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 -20260371MN000000C035

क	फ़ाइल संख्या FILE NO.	S/49-350/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-976-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Gaurav Sahay, B-15,U S Villa Swaminarayan Nagar, Mundra, Kutch, Gujarat-370421

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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 Shri Gaurav Sahay, B-15,U S Villa Swaminarayan Nagar, Mundra, Kutch, Gujarat-370421 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AKM/209/2024-25 dated 02.12.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. J.H. Enterprises.

2.2 The specific focus of this proceeding pertains to a high-value consignment imported in the name of M/s. J.H. Enterprises (IEC: AQIPH7863E) via Container No. TGBU5160748 under Bill of Lading No. YMLUS226013593. The investigation into this specific container highlighted the syndicate's agility in attempting to evade detection once an enforcement action was initiated. As the DRI began intercepting related shipments, the importers, in connivance with the overseas shipper (M/s. Yiwu Surui Imp and Exp Co. Ltd.) and the shipping line (M/s. Huan Ming/Yang Ming Line), attempted a desperate "Change of Destination" (COD) while the vessel was still in transit to Mundra. They sought to divert the container to Jebel Ali, UAE, by manipulating the manifest and preparing two parallel sets of Bills of Lading—one declaring "Floor Clean MOP" for Mundra and another declaring "Household Items" for Jebel Ali. This fraudulent maneuver was intended to erase the shipment's connection to the Indian port and escape the jurisdiction of Indian Customs. Despite these elaborate attempts to divert the cargo, the DRI successfully placed the container on hold, and it was examined at Mundra Port under Panchnama dated September 16/17, 2022.

2.3 The physical examination of Container No. TGBU5160748 yielded an inventory of highly offending and prohibited goods that vastly differed from the manifest. While the documents declared 754 cartons of "Floor Clean MOP," the search actually recovered 200,400 pieces of foreign-brand E-cigarettes and 80,000 pieces of silicon "pop-up" toys. Additionally, the consignment contained 14,000 LCD writing pads and 2,500 head massagers that were used as structural concealment. The E-cigarettes, falling under HS Code 8543, are strictly prohibited for import into India under DGFT Notification No. 20/2015-2020 dated September 26, 2019, and the Prohibition of Electronic Cigarettes Act, 2019. The 80,000 toys were also classified as offending goods due to a total lack of mandatory Bureau of Indian Standards (BIS) compliance as required under Policy Condition 2 of Chapter 95 of the Customs Tariff (specifically IS: 9873 parts 1, 2, 3, 4, 7, and 9). The syndicate's failure to provide safety certifications and the deliberate concealment behind "Floor Clean MOPs" underscored a clear intent to bypass public health regulations and safety standards, posing a significant risk to the domestic market.

2.4 The investigation into the culpability of the parties involved established Shri Mohammad Asif Sathi as the central mastermind and "beneficial owner" of the cartel. He orchestrated the racket by acquiring IECs from dummy firms; in this specific instance, he utilized the services of Shri Tahir Menn to create the firm M/s. J.H. Enterprises by fraudulently using the identity documents of Shri Juma Hamir Halepotra, a caretaker of Asif's bungalow in Bhuj who had no knowledge of the business. The cartel's modus operandi involved a professional division of labor: Shri Baldevsinh Vala of M/s.

Kalpana Exim managed the logistics of "crossing" containers—a process where cleared goods were moved between vehicles or containers at secret locations to evade e-way bill tracking and enforcement checkpoints between Mundra and Bhiwandi. Meanwhile, Shri Samir Sharma, a G-Card holder of a Customs Broker firm, was implicated in submitting manipulated documents to the authorities, often on the instructions of the forwarders rather than the actual IEC holders, whom he had never met.

2.5 Granular details of the coordination were recovered from the "Mm" WhatsApp group, where members discussed the "stuffing" of prohibited items in the containers. Chat logs showed Baldevsinh Vala advising other members to stack E-cigarettes away from the container doors to avoid detection during partial Customs examinations and suggesting that "crossing" was necessary to prevent the DRI from tracking the containers via electronic surveillance. Shri Asif Sathi admitted in his statement that he paid hefty sums—up to ₹17 Lakh per container—for the successful clearance of these prohibited consignments. The investigation also unearthed a financial circuit where cash was collected from domestic buyers like "Raju Bhai" or "Sohail Bhai" and deposited into the bank accounts of the dummy firms to facilitate formal remittances to the foreign suppliers in China, thereby giving the illicit trade a veneer of legitimate commerce.

2.6 The legal and financial implications of the seizure are substantial. Under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the transaction values declared in the documents were rejected due to gross mis-declaration and the absence of any credible price data. Consequently, the value was re-determined sequentially through Rules 4 to 9. Given the absence of identical or similar goods in the valuation database, the value was arrived at using Rule 9 (the residual method) based on a comprehensive market survey and a report from a Government-approved Chartered Engineer. The market price of the seized E-cigarettes alone was estimated at approximately ₹2,400 per piece, totaling ₹48,09,60,000. Combined with the mis-declared toys and electronics, the total value of the offending goods in this single container approached ₹50 Crore.

2.7 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:

- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.
- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.8 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.9 On the basis of the investigation, Show Cause Notice was issued to M/s. J.H. Enterprises and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. J.H. Enterprises and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The adjudicating authority imposed the following penalties on the appellant:-

(A) In respect of offending goods i.e E-Cigarettes and toys :-

(I) He imposed penalty of Rs. 8,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.

(B) In respect of dutiable goods where bills of Entry not filed :-

(I) He imposed penalty of Rs. 5,000/- upon the appellant under Section 112(a)(ii) of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake

of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The Appellants contend that the impugned order is a "non-speaking order" passed in violation of the principles of natural justice. They argue that the adjudicating authority relied entirely on the department's investigation without conducting any independent inquiry into the actual facts of the case or considering the statements provided by the Appellants. This lack of independent assessment, they claim, renders the order unsustainable and liable to be set aside.

3.2 A major portion of the appeal challenges the evidence used to issue the Show Cause Notice (SCN), which is described as being based on "assumptions and presumptions". The Appellants assert that the case relies heavily on confessional statements recorded under pressure, threat, and coercion during the investigation. They argue that such statements are unreliable and inadmissible as evidence, especially when they lack independent corroboration.

3.3 The Appellants highlight a significant procedural flaw regarding the use of statements under Section 138B of the Customs Act. They maintain that for any statement to be relevant in a proceeding, the adjudicating authority must first examine the person who made the statement as a witness and then form an objective opinion that the statement should be admitted in the interest of justice. The appeal emphasizes that the right to cross-examine witnesses is a valuable right that was denied in this case, despite the witnesses being available.

3.4 The appeal contests the reliance on data retrieved from seized mobile phones and WhatsApp chats. Citing various judicial precedents, the Appellants argue that digital data from pen drives or messaging apps cannot be the sole basis for demanding duty or imposing penalties. They assert that the department failed to provide "positive and concrete evidence" such as proof of excess raw material procurement, unaccounted finished goods, or receipt of cash from alleged clandestine sales to support the digital findings.

3.5 Finally, the Appellants argue that no penalty is imposable under Section 112(a) of the Customs Act because their conduct was bona fide and they acted in good faith. They maintain that the department has failed to prove any "knowledge" or "abetment" on their part that would render the goods liable for confiscation. Furthermore, they challenge the allegations regarding Bureau of Indian Standards (BIS) compliance, stating that the onus to prove non-compliance lies with the department, which has failed to provide any documentary evidence to support its claims.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Ms Madhu Jain, Advocate, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

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

5.1 The investigation conducted by the DRI has successfully unmasked a sophisticated criminal architecture designed to systematically deceive the Customs Department. This was not a series of isolated import violations, but a well-oiled "Shadow Importation" system. In such syndicates, the "Beneficial Owner" remains hidden behind multiple layers of proxies. The role of the "Associate of the Beneficial Owner," a role filled by the Appellant Shri Gaurav Sahay, is pivotal to this deception. His primary function was to manage the "regulatory facade" of the operation. This involves sourcing and "lending" Importer-Exporter Codes of dummy or dormant firms, which are then used as front identities for smuggling prohibited items like electronic nicotine delivery systems (E-Cigarettes).

5.2 The digital evidence recovered from the mobile phone of Shri Mohammed Tahir Menn provides a contemporaneous and unedited record of the conspiracy. The Appellant was an active member of the WhatsApp group named "Mm," which functioned as the tactical hub for the cartel. The communications within this group reveal a high degree of "mens rea" and operational coordination. The chats reveal the Appellant actively suggesting the use of specific firms like "Exemplar Trading" or "Global Impex" for certain consignments. This selection of IECs is a strategic act; smugglers often choose "clean" IECs—those with no prior adverse history—to trick the Customs' Risk Management System (RMS) into granting "Green Channel" clearance or low-scrutiny "Faceless Assessment." By providing these "entry vehicles," the Appellant directly facilitated the avoidance of physical examination of the cargo.

5.3 The Appellant is seen forwarding IEC details specifically to the mastermind, Shri Asif, and coordinating the "Notify Party" and "Bill of Lading" (BL) details. In Customs law, the BL is the document of title. Controlling the BL details is controlling the ownership and destination of the goods. The Appellant's hand in coordinating these details proves he was not just a messenger, but a manager of the documentation trail.

5.4 The consignment under M/s J.H. Enterprises contained a massive quantity of E-Cigarettes, which are absolutely prohibited. The use of dummy IECs is the primary tool used to shield the real importer from the severe penalties associated with prohibited imports. The Appellant, by managing the "dummy front," provided the essential cover that allowed this illegal trade to attempt entry.

5.5 The Appellant's argument that he was a "professional acquaintance" or that the findings are based on "assumptions" is factually hollow. In cases of organized smuggling and conspiracy, the "preponderance of probability" combined with "digital footprints" creates a standard of proof that far exceeds mere suspicion. The WhatsApp group was not a social forum; it was a command center. A person who provides the "identity" for an import, knowing that the cargo is mis-declared or prohibited, is equally culpable under the Customs Act as the person who pays for the goods.

5.6 Furthermore, the involvement is not just a singular event but a pattern of behavior. The evidence shows the Appellant was deeply embedded in the "Mm" group's daily coordination. In the context of the Prohibition of Electronic Cigarettes Act, 2019, the intent of the legislature is to absolute prohibition. Any person who abets or facilitates such imports through documentation fraud is committing a grave offense against public policy. The Appellant's actions in coordinating the "names" on the import documents were the "sine qua non" (essential condition) without which the smuggling attempt could not have been staged. Therefore, I find that his role was integral, conscious, and deliberately aimed at facilitating the smuggling activities of the cartel.

5.7 The Appellant has placed heavy reliance on judgments suggesting that Section 108 statements are weak evidence and must be corroborated. However, it is a settled law that Customs Officers are not Police Officers, and statements recorded before them are admissible in evidence. In the case of K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin (1997) 3 SCC 721, the Hon'ble Supreme Court held that Section 108 confers investigative powers on Customs authorities to collect evidence and voluntary statements recorded thereunder may be relied upon as substantive evidence.

5.8 In the present case, co-noticee Shri Tahir Menn clearly stated that he paid Rs. 1,00,000/- to the Appellant for his work in clearing goods for Asif. This statement, when read with the WhatsApp chats where the Appellant is actively providing IECs, forms a "complete chain of evidence." The Appellant has failed to produce any evidence of coercion or threat that would invalidate these statements. Furthermore, the statements were never retracted before the Adjudicating Authority at the earliest opportunity, making them highly reliable.

5.9 The Appellant argues that WhatsApp chats are inadmissible without a certificate under Section 138C of the Customs Act. I find this argument legally flawed in the context of the present facts. The Adjudicating Authority has noted that a certificate under Section 65B of the Indian Evidence Act (equivalent to Section 138C of the Customs Act) was indeed obtained during the forensic retrieval of data from the mobile phones.

5.10 The contents of the chats were confronted to the co-noticees and the mastermind, who confirmed their authenticity. The Appellant's active role in providing "dummy IECs" is explicitly discussed in these chats, which directly facilitated the smuggling of prohibited E-Cigarettes in the J.H. Enterprises consignment.

5.11 The Appellant contends that under Section 138B, the Adjudicating Authority must examine witnesses before relying on their statements. I find that the Adjudicating Authority has correctly exercised its discretion. Cross-examination in quasi-judicial proceedings is not an absolute right; it is a "procedural safeguard" that depends on the facts. However, the Appellant's request for cross-examination was found to be a dilatory tactic aimed at protracting the proceedings. When the evidence is documentary and corroborated by multiple voluntary statements, the denial of cross-examination does not amount to a violation of natural justice.

5.12 Reliance is placed on Kanungo & Co. v. Collector of Customs (1972) 2 SCC 235, where the Apex Court held that principles of natural justice do not require that the person whose statement is relied upon must be produced for cross-examination in all cases, especially when the person had been given an opportunity to explain.

5.13 Section 112 of the Customs Act, 1962, serves as the primary penal provision for the improper importation of goods. Section 112(a) applies to any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. In this case, the "act" committed by the Appellant was the sourcing and systematic "lending" of IECs belonging to various dummy entities like M/s Global Impex and M/s Exemplar Trading to the mastermind, Shri Asif. This act was the foundational prerequisite that allowed the illegal consignment of M/s J.H. Enterprises to be filed and presented to Customs under the cloak of a legitimate trade entity. Furthermore, his "omission" to conduct any due diligence or verify the credentials of the beneficial owner, despite coordinating the documentation for prohibited items, directly abetted the fraud.

5.14 Section 112(b) is wider in its reach and applies to any person who acquires possession of or is "in any way concerned" in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111. The phrase "in any way concerned" has been interpreted by various High Courts and the Supreme Court as a "sweep-all" provision that includes intermediaries, logistical coordinators, and documentation agents who facilitate the illicit trade. The Appellant's active coordination of Bill of Lading (BL) details, Notify Party information, and his participation in the "Mm" group specifically for the movement of the J.H. Enterprises consignment, squarely places him within the ambit of being "in any way concerned" with dealing in goods liable to confiscation.

5.15 The payment of Rs. 1,00,000/- from Shri Tahir Menn to the Appellant—as admitted in statements—cannot be termed a professional fee, especially when no legitimate service was rendered beyond facilitating a documentation fraud for a known smuggling syndicate. A person of ordinary prudence would have reason to believe that the use of dummy IECs and the concealment of prohibited E-cigarettes in containers declared as "Stationary" was an illegal act rendering the goods liable to confiscation.

5.16 The Appellant's contention that he was not the "owner" or the "importer" is legally irrelevant. The statute focuses on the "person concerned" and the "abettor." As held by the Hon'ble Supreme Court in Collector of Customs, Madras v. D. Bhoormull (1983) 13 ELT 1546 (S.C.) held that the Department is not required to prove its case with mathematical precision. The whole circumstances, the conduct of the parties, and the nature of the concealment are to be evaluated and necessary inferences are to be drawn. Smuggling is an operation which is often conducted in secrecy, and direct evidence is seldom available.

5.17 In the instant case, the "totality of circumstances"—including the digital footprints in the "Mm" group, the specific coordination of BLs for the J.H. Enterprises container, and the receipt of unexplained cash from a co-conspirator—makes the inference of the Appellant's guilt inescapable. He was a strategic facilitator of a smuggling operation involving absolutely prohibited goods (E-Cigarettes) and restricted items (non-BIS Toys), thereby making him liable for penalties under both Section 112(a) (i) and 112(a) (ii) of the Act.

5.18 The Appellant cited Basudev Garg v. Commissioner (2013) and Jindal Drugs Pvt. Ltd. v. UOI (2016) regarding cross-examination. I find these cases distinguishable. In those cases, the entire case rested solely on oral statements without any corroborative documentary or digital evidence. In the instant case, the WhatsApp chats provide independent, contemporaneous proof of the Appellant's role, which is merely corroborated by the statements. Furthermore, the Appellant's reliance on Shakil Ahmad Khan (2019) regarding retracted statements is not applicable here because the statements in this case were not retracted during the investigation or at the first available judicial opportunity.

5.19 The Appellant was an active member of the "Mm" group, which was the nerve center of the smuggling operations. He facilitated the use of dummy IECs, which is a classic hallmark of smuggling syndicates to hide the beneficial owner. He received monetary benefits (Rs. 1,00,000/-) for his "services" to the mastermind. The goods (E-Cigarettes) are prohibited under the Prohibition of Electronic Cigarettes Act, 2019, and their import is a grave offense. The Adjudicating Authority has rightly identified the Appellant's culpability. The penalties under Section 112(a) (i) and 112(a) (ii) are fully justified as the

Appellant's acts of omission and commission directly rendered the goods liable to confiscation under Section 111 of the Customs Act, 1962.

6. In view of the detailed discussion and findings recorded above, I find no merit in the appeal filed by Shri Gaurav Sahay. The Adjudicating Authority has correctly established the nexus, the knowledge, and the active participation of the Appellant in the smuggling syndicate. The findings in Order-in-Original No. MCH/ADC/AKM/209/2024-25 dated 02.12.2024 are upheld in their entirety.

7. The appeal is accordingly rejected.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-350/CUS/MUN/2024-25

Date:31.03.2026

By Speed Post A.D/E-Mail

To,
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आयुक्त (अपील), सीमा शुल्क कार्यालय, अहमदाबाद

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.