

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 – 20260271MN000000B749

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| क | फ़ाइल संख्या FILE NO. | S/49-280/CUS/AHD/24-25 |
| 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) : | AHD-CUSTM-000-APP-683-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta<br>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. | OIO No.: 05/AR/ADC/TUMB/2024-25 dt. 19.12.2024<br>passed by the Additional Commissioner of Customs (Imports), ICD, Tumb, Village-Tumb, Taluka-Umbergaon, Dist.-Valsad, Gujarat |
| 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. International Cargo Corporation, Office No.: 221, City of Joy, Ecstasy Business Park, Mulund West, Mumbai- 400 080.<br>info@iccorp.in iccorp1072@gmail.com |



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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 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 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/-. |

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| 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-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |

## Order-In-Appeal

M/s. International Cargo Corporation, Customs Broker No.: 11/1072, Office No.: 221, City of Joy, Ecstasy Business Park, Mulund West, Mumbai- 400 080 (hereinafter referred to as "the Appellant") have filed the present appeal challenging the Order-In-Original No.: 05/AR/ADC/TUMB/2024-25 dt. 19.12.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, ICD, Tumb, Village-Tumb, Taluka-Umbergaon, Dist.-Valsad, Gujarat ( herein after referred to as "the "adjudicating authority").

2.1 Facts of the case, in brief, are that the appellant, a Customs Broker, filed four Bills of Entry No. 3503460 dated 28.11.2022, 3505599 dated 28.11.2022, 3659276 dated 09.12.2022 and 3663759 dated 09.12.2022 on behalf of the importer M/s. Kapsun Resources Corporation, 5, Survey No. 437, Changodar Highway, Near Navapura Sanathal Canal, Ahmedabad–382210, for the import of goods described as "Motor 370W YDK139-370-6 (Part of Air Cooler)." The importer declared classification of the said goods under CTH 8479 9090, attracting Basic Customs Duty (BCD) @ 7.5% along with applicable Social Welfare Surcharge (SWS) and IGST.

2.2 However, the Department was of the view that the impugned goods were appropriately classifiable under CTH 8501 4090, attracting BCD @ 10% along with applicable SWS and IGST, thereby resulting in alleged short payment of duty. Consequently, Show Cause Notice F. No. CUS/SHED/Misc./868/2023 dated 30.05.2024 was issued proposing reclassification of the goods and recovery of differential Customs duty along with applicable interest, imposition of penalty and redemption fine upon the importer, and imposition of penalty upon the appellant Customs Broker under Section 112(a) of the Customs Act, 1962.

2.3 The adjudicating authority, placing reliance upon DAC Analytics Note No. 02/2022-23 dated 16.05.2023 and the HSN Explanatory Notes to Heading 8501, interpreted the scope and meaning of the term "electric motors" for the purpose of determining the appropriate classification of the impugned goods. On this basis, the adjudicating authority concluded that the imported goods, namely "Electric Motor 370W YDK139-370-6 (Part of Air Cooler)," were correctly classifiable under CTH 8501 4090, attracting Basic Customs Duty (BCD) @ 10% along with applicable SWS and IGST. Accordingly, the differential Customs duty was confirmed along with applicable interest, and penalty was imposed upon the importer. Further, vide the impugned Order-in-Original, the adjudicating authority imposed a penalty of Rs. 50,000/- upon the appellant Customs Broker under Section 112(a) of the Customs Act, 1962 on the ground that the Customs Broker had allegedly failed to exercise due diligence in correctly classifying the goods under the appropriate Customs Tariff Heading and in applying the correct rate of Customs duty.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. The Appellant have, inter-alia, raised various contentions and filed detailed submissions in their Appeal memorandum dt. 16.01.2025, as given below in support of their claims :

- *That the Additional Commissioner of Customs, ICD Tumb, Tal: Umbergaon, District: Valsad, Gujarat erred in imposing penalty of Rs 50,000/- under Section 112(a)(ii) of the Customs Act, 1962.*
- *That the Additional Commissioner grossly erred in holding that the Appellant failed to exercise due diligence to ascertain correctness of CTH of the subject goods. Additional Commissioner also erred in holding that the Appellant failed to advise the client to correctly classify the imported goods.*
- *That the Additional Commissioner erred in holding that the Appellant failed to classify the imported goods correctly, which was their duty and obligation and accordingly, abetted the Importer in misclassification of goods and availing ineligible lower rate of duty ,which acts of commission or omission have rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962 and the Appellant Customs Broker liable to penalty under section 112(a)(ii) of the Customs Act, 1962.*
- *That the Appellant submits that in an earlier case of import of similar goods viz Motor-YDK (Part of air cooler) by the same Importer vide Bill of entry No. 8514696 dt 18.08.2020 at JNCH, Nhava Sheva, issue of classification of goods whether under CTH 8501 or CTH 84799090 was a subject matter of interpretative dispute and the same was resolved and decided in favour of the Importer vide* ***Order-in-Original no.318/2020-21/ADC/Gr-V/NS-V/CAC/JNCH dt 1.10.2020*** *passed by the Additional Commissioner of Customs, Gr V, NS-V, JNCH Nhava Sheva. In this fact of the matter, the Additional Commissioner grossly erred in holding that the Appellant Customs Broker failed to advise the Client about the correct classification of the goods. As the Appellant Customs Broker has acted on the basis of the said order-in-original dated 1.10.2020 passed by the Additional Commissioner of customs, JNCH Nhava Sheva and the instructions of the Importer while declaring the classification of the goods under CTH 84799090, the Additional Commissioner ICD Tumb grossly erred in holding that the Appellant Customs Broker failed to exercise due diligence. On this ground alone, the impugned order dated 19.12.2024 deserves to be set aside.*
- *That the Additional Commissioner failed to appreciate that the Appellant Customs Broker had declared the classification of impugned goods on the basis of the order-in-original dated 1.10.2020 passed by the Additional Commissioner JNCH Nhava Sheva in respect of like goods and as such, the Appellant Customs Broker had no authority under the law to sit in judgement over the same and advise the client to classify the goods under CTH 8501.*
- *That it is well settled that claiming of untenable classification under Customs Tariff*

*or ineligible exemption from duty is a bonafide belief of the assessee and does not constitute any misdeclaration rendering the goods liable to confiscation under section 111(m) of the Customs Act,1962, when the goods are correctly declared in the Bill of entry and consequently, no penalty is imposable on the Importer under section 112(a) of the Customs Act, 1962. Decision of* ***Hon. Supreme Court*** *in the case of* ***Northern Plastics reported in 1998 (101) ELT 549(SC)*** *is relied upon in this regard. It follows from this decision that when no penalty under Section 112(a) of the Customs Act, 1962 could be imposed on the Importer for misclassification, if any, then no question of imposition of any penalty under section 112(a) of Customs Act, 1962 on the Customs Broker would arise as the customs Broker has filed the said Bills of entry on the basis of instructions given by the Importer. The appellant quoted few case laws of* ***(i) Oberoi Constructions Ltd vs Commissioner of Customs (Import) Nhava Sheva in 2022(12) TMI 1339-CESTAT Mumbai,*** *(ii)* ***S. Rajiv and Co vs CC 2014(302) ELT 412 (Tri-Mumbai),***

- *That recently, Hon. CESTAT Hyderabad, in the case of* ***M/s. LEWEK Altair Shipping Pvt Ltd v/s Commissioner of Customs, Vijaywada,*** *reported in* ***2019 (366) ELT 318 (Tri-Hyd.)*** *held that if the goods are correctly declared, claiming of classification or wrong exemption Notification does not constitute any misdeclaration. The Hon. CESTAT Hyderabad set aside the order for confiscation of goods under section 111(m) of the Customs Act 1962 and held that no penalties were imposable under Section 112(a) and 114AA of the Customs Act, 1962 even if the appellant makes a wrong classification or claims ineligible exemption. Appeal filed by the respondent department against said decision of Tribunal was dismissed by the Hon. Supreme Court as reported in* ***2019(367) ELT A 328 (SC).***
- *That without prejudice to above, it is submitted that no penalty under section 112 of the Customs Act, 1962 is imposable on the Customs Broker for alleged lack of due diligence in claiming classification of the goods under Customs Tariff. Following case law is relied upon in this regard.* ***(i) Him Logistics Pvt Ltd vs Commissioner of Customs New Delhi*** *reported in* ***2016(340) ELT 388(Tri-Del), L*** *Appellant submits that in order that a penalty is imposed under Section 112(a) of the Customs Act, 1962, some positive act or omission / prior knowledge of wrong doing is required to be established and in the absence of the same, no penalty is imposable under the provisions of Section 112(a) of the Customs Act, 1962 on the ground that the Customs Broker failed to exercise diligence. Hon. CESTAT, Delhi in the case of* ***Rajesh Maikhuri vs Commissioner of Customs, New Delhi reported in 2018(363) ELT 274 (Tri-Del)*** *held that even the lack of due diligence and failure to take more precaution is no ground by itself to bring in penal consequences under Section 112(a) of the Customs Act, 1962.*
- *That without prejudice to above, it is submitted that the penalty under Section 112(a) of the Customs Act, 1962 has been imposed on the Appellant on the grounds of failure to discharge their duties and obligation as a Customs Broker viz failure to advise the client and for failure to exercise due diligence. These alleged*

*failures correspond to Regulation 10(d) and Regulation 10(e) of the CBLR, 2018. Appellant submits that it is well settled that no penalty under Section 112/114 of the Customs Act, 1962 could be imposed on the Customs Broker for failure to discharge its obligations as a Customs Broker. For breach of obligations to discharge duties as a Customs Broker, penalty provided under Regulation 18 read with Regulation 14 of Customs Broker Licensing Regulation 2018 (CBLR in short) could only be imposed subject to compliance of procedure set out under Regulation 17 of CBLR. Appellant relies upon following decisions of Hon CESTAT in this regard:- (i)* ***Adani Wilmar Ltd vs Commissioner of Customs (Prev) Jamnagar reported in 2015(330) ELT 549 (Tri-Ahmd)*** *(ii)* ***Sarosh Nagarwala v/s Commissioner of Customs (Export) Nhava Sheva reported in 2017(358) ELT 542(Tri-Mumbai).*** *(iii)* ***Fast cargo Movers vs Commissioner of Customs, Jodhpur reported in 2018(362) ELT 184 (Tri-Del)****.*

- *That Appellant submits that it is well settled that where a dispute is related to bona fide interpretation, imposition of penalty is not justified. In view of this, since in the instant case, the classification of goods was admittedly a subject matter of interpretation, no penalty under Section 112(a) of the Customs Act, 1962 could be imposed on the Appellant. Therefore, the Additional Commissioner erred in imposing penalty on the Appellant. Appellant relies upon following case laws in this regard: -* ***(i) Shital Fibres Limited vs. State of Punjab, [2008 (225) E.L.T. 406] , (ii)Amigo Brushes Pvt. Ltd. vs. Commissioner of C. Ex., Vadodara-I, [2008 (231) E.L.T. 271 (Tri. - Mumbai)].***
- *That it is well settled from the following decisions of various Tribunals that no penalty is imposable under the provisions of the Customs Act, 1962 on the Custom House Agent (now known Customs Broker) if they file the Shipping Bill/Bill of Entry on the basis of the documents provided to him by the Exporter/Importer/Client and when there is no evidence to indicate that the CHA (CB) had any prior knowledge of any misdeclaration or irregularity committed by the exporter or the importer as the case may be.*

*(i) Adani Wilmar Ltd., v/s Commissioner of Customs (Prev.) Jamnagar reported in 2015 (330) ELT 549 (Tri-Ahm.)*

*(ii) Prime Forwarders v/s Commissioner of Customs, Kandla, reported in 2008 (222) ELT 137 (Tri-Ahmd.)*

*(iii) Sai Shipping Services v/s Commissioner of Customs, New Delhi reported in 2009 (239) ELT 104 (Tri-Del)*

*(iv) Ashok Jaiswar v/s Commissioner of Customs (adj.) Mumbai reported in 2006 (200) ELT 122 (Tri-Del)*

*(v) Sindhu Cargo Services Ltd., v/s Commissioner of Customs Coimbatore reported in 2008 (226) ELT 282 (Tri-Chennai)*

*(vi) H. S. Cox and Co Pvt Ltd., v/s C.C Export 2009 (246) ELT 621(Tri)*

*(vii) World Cargo Movers v/s C.C New Delhi 2002 (139) ELT 408(Tri)*

*(viii) Eagle Shipping Agency v CC Mumbai 2001 (127) ELT 167(Tri)*

- *That the Appellant submits relevancy of the **Instructions no. 20/2024-Customs dated 3.9.2024** issued by the CBIC, New Delhi on the issue of implicating the Customs Broker as a Co- noticee in cases involving interpretative disputes and imostion of penalty under section 112 (a) of the Customs Act, 1962.*

**PERSONAL HEARING:**

4. Personal hearing in the matter was held on 09.12.2025 in Virtual mode. Shri Girish Nadkarni, Advocate appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum.

**DISCUSSION & FINDINGS:**

5. Before going into the merits of the case, it is observed from the Form C.A.-1 dated 16.01.2025 that the impugned order dated 19.12.2024 is shown to have been received on 16.12.2024 and that the present appeal has been filed on 04.02.2025. Accordingly, the present appeal has been filed within the normal period of 60 days prescribed for filing an appeal under Section 128(1) of the Customs Act, 1962.

5.1 It is further observed that the appellant, with respect to the payment of mandatary pre-deposit for filing appeal, has deposited sum of Rs. 3750/- vide E-Paymnet Challan No.: 1419133290 dt. 28.01.2025 calculated @7.5% of the penalty amount Rs. 50,000/- under the provisions of Section 129E of the Customs Act, 1962.

5.2 As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal. One set of the appeal memorandum has forwarded to the adjudicating authority for comments vide this office letter dated 25.03.2025, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. I have carefully gone through the impugned order, the appeal memorandum filed by the Appellant, the submissions made by the Appellant during the course of the hearing as well as the documents and evidence available on record. It is observed that the Appellant has contended that the adjudicating authority has erred in holding that the appellant failed to exercise due diligence to ascertain correctness of CTH of the subject goods and the appellant failed to advice the client correctly classify the imported goods

and imposed penalty under section 112(a)(ii) of the Customs act, 1962. Accordingly, the issue to be decided in this present appeal is whether the impugned order passed by the adjudicating authority, in so far as it imposing penalty on the Custom Broker under section 112(a)(ii) of the Customs act, 1962, is legal and proper in the facts and circumstances of the case.

6.1 I find that the Customs Broker filed the Bills of Entry based on the documents and information provided by the importer. There is no evidence to show that the Customs Broker changed the description of the goods, hid any important information, or knowingly declared the wrong Customs Tariff Heading to evade duty. The adjudicating authority has assumed that a failure to exercise due care amounts to abetment. However, without clear proof that the Customs Broker deliberately helped or was involved in mis-classifying the goods, the requirements of Section 112(a)(ii) are not met. Therefore, I hold that the penalty imposed on the Customs Broker is not justified and should be set aside.

6.2 It is observed from the plain reading of section 112(a)(ii) of the Customs Act, 1962 that it can apply only if it is proved that the Customs Broker deliberately helped or encouraged an act that made the goods liable for confiscation. Simply making an error, being careless, or having a difference of opinion about classification cannot be treated as abetment. In this case, there is no evidence that the Customs Broker colluded with the importer, acted with bad intentions, gained any financial benefit, or actively helped in evading duty. The records do not show that the Customs Broker knew about any wrong classification or intentionally assisted in breaking the law. Since there is no proof of deliberate wrongdoing or abetment, the penalty under Section 112(a)(ii) of the Act cannot be imposed. Therefore, the penalty must be set aside.

6.3 It is further observed that the Commissioner (Appeals), Customs, Ahmedabad, vide Order-in-Appeal No. AHD-CUSTM-000-APP-491-25-26 dated 24.12.2025, has set aside Order-in-Original No. 05/AR/ADC/TUMB/2024-25 dated 19.12.2024 arising out of SCN dated 30.05.2024 . In this OIO, differential duty, interest, and penalties were confirmed against the importer, M/s. Kapsun Resources Corporation, Ahmedabad, and penalty was also imposed on the present appellant, the Customs Broker. However, in the appeal filed by the importer, the Commissioner (Appeals) examined the issue of classification on merits and decided the matter in favour of the importer. Consequently, the entire demand of differential duty, along with interest and penalties, was dropped. Since the main demand itself has been set aside, the allegation of misclassification does not survive. The basis for invoking Section 111(m) of the Customs Act, relating to confiscation of goods, therefore ceases to exist. Penalty under Section 112(a)(ii) is dependent upon the goods being liable for confiscation. When confiscation itself is not sustainable, the penalty cannot stand independently. It is a well-established principle that if the main claim fails, any penalty or consequential action based on it must also fail. Accordingly, the penalty imposed on the appellant Customs Broker is not sustainable and is liable to be set aside.

7. In view of the foregoing discussions and findings recorded hereinabove, it is upheld that the penalty imposed upon the appellant Customs Broker under Sectio 112(a)(ii) of the Customs Act, 1962 is not legally sustainable. The allegation of abetment is not established; the issue involved is one of classification dispute and not mis-declaration; and further, the very foundation of the case having been set aside on merits vide Order-in-Appeal No. AHD-CUSTM-000-APP-491-25-26 dt. 24.12.2025 in the case of the importer, the consequential penalty on the appellant custom broker cannot survive.

Accordingly, the impugned order is set aside relating to the imposing penalty upon the appellant Customs Broker under Section 112(a)(ii) of the Customs Act, 1962. The appeal filed by the Customs Broker is hereby allowed, with consequential relief, if any, as admissible in accordance with law.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-280/CUS/AHD/2024-25

Date: 26.02.2026

By email (as per Section 153(1)(c) of the Customs Act, 1962)

By Speed post.

M/s. International Cargo Corporation,
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Ecstasy Business Park,
Mulund West,
Mumbai- 400 080.
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Copy to:

1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in )
2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in )
3. The Additional Commissioner of Customs, ( ICD- Tumb, ) Custom House, Ahmedabad. ( cus-ahmd-adj@gov.in )
4. The Assistant Commissioner of Customs, ICD-Tumb, . (cusicd-tumb@gov.in icdtumb@gmail.com )
5. Shri Girish Nadkarni Advocate for M/s. International Cargo Corporation, ( girish.nadkarni@hotmail.com )
6. Guard File.