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 - 20260271MN0000777D42

क	फ़ाइल संख्या FILE NO.	S/49-229/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-879-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/142/2023-24 dated 10.08.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Icon Enterprises, G-1, L-120, Street No. 58, Azad Lane, Mahipalpur Extension, New Delhi 110037

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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.

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ORDER-IN-APPEAL

Appeal has been filed by M/s. Icon Enterprises, G-1, L-120, Street No. 58, Azad Lane, Mahipalpur Extension, New Delhi 110037, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/181/2023-24 dated 06.10.2023 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner of Customs, Mundra.

2. Facts of the case, in brief, are that the appellant had filed a Bill of Entry No. 5257898 dated 28-03-2023, which has become invalid/ inactive on account of it getting purged. Since, the issue concerns Investigation by SIIB Section, Customs, Mundra, it was informed vide its letter F.No. S/43-28/Icon/SIIB-A/CHM/23-24 dated 22-09-2023 that the earlier Bill of Entry No. 5257898 dated 28-03-2023 having been purged, the duplicate Bill of Entry No. 7915287 dated 20-09-2023 will be the document under reference in the instant case. Thus, the import is linked to the new Bill of Entry for clearance of New Off Road Tyres. The goods under import had been supplied by M/s. Shandong Linglong Tyres Co. Ltd. China. The assessable value of the goods has been declared as 10,55,179/- and total duty amounting to 4,44,020/-(BCD @ 10%, SWS @10% & IGST @ 18%).

2.1 Based on an intelligence received from DRI, AZU letter F.No. DRI/AZU/CI/INT-08/2023 dated 03-04-2023 that the Importer is importing radial tyres by declaring the same as New Off Road Tyres, SIIB Section of Customs Mundra had initiated an investigation. Verification of the GST returns filed by the said importer indicated that the said importer is engaged in sale of imported tyres to a sole firm i.e. M/s. The Tyre Plaza. Further, data available on the website of "The Tyre Plaza" denoted that it deals with passenger car tyres and SUV car tyres classifiable under HSN 40111010. This indicated that tyres under import may not be Off-Road tyres but, for Motor Cars moving on urban roads.

2.2 The import of Off-Road Tyres is free, unlike the Radial Tyres meant for motor cars, which are "Restricted" for import in terms of DGFT Notification No 12/2015-20 dated 12-06-2023. The impugned goods are covered under the purview of BIS standards applicable on tyres as per Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009:

i Automotive vehicles - Pneumatic tyres for two and: IS 15627 three-wheeled motor vehicles

ii Pneumatic tyres for passenger car vehicles: IS 15633 Diagonal and radial ply IS 15633

iii Pneumatic tyres for commercial vehicles-Diagonal: IS 15636 and radial ply

iv Automotive vehicles - Tubes for Pneumatic Tyres IS 13098

2.3 Examination by SIIB Section of Customs Mundra revealed that out of the total 1028 pcs of tyres, 928 tyres were found to be having BIS Marking: IS:15333 with CM/L no. 4021937. Further verification of CML No. 4021937 on BIS website, informed that it pertains to the supplier M/s. Shandong Linglong Tyre Co., Ltd. No. 777, Jinlong, Road Zhaoyuan City, Shandong Province China. The Investigation Report is silent on the status of the remaining 100 tyres. Further, the type/quality of goods were found to be "New Pneumatic Radial Tyres, of Rubber" and not New Off Road Tyres as declared by the Importer.

2.4 As examination revealed that the goods are "New Pneumatic Radial Tyres, of Rubber" IS Standard 15333, classifiable under CTH 40111010 attracting BCD 15% and are restricted in nature as per notification No. 12/2015-20 dated 12-06-2020, Sr No. 1, issued by DGFT and Ex- officio Additional Secretary, Government of India, the said Importer tried to evade Customs duty to the tune of 74,284/-. Therefore, the goods appeared liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 and the appellant appeared liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

2.5 After the appellant requested vide their letter dtd. 25.09.2023 that they do not intend to have personal hearing and show cause notice, the Adjudicating Authority adjudicated the matter vide impugned order wherein she ordered as under :-

i. She ordered confiscation of the imported goods viz. 1028 tyres imported under Bill of Entry No. 7915287 dated 20-09-2023 having a assessable

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value of 10,55,179/- (Rupees Ten Lakhs Fifty Five Thousand One Hundred Seventy Nine Only) under Section 111 (d) of the Customs Act, 1962 and 111(m) of the Customs, Act, 1962. However, she gave an option to the Importer to redeem the confiscated goods on payment of redemption fine of 1,75,000/- (Rupees One Lakh Seventy Five Thousand only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

ii. She imposed a penalty of 80,000/- (Rupees Eighty Thousand Only) on the appellant under Section 112(a) of Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal .

SUBMISSIONS OF THE APPELLANT:

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

3.1 That impugned judgment dated 06.10.2023 is per-incurium in as much as it totally ignored to reach just finding / conclusions, appellant's recovery statement read with submission (though both were taken on record);

3.2 It is submitted that had it been considered then Additional Commissioner of Customs would have appreciated the "bonafide" of appellant;

3.3 It is submitted that under the recovery statement and in the submission clearly stated that appellant is a new importer of "New Off Road Tyres), whereas supplier of China is regular exporter of "Radial / Pneumatic tyres" to India. So, it appears due to accidental mistake instead of "Radial Tyres", consigned "New Off Road tyres" to appellant (importer)

3.4 It is submitted that in view of "bonafide" accidental mistake, Customs Department ought to have taken lenient view and ought not to have imposed penalty, fine and confiscation order of 1028 "Radial Tyres";

3.5 That respondents ought to have invoked settled law by Hon'ble Supreme Court in the case of " R.K. Steel Union Ltd." reported in AIR 2001 SC 1899 and in the case of "Vijay Kumar & Ors." reported in (1991) 33 SCR 69 (SC).

3.6 That it is submitted that under the above cited law, it has been held that it is not a case that under the guise of second-hand machinery /parts, appellant in fact imported new machinery as substantial parts are second hand parts. So, "Bonafide" intention of appellant was appreciated and penalty / fine were revoked (AIR 2001 SC 1899 case of K.R. Steel Ltd.)

3.7 That the Competent Authority ought to have appreciated spirit of Section 111 and Section 112 (b) of Customs Act which are postulated as under:

Section 111 (d): Any goods which are imported or attempted to be imported or are brought within the Indian Custom waters for the purpose of being imported contrary to any Prohibition imposed by or under this Act or any other law for the time being in force;

Now, under the law, it presupposes that imported contrary to any prohibition imposed......"

But, as appellant contended under recovery statement u/s 108 of Customs Act r/w submission before the Additional Commissioner of Customs, the appellant had imported only "New Off Road Tyres" not "Radial Tyres", but it was only due to accidental mistake by supplier -it consigned "Radial Tyres" and mistake was appeared natural as supplier asked to supply only "New Off Road Tyres" not "Radial Tyres".

Under the circumstances, Section 111 of the Act cannot be invoked for confiscation of goods simply wrongly consigned goods by supplier.And, once Section 111 of the Customs Act cannot be invoked then Section 112 of the Act for imposing penalty and fine also cannot be invoked.

3.8 Kindly consider Section 112 as under:

"(a) Who, in relation to any goods, does or omit to do any act which act or omission would render such goods liable to confiscation under section 111......."

So, if Section 111 cannot be invoked, then section 112 (a) cannot be invoked.

Similarly Section 112(b) also not satisfied as appellant had made statement that due to bonafide mistake, wrong consignment dispatched by supplier.

Kindly see Section 112 (b) "Who acquires possession of or is in any way considered in carrying, removing, dispos. has keeping concealing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 .... "

3.9 That, "findings" reached by the authority about "deliberate mis-"fraud" by appellant, declaration" are all dehores the appellant's statement and submissions, which are neither considered nor held to be false though both are taken on record.

3.10 That the penalty of Rs.80,000/- as imposed is also illegal and contra to section 112(b)(i) of the Act. Kindly consider Section 112 (b)(i) ....i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force; a penalty not exceeding the value of the goods or five thousand rupees) whichever is the greater. Hence, impugned order deserves to be set aside.

3.11 On above and other submissions, impugned order order and judgment dated 06.10.2023 may to be quashed and set aside, consequently the appellant be permitted to re-export to supplier.

PERSONAL HEARING:

4. It is pertinent to mention that the appellant had not submitted the challan for pre-deposit along with the appeal filed on 30.10.2024. Personal hearing was granted to the Appellant on 23.12.2025, following the principles of natural justice wherein the appellant was specifically informed about non payment of pre-deposit . However ,the appellant has neither paid the pre-deposit nor appeared for personal hearing. A copy of the appeal memorandum was also sent to the jurisdictional authority for comments. However, no response has been received . I therefore proceed to decide the case on the basis of available records.

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 right to appeal is a creation of statute and must be exercised subject to the conditions laid down in the statute itself. The primary issue is the Appellant's failure to deposit the mandatory pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Section 129E(i) of the Customs Act, 1962, explicitly mandates:

> *"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,— (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs]".*

5.2 The right to appeal is a conditional statutory remedy. For an appeal filed against an Order-in-Original passed by an Additional Commissioner, the mandatory pre-deposit is 7.5% of the aggregate of the Duty, Fine, and Penalty in dispute. The facts on record demonstrate that the Appellant has failed to comply with this statutory requirement.

5.3 The appeal was filed without the necessary pre-deposit, which is a mandatory statutory requirement for the appeal to be 'entertained'. The core legal principle at hand is established in Section 129E(i) of the Customs Act, 1962, which explicitly states that the Commissioner (Appeals) "shall not entertain any appeal" unless the appellant has deposited the prescribed percentage of the duty or penalty in dispute. The word "shall not entertain" in Section 129E creates an absolute bar for the appellate authority to proceed with the merits of the case in the absence of the stipulated pre-deposit. The appellate authority has no discretionary power to waive the pre-deposit below the statutory percentage, which was explicitly removed by the 2014 amendment to Section 129E. In the instant case, despite having been notified and given an opportunity during the hearing, the Appellant failed to provide proof of the mandatory deposit before the final consideration of the appeal.

5.4 The records conclusively demonstrate that the mandatory deposit was not made at the time of filing the appeal, nor by the date of the Personal Hearing. The office of the Commissioner (Appeals) formally notified the Appellant on 19.12.2025 that the pre-deposit as prescribed under Section 129E was "not made" till that date. The Appellant was aware of the statutory defect but failed to rectify it before the final consideration of the appeal, confirming a clear and sustained non-compliance with the jurisdictional requirement of Section 129E. In line with the settled legal position, the appeal is not entertainable.

5.5 Since the appeal cannot be entertained due to the fatal procedural defect of non-payment of the mandatory pre-deposit, it is not necessary and indeed impermissible to proceed to discuss the merits of the appeal. The appeal is therefore rejected solely on the ground of non-compliance with the statutory pre-condition.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The appeal filed by M/s. Icon Enterprises, is hereby rejected on the ground of non-compliance with the mandatory pre-deposit requirement under Section 129E(i) of the Customs Act, 1962, without going into the merits of the case.

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

F. No. S/49-229/CUS/MUN/2023-24

Date:26.02.2026

By Speed post /E-Mail

To,
M/s. Icon Enterprises,
G-1, L-120, Street No. 58, Azad Lane,
Mahipalpur Extension,
New Delhi 110037

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.