



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 - 20260171MN0000888B20

क	फ़ाइल संख्या FILE NO.	S/49-319/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-788-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.01.2026
	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Sarfaraz Kamani, 502, 5th Floor, Fatima Apartment, 109 Morland, Mumbai Central, Mumbai



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)	बैगेज 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/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार 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.
	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।
(द)	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 Sarfaraz Kamani, 502, 5th Floor, Fatima Apartment, 109 Morland, Mumbai Central, Mumbai, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024 (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 case involves an intricate and wide-ranging investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, which unearthed a large-scale, highly organized smuggling cartel operating through the Mundra Port. The investigation revealed that a common group of persons had established a sophisticated, multi-layered syndicate designed specifically to exploit the regulatory relaxations and procedural flexibilities inherent in the Special Economic Zone (SEZ) to Domestic Tariff Area (DTA) clearance mechanism. This syndicate was created for the primary purpose of importing prohibited and restricted goods—specifically high-value foreign-brand electronic cigarettes and various types of toys requiring mandatory Bureau of Indian Standards (BIS) compliance—by resorting to gross and calculated mis-declaration of description, quality, quantity, and value. While the broader investigation covered a staggering 18 import consignments involving eight different importers, the specific subject of this adjudication is the consignment imported in the name of M/s. M.M. Enterprises (IEC: BMEPM3625G) covered under DTA Bill of Entry No. 2012895 dated 26.08.2022.

2.1 The genesis of the case lies in specific, actionable intelligence gathered by the DRI suggesting a systematic and predatory abuse of the "self-assessment" and "trusted trader" schemes that underpin modern customs operations within the SEZ. The intelligence indicated that a smuggling cartel was utilizing front companies to move prohibited contrabands into the domestic market. Analysis of system data revealed that Vehicle No. GJ12BV0610 was carrying the import consignment imported through Container No. TLLU4615592. Acting swiftly upon this intelligence, DRI officers,



in coordination with the Surat Regional Unit, intercepted the truck near Palsana Chokdi on the National Highway on 01.09.2022.

2.2 The vehicle was found to be carrying Container No. TLLU4615592, which had been cleared from the SEZ Warehouse Unit of M/s. Empezar Logistics, Mundra, and was supposedly destined for a godown in Bhiwandi. Upon interception, the driver, Shri Chuna Singh Rawat, was questioned regarding the nature of the cargo. The preliminary inquiry and the recovery of incriminating documents from the driver—including e-way bills featuring unrelated entities—corroborated the intelligence that the container did not merely contain the declared items but was a vessel for contraband. Given the complexity of the concealment, the vehicle was escorted to ICD Sachin, where DRI officials requested the assistance of mechanical labor and equipment to de-stuff the entire container for an exhaustive examination in the presence of two independent arbitrators (Panchas). During the process, a person named Mr. Parvez Alam arrived at ICD Sachin, introducing himself as the representative of the actual buyers, Shri Mohammad Asif Sathi and Shri Sarfaraj Kamani, confirming the syndicate's oversight of the transit.

2.3 The rigorous examination of the impugned goods at ICD Sachin was conducted under Panchnamas dated 01/02.09.2022 and 19.10.2022. This process revealed a masterclass in smuggling techniques. Amidst the declared cargo of "Head Massagers" and "Exercise Books," officers recovered 107 cartons marked with the brand "DK123 XXL." Upon opening these cartons, they discovered a total of 85,600 pieces of electronic cigarettes of the "Yuoto" brand. These were found in a wide array of flavors clearly designed to appeal to younger demographics, including Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, Milk, and Coffee. These goods, falling under CTH 85434000, are strictly prohibited for import in terms of DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes Act, 2019.

2.4 Furthermore, the examination revealed 89,000 pieces of silicon "Pop up" toys falling under CTH 9503. These items were imported in direct violation of Policy Condition 2 of Chapter 95 of the Customs Tariff. This policy mandates that all imported toys conform to rigorous BIS standards, including IS: 9873 Part 1 (Safety aspects related to mechanical and physical properties),

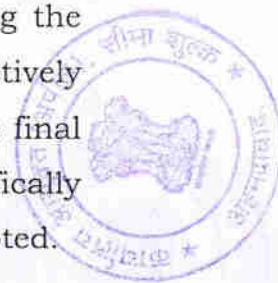


Part 2 (Flammability), and Part 3 (Migration of certain elements). The importer failed to produce any valid BIS compliance certificates, rendering the toys "prohibited goods" under Section 2(33) of the Customs Act, 1962. The examination also found excess quantities of declared items, such as 240 additional Head Massagers and 1,364 Exercise Books. These "filler" goods were strategically used to pad the container, ensuring that the prohibited items remained shielded from the container doors and providing a facade of legitimacy during any casual visual inspection at the port or SEZ gate.

2.5 The investigation into the role and culpability of the noticees revealed a deep-rooted conspiracy characterized by a high degree of planning and division of labor. M/s. M.M. Enterprises, through its proprietor Shri Mohammed Tahir Hanif Menn, acted as a willing front for the syndicate. Shri Tahir Menn admitted that he allowed the smuggling cartel led by Shri Mohammad Asif Sathi to use his firm's IEC and bank accounts in exchange for "rental" monetary benefits ranging from Rs. 15,000 to Rs. 50,000 per consignment. To further insulate the mastermind from detection, Shri Tahir Menn facilitated the creation of dummy firms like M/s. J.H. Enterprises in the names of domestic workers, such as Shri Juma Hamir Halepotra, demonstrating the predatory nature of the syndicate's recruitment.

2.6 A critical aspect of the syndicate's modus operandi was the "crossing" operation, a tactical maneuver designed to disrupt the surveillance of enforcement agencies. After a container was cleared from the Mundra SEZ, the syndicate would monitor its movement in real-time via "Wheelseye" tracking links. To evade detection by agencies tracking e-way bills or container numbers, the syndicate would arrange for the "crossing" of goods at intermediate locations like Navsari or Surat. This involved transloading the contraband from the original container into secondary vehicles, effectively breaking the digital and physical trail between the port of entry and the final destination. In the present case, Shri Parvej Alam was dispatched specifically to oversee this transloading just before the vehicle was tactically intercepted.

2.7 During the investigation, it was revealed that the smuggling cartel had utilized the IEC of M/s. M.M. Enterprises for successful importations in the past. Shri Tahir Menn, Shri Asif Sathi, and Shri Parvez Alam all confirmed in their voluntary statements that a total of 265 cartons (comprising 125 and 140 cartons respectively) had been imported in July and August 2022. These



consignments contained approximately 212,000 pieces of electronic cigarettes. Although these goods had already been disposed of in the domestic market and were not available for physical seizure, the Adjudicating Authority held them liable for confiscation under Section 111, noting that the proceeds of these past crimes were laundered through the same dummy accounts.

2.8 The individual roles in this well-oiled machinery were established through various voluntary statements recorded under Section 108:

- a. Shri Mohammad Asif Sathi (The Mastermind): Sathi was the architect and financier of the racket. He coordinated directly with overseas suppliers in China (such as "Mrs. Shelly") and finalized deals through firms like "AH International Trading Co." and "HK Longcheng Trade Co." He managed the financial trail, collecting cash from domestic purchasers and depositing it into dummy firm accounts to facilitate outward remittances, thereby bypassing legitimate forex regulations.
- b. Shri Mohammed Tahir Menn (The Facilitator): As the proprietor of M.M. Enterprises, he lent the "credibility" of a local business to the cartel. He introduced Shri Baldevsinh to Sathi to handle port-side logistics and was actively involved in monitoring the location of trucks via shared GPS links. He admitted that his firm never conducted any actual business in the goods imported but served merely as a conduit for Sathi's contrabands.
- c. Shri Sarfaraj Kamani (The Associate): A close partner of Sathi, Kamani was involved in the loading phase in China and was identified as a joint owner of the Bhiwandi godowns. Evidence confirmed his participation in planning the import of counterfeit goods and mobile phone accessories infringing the Intellectual Property Rights (IPR) of brands like Vivo, Oppo, and Realme.
- d. Shri Baldevsinh Vala (The Logistical Operative): Operating through M/s. Kalpana Exim, Vala was the operative who manipulated the shipping documents and invoices provided by the overseas suppliers. For ensuring the smooth clearance of prohibited items, he charged Sathi a premium of approximately Rs. 17 Lakhs per container—a fee far exceeding any legitimate forwarding commission.
- e. Shri Samir Sharma (The Customs Broker): A G-Card holder of M/s. Al Cargo Services, Sharma misused the SEZ Online portal's sub-login functionality. He filed the Bills of Entry despite knowing that the



descriptions were false. To facilitate the exit of the trucks from the SEZ gate, he submitted e-way bills featuring unrelated parties, ensuring the actual destination remained masked.

2.9 The investigation also highlighted gross professional negligence on the part of the then-Preventive Officer, Shri Vipin Sharma. Charged with the statutory duty to verify the physical cargo against the invoice, Sharma submitted an examination report stating he had "inspected the lot." The subsequent seizure of nearly 175,000 units of prohibited or un-declared cargo from that very container proved that no meaningful physical examination was ever performed. This "casual approach" provided the syndicate with a virtual "green channel," directly enabling the entry of prohibited contrabands that pose a risk to national health and child safety.

2.10 Under the Customs Valuation Rules (CVR), 2007, the Adjudicating Authority rejected the transaction values declared in Bill of Entry No. 2012895. Rule 12 was invoked because the significant mis-declaration rendered the declared values—and the associated invoices—fraudulent. Consequently, the value was re-determined using the "Best Judgment Method" under Rule 9. A government-approved Chartered Engineer assessed the market price of the seized goods at approx. Rs. 21.67 Crores, compared to a declared value of approx. Rs. 4.43 Lakhs.

2.11 On the basis of the investigation, Show Cause Notice dtd. 31.08.2023 was issued to the appellant and other persons. Consequently, the Adjudicating Authority passed the following order in respect of the appellant.

**IN RESPECT OF GOODS IMPORTED AND CLEARED THROUGH BILL OF ENTRY NO. 2012895 DT. 26.08.2022:**

- (I) He imposed penalty of Rs. 10,00,000/- upon the appellant (associate of beneficial owner) under Section 112(a)(i) 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 Appellant contends that the Respondent failed to provide concrete evidence demonstrating his personal involvement in the alleged smuggling or mis-declaration activities. He argues that the Department has not shown any proof that he placed orders, negotiated with suppliers, remitted payments, or filed any Bills of Entry for the contested goods. Furthermore, he asserts that the Department failed to establish that he received any consideration or financial benefit from the alleged undervaluation, which would be necessary to prove he had knowledge of the illicit activity.

3.2 The Appellant challenges the Department's reliance on statements from co-appellants and third parties, specifically Mr. Tahir Memn. He argues that Mr. Tahir's claims regarding the Appellant's involvement in a Dubai-based company (M/s. ASH) are based on mere assumptions rather than factual proof. Additionally, the Appellant highlights that the mastermind, Mr. Asif Sathi, explicitly stated in his own testimony that the Appellant was not involved in the import of e-cigarettes and that their visit to Dubai was for personal leisure and exploring a separate trade in dry dates.

3.3 A significant portion of the appeal rests on the denial of natural justice, specifically the refusal of the Adjudicating Authority to allow the cross-examination of Mr. Tahir Memn. The Appellant argues that under Section 138B of the Customs Act, the authority is obligated to examine witnesses before relying on their statements as evidence. He contends that using incriminating material without providing an opportunity for cross-examination effectively renders the proceedings ex-parte and legally unsustainable.

The Appellant argues that the penalty under Section 112(a)(i) is improper because he did not possess the requisite mens rea or knowledge that the goods were liable for confiscation. He asserts that the term "abetment," as defined under the Indian Penal Code, requires an intentional aid or conspiracy, neither of which has been proven. Finally, he disputes the allegations regarding Intellectual Property Rights (IPR) violations, stating the Department failed to follow mandatory procedures by not allowing the actual right holders to examine the goods as required by the IPR Enforcement Rules, 2007.



*[Handwritten signature]*

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh , Advocate, appeared for the hearing on behalf of the appellant 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 primary contention of the Appellant is that he was merely a business associate for legitimate trade (Kharek/Dry dates) and had no connection with the illicit import of E-cigarettes. However, the evidence collected during the investigation tells a different story. The investigation recovered digital evidence from the mobile phones of the mastermind (Asif Sathi) and the dummy IEC holder (Tahir Menn). The WhatsApp group 'Mm' was the nerve center of the cartel. Messages in this group, involving the Appellant, discussed "marka" (branding/identifying marks), stuffing instructions, and strategies to evade customs checks. The Appellant was not a passive member; he actively participated in discussions regarding the loading of copy/counterfeit goods of popular brands.

5.2 One of the most crucial pieces of evidence is the confession of co-accused Shri Mohammad Asif Sathi and the verification of digital logs showing a video call with the Chinese supplier. The Appellant was part of this call while the stuffing of E-cigarettes was being carried out. This directly contradicts the Appellant's claim of ignorance regarding the contents of the containers. In the case of **Collector of Customs, Madras vs. D. Bhoormull [1983 (13) ELT 1546 (SC)]**, the Hon'ble Supreme Court held that the department is not required to prove its case with "mathematical precision." The standard of proof in customs cases is "preponderance of probability." Given the digital trail, it is highly probable that the Appellant was fully aware and involved.

5.3 Under Section 2(3A) of the Customs Act, 1962 (as amended), a "beneficial owner" is defined as any person on whose behalf the goods are being imported or who exercises effective control over the goods. The statements of Shri Tahir Menn (IEC holder) and Shri Parvej Alam (Godown In-charge) clearly identify



the Appellant and Asif Sathi as the "asli malik" (actual owners) of the goods. Parvej Alam confirmed that he was reporting the status of the container to the Appellant. This establishes "effective control" over the illicit consignment.

5.4 The Appellant strongly argued that the denial of cross-examination of co-accused Shri Tahir Menn and the Chartered Engineer makes the order a nullity. The right to cross-examination in quasi-judicial proceedings is not an absolute right. In *Kishanlal Agarwalla vs. Collector of Customs* [1967 AIR SC 1110], it was established that the principles of natural justice do not require a formal cross-examination in every case, especially where documentary evidence and voluntary statements under Section 108 are available. In the instant case, the Adjudicating Authority relied on a plethora of independent evidence viz. Physical seizure of prohibited goods, Digital evidence (WhatsApp chats/Video calls), Statements of the Transporter and Godown In-charge, the Chartered Engineer's report.

5.5 The statement of Tahir Menn was corroborated by the statements of Parvej Alam and Asif Sathi. Thus, the denial of cross-examination does not vitiate the proceedings. I also rely on the case of **PATEL ENGINEERING LTD Versus UNION OF INDIA reported at 2014 (307) E.L.T. 862 (Bom.)**, the Hon'ble High Court held that "*irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in a inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated.*"

The Appellant challenged the valuation, claiming the Chartered Engineer (Shri Kunal Ajay Kumar) was not qualified to value electronic goods. Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, allows the rejection of transaction value when there is "reason to doubt the truth or accuracy" of the declared value. Here, the container was found with massive quantities of prohibited and undeclared goods (85,600 E-cigarettes). This fundamental mis-declaration (of quantity, description, and nature) automatically renders the declared transaction value for the entire container suspect and liable for rejection.



5.7 Once the transaction value is rejected, the value must be determined sequentially under Rules 4 to 9. Since these were smuggled/prohibited items, no contemporaneous data for "identical" or "similar" goods (legally imported) was available. Therefore, the Adjudicating Authority correctly resorted to Rule 9 (Best Judgment Method) based on market inquiries and the Chartered Engineer's report. Shri Kunal Ajay Kumar is a Government-approved and Customs-empaneled Chartered Engineer. His report provides a detailed breakdown of the market value of the items based on their features and specifications. The Appellant failed to provide any alternative evidence (like genuine price lists from manufacturers) to counter the findings. Merely attacking the qualification of an empaneled expert without providing a counter-valuation is insufficient.

5.8 The Adjudicating Authority correctly applied several landmark judgments which I find highly relevant to the instant appeal:

- Surjeet Singh Chhabra vs. Union of India [1997 (89) ELT 646 (SC)]: The Adjudicating Authority cited this to emphasize that a statement recorded under Section 108 before a Customs Officer is a valid piece of evidence and an admission made therein is binding. The Appellant's attempt to retract or distance himself from the confessions of his associates (which implicate him) fails in light of this Supreme Court ruling.
- Naresh J. Sukhawani vs. Union of India [1996 (83) ELT 258 (SC)]: This case established that the statement of a co-accused can be used as substantive evidence in customs proceedings. The statements of Asif Sathi and Tahir Menn, which were mutually corroborative and supported by digital evidence, clearly implicate the Appellant.

I find that these cases were correctly applied by the Adjudicating Authority to establish the legal threshold for proving a conspiracy in a smuggling case.

5.9 The Appellant cited several cases to argue against the imposition of penalty and the use of co-accused statements:

- Union of India vs. Bal Samand [2016 (336) ELT 586 (SC)]: Cited to argue that retracted statements have no evidentiary value. However, I find that in the current case, the statements were not merely bare allegations. They were supported by physical seizures (85,600 E-cigarettes) and digital logs (WhatsApp group chats). A retraction is only effective if the person can prove the statement was obtained under duress. The Appellant's



associates gave detailed accounts of the "modus operandi" which matched the physical findings.

- Commissioner of Customs vs. Mullaji Mohammad Ali [2011 (272) ELT 406 (SC)]: Cited regarding the necessity of cross-examination. As discussed earlier, cross-examination is not a right when the findings are based on a "preponderance of probability" derived from multiple independent sources. Here, the "Mm" WhatsApp group chats serve as a "res ipsa loquitur" (the thing speaks for itself) evidence of a smuggling conspiracy.

5.10 Based on the above detailed discussion, the I find that the Appellant's participation in the WhatsApp group 'Mm' and the video call during stuffing proves beyond doubt that he had "knowledge" of the prohibited nature of the goods. This satisfies the requirement of "mens rea" for the imposition of penalty under Section 112. E-cigarettes are absolutely prohibited for import. Smuggling of contraband items is a serious offense against the economic security and public health of the country. The statements of the Godown In-charge (Parvej Alam) and the IEC holder (Tahir Menn) consistently point to the Appellant as one of the two main beneficiaries. The use of a dummy firm (M/s. M.M. Enterprises) is a classic "modus operandi" to shield the actual owners. Besides E-cigarettes, the container had counterfeit goods (infringing IPR) and toys without BIS certification. This shows a systematic and deliberate attempt to bypass all regulatory and safety standards of the country.

5.11 The penalty under Section 112(a)(i) of the Customs Act, 1962 is attracted when a person does or omits to do any act which renders the goods liable to confiscation under Section 111, or abets the same. In the present case, the goods in question—specifically the 85,600 pieces of E-cigarettes—are absolutely prohibited under the Prohibition of Electronic Cigarettes Act (PECA), 2019, and were imported through blatant mis-declaration and concealment. Such acts clearly render the goods liable to confiscation under Sections 111 of the Act. The investigation has established that the Appellant was not a mere bystander but a key conspirator who exercised effective control over the consignment as a beneficial owner. His active involvement in coordinating the branding, stuffing instructions, and logistics through the 'Mm' WhatsApp group, coupled with direct communication with overseas suppliers during the loading process, constitutes a clear 'act of commission' that facilitated the illegal import. It is a settled position of law that for the imposition of penalty under Section 112(a), the department must demonstrate that the person had knowledge or



*(Handwritten signature)*

reason to believe that the goods were liable to confiscation. The comprehensive evidence on record, including the video call logs, digital forensic reports of the mobile devices, and the corroborative statements of co-accused, provides the requisite 'mens rea'. I find that the penalty imposed by the Adjudicating Authority is neither excessive nor arbitrary; rather, it is commensurate with the gravity of the offence, which involves the organized smuggling of prohibited items that pose a significant threat to public health and the nation's economic order.


5.12 The investigation has successfully unraveled a well-organized smuggling syndicate where Shri Sarfaraz Kamani played a pivotal role as a business associate and beneficial owner. The technicalities raised regarding cross-examination and valuation are mere "dilatory tactics" to evade the legal consequences of large-scale smuggling. The Adjudicating Authority has acted within the four corners of the law, following the principles of sequential valuation and providing a reasoned order based on corroborated evidence.

6. In view of the detailed discussions and findings recorded above, I find no reason to interfere with the Order-in-Original No. MCH/ADC/AKM/175/2024-25 dated 25.10.2024.

7. The Appeal filed by Sarfaraz Kamani is hereby rejected.



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

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

F. No. S/49-319/CUS/MUN/2024-25

Date: 29.01.2026

By Speed Post/E-Mail

To,

Shri Sarfaraz Kamani,  
 502, 5th Floor, Fatima Apartment,  
 109 Morland, Mumbai Central, Mumbai

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.

