



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 - 20260371MN000011451C

क	फ़ाइल संख्या FILE NO.	S/49-443/CUS/JMN/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)	JMN-CUSTM-000-APP-465-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	09/Additional Commissioner/2024-25 dated 27.11.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Regenta M Foods, Plot No. 2A & 2B, Survey No 287, Panchratna Industrial Estate, Ahmedabad 382210



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/- (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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	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
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 हज़ार 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 हज़ार 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 हज़ार रूपए.				
(घ)	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

Present Appeal has been filed by M/s. Regenta M Foods, Plot No. 2A & 2B, Survey No 287, Panchratna Industrial Estate, Ahmedabad 382210, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. 09/Additional Commissioner/2024-25 dated 27.11.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs (Preventive), Jamnagar.

2. Facts of the case, in brief, are that the appellant filed Bill of Entry No. 5168230 dated 21.08.2024 (hereinafter referred to as the "said Bill of Entry") under Section 46 of the Customs Act, 1967 for importing goods viz. (1) Red Lotus Flour 325 Carton 118g x 10), (2) Chili Sauce-400 Carton 1570 Grams 12), (3) Aromat Seasoning Power at 100 Carton (1Kg X.06), (4) Glass Noodle (Export PKT)-75 Carton (500 Grams. X 20), (5) Pickled Ginger-150 Carton (1500 Grams X 05), (6) Tempura Flour 325 Carton (1Kg X 10), as per Invoice No. EPI-2408-002 dated 02.08.2024 issued by M/s. Orchid Plus Co Ltd., 719. KPN Tower, 11th Floor, Raina 9 Road, Bangkapi, Huaykwang, Bangkok 10310, Thailand and Bill of Lading bearing No NAM9404848 claiming the benefit of Notification No. 46/2011-Cus dated 01.06.2011, so as to avail the exemption from payment of Basic Customs duty on the strength of Country of Origin Certificate as envisaged under ASEAN-INDIAN FREE TRADE PREFERENTIAL TARIFF AGREEMENT for import of goods from Thailand.

2.1 During the examination of the said goods, it was noticed that, there was mismatch in description and quantity of the goods declared by the Appellant at the time of filing the said Bill of Entry and that of physical quantity of goods actually found during the course of examination i.e. there was shortage of 125 Cartons of Red Lotus Flour and 75 Cartons of Tempura Flour while in place of these, 200 Cartons (150 Cartons of Glutinous Rice Flour (1Kg X 10) and 50 Cartons of Special Soft flour (1Kg X 10)) were found concealed by the declared consignment, although same were neither declared Invoice No. EPI-2408-002 dated 02.08.2024 not in the Bill of Entry No. 5168230 dated 21.08.2024

2.2 The appellant had mis declared the description and quantity of the imported goods in order to evade payment of correct amount of Customs duty leviable thereon. Thus, it appeared that the appellant had contravened the provisions of sub-section (4) of Section 46 of the Customs Act, 1962, inasmuch as they had mis-declared description and quantity of the imported goods in the



Declaration of Bill of Entry filed under the provisions of Section 46(4) of Customs Act, 1962.

2.3 Since the description and quantity of the imported goods found during the course of examination of imported goods were not as per declaration in the import documents i.e. Bill of Entry, Bill of Lading, Invoice, it appeared that the Appellant had mis-declared the quantity and description of Imported goods during the course of self-assessment of the said Bill of Entry as envisaged under Section 17(1) of the Customs Act, 1962. That on examination of imported goods by the Officers of Custom House Pipavav the fact w.r.t. the mis declaration of description and quantity of the subject goods came on record and thereby it appeared that the said Appellant had contravened the provisions of Customs Act, 1962 as discussed above and therefore, it appeared that the said goods were liable to seizure under Section 110 of the Customs Act, 1962 under the reasonable belief to be liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962.

2.4 Further, the representative sample of all imported goods were drawn and sent to the Assistant Chemical Examiner, C. Ex. & Customs Laboratory, Vadodara for Chemical Test vide Test Report dated 09.10.2024 confirmed the goods are fit for human consumption in respect to biological analyzed parameters".

2.5 In order to ascertain the value of mis-declared goods, the Appellant was requested to produce the Tax Invoice, if any, available with earlier import of Cartons Glutinous Rice Flour and Cartons of Special soft Flour, who in turn had submitted copy of Tax Invoice No.23-24/F002764 dated 05.06.2023 and No. 24- 25/F005793 dated 13.07.2024 both issued by M/s. Faridi Impex Pvt. Ltd. Mumbai showing purchase of various goods including Glutinous Rice Flour (CTF)-11029(22) and Hongkong Flour (also known Special Soft Flour CTH 19049000) from local market Therefore, the total assessable value of the goods was taken as Rs.20,46,569/ (Rupees twenty lakh, forty-six thousand, five hundred and sixty-nine only) on the basis of Assessable Value w.r.t. Red Lotus Flour, Chilli Sauce, Aromat Seasoning Power Jar. Glass Noodle (Export PKT), Pickled Ginger and Tempura Flour as declared by the Appellant in the said Bill of Entry and on the basis of copy of Tax Invoice No 23-24/F002764 dated 05.06.2023 w.r.t. quantity of Hong Kong Flour (also known Special Soft Flour CTH 19049000) and on the basis of invoice No.24-25/F005793 dated 13.07 2024 w.r.t. quantity of Glutinous Rice Flour (CTH11029022), as produced by the appellant to determine assessable value in respect of mis-declared goods.



2.6 It appeared that the appellant by resorting to the willful mis-declaration of 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) that concealing these goods by the goods declared in the Bill of Entry, had rendered the entire goods imported vide the said Bill of Entry liable for confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962.

2.7 Further, the Appellant had claimed the benefit of Notification No. 46/2011-Cus dated 01.06.2011. by producing the Country of Origin Certificate No A12024-0046556 in respect of the imported goods as envisaged under ASEAN-INDIAN FREE TRADE PREFERENTIAL TARIFF AGREEMENT for import of goods from Thailand. However, description, details and quantity of goods as per Country of Origin (COO) did not match with the actual details of goods. Hence benefit of the exemption Notification No. 46/2011-Cus dated 01.06.2011 appeared to be not available to the Appellant and liable to be denied to the appellant in respect of entire goods, as the entire goods were seized under Section 110 of the Customs Act 1962 with reasonable belief of liable to confiscation under provisions of Section 111 of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962.

2.8 Therefore, M/s. Regenta M Foods were issued a show cause notice as to why:

(i) customs duty of Rs.9,25,110/- (Rs.7,69,477/- Rs. 1,55,633/-) (Rupees nine lakh, twenty-five thousand, one hundred and ten only) should not be demanded and recovered under Section 28(4) of the Customs Act, 1962,

(ii) interest on duties of customs should not be recovered under Section 28AA of the Customs Act, 1962,

(iii) penalty should not be imposed under Section 112 of the Customs Act, 1962;

(iv) penalty should not be imposed under Section 114A of the Customs Act, 1962;

(v) the goods of value of Rs.20,46,569/- (Rs.16,56,569/-+Rs.3,90,000/-) (Rupees twenty lakh, forty-six thousand, five hundred and sixty-nine only) should not be held liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962 and why fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962.



2.10 Consequently, the Adjudicating Authority passed the following order:

(i) He ordered to confiscate of the entire goods under Section 111(f), 111(i), 111 (l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962, having total value of Rs. 20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) which were seized vide Panchnama dated 09.09.2024. However, he gave an option to the Appellant to redeem the said confiscated goods on payment of redemption fine of Rs 2,00,000/- (Rupees two lakh only) under Section 125 of the Customs Act, 1962 within one hundred and twenty days from the receipt of the order or else this option shall become void in terms of sub-section (3) of the Section 125 of the Customs Act, 1962, unless an appeal against such order is pending.

(ii) He ordered to pay the total customs duty of Rs. 9,25,110/- (Rupees nine lakh, twenty-five thousand, one hundred and ten only) under Section 28(4) of the Customs Act, 1962, along with appropriate Interest at the applicable rate, under Section 28AA of the Customs Act, 1962.

(iii) He imposed a penalty of Rs. 9,25,110/- (Rupees nine lakh, twenty-five thousand, one hundred and ten only) under Section 114A of the Customs Act, 1962 on the Appellant. However, he gave an option, under proviso to Section 114A, to the Appellant, to pay 25% of the amount of total penalty imposed under Section 114A, subject to payment of total amount of duty and interest confirmed at (iii) above, and the amount of 25% of penalty imposed under Section 114A within 30 days of receipt of the order

(iv) He refrained from imposition of penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso of Section 114A 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 (P), Jamnagar. 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 is seeking to set aside Order-In-Original No. 09/Additional Commissioner/2024-25, which confirmed a customs duty demand of Rs. 9,25,110, along with interest, an equivalent penalty under Section 114A, and a redemption fine of Rs. 2,00,000. The appellant emphasizes that they have already deposited 100% of the total amount (Rs. 14,03,820) under protest.

Consequently, they argue that the mandatory 7.5% pre-deposit required under Section 129E of the Customs Act for entertaining an appeal is already satisfied by this full payment.

3.2 The appellant contends that the misdeclaration of goods was a bonafide mistake by the supplier in Thailand rather than an attempt of smuggling. They argue that 200 cartons of intended goods (Red Lotus Flour and Tempura Flour) were short-shipped, while an equal number of cartons of different goods (Glutinous Rice Flour and Special Soft Flour) were loaded by mistake. To support the lack of "intent to conceal," the appellant points out that the undeclared items were found at the front of the container; they argue that if they had intended to smuggle the goods, they would have hidden them at the back or sides.

3.3 The appellant challenges the invocation of Section 119 and Section 120 of the Customs Act regarding the confiscation of "concealing" or "mixed" goods. They argue that because they had no knowledge of the supplier's error until the container was destuffed, the harsh repercussions of these sections should not apply. Furthermore, they highlight that the total financial benefit from this mismatch primarily an IGST difference of approximately Rs. 35,000/- is too small to justify the risks associated with intentional smuggling.

3.4 The appellant requests that the benefit of Notification No. 46/2011-Cus (ASEAN-India Free Trade Agreement) should not be denied to the correctly declared goods. They argue that they should be allowed to pay the concessional rate of duty based on their Country-of-Origin Certificate rather than the full rate. Finally, the appellant requests that the interest, redemption fines, and penalties imposed by the original order be dropped.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on Shri 24.02.2026 following the principles of natural justice wherein Shri Dharmesh R Parmar, Accountant, appeared for the hearing 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 (Preventive), Jamnagar and the defense put forth by the Appellant in their appeal. The core of this dispute lies in the nature of the 200 cartons. It is observed that the total number of packages found matched the total number of packages declared.



5.1 I have carefully examined the Panchnama dated 09.09.2024 and the findings in the impugned order. The crux of the Revenue's case is that during examination 200 cartons were "undeclared" and therefore "concealed." However, a detailed analysis of the container's contents reveals a critical fact that the Adjudicating Authority failed to appreciate that the total number of cartons declared in the Bill of Entry exactly matched the total number of cartons found in the container.

5.2 In the world of international logistics, specifically "Less than Container Load" (LCL) or "Full Container Load" (FCL) of assorted grocery items, the occurrence of "Substitution" is a known phenomenon. The Appellant declared "Red Lotus Flour" and "Tenipurs Flour." During loading at the supplier's warehouse, 200 cartons of these were missed, and 200 cartons of "Glutinous Rice Flour" and "Special Soft Flour" were loaded instead.

5.3 Section 111(i) applies to "any dutiable or prohibited goods found concealed in any manner in any package." The term "concealed" implies a deliberate act of hiding goods behind false partitions, inside other goods, or in secret cavities. In the instant case, the 200 cartons were found alongside the other goods in their original manufacturer's packaging. There was no attempt to hide them. Finding "Item B" in place of "Item A" when the total count remains identical is a case of mis-shipment, not concealment. The Appellant filed the Bill of Entry based on the documents received from the supplier. An importer cannot be expected to have "X-ray vision" to know what is inside a sealed container shipped from a foreign port until it is opened during Customs examination.

5.4 In this case, the Revenue has produced no evidence of collusion. The fact that the Appellant suffered a shortage of 200 cartons of their ordered goods strongly suggests that this was a warehouse error by the supplier. Why would an importer "smuggle" Rice Flour by sacrificing an equal quantity of Wheat Flour? There is no logical economic incentive for such a "concealment."

The Adjudicating Authority (AA) ordered the confiscation of the entire consignment, valued at approximately Rs. 20.46 Lakhs, despite the discrepancy being confined to only 200 cartons. This "blanket confiscation" approach fails to withstand the scrutiny of the Doctrine of Proportionality, which is a fundamental tenet of Indian Administrative Law. Section 119 of the Customs Act, 1962, states that "any goods used for concealing other goods... are also liable to confiscation." However, for this section to be triggered, there must be a physical relationship of "concealment" i.e., the non-offending goods must serve as a cover, mask, or camouflage for the offending goods.



Handwritten signature or initials.

5.6 In the present container, the correctly declared items (such as Sauces, Leaves, and other dry groceries) were stacked in their own distinct packages. The 200 substituted cartons were simply part of the mix. There is no evidence that the Appellant used the legitimate cargo to "hide" the flour. Thus, Section 119 is entirely inapplicable to the non-offending portion of the cargo.

5.7 The Hon'ble Courts have consistently held that if a consignment is composed of distinct and separable items, a discrepancy in one part cannot lead to the confiscation of the whole. By seizing the entire consignment of Rs. 20.46 Lakhs for a discrepancy involving a few hundred cartons, the adjudicating authority has acted in direct contravention of settled legal position. The "Red Lotus Flour" and "Tenipurs Flour" (shortage) and the substituted "Glutinous Rice Flour" are all variants of the same broad category of food products. The presence of the substituted goods does not "taint" the rest of the consignment. Therefore, the confiscation of the correctly declared items is set aside as being disproportionate and legally flawed.

5.8 The Adjudicating Authority imposed a significant redemption fine and penalty based on the premise that the found goods were "undeclared." While it is true that technical liability arises under Section 111(m) when goods do not match the entry, the law provides for a discretionary approach to the quantum of such fines and penalties under Section 125 and Section 112(a) respectively.

5.9 In the present case, the Appellant not received 200 cartons of their ordered flour and received 200 cartons of substituted flour. The "Glutinous Rice Flour" and "Special Soft Flour" are commodities with similar market values and duty structures as the "Red Lotus Flour" originally ordered. There is no evidence that the substituted goods attract a significantly higher duty that would suggest an attempt to evade taxes. Since the total package count remained unchanged, the Appellant gained no "windfall" benefit. Any fine imposed must reflect this lack of financial gain.

5.10 A "Redemption Fine" under Section 125 is intended to "wipe out the profit" the importer might have made from the illicit import. Since the substitution was unintentional and the goods are of similar value, there is virtually no "illicit profit" to be wiped out. Therefore, a heavy redemption fine is legally unsustainable

5.11 Further it is observed that the very basis for issuance of the notice under Section 28(4) of the Customs Act, 1962 namely, the allegations of collusion, willful misstatement, or suppression of facts with intent to evade payment of

duty has not been substantiated by the evidence available on record. In the absence of these essential ingredients, the invocation of the extended period under Section 28(4) is not legally sustainable. Accordingly, in terms of proviso (10B) to Section 28, the impugned notice issued under Section 28(4) is liable to be deemed as a notice issued under Section 28(1), and the demand of duty along with applicable interest is required to be determined under the normal period provisions. In view of the above, the confirmation of demand under Section 28(8), which is predicated upon a notice issued under Section 28(4), cannot be sustained in the present case. Consequently, in the absence of confirmation of demand of duty or interest under Section 28(8), the imposition of penalty under Section 114A of the Customs Act, 1962 is not legally tenable, as the said provision is attracted only when duty or interest is determined under Section 28(8). Therefore, the penalty imposed under Section 114A is liable to be set aside.

5.12 The adjudicating authority failed to consider the "mitigating circumstances," namely the shortage of 200 cartons. If the Appellant intended to smuggle, they would have had the full declared quantity plus the excess. The "shortage vs. excess" scenario is the strongest evidence of a bona fide mistake. Imposing a heavy penalty for what is clearly a logistical mix-up is a violation of the principles of natural justice and administrative fairness.

5.13 After a comprehensive perusal of the averments made in the appeal memorandum, the findings recorded in the impugned Order-in-Original, and the settled position of law through various judicial pronouncements, I am of the considered view that the substitution of 200 cartons was a bona fide clerical error. The fact that the total number of cartons declared in the Bill of Entry matches the total count found during the physical examination, coupled with the critical shortage of the specifically ordered "Red Lotus" and "Tenipurs" flours, provides a clear and undeniable link between the missing goods and the substituted items found. This numerical parity establishes that the present discrepancy is a classic case of "wrong loading" at the supplier's warehouse rather than a deliberate attempt at concealment under Section 111(i). The Appellant, acting in good faith based on the documents provided by the overseas exporter, cannot be attributed with a guilty mind or mens rea for a logistical oversight beyond their immediate control.

5.13 Furthermore, I find that the Adjudicating Authority's decision to confiscate the entire consignment, including 100% correctly declared goods, is an excessive exercise of power that violates the Doctrine of Proportionality and the principle of separability of goods. The non-offending items were clearly distinct,



individually packaged, and not used in any physical capacity to hide the substituted cartons. Thus, the application of Section 119 was legally flawed. The Revenue's interests are adequately protected by ensuring the payment of appropriate duties on the substituted items, and the prolonged detention of the entire container for a minor substitution involving only a fraction of the cargo is commercially punitive and legally unjustifiable. Consequently, while the 200 cartons of undeclared flour are technically liable for confiscation due to the strict liability nature of Section 111(m), the quantum of redemption fine must be nominal and no penalty is liable to be imposed under Section 114A of the Customs Act, 1962, reflecting the absence of fraud and the mitigating circumstances of the case.

6. In view of the detailed discussion and findings above, I pass the following order:

- a. The confiscation of the 200 substituted cartons (150 Glutinous Rice Flour and 50 Special Soft Flour) is upheld, as they were not mentioned in the Bill of Entry.
- b. The Redemption Fine is reduced from the amount set in the OIO to Rs. 20,000/-, and the Penalty under Section 114A is hereby set aside.
- c. The Confiscation of the remaining "correctly declared" goods is set aside. These goods must be released immediately upon payment of applicable duties.
- d. The request for re-export of the 200 substituted cartons is allowed on payment of the reduced fine.

The appeal is PARTIALLY ALLOWED.



सत्यापित/ATTESTED
[Signature]
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

[Signature]
(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-443/CUS/JMN/2024-25

Date: 30.03.2026

By Registered post A.D/E-Mail

To,
M/s. Regenta M Foods,
Plot No. 24 & 2B, Survey No 287,
Panchratna Industrial Estate, Ahmedabad 382210

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs (Preventive), Custom, Jamnagar.
4. Guard File.

