



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 - 20250571MN0000661906

क	फाइल संख्या FILE NO.	S/49-145/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-027-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
ड	दिनांक DATE	20.05.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order – In – Original No, MCH/ADC/MK/201/2023-24 dated 06.11.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	20.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shree Agro International (IEC No. 815014635) M S No. 11/09/87, Near Gayatri Magaj, Visnagar Road, Unjha 384170



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) बेगेज़ के रूप में आयातित कोई माल. (a) any goods imported (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/- (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 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, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच 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 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

1. M/s Shree Agro International, (IEC No. 515014635), M S No. 11/09/87, Near Gayatri Magaj, Visnagar Road, Unjha - 384170 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order-in-Original bearing No. MCH/ADC/MK/201/2023-24 dated 06.11.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Import Section, Custom House, Mundra (hereinafter referred to as 'adjudicating authority').

1.1 , Facts of the case, in brief, are that the Appellant had filed a Bill of Entry No. 7435821 dated 19.08.2023 through their Customs Broker M/s Aarkay Marine Agencies (AAFFA7222FCH001) for clearance of 27.00 MTs Kgs of "Cumin Seeds(Re-Import)" having an assessable value of Rs. 1,31,38,740/-. The said re-imported goods are covered under Bill of lading No. SAI/063/2023-24 dated 11.05.2023 issued by the Appellant at the time of Export. The said re-imported goods were exported vide Shipping Bill No. 9944681 dated 11.05.2023. The details of Re-imported goods are as under: -

Table- A

Item No. as per Bill of Entry	Description as per Bill of Entry & Commercial Invoice	Declared CTH	Net Weight (In KGS)	Assessable Value (in Rs.)
1.	Cumin Seeds (Re-Import)	09093129	27000	1,31,38,740.00

1.2 On re-import of the said cargo, the samples vide sample ID no. RNCC202300000327 were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra. The goods declared as "Cumin Seeds (Re-Import)" weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- covered under Item No. 1 of the said Bill of Entry and as detailed in Table-A above, was rejected for NOC for home consumption by the FSSAI authorities

stating that "Sample Does not confirm to the provisions of FSS Act, rules and Regulations made thereunder."

1.3 From the above, it appeared that the goods declared as "Cumin Seeds (Re-Import)" weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- covered under item no. 1 of the said Bill of Entry were rejected for home consumption by the FSSAI authorities. FSSAI did not find the goods fit for home consumption. Prima facie, it is seen that said cargo is mainly for the human consumption and such conditions are not fulfilled during FSSAI test, hence, the re-imported goods may not be cleared from Mundra Port and the same is required to be re-exported. The failure of the sample resulted into non-compliance of the provisions of Food Safety & Standards Act, 2006. Therefore, such goods would be treated as prohibited for import and action on such goods is to be taken under the Customs Act, 1962.

1.4 The Appellant vide letter dated 31.10.2023 had requested to allow them to re-export the goods to third country to their new buyer M/s Galaxy Foodstuff Trading LLC, Sharjah Media City, Sharjah, U.A.E. The Appellant had submitted a Proforma Invoice/Contract bearing No- SAI/7052324 dated 20.10.2023 which was executed between the new buyer M/s Galaxy Foodstuff Trading LLC, Sharjah, U.A.E and the Appellant M/s Shree Agro International. The said Proforma invoice/Contract is for re-export of the above-stated entire consignment weighing 27000 KGS and having fresh contract value of USD 1,41,750.00 i.e. Rs. 1,19,35,350/-

1.5 From the above it appeared that the goods declared as "Cumin Seeds (Re-Import)" weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- appeared to be liable for confiscation under Section 111 (d) of the Customs Act, 1962 and the Appellant also appeared liable for penal action under Section 112 (a)(i) of the Customs Act, 1962.

1.6 The Appellant vide their letter dated 31.10.2023 had requested to re-export the goods to their new buyer M/s Galaxy Foodstuff Trading LLC, Sharjah, U.A.E. They also submitted that they don't require Show Cause Notice and personal hearing in this case.

1.7 The above matter was adjudicated vide impugned order by the

A.L.

adjudicating authority wherein she ordered as under :-

- (i) She ordered for confiscation of re-imported goods declared as Cumin Seeds(Re-Import)" weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- imported vide Bill of Entry No. 7435821 dated 19.08.2023 under Section 111(d) of the Customs Act, 1962. However, she gave an option to the Appellant to re-export the confiscated goods on payment of redemption fine of Rs. 16,00,000/- under Section 125 of the Customs Act, 1962.
- (ii) She imposed a penalty of Rs. 8,00,000 on the Appellant under Section 112 (a)(i) of the Custom Act, 1962.
- (iii) She also allowed the Appellant to re-export the goods declared as Cumin Seeds(Re-Import) weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- covered under item no. 1 of the said Bill of Entry to the new overseas buyer.

1.8 It is in the above context the Appellant has filed the present appeal in terms of Section 128 of Customs Act, 1962 before this appellate authority seeking to set aside the impugned order dated 06.11.2023 so passed by the Additional Commissioner(Import), Custom House, Mundra

2 SUBMISSIONS OF THE APPELLANT:

- The impugned order passed by the adjudicating authority is without any application of mind inasmuch as such order is against the settled legal position. It is a settled legal position that in cases of re-export of goods, redemption fine under Section 125 along with penalty under Section 112(a) of the Customs Act, 1962 is not imposable. The law as regards to non-imposition of redemption fine under Section 125 and non-imposition of penalty under Section 112(a) of the Customs Act, 1962 is settled by a catena of decisions of the Hon'ble Tribunal and the Hon'ble Supreme Court. The Hon'ble Tribunal in the case of M/s. Padia Sales Corporation reported at **1992 (2) TMI 221** came to a conclusion that Section 125 of

the Customs Act, 1962 is only applicable when the Appellant chooses to redeem the goods for home consumption and such redemption fine cannot be imposed when the goods are of re-export of the goods. Relevant para: -

"In this case, similarly, Additional Collector by his order confiscated the goods for contravention of provisions under Import and Export Control Act as well as Customs Act. He permitted the Appellant to re-export the goods on payment of taken redemption fine of Rs. 35,000/- I find that the view taken in the aforesaid decision that Adjudicating Authority has no power to impose redemption fine while permitting re-export of the goods, is correct. Accordingly, the order passed by the Additional Collector to that extent is not correct."

- The Hon'ble Tribunal in the case of M/s. Siemens Public Communication Networks Ltd. reported at **2001 (1) TMI 686** came to a conclusion that in view of the decision of the Hon'ble Supreme Court in the case of M/s. Siemens Ltd. reported at **1999 (113) ELT 776**, the law is well settled that in case of re-export, redemption fine cannot be imposed. Furthermore, the Hon'ble Tribunal in the case of M/s. Siemens Public Communication Networks Ltd. (supra) also held that re-export would be allowed without redemption fine or penalty. The Hon'ble Tribunal followed the decision of M/s. HCL Hewlett Packard Ltd. reported at **1997 (92) ELT 367** and M/s. Padia Sales Corporation (supra) to come to a conclusion that in cases of re-export, redemption fine cannot be imposed. Relevant para :-

"We have heard the submissions made from both the sides. During the course of the arguments the Id. adv. appearing for the appellant made it clear that the appellants have opted for re-export of the goods. Accordingly, they have challenged the order of the Commissioner imposing a redemption fine and penalty for the said re-export, which according to the appellants is not permissible to be imposed in view of the various case laws relied upon by them. It is seen that in the case of Siemens Ltd. v. CC -



1999 (113) E.L.T. 776 (S.C.), their Lordships have held that since goods have been allowed to be re-exported, neither redemption fine nor duty was required to be paid. The Tribunal in the case of HCL Hewlett Packard Ltd. - 1997 (92) E.L.T. 367 (T) has held that no redemption fine is imposable when re-export of the goods is allowed. To the same effect is the decision of the Tribunal in the case of Padia Sales Corpn. V. CC - 1992 (61) E.L.T. 90 and in the case of Skantrons (P) Ltd. - 1994 (70) E.L.T. 635. We further find that the Tribunal in the case of G.V. International and Another - 2000 (118) E.L.T. 517 = 2000 (39) RLT 272, following the earlier decisions of the Tribunal, has set aside the orders passed by the lower authorities ordering confiscation of goods and their release on payment of redemption fine and penalty. Further in the case of Commissioner of Customs, Calcutta v. J.V. (P) Ltd. - 2000 (39) RLT 1074, the order of the lower authorities allowing re-export of the goods without fine and penalty was upheld"

- The decisions of M/s. Siemens Ltd. and M/s. Padia Sales Corporation have been followed in the recent decision of the Hon'ble Tribunal in the case of M/s. Goyal Trading Company reported at **2023 (10) TMI 294** and M/s. Perfect Trading Company reported at **2022 (2) TMI 631** whereby the Hon'ble Tribunal came to a conclusion that penalty under Section 112(a) of the Customs Act, 1962 and redemption fine cannot be imposed in a situation where the goods are allowed to be re-exported overseas. Relevant para (**2023 (10) TMI 294**): -

"As can be seen from the findings and order in the precedent decision of this Tribunal in the case of Siemens Public Communication Networks Ltd. when the goods are allowed to be re-exported, neither redemption fine nor duty was required to be paid. At the same time, penalty is also not to be imposed on the Appellants. I, therefore, hold that penalties imposed in these six appeals are not justified. I, therefore, set aside all the penalties imposed under Section 112(a) of Customs Act, 1962."

Relevant para **(2022 (2) TMI 631)**: -

"In the above decision, the Tribunal has held that when the goods are allowed to be re-exported, the imposition of redemption fine cannot sustain. In the present case, the adjudicating authority has also imposed penalty of ₹ 2 lakhs. The adjudicating authority after considering the submissions made by the appellant that the goods were intended to be supplied to another customer of another country has allowed the request for re-export. On such score, when the goods have not been intended to be imported by the appellant, no penalty can be imposed. Similar view has been taken in the decision cited supra."

- Therefore, the law regarding non imposition of penalty and redemption fine in cases of re-export is well settled by a catena of decisions of the Hon'ble Tribunal and the order passed by the adjudicating authority is not in conformity with such legal position. The adjudicating authority is bound by the view ex-facie by the Hon'ble Tribunal in various cases and since the impugned order is not in consonance with such legal position, the impugned order is not sustainable in the eyes of law. The impugned order hence being perverse is liable to be set aside on this ground alone.

The adjudicating authority-imposed redemption fine of Rs.16,00,000/- along with a penalty of Rs.8,00,000/- . The adjudicating authority has nowhere in the impugned order held that the appellant knew that the re-imported goods did not confirm to the FSSAI Standards or that the appellant acted with knowledge that the goods were prohibited in nature. The facts of the present case are that the appellant initially exported 27 MTs of cumin seeds and subsequently re-imported such goods because the overseas buyer did not accept the goods. As a matter of fact, the letter issued by the Chinese buyer simply states that they request the appellant to arrange the return of the goods back to India. Even the overseas buyer has nowhere stated that the goods did not confirm to the quality requirements or that such goods were contaminated or defective. The appellant simply recalled the very same goods which were exported earlier and the appellant was completely unaware that the cumin seeds which were re-imported did not confirm to the FSSAI Standards. The appellant



did not deliberately re-import the goods knowing such goods did not confirm to the FSSAI Standards and hence were prohibited. Even though after the sample was drawn and the FSSAI report was against the appellant, the adjudication authority should have considered that the appellant was not at fault inasmuch as when the appellant exported the goods no test was undertaken to check whether the FSSAI requirements were met with. The action of the appellant to re-import the goods was also not deliberate and was only done because the overseas buyer asked the appellant to recall the goods. The appellant had no other option to recall the goods and to arrange for another buyer who would accept the consignment. In view of these peculiar facts, the adjudicating authority could have used discretion appropriately to impose lesser fine and penalty. In other words, without there being any deliberate intention to import prohibited goods, the appellant should not be penalized harshly and such a hefty fine of Rs.16,00,000/- should not have been imposed. The conduct of the appellant being a bona-fide conduct, such hefty fine and penalty were completely unwarranted in the facts of the present case. Therefore, the impugned order imposing disproportionate amount of fine and penalty is liable to be set aside in the interest of justice.

- The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of M/s Hindustan Steel Limited reported in **1978 ELT (J159)** wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty to conduct contumacious or dishonest and the error committed by the assessee was not bonafide but was with a knowledge that the assessee was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief; even a token penalty would not be justified. In the present case also, there has not been any illegality committed by the appellant; and hence, no penalty under Section 112(a)(i) of the said Act was justified

in the facts of this case. The impugned order imposing penalty on the appellant therefore, deserves to be set aside in the interest of justice.

3. PERSONAL HEARING:

A personal hearing was granted to the Appellant on 30.04.2025 following the principles of natural justice wherein Shri Amal Dave, Advocate appeared on behalf of the Appellant. He reiterated the submissions so made in the appeal and requested to drop the impugned order dated 06.11.2023 in its entirety. He also placed reliance of following case laws:-

- (i) Nitta Gelatin India Ltd. V/s. CC, Cochin 2024(12) TMI 1322-CESTAT Bangalore.
- (ii) Perfect Trading Company V/s. CC(AIR), Chennai 2022(2) TMI 631-CESTAT, Chennai.
- (iii) Goyal Trading Co. & others V/s. CC, Nhava Sheva-III 2023(10) TMI 294- CESTAT Mumbai



4. DISCUSSION AND FINDINGS:

4.1 I have carefully gone through the case records and corresponding order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal. I find that the condition of pre-deposit stands fulfilled in respect of the above referred appeal, as the appellant has deposited the entire amount of redemption fine and penalty so imposed under protest on 21.11.2023. The Appellant has filed the present appeal on 07.12.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 06.11.2023 as 06.11.2023. Hence the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal.

4.2 Ongoing through the material available on record, I find that following issues are to be decided in the instant appeal:-

- (i) Whether the impugned order wherein the adjudicating authority has ordered for confiscation of re-imported goods declared as "Cumin Seeds(Re-Import)" weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- under Section 111(d) of the Customs Act, 1962 and gave an option to the Appellant to re-export the confiscated goods on payment of redemption fine of Rs. 16,00,000/- under Section 125 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.
- (ii) Whether impugned order wherein the adjudicating authority has imposed a penalty of Rs. 8,00,000/- on the Appellant under Section 112 (a)(i) of the Custom Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.

4.3 On going through the case records it is understood that the goods declared as Cumin Seeds (Re-import) weighing 27000 Kgs having Assessable Value of Rs. 1,31,38,740/- covered under item no. 1 of the said Bill of Entry and as detailed in Table-A above, was rejected for NOC for home consumption by the FSSAI authorities stating that *"Sample Does not confirm to the provisions of FSS Act, rules and Regulations made thereunder."*

4.4 I also find that Appellant vide letter dated 31.10.2023 has requested to re-export the goods to their new buyer M/s Galaxy Foodstuff Trading LLC, Sharjah, U.A.E. The Appellant has also submitted a Performa Invoice/Contract having No-SAI/7052324 dated 20.10.2023 which was executed between the new buyer M/s Galaxy Foodstuff Trading LLC, Sharjah, U.A.E. and the Appellant M/s Shree Agro International. The said Proforma invoice/Contract is for re-export of the above-stated entire consignment.

4.5 It has been specifically mentioned by the adjudicating authority in the impugned order dated 06.11.2023 that:

"I find that the Appellant has requested to re-export of the goods to their new overseas buyer. CBIC Circular No. 58/2001-Cus. dated. 25.10.2001 prescribes that the goods which are not found fit for human consumption

can be either destroyed or to be re-exported after necessary adjudication proceedings. The provision of food safety and standard act 2006 are not specifically restricting the re-export of such failed consignment. Therefore, the option of re-export can be availed by the Appellant after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962. Whereas, Section 125(1) of the Customs Act, 1962 provides that:

"Whenever confiscation of any goods is authorized by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit".

4.6 I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject re-imported goods."

4.7 Moreover, the learned counsel of the appellant had argued that the appellant has requested to re-export the impugned goods to a buyer in UAE namely M/s Galaxy Food Stuff Trading LLC, UAE and has also relied upon plethora of judgments regarding imposing of redemption fine and penalty. I find that in the case of Hemant Bhai R. Patel Vs Commissioner of Customs Ahmedabad 2003(153) ELT 226 (Tri-LB) has observed that:

"We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. Thus, the Bench was only answering the question whether redemption fine and penalty can be imposed while ordering for re-export of goods."

[Handwritten signature]

I also place reliance on the following case of SANKAR PANDI Versus UNION OF INDIA 2002 (141) E.L.T. 635 (Mad.) wherein the Hon'ble High Court held as under :

" It appears that the question relating to re-export is covered by the decision of the Supreme Court rendered in the case of Siemens Limited v. Collector of Customs reported in S.C. 1999 (113) E.L.T. 776. Keeping in view the above said decision there cannot be any doubt that the petitioner is entitled to re-export the articles in question and for the above said purpose, it is not necessary for him to pay redemption fine as imposed by the authorities.

4. *The learned Counsel for the petitioner further submitted that since the petitioner is not going to import the articles and use or sell the articles within India, the imposition of penalty of Rs. 33,000/- should be quashed.*

5. *The learned Counsel appearing for the Department has opposed to this stating that the petitioner has violated and the penalty has been rightly imposed.*

6. *In the facts and circumstances of the case, I feel the imposition of penalty of Rs. 33,000/-, keeping in view the relevant value of the articles concerned, appears to be grossly high and interest of justice would be met by reducing the penalty to Rs. 15,000/- and such amount should be paid by the petitioner within a period of two weeks from the date of receipt of this order. Only after the amount is paid, the petitioner would be permitted to re-export the items concerned."*

It is observed that the Supreme Court dismissed the Civil Appeal No. 2061 of 2003 filed by Union of India against the Judgment and Order dated 6-12-2001 of Madras High Court in Writ Petition No. 2384 of 2001 as reported in 2002 (141) E.L.T. 635 (Mad.) (Sankar Pandi v. Union of India). While dismissing the appeal, the Supreme Court passed the following order :

"Having regard to the peculiar facts and circumstances of the case, we do not find it to be a fit case for exercise of our jurisdiction under Article 136 of

L2

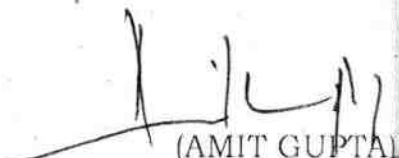
the Constitution. Accordingly, the appeal, by special leave is dismissed, keeping the question of law open."

[Reported at *Union of India v. Sankar Pandi - 2018 (360) E.L.T. A214 (S.C.)*]

4.8 Therefore, in light of the above discussions and the defense so taken by the appellant I reduce the redemption fine from Rs.16,00,000/- (Rupees sixteen lakhs only) to Rs 50,000/- (Rupees fifty Thousand Only) and penalty from Rs.8,00,000/- (Rupees eight lakhs only) to Rs 25,000/- (Rupees Twenty Five thousand only) on the appellant so imposed by the adjudicating authority vide the impugned order dated 06.11.2023.

5. Accordingly, the impugned order dated 06.11.2023 of the adjudicating authority stands modified to the above mentioned extent only. The appeal filed by the appellant succeeds to the above extent with consequential relief, if any.




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


F. No. S/49-145/CUS/MUN/2023-24

Date: 20.05.2025

By Registered post A.D/E-Mail

To,

M/s Shree Agro International,
(IEC No. 515014635),
M S No. 11/09/87, Near Gayatri Magaj,
Visnagar Road, Unjha - 384170

साहचर्यपत्र/ATTESTED

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

Copy to:

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

