सत्यमेव जयते

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250871MN0000520664

क	फ़ाइल संख्या FILE NO.	S/49-155/CUS/MUN/2023-24
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-160-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/RK/192/2023-24 dated 25.10.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. SR Exports, F-10, First Floor, Satish Bhawan, Near Inderganj Police Station, Gwalior Madhya Pradesh-474009.

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

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

ORDER-IN-APPEAL

Appeal has been filed by M/s. S. R. Exports, F-10, First Floor, Satish Bhawan, C Near Inderganj Police Station, Gwalior, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/RK/192/2023-24 dated 25.10.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed Shipping Bills No.6912058, 6912146, 6925193 and 6924008 all dated 12.01.2023 through their CHA M/s Veewin Logistics (CHA Code AMHPS3708ECH003) for Export of following cargo as below :

Sr No.	S.B. No./Date	Container Number	Declared Goods/Cargo
1.	6912146/12-01-2023	BSCU7270148	Detergent Powder, Pan Masala, Handwash Godrej, Laundry Soap Surf Excel, Handwash Dettol, Harpic
2	6925193/12-01-2023	CRXU9746180	Detergent Powder, Pan Masala, Handwash Godrej, Laundry Soap Surf Excel, Handwash Dettol, Harpic
3	6924008/12-01-2023	GESU5982435	Detergent Powder, Pan Masala, Handwash Godrej, Laundry Soap Surf Excel, Handwash Dettol, Harpic
4	6912058/12-01-2023	WSCU8479935	Detergent Powder, Pan Masala, Handwash Godrej, Laundry Soap Surf Excel, Handwash Dettol, Harpic

2.1 As per the information received from Deputy Commissioner (Preventive) O/o Principal Commissioner of CGST and Central Excise, Bhopal, the Shipping Bills No. 6912058, 6912146, 6925193 and 6924008 all dated 12.01.2023 were put up on hold and taken up for the examination. The examination of goods was carried out at M/s. All Cargo CFS Pvt Ltd., CFS, Mundra under Panchnama on 06.02.2023 in presence of Authorized Person of CHA and Representative of M/s. All Cargo CFS Pvt Ltd., Mundra.

2.2 The goods were 100% de-stuffed and examined under Panchnama at M/s.All Cargo CFS Pvt Ltd., Mundra in presence of Authorized Person of CHA and Representative of CFS. During the examination, all the bags were opened one by one and the goods were visually inspected and the goods found were same as declared under the Shipping Bill. The Detergent Powder, Handwash Godrej, Laundry Soap Surf Excel, Handwash Dettol and Harpic all were packed in the cartons of different sizes. The Pan Masala was packed in Bulk Packaging inside the Cartons of approximately 25 Kg each. Further, the counting of the goods were done with the help of a surveyor of CFS and the goods were found as declared in terms of quantity. Further, 03 representative samples of the shipment covered under Shipping Bill No(s), 6912058, 6912146, 6925193 and 6924008 all dated 12.01.2023 have been drawn and sealed by red lac with seal impression and forwarded to the Deputy Commissioner (Preventive), Bhopal vide this office letter F.No.S/15-139/S.R.EX/SIIB-G/CHM/2022-23 dated 17.02.2023.

2.3 Further, a summons dated 09.02.2023 was issued to the appellant for the submission of the local Purchase Invoices in respect of the goods being exported. In response to the Summons, the CHA-M/s Veewin Logistics on behalf of the exporter has submitted the Purchase Invoices through email dated 15.02.2023. On analyzing the purchase invoices, it was noticed that the appellant had made purchase of Pan Masala which is Rajnigandha Brand in the Packing of 4gm Pouch. However, on examination, it was observed that the Pan Masala was packed in Bulk Packaging inside the Cartons of approximately 25 Kg each. From the above, it was evident that the goods ie. Pan Masala brought into the Port area for export is other than the actual Pan Masala which was purchased by them under the above Purchase Invoice. Hence, there was mis-declaration of goods by the appellant in the Shipping Bills No. 6912058, 6912146, 6925193 and 6924008 all dated 12.01.2023 in respect of Pan Masala. Therefore, it appeared that the goods were brought to the port with an intention to avail undue export benefits and hence, the said goods appeared liable for confiscation under Section 113(i) of Customs Act, 1962. Accordingly, the goods were placed under seizure under Section 110 of the Customs Act, 1962 vide seizure Memo F.No.S/15-139/S.R.EX/SIIB-G/CHM/2022-23 dated 17.02.2023 and the seized goods had been handed over to the Custodian, M/s. All Cargo, CFS, Mundra under Supratnama-dated 17.02.2023.

2.4 During the course of investigation, the Deputy Commissioner

(Preventive), Bhopal vide its letter F.No.IV/(16)197/HQP/BPL/Misc/corrp/2021 dated 31.05.2023 informed as under:

> *"the forwarded samples has been shown to the General Manager of M/s. Dharampal Satyapal (DS Group) manufacture and owner of Rajnigandha Brand, who on perusing the said samples has revealed that the sample are not their product. Hence, the mis-declaration of the product has been proved. During further enquiry, statement of Shri Shyam Garg, partner of M/s S. R. Export, Gwalior and Shri Niraj Singh, partner M/s Vaishnavi India Tradex, New Delhi (supplier firm of M/s S. R. Export) has been recorded under Section 70 of the CGST Act. Shri Niraj Singh in his statement inter alia revealed that he has never supplied any goods to M/s S. R. Exports, only invoices were issued by his firm at the instance of Shri Shyam Garg. Shri Shyam Garg has been arrested on 11.04.2023 and sent to judicial custody. Further investigation is under progress."*

2.5 Therefore, it is evident that the exporter has attempted to export the goods other than which has been purchased by them to avail the undue benefit of export incentives. Therefore, the goods entered for export in the port are liable for confiscation under Section 113 (i) and (ja) of the Customs Act, 1962. During the course of investigation, summons was issued to the exporter, M/s S. R. Export on dated 18.07.2023 and in reply the exporter vide their letter dated 21.07.2023 requested permission to back to town by stating as under:

> *"We have filed SB Nos. (i).6925193, (ii).6912146, (iii).6924008 and (iv).6912058 all dated 12.01.2023 for export of various FMCG goods and Pan Masala. Further, the goods were kept on hold by GST (Anti-evasion). Bhopal for further investigation. As per instruction of the GST, Bhopal, the goods have already been examined by SIB, Mundra and stored in open warehouse of All Cargo CFS, Mundra vide Seizure Memo dated 17.02.2023. The samples of the goods have already been forwarded to GST (Anti-evasion), Bhopal. Further, the investigation by the GST (Anti-evasion), Bhopal is yet under process.*
>
> *We, further wish to inform to your goodness that these goods are perishable in nature and will be deteriorated with time period which will cause heavy loss. At present, it is monsoon weather and the goods are kept in covered warehouse which may absorb the moisture and it will get denatured. In this*

way, the goods will lose their quality and value which will result huge financial loss for them. Further, the buyer has already cancelled the deal and denied to accept the consignment due to delay. So, we request to your goodness to allow the goods for back to town. We, further requested to decide the case on merits. We don't want any SCN and Personal Hearing in this regard."

2.6 As the last date of issuance of SCN in the case was 05.08.2023, and reply from the CGST Bhopal was awaited, extension for two (02) months was granted by the Commissioner. Further, an email dated 04.08.2023, 10.08.2023 and reminder email dated 15.08.2023 was sent to CGST Bhopal and inquired whether, the seized exported goods are required as material evidence in their investigation/criminal proceedings. In response, CGST Bhopal vide email dated 22.08.2023 submitted their reply wherein they informed that subject goods are not required as material evidence at their end.

2.7 From the foregoing paras, it appeared that the appellant has deliberately and knowingly brought the said goods in the Customs area and attempted to export the said mis-declared goods i.e. attempted to export the goods other than purchased by them on payment of IGST to take undue benefit of export incentive/refund of IGST. Hence, the said goods become liable for confiscation under section 113(i) and 113(ja) of the Customs Act, 1962.

2.8 From the examination of the goods and Deputy Commissioner (Preventive), Bhopal letter F.No.IV/(16) 197/HQP/BPL/Misc/corrp/2021 dated 31.05.2023, it was evident that the appellant intentionally and willingly brought the said goods in the Customs area and attempted to export the said mis-declared good and have contravened the provisions of Section 50 of the Customs Act, 1962 & thereby rendered the goods liable for confiscation under section 113(i) and113(ja) of the Customs Act, 1962. Therefore, the above consignments were seized under Seizure Memo dated 17.02.2023 and handed over to the Custodian vide Supratnama dated 17.02.2023. The appellant also rendered themselves liable for penalty under Section 114 and 117 of the Customs Act, 1962.

2.9 The appellant requested to allow the goods for back to town. They requested to decide the case on merits. They also submitted that the don't want any SCN and Personal Hearing in this regard.

The details of mis-declared goods attempted to be exported vide Shipping Bills No.6912058, 6912146, 6925193 and 6924008 all dated 12.01.2023, are as per Table-I below:-

Table-I

Name of the importer	Shipping Bill No. & Date	Description of goods to be seized	CFS	Quantity	Value
M/s S. R. Exports	6912146/12-01-2023 6925193/12-01-2023 6924008/12-01-2023 6912058/12-01-2023	Pan Masala	All Cargo CFS	1. 7625 kgs (305 boxes of 25 Kgs.) 2. 7625 kgs (305 boxes of 25 Kgs.) 3. 7625 kgs (305 boxes of 25 Kgs.) 4. 7625 kgs (305 boxes of 25 Kgs.)	7798362 7798362 7798362 7798362 --------- 31193448

2.10 In light of the above examination, investigations and submissions, an Investigation Report F. No.S/15-139/S.R.Ex/SIIB-G/CHM/2022-23 has been issued by Deputy Commissioner (SIIB) proposing: -

(i) The mis-declared goods attempted to be exported vide Shipping Bills No.6912058, 6912146, 6925193 and 6924008 all dated 12.01.2023, having declared FOB value of goods as Rs.3,11,93,448/- are liable for confiscation under Section 113(i) & 113(ja) of the Customs Act, 1962.

(ii) The Exporter M/s S. R. Exports, F-10, First Floor, Satish Bhawan, C Near Inderganj Police Station, Gwalior holding IEC No.AEIFS3552F who attempted to export misdeclared goods are liable for Penalty under Section 114(iii) of the Customs Act, 1962.

2.11 As the Exporter have already requested for waiver of the show cause notice in the matter, necessary adjudication proceeding/action was initiated in respect of the said Shipping Bills as per the Customs Act, 1962.

2.12 In view of the forgoing discussions and findings, the adjudicating authority passed the following order:

i. He ordered absolute confiscation of the seized goods totally valued at Rs.3,11,93,448/- (Rupees Three Crore, Eleven Lakhs, Ninety Three Thousand, Four Hundred and Forty Eight only) covered under Shipping Bills mentioned in Table-I above.

ii. He further ordered for imposition of penalty of ₹5,00,000/-(Rupees Five Lakhs Only) on M/s.S.R. Exports, F-10, First Floor, Satish Bhawan, C Near Inderganj Police Station, Gwalior (IEC- AEIFS3552F), under Sections 114(iii) of the Customs Act, 1962.

iii. Since the goods were not exported, the claim for RoDTEP becomes non-est and there is no claim for Drawback

3. SUBMISSIONS OF THE APPELLANT:

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

3.1 The appellant has submitted that the Adjudicating Authority has grossly erred in ordering absolute confiscation of the seized goods u/s 113(i) of the Act. Confiscation u/s 113(i) is warranted only when any goods entered for exportation do not correspond in respect of the value or in any material particular with the entry made under the Act. Significant here would be to understand the meaning of word "any goods entered" vis-a-vis "with the entry made under this Act" Section 50 falling under Chapter VII of the Act deals with the entry of goods for exportation. Sub-section (1) thereof reads that the exporter of any goods shall make entry thereof by presenting electronically on the customs automated systems to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in case of goods to be exported by land, a bill of export in such form and manner as may be prescribed. As the goods were destined for foreign destination through a vessel from Mundra Port, therefore the Entry of such goods was made through a shipping bill. Consequently, if the goods entered for export corresponded in respect of value and material with entry i.e. to say the shipping bill, provisions of sec 113(i) could not be attracted.

3.2 It is not the case of the revenue that the goods entered for export differ from the description given in the shipping bill. When the goods were

examined on 6.2.2023 and a panchanama was drawn, it was found that pan masala was packed in bulk packing inside the carton of approximately 25 kg each. In the seizure memo against each shipping bill pan masala weighing 25 kg in each bag was found loosely packed in 305 cartons. This number of 305 cartons also appears in the packing list as well as in the export invoice issued by the appellant. On a counting being made, the goods were found as declared in terms of quantity. Even the export invoices matched with the purchase orders issued by Blossom Star General Trading (LLC). The export invoices mention pan masala falling under HSN as 21069020 with number of cases, rate per case and then the value arrived accordingly. Even the check list for shipping bill prepared by Veewin Logistics simply reflected pan masala with no reference of 'Rajanigandha Brand of 4 gm packing'. When the seized goods were found in loose packing of 25 kg each then it not only corresponded to the purchase order but also to the export invoice, shipping bill as well as the packing list against each consignment. Therefore, confiscation u/s 113(i) was not warranted, least to say, absolute confiscation thereof.

3.3 The appellant through its CHA while presenting the shipping bill subscribed to the declaration as to the truthfulness of its contents. On physical examination of goods, no discrepancy was found with respect to the declaration in the shipping bill vis-à-vis the goods as to their value and quantity when examined by the authorities. This examination was carried out in the presence of the authorized person of the CHA and representative of M/s. Al Cargo CFS Pvt Ltd. The appellant in terms of sec 50(3) stood by the accuracy and completeness of the information given therein and the authenticity and validity of supporting documents. In the absence of any restriction or prohibition having been placed under this act or under any other law for the time being in force regarding the seized goods, therefore, clause (c) to sec 50(3) did not stand attracted. During the course of personal hearing when granted, appellant would place on record all the necessary documents to support that the goods entered for export corresponded to the entry made in the shipping bill and was is accordance with provisions of sec 50 of the Act. Certificate from the transporter too would be placed on record in evidence of the fact that loose pan masala in 25 kg pack was carried out in 305 cartons against each invoice raised by Vaishnavi.

3.4 The Addl. Commissioner while ordering of absolute confiscation of the seized goods attributed it to the description appearing in the purchase invoices vis-a-vis the quantity of goods found in each pack at the time of

examination. The charge of misdeclaration has been arrived at by matching the export goods with the purchase invoices issued by Vaishnavi. The allegation that the goods were mis-declared is grossly misplaced. This can be understood from the perusal of the export invoice issued by the appellant vis-à-vis the purchase invoices issued by Vaishnavi and their co-relation with the shipping bill and packing list. Against Shipping Bill No.6120588 dated 12.2.2023 pan masala was seized from the container WSCU81479935. In the purchase invoice No. VIT/22-23/50 dated 28.12.2022 issued by Vaishnavi, total quantity of 9150 boxes (in fact inners) with 4 gm packing of 30 boxes was mentioned. When this quantity of 9150 boxes is divided by 30, the figure of 305 cartons stands confirmed. These were the number of cartons which were seized through the seizure memo dated 17.2.2023. Vaishnavi while selling Surf Excel, Godej Handwash, Dettol handwash, Surf Excel Soap 250 gm and Surf Excel 200 gm has identified them in pieces. Number of cartons have not been given against each of them. So far as Surf Excel Detergent Power is concerned each carton contains 12 pieces. Vaishnavi is stated to have sold 2640 pieces itself. If 2640 is divided by 12, it will work out to be 220 cartons, likewise for handwash, each carton contains 24 pieces. Thus 240/24 works out to 10 cartons. This has been declared in the shipping bill and in the packing list. Dettol handwash has been billed by Vaishnavi as 480 pieces and each carton thereof contains 48 pieces. 480/48 works out to 10 cartons. Laundry Surf Excel- each carton contains 60 pieces. The quantity of 600 pieces fits in 10 cartons. Surf Excel Soap each carton contains 80 pieces. The quantity of 800 pieces fits in 10 cartons. 240 pieces of Harpic has been invoiced. Each case contains 24 pieces the entire quantity is packed with 10 cases. Total number of cases as per the packing list as well as the export invoice works out to 575 cartons. Best Roadways Ltd. which carried this material from Delhi to Mundra had also identified 575 cartons containing pan masala, surf excel, handwash, harpic etc. Thus neither there is any discrepancy in the quantity of the goods nor in the number of cartons. Against Consignment No.409818 dated 28.12.2022 these 575 cartons were transported through Vehicle No. HR 63 C 4463 from Delhi to Mundra Port. The said vehicle crossed over 17 toll plazas en-route to Mundra whose transaction report will is so be placed on record at the time of bearing. In the export invoice, the same quantity of cartons with respect to goods has been declared. In all the other three consignments there is no discrepancy either in the quantity or value of the material. Merely because Vaishnavi has reflected the goods in number of pieces instead of cartons in its invoice, that would not ipso-facto leads to confiscation of the goods. It is therefore, the absolute confiscation ordered by the Addl.

Commissioner u/s 113(i) is unsustainable in law and the seized goods are required to be released to the appellant without any condition or qualification.

3.5 The goods had been carried from Delhi to Mundra Port where en-route 17 toll plazas were crossed. The goods had been transported from Delhi to Mundra can also be traced and tracked through the transaction history of the Fastag which will also be shared during the course of hearing. The Addl. Commissioner had laid great emphasis on the statement of Vaishnavi wherein they are stated to have made only paper transaction and no goods had been supplied by them. At best appellant can say that such a statement should be read in context of sec 16(2)(b) by of the CGST Act. If one reads the Explanation (i) attached thereto, one can make out that what Vaishnavi wanted to impress was that the bill was raised to the appellant at Gwalior whereas shipment was sent to Mundra Port. In the face of e-way bills, Fastag transaction history and availability of goods on physical examination, all these factors would demolish the part of the statement of Vaishnavi is per which no goods are stated to be supplied by them. Had the goods not been supplied, no goods could have been found on physical examination, when the facts suggest otherwise. The Addl. Commissioner has relied upon the Information received from the Dy. Commissioner (Preventive), Bhopal who is stated to have caused investigation in this regard. As per his letter dated 21.5.2023, it is informed that he had forwarded samples to the General Manager of M/s. Dharampal Satyapal, DS Group who on perusing the samples has denied the same to be their product. On the basis thereof appellant is alleged to have mis-declared the goods. However, such an observation appearing in the impugned order is in gross violation of principles of natural justice. The appellant was never ever put to notice about the stand of the General Manager of DS Group. It is therefore the impugned order been passed in gross violation of principles of natural justice.

3.6 The impugned order deserves to be set aside because it is not known as to on which date the samples were shown to the General Manager. Significant to mention here is that the goods seized were stored in the open warehouse which were exposed to the moisture. Pan masala being perishable in nature was to deteriorate with the passage of time because of absorption of moisture. They were to get de-natured having a bearing on their quality and value. Therefore, if at a belated stage General Manager of DS Group is made to make the statement, then possibly with the wiggery of weather leading to deterioration in the pan masala, they could not stand to the quality standard maintained by any of the

manufacturer. Moreover, these were not in the packing of Rajanigandha Brand the seized pan masala was in loose pack of 25 kg.

3.7 Reliance placed upon the information received from the Manager of DS Group to the effect that the seized pan masala is not of Rajanigandha Brand is highly mis-placed. Pan masala is of Rajanigandha Brand any other brand could be made out only when same is available in the packing bearing the name of manufacture or brand used by them. Once the packing is removed and pan masala is sold in loose pack even the Rajanigandha people would not be able to ascertain and asset that the pan masala is of which brand. Otherwise also, it is not patented product. Multiple manufacturers are in the field who make pan masala. If distinct varieties of pan masala are kept in loose packing, then no manufacture of pan masala can make out as to the pan masala exhibited belongs to which brand whether Rajanigandha, Pan Parag, Pan Bahar, Vimal, Raj Niwas, Kamla Pasand, Raj Shree, Dilbagh, Signature, Sir etc. It is not possible for any person to make out on visual examination of pan masala in loose form as to which brand it belongs to. No chemical examination has been carried out to strengthen the stand that pan masala is not of Rajanigandha Brand. It is not known on what basis the General Manager had asserted the loose pan masala to be not of Rajanigandha Brand.

3.8 Because when goods could not be confiscated u/s 113(i) & (ia), penalty of Rs. 5 lakh imposed on the appellant u/s 114(iii) is unwarranted and deserves to be set aside.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 24.06.2025, following the principles of natural justice wherein Shri Rajesh Jain, Advocate appeared for the hearing and he re-iterated the submission 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 House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(i) Whether the delay of 1 day in filing the appeal should be condoned.

(ii) Whether the absolute confiscation of the seized goods under Section 113(i) of the Customs Act, 1962, is legally sustainable.

(iii) Whether the imposition of penalty under Section 114(iii) of the Customs Act, 1962, on the Appellant is legally sustainable and proportionate.

5.2 The Appellant has sought condonation of a delay of 1 day beyond the maximum permissible period of 60 days. The reason cited is the person who was to file the appeal reached Ahmedabad on 28.12.2023 due to which the filing got delayed . 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 one day beyond the initial sixty-day period, but within the extended thirty-day period. 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 application for condonation of delay is allowed in the interest of natural justice and appeal is admitted for disposal.

5.3 Section 113(i) of the Customs Act, 1962, provides for confiscation of *"any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77."* The crucial finding in the impugned order, supported by the examination report (Panchnama dated 06.02.2023), is that the goods were "100% misdeclared" and that "pan masala was packed in bulk packing inside the carton of approximately 25 kg each," contrary to the declared "4 gm packing". This constitutes a clear misdeclaration in a "material particular" within the meaning of Section 113(i). The quantity and

packing of goods are fundamental aspects of their description and directly impact classification, valuation, and compliance with export regulations.

5.4 The Appellant's contention that the 25 kg bulk packing was "in compliance with the purchase order" does not negate the fact that the export invoices and shipping bills declared "4 gm packing." The discrepancy between the actual goods and the declared particulars in the export documents is the key. The purpose of Section 113(i) is to penalize such discrepancies, which can be used to avail undue export benefits or for other illicit purposes.

5.5 The adjudicating authority's finding that the misdeclaration was with an "intention to avail undue export benefit" is a reasonable inference from such a significant discrepancy in packing and quantity. This implies a deliberate attempt to misrepresent the goods for illicit gain. The statement of Shri Shyam Garg, partner of M/s S.R. Export, admitting that he never supplied any goods to M/s S.R. Exports, and that invoices were issued by his firm at his instance, strongly indicates a deliberate and orchestrated scheme of misdeclaration, rather than a mere "mistake of their supplier." This establishes the mens rea on the part of the Appellant.

5.6 The Appellant's reliance on Dimple Overseas and M.G. Shahani & Co. is misplaced. These cases generally deal with situations where the breach is merely technical or venial, or where mens rea is absent. Here, the misdeclaration of packing and quantity, coupled with evidence of a deliberate scheme, is a substantial contravention, not a technical one. The argument that the goods were not of "Rajanigandha Brand" does not absolve the Appellant of misdeclaring the packing and quantity of the pan masala itself, which is the primary basis for confiscation under Section 113(i). Therefore, this appellate authority finds that the goods were clearly misdeclared in a material particular (quantity and packing) with an apparent intent to avail undue export benefits, and the Appellant was directly involved in this scheme. Consequently, the absolute confiscation of the seized goods under Section 113(i) of the Customs Act, 1962, is legally sustainable.

5.7 Section 114(iii) of the Customs Act, 1962, provides for a penalty on *"any person who, in relation to any goods entered for exportation, makes or uses any declaration, statement or document which is false or incorrect in any material particular, or abets or is concerned in the doing or omission of any act whereby*

such goods are liable to confiscation under section 113." Since this appellate authority has upheld the confiscation of the seized goods under Section 113(i) due to misdeclaration in a material particular, the Appellant, by making/using false declarations in the export documents, has directly caused the goods to be liable for confiscation. Thus, the imposition of a penalty under Section 114(iii) on the Appellant is legally sustainable.

5.8 The evidence, including the examination findings, the nature of the misdeclaration (bulk vs. 4gm packing), and the partner's statement, strongly indicates a deliberate and conscious act of misdeclaration with the intention to avail undue export benefits. This establishes the necessary mens rea for imposing the penalty.

5.9 The impugned order imposed a penalty of ₹5,00,000/- on the Appellant. Section 114(iii) allows for a penalty up to the value of the goods or the value as determined under the Customs Act, whichever is higher. Here, the value of the seized goods is ₹3,11,93,448/-. A penalty of ₹5,00,000/- is significantly less than the value of the goods and is well within the statutory limit. Given the deliberate nature of the misdeclaration and the significant value of the seized goods, the imposed penalty of ₹5,00,000/- is found to be reasonable and proportionate.

5.10 The Appellant's reliance on Hindustan Steel Ltd. V/s State of Orissa [1978 (2) ELT J 159 (SC)] regarding "no penalty for venial breach" is not applicable. As discussed, the misdeclaration here is substantial and deliberate, not a venial or technical breach. The act of misdeclaring the packing and quantity of goods for export is a serious contravention aimed at circumventing regulations or obtaining undue benefits. Therefore, the imposition and quantum of penalty of ₹5,00,000/- on M/s. S.R. Export under Section 114(iii) of the Customs Act, 1962, are found to be legally sustainable and proportionate.

6. In view of the detailed discussions and findings above, this appellate authority concludes that the appeal filed by M/s. S.R. Export is not sustainable on merits. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The absolute confiscation of the seized goods valued at ₹3,11,93,448/- under Section 113(i) of the Customs Act, 1962, by the impugned Order-

in-Original No. MCH/ADC/RK/192/2023-24 dated 25.10.2023, is hereby upheld.

(ii) The imposition of penalty of ₹5,00,000/- on M/s. S.R. Export under Section 114(iii) of the Customs Act, 1962, by the impugned order, is hereby upheld.

7. The appeal filed by M/s. S.R. Export is hereby rejected.

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

F. No. S/49-155/CUS/MUN/2023-24 2824

Date: 08.08.2025

By Registered post A.D/E-Mail

To,
M/s. S.R. Export,
F-10, First Floor, Satish Bhawan,
Near Inderganj, Police Station,
Gwalior, Madhya Pradesh- 474009.

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

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.