, M/s. Kalpana Exim, served as the indispensable logistical hub. The Appellant's contention that they were merely "forwarders" with no knowledge of the cargo's contents is diametrically opposed to the evidentiary facts. The statement of the mastermind, Shri Mohammad Asif Sathi, recorded under Section 108, provides the foundational evidence of a "knowing concern." He explicitly deposed that he entered into a specific arrangement with Shri



Baldevsinh Vala (Representative of M/s. Kalpana Exim) for the clearance of "risky" cargo, which included E-cigarettes and uncertified toys.

5.6 The most telling evidence of the Appellant's knowledge is the financial arrangement. The syndicate was paying Rs. 17 Lakh per container as "all-inclusive clearance charges." In the industry of freight forwarding and customs clearance, such an exorbitant amount—multiples higher than standard legal clearance fees—can only be explained as a "risk premium" for managing illegal imports. This financial anomaly is a "badge of fraud" that establishes the Appellant's awareness of the prohibited nature of the goods. The forensic extraction of data from mobile devices revealed the existence of a WhatsApp group named "Mm". Shri Baldevsinh Vala was an active participant in this group, which functioned as the command center for the syndicate. The chats show Shri Baldevsinh providing specific instructions on the "loading pattern" of the containers. He advised the syndicate to place the restricted items deep inside the container, behind the declared "cover cargo", to thwart physical inspection.

5.7 In one specific thread, Shri Baldevsinh assured the members that he would "manage the invoice values" to ensure they stayed below the threshold that usually triggers intensive scrutiny by the Special Intelligence and Investigative Branch (SIIB). Such active tactical advising is the hallmark of a conspirator, not a neutral service provider. The investigation unearthed a tactical maneuver termed "Crossing," managed by M/s. Kalpana Exim. After the containers were cleared from the port, they were taken to a warehouse or a secondary location where the cargo was "crossed" from the original container to different trucks. Shri Baldevsinh Vala facilitated the generation of multiple sets of E-way bills for the same cargo, using the firm's infrastructure to obscure the final destination. This was designed to ensure that if a truck was intercepted by GST or Customs enforcement on the highway, the paperwork would show a different origin and commodity. The use of M/s. Kalpana Exim's office to communicate with overseas shippers for the purpose of receiving "double sets" of invoices further reinforces the finding of a deep-rooted conspiracy.

5.8 In the present case, even if the Appellant (Proprietor) claims he didn't know the exact count of "Dancing Cactus" toys, the firm's systematic involvement in handling 18 containers for a single syndicate, the acceptance of astronomical fees, and the provision of tactical advice for evasion clearly demonstrate a "Knowing Concern."



5.9 Section 112(a) of the Customs Act, 1962, provides for the imposition of a penalty on any person who, in relation to any goods, does or omits to do any act which would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act. The goods found in Container No. TEMU 7694450 consisted of 98,000 Pop-up Toys and 24,000 Dancing Cactus Toys. Under Policy Condition 2 of Chapter 95 of the ITC (HS), 2022, the import of toys is subject to mandatory Bureau of Indian Standards (BIS) certification and testing for safety standards. The investigation established that these toys were imported without any valid BIS certification or test reports from NABL-accredited labs. In the absence of these mandatory compliance documents, the goods are "prohibited goods" as defined under Section 2(33) of the Customs Act. The act of importing prohibited goods through mis-declaration renders the goods liable to confiscation under Section 111(d) and Section 111(m).

5.10 The Appellant argues they were merely "forwarders." However, the legal definition of "abetment" under Section 107 of the Indian Penal Code includes "engaging in a conspiracy" or "intentionally aiding" the commission of an act. The evidence shows that M/s. Kalpana Exim did not just "forward" goods; they actively advised the syndicate on how to arrange the stowage to hide the toys. By providing the "crossing" logistics, they provided the essential infrastructure for the smuggling to succeed. The Appellant's firm was the "logistical bridge" that allowed prohibited toys to bypass safety scrutiny, directly aiding the violation of Section 111.

5.11 A freight forwarder is expected to exercise due diligence. When a forwarder handles 18 containers for a single client and accepts fees that are vastly disproportionate to standard services, the "innocence" claim evaporates. The Appellant's omission to verify the actual cargo against the declaration, coupled with their active involvement in concealing the goods, constitutes a clear act of commission under Section 112(a).

5.12 Section 114AA is a specific penal provision targeting the "intentional and knowing use of false documents" in customs transactions. The Appellant's challenge to this penalty is rejected based on a lot of grounds. The investigation found that Shri Baldevsinh Vala, acting for the Appellant, was in possession of dual sets of invoices. One set showed the actual description and value of the toys/E-cigarettes, while the second set showed the cargo as "Plastic Chocolate Moulds" at a lower value for filing with Customs. Even though a Bill of Entry was

not filed for the specific container TEMU 7694450, Section 114AA penalizes the making, signing, or using of any document which is false in any material particular. The preparation of these false invoices and their integration into the logistical chain managed by M/s. Kalpana Exim constitutes "using" such material for the transaction of business under the Act.

5.13 The Appellant contends that since no Bill of Entry was filed for this specific container, Section 114AA cannot be invoked. This is a flawed interpretation. Section 114AA applies to "the transaction of any business for the purposes of this Act." The entire process of IGM filing, logistical coordination, and the "crossing" managed by the Appellant are part of the "transaction of business." In **Commissioner of Customs vs. M/s. Candid Enterprises [2001 (130) E.L.T. 404 (S.C.)]**, it was held that fraud vitiates every solemn act. The discovery of a larger pattern (18 containers) where false documents were systematically used by the firm allows the Adjudicating Authority to infer that the documents prepared for the intercepted container were also part of the same fraudulent design. The attempt to smuggle was complete the moment the goods entered Indian territorial waters with a false IGM description facilitated by the Appellant.

5.14 The forensic evidence from the "Mm" WhatsApp group clearly shows the Appellant's representative discussing the "valuation" and "invoice descriptions" with the mastermind. This proves mens rea, which is a prerequisite for Section 114AA. The firm intentionally "caused to be made" false declarations to bypass the mandatory BIS requirements for toys, thereby endangering public safety and causing revenue loss.

5.15 The Adjudicating Authority correctly applied the following rulings, which I find squarely applicable to the current appeal:

- **Naresh Kumar Sukhwani vs. Union of India [1996 (83) ELT 285 (SC)]:** Statements recorded under Section 108 are substantive evidence. Shri Baldevsinh's statements, corroborated by the mastermind and the WhatsApp chats, are sufficient to prove the Appellant's involvement.
- **Surjeet Singh Chhabra vs. UOI [1997 (84) ELT 646 (SC)]:** Confessional statements made before Customs officers are binding. The attempt to retract these statements during cross-examination (two years later) is a clear afterthought and does not diminish their original evidentiary value.

5.16 The evidence on record demonstrates a well-orchestrated conspiracy

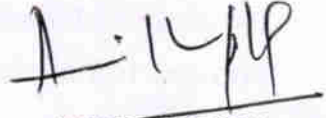


where M/s. Kalpana Exim acted as the primary facilitator for a smuggling cartel. The claim of being an innocent forwarder is belied by the "premium" charged for clearance and the active manipulation of E-way bills and transport documents. The Toys in question were imported in violation of BIS standards, and the mis-declaration was intentional. Given the gravity of the offense involving prohibited goods, the penalties imposed by the Adjudicating Authority are neither excessive nor arbitrary. They serve as a necessary deterrent against the misuse of logistical infrastructure for smuggling.

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

7. The appeal filed by M/s. Kalpana Exim is hereby rejected.

સત્તાપિત્વ અટકાવેલું  
  
 સુપરિન્ટેન્ડન્ટ  
 સીમા શુલ્ક (અપીલ), અમદાવાદ.  
 CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-244/CUS/MUN/2024-25

Date: 27.01.2026

By Speed Post/E-Mail

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 Adani Port Road,  
 Mundra (K) – 370 421.



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.