



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 - 20250571MN000000C8A3

क	फ़ाइल संख्या FILE NO.	S/49-140/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-031-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order – In – Original No. MCH/ADC/MK/161/2023-24 dated 06.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Pace Ventures Private Limited (IEC No. 0311003214) 166B, Nabashruti Building, Khan Ghat, Dadar East, Mumbai-400014



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)	बैगों 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 रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, 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 Pace Ventures Private Limited, (IEC No. 0311003214) 166B, Nabashruti Building, Khan Ghat, Dadar East, Mumbai-400014 (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/161/2023-24 dated 06.09.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner (Import), Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed Bill of Entry No. 4548727 dated 08.02.2023 through their Custom Broker M/s Bright Shiptrans Pvt. Ltd. (AACCB5107ECH001) for clearance of 7500 Kgs of "Re-import of Indian Green Cardamom TRP Special- rejected due to packing" having an assessable value of Rs. 65,89,874/-. The said re-imported goods are covered under Bill of lading No. MEAEU224785453 dated 03.02.2023 and Commercial Invoice No. EXP/432/2023 dated 30.01.2023 issued by M/s Pearl Line Trading LLC, P.O. Box No. 47300, Dubai, United Arab Emirates. The said re-imported goods were exported vide Shipping Bill No. 9179364 dated 24.03.2022. The details of Reimported goods are as under: -

Table- A

Item No. as per Bill of Entry	Description as per Bill of Entry & Commercial Invoice	Declared CTH	Net Weight (In KGS)	Assessable Value (in Rs.)
1	Re-import of Indian Green Cardamom TRP Special- rejected due to packing	9083120	7500	65,89,874/-

2.1 On re-import of the said cargo, the samples vide sample ID no. 537022023KVEEC5BL were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra. The goods declared as Indian Green Cardamom TRP Special weighing 7500 Kgs having Assessable Value of Rs. 65,89,874/- covered under item no. 1 of the said Bill of Entry and as detailed in Table-A above, was rejected for NOC for home consumption by the FSSAI authorities stating that *"Sample does not confirm to provision of FSS Act, 2006 Rules and Regulations 2011 made thereunder (Version-XXV dated 23.09.2022 & contaminants, toxins & Residue regulation (Version VI dated 27.01.2022) with respect to tested parameters and values."*



2.2 From the above, it appeared that the goods declared as "Indian Green Cardamom TRP Special" weighing 7500 Kgs having Assessable Value of Rs.65,89,874/- covered under item no. 1 of the said Bill of Entry were rejected for home consumption by the FSSAI authorities. FSSAI did not find the goods fit for home consumption. Prima facie, it was seen that said cargo was mainly for the human consumption and such conditions are not fulfilled during FSSAI test, hence, the re-imported goods may not be cleared from Mundra Port and the same were required to be re-exported. The failure of the sample resulted into non-compliance of the provisions of Food Safety & Standards Act, 2006. Therefore, such goods would be treated as prohibited for import and action on such goods is to be taken under the Customs Act, 1962.

2.3 The appellant vide letter dated 10.08.2023 had requested to allow them to re-export the goods to their original buyer M/s Pearl Line Trading LLC, P.O. Box No. 47300, Dubai, United Arab Emirates. The importer submitted a Performa Invoice having No- PVPL/EX/10/23-24 dated 03.08.2023 for re-export of goods along with consent letter dated 09.08.2023 received from the UAE based buyer to accept the cargo. It appeared that the goods declared as "Indian Green Cardamom TRP Special weighing 7500KGS as detailed in Table-A above, having Assessable value of Rs. 65,89,874/- appeared to be liable for confiscation under Section 111 (d) of the Customs Act, 1962 and the importer was also liable for penal action under Section 112 (a)(i) of the Customs Act, 1962.

2.4 The importer vide their letter dated 10.08.2023 requested to re-export the goods to the same buyer i.e. M/s Pearl Line Trading LLC, P.O. Box No. 47300, Dubai, United Arab Emirates. They also submitted that that they don't require Show Cause Notice and personal hearing in this case. The adjudicating authority found that principles of natural justice as provided in Section 122A of the Customs Act 1962 had been complied with and therefore, they proceeded to decide the case on the basis of the documentary evidence available on records.

2.5 The adjudicating authority vide impugned order ordered as under :-

- i. She ordered for confiscation of re-imported goods declared as "Indian Green Cardamom TRP Special" weighing 7500 Kgs having an assessable value of Rs. 65,89,874/- (Rupees Sixty Five Lacs Eighty Nine Thousand



Eight Hundred Seventy Four Only) imported vide Bill of Entry No. 4548727 dated 08.02.2023 under Section 111(d) of the Customs Act, 1962. However, she gave an option to the appellant to re-export the confiscated goods on payment of redemption fine of Rs. 7,00,000/- (Rupees Seven Lakh Only) under Section 125 of the Customs Act, 1962.

- ii. She imposed a penalty of Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand Only) on the appellant under Section 112(a) (i) of the Customs Act, 1962.
- iii. She also allowed the importer to re-export the goods declared as Indian Green Cardamom TRP Special weighing 7500KGS having Assessable Value of Rs. 65,89,874/- covered under item no. 1 of the said Bill of Entry to their original overseas buyer.

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 It is submitted that the whole case is in favour of the Appellant and the impugned Order in Original No.MCH/ADC/MK/161/2023-24 dated 06.09.2023 passed by the Additional Commissioner of Customs (Import), Custom House Mundra, Kutch, Gujarat confiscating the Indian origin Green Cardamom and imposing Redemption Fine and penalty on the said goods allowed for reexport is neither proper nor legally tenable

Re-imported goods are exempted from FSSAI testing:

3.2 The Appellant has submitted that the as per Rule 3(1)(k) and 3(2)(f) of the FOREIGN TRADE (EXEMPTION FROM APPLICATION OF RULES IN CERTAIN CASES) ORDER, 1993 when already exported Indian origin are being re-imported in India for re-export out of India these goods are exempted from Customs duty or any other compliance of rules for shipments on re-importation under section 20 of the Customs Act, 1962. The relevant portion of the said Rules is reproduced below for ready reference:

"3. Exemption from the application of rules. -



(1) Nothing contained in the Rules shall apply to the import of any goods,

...

(k) from any country, which are exempted from Customs duty on re: importation under section 20 of the Customs Act, 1962 (52 of 1962);"

(2) Nothing contained in the Rules shall apply to -

...

(f) any goods imported and bonded on arrival in India for re-export to any country outside India, except Nepal and Bhutan;

3.3 Moreover, as per Regulation 7 (3) of the Food Safety and Standards (Import) Regulations, 2017 the customs authority need not to refer the imported articles of food to Food Authority for clearance if such articles of food are meant for export as per the extant instructions and export rejected or re-imported articles of food meant for re-export of the Government. The relevant portion of Food Safety and Standards (Import) Regulations, 2017 is reproduced below for ready reference:

"7. (3) Unless otherwise specified, the customs authority need not to refer the imported articles of food to Food Authority for clearance if such articles of food are meant for the following purpose, namely

a. export as per the extant instructions and export rejected or re-imported articles of food meant for re-export of the Government;"

3.4 From the above it is very clear that the department is supposed to send the impugned re-imported Indian Origin goods for FSSAI clearance. The whole action of the department is against the prevailing Rules and Regulations issued by the Ministry of Commerce and Ministry of Health & Family Welfare, Government of India. Therefore, the impugned order is neither legal nor proper. Hence, the impugned order is liable to be set aside.

3.5 The Appellant has submitted that as per Rule 3(2)(f) of the FOREIGN TRADE (EXEMPTION FROM APPLICATION OF RULES IN CERTAIN CASES) ORDER, 1993 when already exported Indian origin are being reimported in India for re-export out of India these goods are exempted from Customs duty or any other compliance of rules for shipments on reimportation under section 20 of the



Customs Act, 1962 and Regulation 7(3) of the FOOD SAFETY AND STANDARDS (IMPORT) REGULATIONS, 2017 the customs authority need not to refer the imported articles of food to Food Authority for clearance if such articles of food are meant for export as per the extant instructions and export rejected or re-imported articles of food meant for re-export of the Government.

3.6 Furthermore, the impugned re-imported goods have not been cleared instead these goods are allowed to be re-exported from the customs area only. Therefore, the impugned goods are not liable to confiscation.

3.7 The Appellant has relied on the following case laws:

- i) GLOBAL ENTERPRISES Versus COMMISSIONER OF CUS. (NS-V), NHAVA SHEVA [2019 (369) E.L.T. 1596 (Tri. - Mumbai)]
- ii) PACE INDIA Versus COMMISSIONER OF CUSTOMS, BANGALORE [2020 (372) E.L.T. 442 (Tri. - Bang.)]

3.8 The Hon'ble Tribunal has held that Confiscation of imported goods with option to redeem the same on payment of fine and re-export of the same not to be ordered simultaneously. Reliance is placed on the following case law:-

EMINENCE TECHNOLOGIES Versus COMM. OF CUS., C. EX. & SERVICE TAX, NOIDA [2019 (370) E.L.T. 825 (Tri. - All.)]

3.9 The Appellant has submitted that the said Indian origin re-imported goods have been allowed by the department for re-export out of India. No revenue implication is there in this re-import and re-export of the impugned consignment. When the goods are not allowed for clearance for home consumption, the goods are not liable for confiscation. When the goods are not liable to confiscation, the question of imposition of redemption fine does not occur. The Appellant relied on the following case laws:

- i) SHUBH GEMS Versus COMMISSIONER OF CENTRAL EXCISE, JAIPUR [2000 (121) E.L.T. 426 (Tribunal)]
- ii) DIA PRECIOUS JEWELLERY PVT. LTD. Versus C.C. (ACC & IMPORT), MUMBAI [2014 (313) E.L.T. 243 (Tri. - Mumbai)]
- iii) SIEMENS LIMITED Versus COLLECTOR OF CUSTOMS [1999 (113) E.L.T. 776 (S.C.)]
- iv) HAZEL MERCANTILE LTD. Versus COMMISSIONER OF CUSTOMS, KANDLA [2022 (379) E.L.T. 357 (Tri. - Ahmd.)]



3.10 The appellant has submitted that the impugned Indian origin reimported goods have not been cleared for home consumption instead the impugned goods have been allowed to be re-exported. Hence the said goods are not liable to confiscation under section 111 of the Customs Act, 1962. Consequently, no penalty is imposable on the appellant for the subject goods meant for re-export out of India.

3.11 Moreover, the Adjudicating Authority was not sure about imposition of penalty on the importer because of that she has not specified the section under which she has imposed the penalty on the importer. Hence, the arbitrary imposition of penalty on presumption and assumption is neither proper nor legal. Therefore, the impugned order is liable to be set aside. The Appellant has relied on the following case laws:

- i) ROYAL IMPORTS & EXPORTS Versus COMMISSIONER OF CUSTOMS, TUTICORIN [2021 (377) E.L.T. 865 (Tri. - Chennai)]

PERSONAL HEARING:

4. Personal hearing in the matter was held on 13.05.2025 in virtual mode. Shri Ashwani Kumar Prabhakar, Advocate, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum and also submitted copy of the advisory of FSSAI dated 16.10.2023, requesting to take the same on record and also submitted letter dated 13.05.2025 regarding the Condonation of delay in filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner (Imports), Customs House, Mundra and the defense put forth by the appellants in their appeal. The Appellant has filed the present appeal on 07.11.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 06.09.2023 as 06.09.2023. Hence, the appeal appears to have been filed with a delay of 2 days beyond the period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant vide their letter dated 13.05.2024 have informed that date of the impugned Order was 06.09.2023 and they had not received physical



copy of the order. The appeal sent by them by speed post was received in office of the Commissioner (Appeals) on 06.11.2023. They have submitted speed post tracking record indicating that the consignment/appeal had reached Ahmedabad on 04.09.2023 and the postal department was not able to deliver the same on that day as there was a local holiday in Ahmedabad on 04/11/2023 being Saturday and 05.11.2023 being Sunday and the appeal was delivered to on 06.11.2023 and they have requested that such delay for 1-2 days may be condoned. In terms of per Section 10 of the General Clauses Act, 1897, the present appeal filed on the next working day i.e. 06.11.2023 is to be considered as filed in due time i.e. within normal period of 60 days. The appellant has paid entire duty, Redemption fine, interest and penalty totaling Rs. 14,07,930/- vide E-payment challan No. 2042908841 dtd 27.09.2023. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

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 treatment of Re-imported goods as prohibited by the adjudicating authority on the basis of FSSAI testing is correct or otherwise. Consequently, whether the goods are liable for confiscation under Section 111(d) due to their nature being prohibited or otherwise.
- ii. Whether the imposition of a redemption fine under Section 125 and penalty under Section 112(a)(ii) is justified, or if the appellant's claim of a clerical error negates liability.

5.2 It is observed that the Adjudicating Authority emphasized that the goods, intended primarily for human consumption, failed to meet FSSAI standards, rendering them unfit for clearance at Mundra Port for domestic use and hence making the goods "prohibited" under Section 2(33) of the Customs Act, 1962. Consequently, the goods were deemed liable for confiscation under Section 111(d) of the Customs Act, 1962. The Adjudicating Authority ordered confiscation but provided an option for re-export upon payment of a redemption fine of Rs. 7,00,000/- under Section 125 of the Customs Act, 1962 in light of CBIC Circular No. 58/2001-Cus. dated 25.10.2001, which allows goods unfit for human consumption to be re-exported or destroyed after adjudication, subject



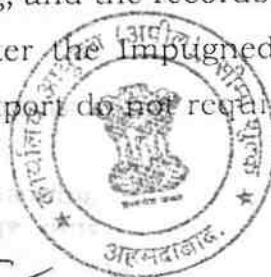
to a redemption fine for prohibited goods.

5.3 It is observed that the Appellant submits that Rule 3(1)(k) and 3(2)(f) of the Foreign Trade Order, 1993, exempt re-imported Indian-origin goods intended for re-export from Customs duty and compliance with import rules under Section 20 of the Customs Act, 1962. Regulation 7(3) of the FSSAI (Import) Regulations, 2017, further states that Customs authorities need not refer such goods to FSSAI for clearance if meant for re-export.

5.4 It is also observed that the appellant has submitted that goods, not cleared for home consumption but permitted for re-export from the Customs area, do not violate any prohibition under the Customs Act, 1962, or FSSAI regulations. Hence, they are not liable for confiscation under Section 111(d). Citing judicial precedents, the Appellant argues that redemption fines cannot be imposed on goods allowed for re-export, as no revenue implication arises. Further, the goods, not intended for home consumption, do not attract penalty under Section 112(a).

5.5 It is observed that the appeal hinges on whether the re-imported Indian Green Cardamom, intended for re-export, is subject to FSSAI testing and, consequently, liable for confiscation and penalties due to non-compliance. The Impugned Order relies on the FSSAI's rejection of the goods for home consumption, treating them as prohibited under Section 2(33) and liable under Sections 111(d) and 112(a). The Appellant's primary contention is that the goods, re-imported for re-export, are exempt from FSSAI testing. Rule 3(2)(f) of the Foreign Trade Order, 1993, clearly states that goods imported and bonded for re-export (except to Nepal and Bhutan) are exempt from import rules. Regulation 7(3) of the FSSAI (Import) Regulations, 2017, further supports this by exempting customs authorities from referring such goods to FSSAI for clearance. The Impugned Order does not address these provisions, instead relying on the FSSAI's rejection for home consumption, which is irrelevant given the goods' re-export intent.

5.6 During the course of personal hearing, the appellant has submitted FSSAI Advisory dated 16.10.2023. I have carefully examined the appeal, submissions made during the personal hearing, and the records of the case. The FSSAI Advisory dated 16.10.2023, issued after the Impugned order possibly clarifies that re-imported food articles for re-export do not require FSSAI testing




or NOC. The FSSAI Advisory dated 16.10.2023 likely clarifies this, potentially directing Customs authorities to bypass FSSAI testing for such consignments. The FSSAI Advisory dated 16.10.2023 makes it clear that imported food consignments meant for 100% export/re-export shall not be subjected to FSSAI clearance procedures.

5.7 The Adjudicating Authority could not have considered this advisory as it was issued after the issuance of the OIO, necessitating a remand to ensure its application. This aligns with principles of natural justice and Section 128A, which empowers remand for re-adjudication in light of new evidence or guidelines. Given this clarification from the competent food authority (FSSAI), the classification of the goods as 'prohibited' under Section 2(33) read with 111(d) of the Customs Act, 1962, requires re-examination. It is essential for the adjudicating authority to reassess the facts in the light of this authoritative advisory, which was not in existence at the time of the original adjudication. In view of the above, the matter is required to be remanded for de novo adjudication.

6. In view of the above findings and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I hereby set aside the Order-in-Original No. MCH/ADC/MK/161/2023-24 dated 06.09.2023 and remand the matter to the adjudicating authority with the direction to reconsider the case afresh, after giving the appellant an opportunity of being heard and taking into account the FSSAI Advisory dated 16.10.2023. In this regard, I rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. - Del)] holding that Commissioner (Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

7. In view of the above, I allow the appeal by way of remand.





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

F. No. S/49-140/CUS/MUN/2023-24 1176

Date: 27.05.2025

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सत्यापित/ATTESTED

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

By Registered post A.D/E-Mail

To,
M/s Pace Ventures Private Limited
(IEC No. 0311003214)
166B, Nabashruti Building,
Khan Ghat, Dadar East,
Mumbai-400014



Copy to:

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