



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**
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DIN - 20250671MN000000D2F1

क	फ़ाइल संख्या FILE NO.	S/49-260/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- 055 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	05.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/AK/241/2023-24 dated 26.1.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	05.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Harsha Engineers International Ltd. (formerly known as M/s Harsha Engineers International P Ltd) Plot No. 388, Changodar, Sarkhej-Bavla Road, Ahmedabad Gujarat 382213



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)	बैगैज 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 मंजिल, 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 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

M/s. Harsha Engineers International Ltd. (formerly known as M/s Harsha Engineers International P Ltd) situated at Plot No. 388, Changodar, Sarkhej-Bavla Road, Ahmedabad, Gujarat 382213 (hereinafter referred to as 'the appellant') have filed the present appeal challenging the Order-in-Original No. MCH/ADC/AK/241/2023-24 dated 26.01.2024(hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that a Show Cause Notice No.CUS/APR/MISC/9084/2023-Gr 5-6- O/o Pr Commr-CusMundra dated 01.09.2023 was issued to the appellant wherein it was alleged that the goods imported by the appellant under Bill of Entry No. 8910291 dated 22.9.2020 viz. 'Seco Warwick make Horizontal Retort Nitriding Furnance' under Custom Tariff Head 84798999 attracted IGST @ 18% as per Sr. No. 366 of Schedule III of said Notification No. 01/2017-IGST (Rate) dated 28.06.2017, whereas , the appellant had paid IGST @ 12% under Sr. No. 201 of Schedule II of the Notification No. 01/2017-IGST (Rate) dated 28.06.2017.This resulted in short payment of IGST amounting to Rs. 19,95,818/- and the same was demanded from the appellant under Section 28A(4) of the Customs Act, 1962 along with interest under Section 28AA of the said Act under the above show cause notice. Further penalty under Section 114A of the Customs Act, 1962 was also proposed on the appellant vide the said show cause notice.

2.1. The adjudicating authority adjudicated the aforesaid show cause notice vide the impugned order wherein he ordered as under :

- (1) The impugned goods were ordered to be re-assessed at 18% IGST under Sr. No. 366 of Schedule III to Notification No. 1/2017 – IGST (Rate)
- (2) Differential IGST of Rs. 19,95,818/- was demanded under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the said Act
- (3) Bill of Entry No. 8910291 dated 22.9.2020 was ordered to be re-assessed to debit the differential duty from EPCG Licence No. 0830011992



(4) Penalty of Rs. 19,95,818/- was imposed on the appellant under Section 114A of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has filed the present appeal. They have, *inter-alia*, raised various contentions and filed detailed submissions as given below in support of their claims:

- They had uploaded all the relevant documents such as Invoice, Packing List, Bill of Lading, etc. in e-sanchit at the time of filing the Bill of Entry and the same were available to the assessing officer at the time of assessment. The Appraising Officer had assessed the Bill of Entry on the basis of the documents and no query was raised at the relevant time. Thus, it is a case where all the relevant information was available with the department and there is no case for suppression of facts or mis-declaration. As such, the extended period of limitation was not available and the notice was hit by limitation. Reliance was placed on the case laws of Dr. Rai Memorial Cancer Institute reported at 2022 (381) ELT 540 (T), M/s Sirthai Superware India Ltd. reported at 2020 (371) ELT 324 (T), M/s Semco Electric Pvt. Ltd. reported at 2019 (370) ELT 1052 (T) and M/s Sandor Medicaids Pvt. Ltd. reported at 2019 (367) ELT 486 (T).
- IGST was leviable under Section 3(7) of the Customs Tariff Act and not under Section 12 of the Customs Act. Reliance was placed on the case laws of M/s Hyderabad Industries Ltd. reported at 1999 (108) ELT 321 (SC) and M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom)
- Interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. Reliance was placed on the case law of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) and order dated 16.7.1997 of the Hon'ble Supreme Court in the case of M/s India Carbon Ltd.
- There were no provisions under Section 3(12) of the Customs Tariff Act for charge of interest or imposition of penalty and as such no penalty or interest could have been charged in the case. Reliance was placed on the case laws of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) and M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom).

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- Penalty under Section 114A of the Customs Act was not imposable since the elements of suppression of facts and willful mis-statement are not satisfied in the facts of the case at hand.

PERSONAL HEARING

4. Personal hearing in the matter was held on 08.05.2025 wherein Shri John Christian and Shri Ashish Jain, Consultants appeared for hearing on behalf of the appellants. They reiterated the submissions made in appeal memorandum and placed on record the case law of M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom). They further submitted that with respect of charge of interest and imposition of penalty, the matter in present appeal is squarely covered in the said judgement and requested that the interest and penalty may be set aside.

DISCUSSION AND FINDINGS

5. I have carefully gone through the impugned order, appeal memorandum filed by the appellants, submissions made by the appellant during course of hearing as well as the documents and evidences available on record.

5.1 The entry at Sr. No. 201 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate) covers 'Composting Machines' and the entry at Sr. No. 366 of Schedule III of Notification No. 1/2017-IGST covers 'Machines other than Composting Machines'. Comparison of both entries leaves no room for doubt that all machines falling under CTH 8479 other than Composting Machines are covered under the scope of Sr. No. 366 of Schedule III of Notification No. 1/2017-IGST. There is no ambiguity in both the entries and whenever machine covered under CTH 8479 is not a Composting Machine, the same would not be covered under entry at Sr. No. 201 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate).

5.2 Upon examining the facts of the case in light of the above observations, I find that the appellants have not raised any substantive arguments on the merits regarding the applicability of Sr. No. 366 of Schedule III of Notification No. 1/2017-IGST. Their submissions are limited solely to the issue of limitation. At no point have the appellants claimed that the goods imported were Composting Machines. It is implausible that an



importer would be unaware of the actual description or nomenclature of the goods they have ordered/imported. Furthermore, the complete silence of the appellants regarding the nature of the goods strongly suggests that they were fully aware that the items imported were not Composting Machines. Accordingly, I have no hesitation in concluding that the appellants knowingly imported goods that do not qualify as Composting Machines.

5.3 In view of the above, it is important to underscore that under the regime of self-assessment, the responsibility for correct classification, including the claim of exemption under a notification and the applicable rate of duty, squarely rests with the importer. When the relevant entry in the exemption notification is clear and unambiguous, and the appellant is aware that the imported goods are not Composting Machines, the act of claiming such an exemption constitutes a wilful mis-declaration with the intent to evade payment of duty. Therefore, the appellant's plea on the grounds of limitation is untenable in law, and the invocation of the extended period under Section 28(4) of the Customs Act, 1962, is justified in the facts of this case.

5.4 In the absence of any submission by the appellants asserting that the goods in question were Composting Machines, I conclude that the entry at Sr. No. 201 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate) is not applicable. The goods are, therefore, correctly classifiable under Sr. No. 366 of Schedule III of the said notification. Accordingly, the demand for differential duty amounting to ₹19,95,818/- is sustainable and liable to be upheld.

6. The appellants have strongly contended that interest and penalty are not imposable in the absence of explicit statutory provisions. It is a well-settled principle of law that interest on delayed payment of tax can only be levied if there is a substantive provision authorizing such imposition under the relevant statute. This position is supported by the order dated 16.07.1997 in the case of *M/s Indian Carbon Ltd. and M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd.*, reported in 2011 (271) ELT 32 (Guj.).

6.1 There is no dispute that IGST is leviable under Section 3(7) of the Customs Tariff Act. However, for the purpose of charging interest or imposing a penalty, there must be corresponding provisions under Section 3 of the said Act. The recovery mechanism provided under sub-section (12) of Section 3 does not contain any specific provisions authorizing the levy of interest or imposition of penalties. A comparison between the

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substituted and the erstwhile versions of Section 3(12) of the Customs Tariff Act clearly establishes this position. For ease of reference, both versions are reproduced below:

Statute prior to substitution i.e. before 16.8.2024

The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.]

Statute after substitution i.e. after 16.8.2024

"The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."

A comparison of the substituted statute with the earlier version clearly demonstrates that the provision for charging interest and imposing penalties in relation to the levy of IGST under Section 3(7) of the Customs Tariff Act was introduced only with effect from 16.08.2024. Prior to this amendment, there was no statutory provision under Section 3(12) of the Customs Tariff Act that authorized the levy of interest or the imposition of penalties.

6.2 The amended Section 3(12) of the Customs Tariff Act is prospective in nature, and therefore, the provision for charging interest is applicable only with effect from 16.08.2024. This position is supported by the judgment of the Hon'ble Bombay High Court in the case of **M/s A R Sulphonates Pvt. Ltd., reported in (2025) 29 Centax 212 (Bom)**, wherein the Court observed as follows:

66. Further, as far as the applicability of Section 3 (12), after its amendment by Finance (No. 2) Act, 2024, dated 16th August, 2024, is concerned, it would be appropriate to first refer to the provisions of the amended Section 3 (12) of the Tariff Act. Amended Section 3 (12) of the Tariff Act reads as under:-



"12:- The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."

67. In our view, the amended Section 3 (12) of the Tariff Act is prospective in nature and would apply only with effect from 16th August, 2024.

6.3 The issue of whether there existed a provision for charging interest and imposing penalties on levies under Section 3 of the Customs Tariff Act is no longer *res integra*. The Hon'ble Bombay High Court, in the case of **M/s Mahindra & Mahindra Ltd., reported at (2023) 3 Centax 261 (Bom)**, categorically held that the imposition of penalty and charge of interest under the then Section 3(6) of the Customs Tariff Act (now renumbered as Section 3(12)) is not sustainable in respect of duties levied under Section 3. This ruling was affirmed by the Hon'ble Supreme Court vide order dated 28.07.2023 in Special Leave Petition (Civil) Diary No. 18824/2023. Furthermore, the department's review petition against the said order was also dismissed by the Hon'ble Supreme Court on 09.01.2024 in SLP (C) No. 16214/2023.

6.4 The Hon'ble Bombay High Court reaffirmed the above legal position in the case of **M/s A R Sulphonates Pvt. Ltd., reported at (2025) 29 Centax 212 (Bom)**. In that case, which involved similar facts concerning the chargeability of interest and imposition of penalty for delayed payment of IGST, the Court categorically held that neither interest can be levied nor penalty imposed in respect of such IGST demands.

6.5 In view of the above, the matter is no longer *res integra*, and it is now settled that neither interest can be charged nor penalty imposed in cases involving IGST leviable under Section 3(7) of the Customs Tariff Act.

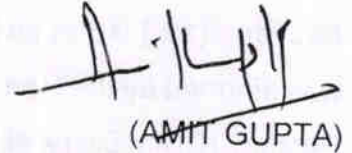
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7. In light of the judicial principles established by the Hon'ble Supreme Court in *M/s Kamlakshi Finance Corporation Ltd.* (1991 (55) ELT 433 (SC)), I am bound to follow the judgment of the **Hon'ble Supreme Court in *M/s Mahindra & Mahindra Ltd.* (supra)** and the **Hon'ble High Court of Bombay in *M/s A R Sulphonates Pvt. Ltd.***, especially since there is no stay on the operation of these orders nor have they been overruled to date.

7.1 Moreover, the law laid down by the Hon'ble Supreme Court is the binding law of the land under Article 141 of the Constitution of India and is mandatory for all lower authorities to follow. Accordingly, I hold that interest under Section 28AA and penalty under Section 114A of the Customs Act are not chargeable or imposable in the facts of the present case. Consequently, the adjudicating authority's imposition of interest and penalty in the impugned order is set aside.

8. Accordingly, I partially set aside the impugned order and allow the appeals in so far as the imposition of penalty and charge of interest are concerned, while upholding the demand for differential amount of IGST of Rs. 19,95,818/- confirmed in the impugned order.


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-260/CUS/MUN/2023-24

Date: 05.06.2025

By Registered post A.D/E-Mail

To,


✓ M/s. Harsha Engineers International Ltd.
(formerly known as M/s Harsha Engineers International P Ltd),
Plot No. 388, Changodar, Sarkhej-Bavla Road,
Ahmedabad Gujarat 382213



Copy to:

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

सत्यापित/ATTESTED


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