



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
 चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
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 DIN-20250571MN000000B30A

क	फ़ाइल संख्या FILE NO.	S/49-281/CUS/AHD/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-25-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	05.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 130/ADC/VM/O&A/2023-24, dated 01.08.2023 passed by the Additional Commissioner of Customs, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	05.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Pacific India, B-417, Advance Business Park, Opp. Swaminarayan Temple, Shahibaugh, Ahmedabad - 380004.



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 imported on baggage.	
(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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 <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.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.





**ORDER-IN-APPEAL**

1. M/s. Pacific India, B-417, Advance Business Park, Opp. Swaminarayan Temple, Shahibaugh, Ahmedabad - 380004 (hereinafter referred to as the 'appellant') has filed the present appeal against the Order-In-Original No. 130/ADC/VM/ O&A/2023-24 dated 01.08.2023 (hereinafter referred to as the 'impugned order') passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts involved in the appeal, in brief, are that the appellant has filed a Bill of Entry No. 6733438 dated 05.07.2023 at ICD-Sanand for import of 22.340 MT 'Aluminium Scrap Taint Tabor as per ISRI for melting'. The importer has classified the said goods under Customs Tariff Item ('CTI' for short) 76020010. During examination of the goods by Customs officer, it appeared that the goods were 'Scrap of Aluminium window blinds with foam'. The cargo was found as Aluminium Panels/Strips in sandwich form and compressed in blocks. Further, a thick sheet of plastic/polymer as filling between Aluminium Sheets was also found during the examination. Samples were drawn and forwarded to Central Revenue Control Laboratory ('CRCL' for short). Test Report received from CRCL shows that the sample was in form of cut pieces of painted metallic sheets made of 84.4% Aluminium alloy and balance about 15% to 16% Polyurethane foam i.e. PU form.

3. The appellant has imported the impugned goods as 'Aluminium Scrap Taint Tabor Grade falling under CTI 76020010. As per the ISRI specifications of Aluminium Scrap Taint Tabor grade, it should be clean and free of plastic, glass, dirt and other foreign substances. Whereas, in the instant case, the goods found to have contain 15% to 16% Polyurethane foam, which is not permissible as per the ISRI specifications. It appeared that the impugned goods are not covered under any of the ISRI specifications as mentioned in CTI 76020010 and therefore, the same are appropriately classifiable under CTI 76020090 as Other Waste and Scarp of Aluminium. Further, the goods falling under CTI 76020090 are covered under the Restricted Category of the Foreign Trade Policy. The appellant was not in possession of the requisite authorization/permission of DGFT for import of such goods. So, it appeared that the impugned goods were liable for confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962 and the appellant was liable for penalty under Section 112(a)(i) *ibid*.

4. The appellant has waived the requirements of written Show Cause Notice and Personal Hearing. Thereafter, the case has been adjudicated vide the impugned order. In the said order, the ISRI specification of Aluminum Scrap Taint Tabor have been reproduced as under:



*Taint/Tabor-CLEAN MIXED OLD ALLOY SHEET ALUMINUM*

*Shall consist of clean old alloy aluminum sheet of two or more alloys, free of foil, venetian blinds, castings, hair wire, screen wire, food or beverage containers, radiator shells, airplane sheet, bottle caps, plastic, dirt, and other non-metallic items. Oil and grease not to total more than 1%. Up to 10% Tale permitted.*

The adjudicating authority observed that the above description indicates that Aluminium Taint Tabor grade should be free of plastic, glass, dirt and all other foreign substances. Whereas, in the instant case, the goods have been found to contain substantial amount of polyurethane foam (15-16%), which is not permissible as per the specifications. Thus, the subject goods are not covered within the ambit of the definition of Aluminum Scrap Taint Tabor. Resultantly, the goods do not merit classification under CTH 76020010 in as much as the said goods do not confirm to any of the ISRI specifications as mentioned in the said tariff heading. The adjudicating authority further observed that since the goods contain 84-85% of Aluminum as per the test report and are in Scrap form, the same are appropriately classifiable under CTH 76020090, which are covered under the Restricted category in terms of the ITC(HS) Policy under the Foreign Trade Policy. Further, the importer was not in possession of the requisite authorization/permission of the DGFT for import of such goods. Thus, the adjudicating authority found that the goods are covered under the definition of prohibited goods. Section 2(33) of the Customs Act, 1962, defines 'prohibited goods' as "*any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with*". The said definition implies that in cases where the conditions applicable for import of goods are not complied with, such goods would fall under the category of 'prohibited goods'. In this regard, the adjudicating authority relied upon the decision of Hon'ble Supreme Court in the case of *M/s Om Prakash Bhatia reported at 2003 (155) ELT 423 (SC)*.

5. The adjudicating authority further observed that the importer, vide their letter dated 31.7.2023, have accepted the above facts and there is no dispute regarding the fact that the goods are not covered under the ISRI term 'Taint Tabor' in as much as the same contain 15-16% PU Foam. Further, he found that the description of the goods is not in confirmation to the declaration made by the importer in the Bill of Entry and accordingly the subject goods are liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962. Further, it has been observed that the importer has rendered themselves liable to penalty under Section 112(a)(i) *ibid* in as much as they have mis-declared the goods and thereby rendered the goods liable to confiscation.



6. In view of the above discussion, the adjudicating authority has passed the following order (operative portion):

*"(1) I order confiscation of the goods covered under Bill of Entry No. 6733438 dated 5.7.2023, valued at Rs. 20,77,969/- (Rupees Twenty Lakhs Seventy Seven Thousand Nine Hundred Sixty Nine only) in terms of the provisions of Section 111 (d) & (m) of the Custom Act, 1962. However, the importer are given an option to redeem the same on payment of fine in lieu of confiscation amounting to Rs.3,00,000/- (Rupees Three Lakhs only) in terms of the provisions of Section 125(1) of the Customs Act, 1962.*

*(ii) I Impose penalty of Rs.30,000/- (Rupees Thirty Thousand only) on M/s Pacific India in terms of the provisions of Section 112(a) (i) of the Customs Act, 1962*

*(iii) M/s Pacific India would be liable for payment of applicable duties and other levies/charges in terms of Section 125(2) of the Customs act, 1962."*

7. Being aggrieved, the appellant has filed the present appeal on the following **Grounds of Appeal**.



7.1 The Ld. Adjudicating Authority has erred by failing to appreciate the admitted position that 84-85% goods have been found to be Aluminum Scrap of Taint/Tabor grade and balance 15-16% was foam. Hence, it is incorrect to hold 84-85% goods which were found in accordance with description declared in the bill of entry as mis-declared or as of restricted category so as to hold the same as liable to confiscation under Section 111 (m) and (d) of Customs Act, 1962. On this basis, imposition of fine in lieu of confiscation of such goods is not tenable in the eyes of law.

7.2 The appellant had filed the bill of entry on the basis of documents like invoice, bill of lading, packing list, certificate of origin, etc. received from the overseas supplier. As such, the appellant had no prior knowledge about presence of some small percentage of foam in the consignment which was otherwise found to be in accordance with the description declared in the bill of entry, i.e. Aluminum Scrap Taint Tabor. Hence, the charge of mis-declaration would not hold good for 84.4% of goods that were found to be comprised of painted metallic sheet made of Aluminum Alloy. Accordingly, levy of fine and penalty to the extent of 84.4% of goods is not tenable in the eyes of law.

7.3 In view of the above submissions, the appellant has requested to set aside the impugned order with consequential relief.

*Handwritten signature/initials in blue ink.*



**Discussion regarding time-limit and pre-deposit for filing appeal:**

8.1 The present appeal has been received in this office on 03.10.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 01.08.2023 has been shown as 02.08.2023. Therefore, the present appeal has been received on 62<sup>nd</sup> day from the date of communication of the impugned Order. The normal period of 60 days for filing of appeal, as prescribed under Section 128(1) of the Customs Act, 1962, has been expired on 01.10.2023. However, I find that there were holidays on 30.09.2023, 01.10.2023 and 02.10.2023 on account of Saturday, Sunday and Gandhi Jayanti. Therefore, as per Section 10 of the General Clauses Act, 1897, the present appeal filed on the next working day i.e. 03.10.2023 is to be considered as filed in due time i.e. within normal period of 60 days.

8.2 The appellant has submitted a copy of the e-payment Receipt dated 02.08.2023 towards payment of Rs.7,76,181/- against Document/BoE No. 6733438 dated 05.07.2023. From the ICEGATE website, it has been ascertained that the said amount consists duty of Rs.4,41,464/-, fine of Rs.3,00,000/-, interest of Rs.4,717/- and penalty of Rs.30,000/-, totalling to Rs.7,76,181/-. As the appellant has got cleared the goods on payment of duty with interest, and also paid entire amount of penalty and fine, as determined/imposed vide the impugned order, no further pre-deposit for filing of appeal, under the provisions of Section 129E of the Customs Act, 1962, is required.

8.3 As the appeal has been filed within the stipulated time-limit and on payment of duty, interest, fine and penalty, it has been admitted and being taken up for disposal on merits.

**Personal Hearing:**

9. Personal Hearing in this matter was held in virtual mode on 30.04.2025, which was attended by Shri Vikas Mehta, Consultant. He reiterated the submissions made at the time of filing of appeal.

**Findings:**

10. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant. The issue to be decided in the present appeal is whether the impugned order, to the extent it imposes a redemption fine of Rs.3,00,000/- and a penalty of Rs.30,000/- on the appellant is legal and proper or not.

11. I find that it is undisputed that the imported goods were found as Scrap of Aluminium Panels/Strips in sandwich form containing 15% to 16% PU form and therefore, not falling under any ISRI specifications, which are freely importable. Further, the impugned goods have found of to be mis-declared and mis-classified. The appropriate classification of the goods is found to be under CTI 76020090 as Other Waste and Scarp of Aluminium, which falls under Restricted



Category of Foreign Trade Policy. It is also undisputed that the appellant does not possess any licence or authorization, which is required for import of such restricted category of goods falling under CTI 76020090. Therefore, I am of the view that the adjudicating authority has rightly held that the goods are liable for confiscation.

12. The appellant has contended that due to only 16% of PU form, remaining 84% of aluminium scrap should not be held as liable for confiscation. In this regard, I find that the imported goods are found to be compressed scarp in sandwich form containing thick sheets of PU form between Aluminium Sheets. So, it is not possible to segregate and differently assess the goods as Aluminum Scarp and PU Form separately. So, I find that this contention of the appellant is not tenable in eyes of law.

13. As regards, another contention of the appellant that they had no prior knowledge about presence of 15-16% of PU form in the consignment, I find that in such situation the appellant should had sought 'first check' of the consignment as prescribed under the second proviso to Section 46 of the Customs Act, 1962. The said provisions are as under:

**"SECTION 46. Entry of goods on importation. — (1)** *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] :*

*[Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner :*

*Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same."*

In the present case, the appellant has not sought 'first check' of the consignment and subscribed to a declaration regarding correctness of the information given by them in the Bill of Entry. Therefore, this contention of the importer is also not acceptable.

14. I further observe that quantum of the redemption fine of Rs.3,00,000/- and penalty of Rs.30,000/- imposed by the adjudicating authority is quite reasonable and commensurate to the



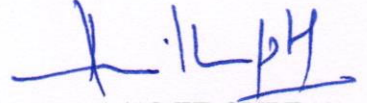
*[Handwritten signature]*



value of the mis-declared goods i.e. Rs.20,77,969/-. Therefore, I am of the considered view that the impugned order need no interference and requires to be upheld.

**Order:**

15. In view of the above discussion, I reject the appeal filed by the appellant M/s. Pacific India and uphold the impugned order.

  
(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

Date: 05.05.2025

F.No. S/49-281/CUS/AHD/2023-24

**By e-mail** [As per Section 153(1)(c) of the Customs Act, 1962]

To

M/s. Pacific India,  
B-417, Advance Business Park,  
Opp. Swaminarayan Temple,  
Shahibaugh, Ahmedabad - 380004.  
(email: [pacificindiaimports@gmail.com](mailto:pacificindiaimports@gmail.com) )

Shri. Vikas Mehta, Consultant,  
M/s. D'Legal (Advocates and Consultants),  
B-1902, Parijat Eclat, Behind Iskcon Temple,  
S. G. Highway, Ahmedabad - 380058.  
(email: [vikas@dlegal.in](mailto:vikas@dlegal.in) )



**Copy to:**

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.  
(email: [ccoahm-guj@nic.in](mailto:ccoahm-guj@nic.in) )
2. The Pr. Commissioner of Customs, Ahmedabad. (email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) , [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in) )
3. The Additional Commissioner of Customs, Ahmedabad (email: [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in) )
4. The Deputy/Assistant Commissioner of Customs, ICD-Sanand, Ahmedabad (email: [customs-sanand@gov.in](mailto:customs-sanand@gov.in) )
5. Guard File.

\* \* \* \* \*