



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथीमंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN- 20250471MN000000E96F

क	फाइलसंख्या FILE NO.	S/49-454/CUS/MUN/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-003-25-26
ग	पारितकर्ता PASSED BY	SHRI AKHILESH KUMAR Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	08.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. MCH/ADC/MK/283/2024-25 dated 06.02.2025 issued by the Additional Commissioner, Customs, Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	08.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Indo Nippon Trading Company, 6562/9, 1 <sup>st</sup> Floor, Right Side Portion, Chamelian Road, Bara Hindu Rao, Central Delhi-110006
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.
	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए 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, 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	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 हजार रुपए.	(क) 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 रुपए	(ख) 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 रुपए.	(ग) 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।	(घ) 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**

The present appeal has been filed by M/s. Indo Nippon Trading Company, 6562/9, 1<sup>st</sup> Floor, Right Side Portion, Chamelian Road, Bara Hindu Rao, Central Delhi - 110006, holding IEC - BLEPY9986K, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962 against the Order - In - Original No. MCH/ADC/MK/283/2024 – 25, dated 06.02.2025 (herein after referred to as the 'impugned order') issued by the Additional Commissioner, Customs, Mundra (herein after referred to as the 'adjudicating authority').

2 Briefly stated, facts of the case are that the appellant has imported below mentioned consignment at Mundra Port :

Sr. No.	Bill of Entry & Date	Declared goods	Quantity	Declared value (Rs.)
1	9984272, dated 05.02.2024	Used tyre for ADV, Tractor, trolley and PCV size 8	2308	39,95,152/-
		Used tyre for ADV, Tractor, trolley and PCV size 10	41	
		Used tyre for ADV, Tractor, trolley and PCV size 12	1951	
		Used tyre for ADV, Tractor, trolley and PCV size 13	51	
		Used tyre for ADV, Tractor, trolley and PCV size 14	2736	
		Used tyre for ADV, Tractor, trolley and PCV size 15	3856	
		Used tyre for ADV, Tractor, trolley and PCV size 16	2756	
		Used tyre for ADV, Tractor, trolley and PCV size 17	1132	
		Used tyre for ADV, Tractor, trolley and PCV size 17.5	227	
		Used tyre for ADV, Tractor, trolley and PCV size 18	48	
2	9984304, dated 05.02.2024	Used tyre for ADV, Tractor, trolley and PCV size 19	2	15,02,873/-
		Used tyre for ADV, Tractor, trolley and PCV size 25	2	
		Used tyre for ADV, Tractor, trolley and PCV size 16	830	
		Used tyre for ADV, Tractor, trolley and PCV size 20	1846	



On the basis of letter dated 29.03.2024 received from Central Intelligence Unit, Customs House, Mundra, directions were issued to the Docks Examination, Custom House, Mundra for examination/re-examination of the goods imported under Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024. Further, a Customs empanelled Chartered Engineer, Shri Tushar Zankat was appointed by the competent authority to survey the goods imported under the said Bill of Entry and ascertain the actual value and description of goods. The Chartered Engineer vide his Survey Report dated 02.04.2024 concluded that the goods imported vide Bills of Entry No. 9984304, dated 05.02.2024 and 9984272, dated 05.02.2024 can not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. As per his report, the imported goods can be used in passenger car vehicles and Light Trucks and other. The Chartered Engineer has also valued the goods as per the current market details with respect to old and used tyres of various size and brands. He has also found that the importers have imported the goods by way of huge undervaluation. Further, in the Examination report it was also affirmed that the goods are old and used tyres.

2.2 In view of the report submitted by Docks Officer in the system and Chartered Engineer Survey Reports, it appeared that the appellant had imported the goods covered under the Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 by way of mis-declaration of description, mis-classification and under valuation of the goods and thus by doing so the appellant has contravened the provisions of Section 46 of the Customs Act, 1962 and Foreign Trade Policy condition prescribed by DGFT. In absence of DGFT license for import of restricted i.e. old and used tyres, goods become restricted/prohibited. Therefore, the said goods could not be allowed for home consumption and appeared liable for confiscation. The same were seized vide two Seizure Memos both dated 22.04.2024 covering the Bills of Entry No. 9984304, dated 05.02.2024 and 9984272, dated 05.02.2024 respectively under Section 110(1) of the Customs Act, 1962.

2.3 The appellant had filed Special Civil Application No. 3624 of 2024 before the Hon'ble High Court of Gujarat for a direction to the Customs authorities for immediate assessment of the Bills of Entry. The Hon'ble High Court vide order dated 04.03.2024 directed the appellant to make representation in the matter before the Commissioner of Customs as well as Deputy Commissioner of Customs Department.



2.4 The appellant vide letter dated 05.03.2024 submitted a representation before the Commissioner of Customs and Deputy Commissioner of Customs, requesting for assessment of the impugned Bills of Entry and clearance of goods for home consumption on payment of assessed duties. The appellant further submitted an application dated 15.06.2024 for provisional clearance and provisional assessment of the goods before the Commissioner of Customs and Deputy Commissioner of Customs. The Adjudicating authority vide impugned order rejected the appellant's application for provisional release.

2.5 In the meantime, two separate Show Cause Notices both dated 18.10.2024 were issued under Section 124 of the Customs Act, 1962 in respect of each Seizure Memos, both dated 22.04.2024 covering the Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 respectively.

2.5 The Hon'ble High Court has vide order dated 03.03.2025 in SCA No. 3624 of 2024 direction that the appellant herein may file an appeal against the order for rejection of application for provisional release within 2 weeks and the appeal may be decided by the Appellate authority within 4 weeks from submission of the appeal. The present appeal has been filed by the appellant in this office on 13.03.2025. In pursuance of the order dated 03.03.2025 of the Hon'ble High Court, the appeal is taken up for disposal.

3. The appellant has filed the appeal on the following grounds:-

- The learned adjudicating authority has failed to classify the goods under the correct tariff heading and has erroneously declared the goods as prohibited, by misapplying Para 2.31 of the Foreign Trade Policy, which pertains to restrictions on second-hand goods.
- The used tyres are repurposed for use in animal-drawn vehicles, tractor trolleys, and pushcarts, as these tyres have already been discarded for use according to their original design and the purpose for which they were manufactured. Hence, the description had been correctly given in the bills of entry.
- Under the First Schedule to the Customs Tariff Act, 1975, the goods have been identified as pre-used by titling them as 'used pneumatic tyres' under CTH No. 401220. Sub-



heading 40122010 there under describes the tyres as used pneumatic tyres "for buses, lorries and earth moving equipment's including light commercial vehicles". The proposition 'for' is used to denote the intended purpose as the goods capable of being used in buses, lorries, earth moving equipments including light commercial vehicles. In other words, the quality of the tyres capable of being used in aforementioned vehicles is the determining factor for deciding the classification of used pneumatic tyres under CTI No.40122010. Had the intention been to classify used pneumatic tyres of buses, lorries and earth moving - equipments including light commercial vehicles under the aforementioned CTI instead of proposition 'for' the proposition 'of' would have been used in the first schedule to the Customs Tariff under the Customs Tariff Heading. The same argument holds good for classifying used tyres under CTS 4012 20 20. Under this CTS also, the intended use of the imported goods has been considered for classifying the goods under the heading.

- Reliance is placed on the following case laws:-
  - (i) Ceat Tyres of India reported in 2002 (140) ELT 273 (Tri.-LB)
  - (ii) Galaxy Pet Packaging Syntex Vs. Commissioner of Customs, Kandla reported in 2009 (233) ELT 358 (Tri.-Ahmedabad)
  - (iii) Eagle Impex Vs. Commissioner of Customs, Kandla reported in 2017 (350) E.L.T. 107 (Tri.-Ahmedabad)
- The goods were seized vide two seizure memos, both dated 22.04.2024, based on a report by Shri Tushar Zankat, a Customs-empanelled Chartered Engineer nominated by the Customs authority to survey the goods. His findings contradict those of Shri Kunal A. Kumar of M/s. Suvikaa Associates, who was previously engaged by the appellant. The Chartered Engineer's report is also unreliable because it is based solely on visual examination, which is insufficient for providing a technical assessment of the tyres. Despite this limitation, he has concluded that the tyres have a residual life of 50 to 70 percent. Such a conclusion is highly problematic, as relying on it could lead to the use of these tyres on high-speed vehicles, potentially causing serious accidents. Therefore, the report is not only irresponsible but also lacks credibility and cannot be relied upon. The Chartered Engineer failed to identify the aircraft tyres, mud and snow tyres, and monorail tyres, which have no apparent second-hand market except for use in animal-drawn vehicles and pushcarts. Moreover, if IRMRA certifies that the tyres in question are

suitable for use in animal-drawn vehicles, there should be no objection to releasing the goods for that purpose. It is therefore requested that the tyres be examined by IRMRA.

- Assuming but not admitting that there was mis-declaration of value, it does not make the goods a prohibited one. Even if the goods are liable for confiscation, there is no objection in releasing the goods provisionally.
- The adjudicating authority, vide impugned order held that the appellant had imported the old and used tyres, in violation of para 2.31 of Foreign Trade Policy conditions wherein all the second hand /used goods other than capital goods are restricted for import and therefore required an authorization for import. The goods fall under the prohibited category and are liable for confiscation under the Customs Act. The learned adjudicating authority erred in concluding that the goods imported are second hand by nature. The goods in question do not fall within the scope of "second-hand goods" as contemplated under Para 2.31 of the Foreign Trade Policy (FTP). The term "second-hand goods" refers to items that have had a previous owner, are not new, and remain capable of being used for the same purpose for which they were originally manufactured. In the present case, the old and used tyres imported by the appellant can no longer serve their original purpose, as they are unfit for use on fast-moving vehicles or on heavy-load carriers such as trucks and buses. Instead, these tyres are now suitable only for use on slow-moving vehicles, including bullock carts, camel carts, etc. While these tyres qualify as "used goods," they are not for second hand use for the same purpose and therefore do not require any specific authorization for import under Para 2.31 of the FTP. Therefore, the allegation of a policy violation is misplaced, and the goods cannot be deemed prohibited or restricted under the FTP on this basis.
- In the past, old and used tyres for ADV purpose had been cleared by Mundra Customs. Hence, there should not be any difficulty in provisionally releasing the goods.
- Assuming without admitting that the old and used tyres imported by the appellant fall within the restricted category, it is submitted that the settled legal position establishes that restricted goods may be imported into the country under a valid licence and are therefore not injurious to the domestic industry. Consequently, such goods have been permitted clearance into the domestic tariff area upon the imposition of penalties. A restriction, though a form of prohibition, does not render the goods ineligible for clearance into the

*dky*



domestic tariff area. Accordingly, the provisional release of the goods is entirely lawful and may be granted in the present case.

4. Personal hearing in the matter was held in virtual mode on 04.04.2025. Shri Gervasis P. Thomas, Advocate, appeared for personal hearing. He reiterated the submissions made at the time of filing appeal. He also submitted that since contradictory test reports are available, the tyres may be ordered to be examined by IRMRA (Indian Rubber Manufacturers Research Association) which is an approved laboratory for tyre testing and the goods may be ordered to be provisionally released. He placed reliance upon the additional documents and case laws submitted vide email dated 04.04.2025 as under :-

- (i) Reports of IRMRA in respect of M/s. Imrose Traders and M/s. Jubran Overseas
- (ii) Automotive Tyre Testing Rules and Standards compiled for Kerala Rubber Ltd and other Traders.
- (iii) Rule 17 i.e Confiscation and Redemption of Foreign Trade ( Regulation) Rules 1993
- (iv) Kadri Enterprises 2016 (331) ELT 358 (Guj.)
- (v) Black Gold Technologies V/s. UOI- 2020 (374) ELT 507 (Mad.).
- (vi) Mumbai Fabrics P Ltd -2021(375) ELT 145 ( Bom.)

5. I have carefully considered the Memorandum of Appeal, the arguments advanced during the course of personal hearing and the materials available on record. The issue before me for determination is whether the impugned order rejecting the application of the appellant for provisional release of the goods seized under two Seizure Memos, both dated 22.04.2024, pertaining to two import consignments covered under Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 respectively, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1. The Deputy Commissioner, Import Assessment (Group II), Custom House, Mundra has vide letter dated 04.04.2025 forwarded comments on the appeal filed by the appellant. It has been submitted that the provisional release of the consignment was denied by the Competent Authority as per provisions of Board's Circular No. 35/2017 - Customs, dated 16.08.2027 on the grounds that the appellant had mis-declared the goods covered under Bills of Entry No. 9984304 dated 05.02.2024 & 9984272 dated 05.02.2024, as old and used tyres for Animal Driven Vehicle



purpose instead of Old and used truck/bus/car tyres and also mis-classified the same under CTH 40122090-Others, to avoid the restrictions imposed on the import of used pneumatic tyres. After carrying out the examination and assessment of imported goods, the Chartered Engineer issued reports on 02.04.2024 and concluded that the subject tyres cannot be declared as being used for Animal Driven Vehicle. It is further submitted that the subject goods were seized on the ground of illegal importation of the impugned goods, which are old and used tyres and fall under the category of 'second-hand goods other than capital goods' at Sl. No. II of para 2.31 of FTP, 2023, which is 'Restricted' and importable only against authorization. However, the importers have not produced any authorization issued by DGFT for the importation of the used and old tyres. In the absence of a DGFT license for the import of restricted items, i.e., old and used tyres, the goods become prohibited.

6. It is observed that the appellant has imported consignment of goods declared as 'Used tyre for ADV, tractor trolley and PCV' comprising of different sizes under Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 filed at Mundra Port . On the basis of letter dated 29.03.2024 from Central Intelligence Unit, Customs House, Mundra, the officers of Dock Examination were directed for examination/re-examination of the said goods. Further, a Customs empanelled Chartered Engineer, Shri Tushar Zankat was appointed by the competent authority to survey the goods imported under the said Bills of Entry and ascertain the actual value and description of goods. The Survey Report dated 02.04.2024 of the Chartered Engineer conclude that the goods imported vide Bills of Entry No. 9649517, dated 13.01.2024 will not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. As per his report, the imported goods can be used in passenger car vehicles and Light Trucks and other. The Chartered Engineer has also valued the goods as per the current market details with respect to old and used tyres of various size and brands. He has also found that the importers have imported the goods by way of huge undervaluation. Further, in the Examination report it was also affirmed that the goods are old and used tyres.

6.1 In view of the report submitted by Docks Officer in the system and Chartered Engineer Survey Reports, it appeared that the appellant had imported the goods covered under the Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 by way of mis-declaration of description, mis-classification and under valuation of the goods and thus by doing so the appellant has contravened the provisions of Section 46 of the Customs Act and Foreign Trade Policy condition prescribed by DGFT. In absence of DGFT license for import of restricted goods i.e. old and used tyres, the said goods become restricted/prohibited. It appeared that the



said goods could not be allowed for home consumption and also appeared liable for confiscation. The same were accordingly seized vide Seizure Memo dated 22.04.2024 under Section 110(1) of the Customs Act, 1962.

6.2 It is further observed that the appellant filed an application dated 15.06.2024 for provisional release and provisional assessment of impugned goods before the adjudicating authority. The adjudicating authority vide impugned order rejected the appellant's application for provisional release of goods on the ground that the impugned goods are mis-declared in terms of description as old and used tyres for Animal Driven Vehicle instead of Old and used truck/bus/car tyres and also in terms of value as reported by the Chartered Engineer. The adjudicating authority has further held that the imported goods are also mis-classified under CTH 401202090-others, so as to avoid the restriction imposed on import of Old and Used Retreated or used pneumatic tyres. It is also held by the adjudicating authority that the imported goods 'Old and Used Tyres for A.D.V purpose' have been imported in violation of Para 2.31 of Foreign Trade Policy condition, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for Import but the appellant had not produced any authorization issued by DGFT for importation of the used and old tyres. In view of the same, the adjudicating authority has held that the goods have been rendered as prohibited.

6.3 It is observed that the import of old/second hand goods is governed through Foreign Trade Policy and the relevant para 2.31 of the Policy is reproduced as under :-



**Import Policy for Second Hand Goods:**

## 2.31 Second Hand Goods

Sl.No.	Categories of Goods	Second-Hand	Import Policy	Conditions, if any
<b>I. Second Hand Capital Goods</b>				
I(a)	i. Desktop Computers; ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops; iii. Air Conditioners; iv. Diesel generating sets		Restricted	Importable against Authorisation
I(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time		Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
I(c)	Refurbished / re-conditioned spares of Capital Goods		Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare
I(d)	All other second-hand capital goods {other than (a) (b) & (c) above}		Free	
<b>II. Second Hand Goods other than capital goods</b>				
III.	Second Hand Goods imported for the purpose of repair/refurbishing / re-conditioning or re-engineering		Free	Subject to condition that waste generated during the repair/ refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

I find that the impugned goods i.e old and used tyres as per the description confirmed by the Chartered Engineer fall under the category of 'Second Hand Goods other than capital goods' as per Sl No. II of Table above and hence are restricted items which require DGFT Authorisation for import. From the facts available on record, I find that the appellant has not produced any authorization from DGFT for import of impugned goods.

6.4 The appellant has on the other hand placed reliance on the following two orders passed by the Customs Authorities at Customs, Mundra on similar issues:-

- (1) OIO No. MCH /ADC/AK/231/2023-24, dated 06.01.2024 issued by the Additional Commissioner of Customs, Gr-II, Mundra in case of M/s. Indo Nippon Trading Company (appellant).
- (2) OIO No. MCH /53/AC/NSM/Gr-II/2023-24, dated 18.04.2023 issued by the Assistant Commissioner of Customs, Gr-II, Mundra in case of M/s. IM Enterprises.



On going through the above orders, it is observed that in both the cases, similar goods i.e 'Old and Used tyre for ADV' were found to have been imported without DGFT Authorisation at Mundra Port. Further, the said goods were also found to be mis-declared in terms of value and held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. However, the adjudicating authority gave an option to the importers in both the above cases to redeem the goods on payment of redemption fine under Section 125 of the Customs Act, 1962. The present case being similar in nature, I am of the considered view that the rejection of application for provisional release of goods by the adjudicating authority is not in accordance with decisions in quasi-judicial proceedings followed in the same jurisdiction. The impugned order is not legally sustainable.

6.5 It is further observed that the Hon'ble High Court of Gujarat, Ahmedabad vide Oral Order dated 06.11.2015 in the SCA No. 8492 of 2015 (Civil Application No. 9587 of 2015) in the matter of M/s. Kadri Enterprise Vs Union of India, has allowed the clearance of similar goods subject to the following conditions. The relevant part of the Order is as under:

*"18. For the foregoing reasons, the application succeeds and is, accordingly, allowed. The respondents are directed to forthwith permit assessment and clearance of the goods imported by the applicant petitioner under Bills of Entry No.17 and 18 dated 16.03.2015 in accordance with the provisions of the Customs Act, 1962, subject to the following conditions*

- i. the customs authority shall depute a surveyor to check whether the tyres are reusable with or without retreading;*
- ii. the petitioner shall not clear any goods which are not reusable;*
- iii the responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused."*

6.5.1 Similarly, in another case, the Hon'ble High Court of Gujarat, Ahmedabad vide oral order dated 10-02-2021 in the SCA No. 2350 of 2021 in the case of M/s. K S Trading Co., Vs. UOI, in para 2(5), has ordered that,

*"the situation being identical in the matter, of SCA 8492 of 2015 (Civil Application No. 9587 of 2015), similar interim directions are issued subject to similar conditions as referred in SCA 8492 of 2015, viz. (i) the customs authority shall depute a surveyor to check whether the tyres are reusable with or without retreading; (ii) the petitioner shall not clear any goods which are not reusable; (iii) the responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused."*

6.6 As discussed in the above said Oral Order dated 10-02-2021, vide para 3 thereof, the Hon'ble High Court of Gujarat, Ahmedabad has allowed clearance of the goods as per the conditions referred in Special Civil Application No. 8492 of 2015. The Hon'ble High Court of Gujarat vide order dated 07.09.2022 in case of SCA No. 6957 of 2021 clubbed with all SCAs, has disposed off all pending SCA's including SCA No. 8492 of 2015 & 2350 of 2021 in terms of the interim orders issued on the subject issue. Therefore, considering the facts of the case, decisions of the Hon'ble High Court, Gujarat for release of goods, I am of the considered view that the goods which are similar in this case, can be released provisionally on the same conditions as prescribed by the Hon'ble High Court of Gujarat, Ahmedabad in SCA No. 8492 of 2015 read with SCA No. 2350 of 2021.

6.7 It is further observed that the Advocate appearing on behalf of the appellant during personal hearing has requested for re-testing of imported tyres by IRMRA. In this regard, I am of the considered view that SCN has already been issued in the case and the request for re-test can be considered in the quasi-judicial proceedings by the adjudicating authority during adjudication. Further, I find that the present appeal is limited to the request for provisional release only and no such request appears to have been made before the adjudicating authority. Hence, I reject the request for re-testing by the appellant in this appeal.

6.8 In view of the above, considering the facts of the case and decision of the Hon'ble High Court of Gujarat cited above and taking into account the Board's Circular No. 35/2017 - Customs, dated 16.8.2017, I set aside the impugned order and allow the provisional release of the seized goods subject to the following conditions:-

- (1) Furnishing a bond equivalent to the value of the goods as determined by the adjudicating authority.




- (2) Providing a Bank Guarantee equivalent to 15% of value of goods as determined by the adjudicating authority.
- (3) Payment of duty amount pertaining to seized goods before provisional release.
- (4) The appellants shall not clear any goods which are not reusable
- (5) The responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused.

7. The appeal filed by the appellant is disposed in above terms.

*Akhilesh Kumar*  
.. 08 April, 2025.  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Customs, Ahmedabad

F.No. S/49-454/CUS/MUN/2024-25

Date: 08.04.2025

By Registered Post A.D./E-Mail

To,

(1) M/s. Indo Nippon Trading Company,  
6562/9, 1<sup>st</sup> Floor, Right Side Portion,  
Chamelian Road, Bara Hindu Rao,  
Central Delhi-110006.

(2) Shri Gervasis P Thomas, Advocate ( E-Mail:-gpt@etimeadvisory.com)  
A-801-802, Shapath Hexa, Near Gujarat High Court,  
SG Highway, Sola,  
Ahmedabad-380060



Copy to :-

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Customs House, Mundra.
4. Guard File.