



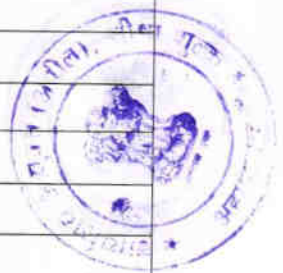
सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS  
(APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20260371MN000016831A

क	फ़ाइलसंख्या FILE NO.	S/49-37/CA-2/CUS/MUN/MAR/2025-26
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-927-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	30.03.2026
ड	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	MCH/ADC/ZDC/433/2025-26 dated 10.12.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Deputy Commissioner of Customs (Review), Custom House, Mundra.



1.	यह प्रतिउसव्यक्तिके निजी उपयोगके लिए मुफ्तमें 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 डीडी (1) (यथासंशोधित) के अधीन निम्नलिखित श्रेणियोंके मामलोंके सम्बन्धमें कोई व्यक्ति इस आदेशसे अपनेको आहत महसूस करता हो तो इस आदेशकी प्राप्तिकी तारीखसे 3 महीनेके अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्लीको पुनरीक्षण आवेदन प्रस्तुत कर सकता 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)	बैगज के रूपमें आयातित कोई माल। (a) any goods imported on baggage.
(ख)	भारतमें आयात करने हेतु कि सीवाहनमें लादा गया लेकिन भारतमें उनके गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जानेके लिए अपेक्षित माल उतारे जाने पर या उस गन्तव्य स्थान पर उतारे गए मालकी मात्रामें अपेक्षित मालसे 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 नियमोंके तहत शुल्क वापसीकी अदायगी। (c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावलीमें विनिर्दिष्ट प्रारूपमें प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांचकी जाएगी और उसके 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 आदेशकी 4 प्रतियां, जिसकी एक प्रति में पचास पैसेकी 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 दस्तावेजोंके अलावा साथ मूल आदेशकी 4 प्रतियां, यदि हो (b) 4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणके लिए आवेदनकी 4 प्रतियां (c) 4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करनेके लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदोंके शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतानके प्रमाणिक चलानटी. आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंडकी राशि और रूपए एक लाख या उससे कम हो तो एसे फीसके रूपमें रु. 200/- और यदि एक लाखसे अधिक हो तो फीसके रूपमें 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.	<p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p>				
	<p>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 :</p>				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</td> <td>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016</td> <td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</p>				
	<p>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 -</p>				
(क)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.</p>				
(a)	<p>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;</p>				
(ख)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए</p>				
(b)	<p>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 ;</p>				
(ग)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो, दसहज़ाररूपए.</p>				
(c)	<p>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</p>				
(घ)	<p>इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, अपीलरखाजाएगा।</p>				
(d)	<p>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.</p>				
6.	<p>उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p>				
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p>				
(a)	<p>in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p>				
(b)	<p>for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



**ORDER-IN-APPEAL**

The Deputy Commissioner of Customs (Review), Custom House, Mundra, (hereinafter referred to as 'the appellant department') have filed the present appeal in terms of Section 129D (4) of the Customs Act, 1962 on the basis of Authorization/Review Order No. 09/OIO/2025-26 dated 12.02.2026 issued by the Commissioner of Customs, Mundra, challenging Order-in-Original No. MCH/ADC/ZDC/433/2025-26 dated 10.12.2025 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as "the adjudicating authority") in case of M/s Nijanand Steel, Survey No.: 287/1, Plot No. 03, Opp. Panchpipla Complex Street, Shapar Road, Shapar-Veraval, Rajkot 360 024 (hereinafter referred to as 'the respondent').

2. Briefly stated, facts of the case are that the respondent, in respect of imports of Stainless Steel Welded Pipes J3 (Industrial Use) made from Malaysia through Mundra Port (INMUN1) during the period February 2020 to July 2020 filed two Bills of Entry, namely Bill of Entry No. 6720655 dated 01 02 2020 and Bill of Entry No. 8166753 dated 17.07. 2020, declaring the goods under CTH 7306, and claimed nil Basic Customs Duty by availing preferential tariff benefit under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No. 968(1)), on the strength of Country of Origin (COO) Certificates purportedly issued in Malaysia. At the time of import, the respondent paid Customs duty amounting to 9,84,406, whereas duty of 16,94,272 was actually payable, resulting in a short-levy of ₹7,09,866.

2.1 Investigation was initiated by the Directorate of Revenue Intelligence (DRI) on the basis of intelligence that several COO certificates issued by Malaysian authorities in respect of certain exporters were non-authentic. It was noticed that the suppliers involved in the present case, namely M/s Artfransi International Sdn. Bhd. and M/s Jentayu Industry, Malaysia, figured in the list of exporters whose COO certificates were reported to be not genuine. Verification was carried out with the Ministry of International Trade and Industry (MITI), Malaysia, which categorically confirmed that no applications for issuance of COO had ever been received from the said exporters through their e-PCO system.



2.2 On scrutiny of import documents, it was found that the respondent had claimed preferential duty benefit solely on the basis of COO certificates bearing numbers KL-2020-AI-21-0101184 dated 24.01.2020 and KL-2020-AI-21-057853 dated 20.01.2020, both of which were issued prior to 18.05.2021 and were subsequently declared inauthentic by the Malaysian issuing authority and the FTA Cell, CBIC, vide communications placed on record. It was thus established that the respondent had wrongly availed duty exemption under the Indo-Malaysia Preferential Trade Agreement.

2.3 Statements under Section 108 of the Customs Act, 1962 were recorded from Shri Vijay Vallabhbai Savaliya, Partner of M/s Nijanand Steel. In his statement, he admitted that the firm had imported the said goods from Malaysia, had availed the benefit of Notification No. 46/2011-Customs on the basis of COO certificates provided by the suppliers, and accepted that the certificates were later found to be non-authentic. He acknowledged the firm's liability to pay differential Customs duty along with applicable interest and penalty, while stating that they had relied upon documents furnished by overseas suppliers and had no independent means to verify their authenticity.

2.4 Documentary verification revealed that the respondent had failed to comply with the requirements of Section 28DA of the Customs Act, 1962 and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) The respondent did not possess sufficient information regarding the origin criteria of the goods, did not exercise reasonable care to ensure the authenticity of the COO certificates, and made a declaration in the Bill of Entry which was not supported by valid origin documents. Consequently, the preferential duty benefit claimed under Notification No. 46/2011-Customs was held to be inadmissible

2.5 A. Show Cause Notice dated 30.12.2024 was issued proposing disallowance of exemption, recovery of differential duty of ₹7,09,866 under Section 28(4) along with interest under Section 28AA, confiscation of the goods having total assessable value of Rs. 54,68,921 under Sections 111(m), 111(0) and 111(q) of the Customs Act, 1962, and imposition of penalties under Sections 112(a) & 112(b) and/or 114A & 114AA .



2.6 The respondent was granted multiple opportunities for persons' hearing on 26.09.2025, 13.10.2025 and 07 11.2025, however, the respondent neither appeared nor submitted any written submissions

2.7 The adjudicating authority observed that the respondent had made a self-assessment declaration claiming preferential duty benefit without exercising due diligence, despite the statutory obligation under Sections 17 and 46(4) of the Customs Act, 1962. It was held that submission of inauthentic COO certificates amounted to mis-statement and suppression of facts, justifying invocation of the extended period under Section 28(4) The authority further held that under Rule 6 and Rule 7 of CAROTAR, 2020, and Rule 13 of the Rules of Origin, 2009, the Customs authorities were empowered to deny preferential tariff treatment once the COO certificates were found to be non-genuine, without requiring further verification

2.8 It was concluded that the respondent had wrongly availed exemption under Notification No. 46/2011-Customs, resulting in evasion of Customs duty. Accordingly, the Bills of Entry were held liable for re-assessment, and the differential duty of ₹7,09,866 was confirmed along with applicable interest.

2.9 The imported goods were held liable to confiscation under Sections 111(m), 111(o) and 111(q) of the Customs Act, 1962, with an option of redemption on payment of fine under Section 125. However, the goods covered under above said Bills of Entry are not physically available for confiscation, no redemption fine was imposed. The respondent was also held liable to penalties under Sections 114A and 114AA, considering the nature of mis-declaration and misuse of preferential trade benefits.

2.10 Accordingly, the adjudicating authority ordered to confiscate the goods under Section 111 (m), (o) & (q) of Customs Act, 1962 The adjudicating authority also noted that the goods had already been cleared and were not available physically for confiscation. Since the goods were not physically available for confiscation, the adjudicating authority did not impose any redemption fine in lieu of such confiscation.

3. The appellant department has contended that the adjudicating authority has erred in holding that redemption fine under Section 125 of the



Customs Act, 1962 is not imposable merely on the ground that the goods were not physically available for confiscation. Being aggrieved by the non-imposition of redemption fine in lieu of confiscation in the impugned order on account of such non-availability, the appellatant department has preferred the present appeal, inter alia, contending as under:

- *"The adjudicating authority has erred in law by holding that redemption fine under Section 125 of the Customs Act, 1962 is not imposable merely because the goods are not physically available for confiscation. The authority failed to appreciate that the statutory trigger for imposition of redemption fine is the authorization of confiscation, and not the physical availability of goods. Once goods are held liable to confiscation under Section 111 or Section 113 of the Customs Act, the power to impose redemption fine automatically flows under Section 125 of the Act.*

- *The Hon'ble Madras High Court in M/s Visteon Automotive Systems India Pvt. Ltd., reported at 2018 (9) G.S.T.L. 142 (Mad.), has conclusively held that:*

*Penalty under Section 112 and redemption fine under Section 125 operate in two distinct fields;*

*Redemption fine is imposed in lieu of confiscation of goods;*

*The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", clearly establish that physical availability of goods is not necessary for imposition of redemption fine; and*

*Redemption fine is intended to avoid the consequences flowing from confiscation under Section 111 of the Act.*

*The adjudicating authority has failed to follow this binding judgment. rendering the impugned order legally unsustainable.*

- *The Hon'ble Gujarat High Court in M/s Synergy Fertichem Ltd., reported at 2020 (33) G.S.T.L. 513 (Guj.), has reaffirmed the above legal position and expressly followed the judgment of the Hon'ble Madras High Court in Visteon Automotive Systems. The Hon'ble Court held that the prerequisite for offering redemption fine is the finding that the goods are liable to confiscation. The Court further clarified that non-availability of goods does not bar the imposition of redemption fine. The impugned order is in direct conflict with this authoritative pronouncement.*



• The Hon'ble CESTAT, West Zonal Bench, Ahmedabad, in Van Oord Indi Pvt. Ltd. (Customs Appeal No. 10679/2024-DB, Order dated 13.11.2025), has categorically held that:

*Physical non-availability of goods does not affect confiscation or imposition of redemption fine;*

*The power to impose redemption fine springs from authorisation of confiscation under Section 111; and*

*Redemption fine is meant to avoid the consequences of confiscation and save the goods from such confiscation.*

*The adjudicating authority, being subordinate to the jurisdictional Tribunal, was bound to follow this settled position of law.*

• The appellant department further contended that the opening words of Section 125 of the Customs Act, 1962 clearly provide that "Whenever confiscation of any goods is authorised by this Act", the adjudicating authority may impose redemption fine. The statute does not prescribe physical availability of goods as a condition precedent. It is a settled legal principle that once the power of confiscation is traceable to Section 111 or Section 113 of the Act, the physical availability of goods becomes irrelevant for the purpose of imposing redemption fine. This principle applies equally to cases of improper import as well as attempted improper export.

• The appellant department further contended that in view of the settled legal position laid down by the Hon'ble Madras High Court, Hon'ble Gujarat High Court, and consistently followed by the Hon'ble CESTAT, the adjudicating authority has committed a clear error of law by not imposing redemption fine under Section 125 of the Customs Act, 1962 solely on the ground that the goods were not physically available.

• In view of the above facts and submissions, the impugned Order-in-Original passed by the Additional Commissioner of Customs, Custom House Mundra is not legal and proper and therefore, in the interest of justice, prayed to:

- i. Set aside the impugned Order-in-Original to the extent it failed to impose redemption fine under Section 125 of the Customs Act, 1962.
- ii. Refer the matter back to Adjudicating Authority to consider it as a fresh with regard that redemption fine is imposable irrespective of the physical availability of the goods."

4. A letter F.No.: S/49-37/CA-2/CUS/MUN/MAR/2025-26 dated 12.03.2026 was send to the respondent for submitting their comment. Personal

hearing in the matter were scheduled on 17.03.2026. However, no comments were received and no one appeared for personal hearing. Hence, the appeal is taken up for decision on the basis of documents available on record.

5. It is observed that the respondent, imported Stainless Steel Welded Pipes (J3 – Industrial Use) from Malaysia through Mundra Port during February 2020 to July 2020 vide two Bills of Entry and claimed nil Basic Customs Duty under Notification No. 46/2011-Cus. on the basis of Country of Origin (COO) certificates, resulting in payment of duty ₹9,84,406/- as against actual payable duty of ₹16,94,272/-, thereby short-levying ₹7,09,866/-. Investigation by DRI revealed that the COO certificates issued in respect of the exporters were non-authentic, as confirmed by the Ministry of International Trade and Industry (MITI), Malaysia, which stated that no such certificates were issued through its system. The respondent had relied solely on such invalid COO certificates and failed to comply with the requirements of Section 28DA of the Customs Act, 1962 and CAROTAR, 2020, by not exercising due diligence or verifying origin criteria. A Show Cause Notice dated 30.12.2024 was issued proposing denial of preferential benefit, recovery of differential duty under Section 28(4) along with interest under Section 28AA, confiscation under Sections 111(m), 111(o) and 111(q), and imposition of penalties under Sections 114A and 114AA. Despite multiple opportunities, the respondent neither appeared nor submitted any reply, and the case was decided ex parte. It was held that submission of inauthentic COO certificates amounted to wilful mis-statement and suppression of facts, justifying invocation of extended period, and denial of exemption under Notification No. 46/2011-Cus. Accordingly, differential duty of ₹7,09,866/- was confirmed with interest, penalties under Sections 114A and 114AA were imposed, and the goods were held liable for confiscation under Sections 111(m), (o) and (q); however, no redemption fine under Section 125 was imposed as the goods were not physically available.

5.1 It is observed that the present appeal has been preferred by the appellant department solely on the ground that the adjudicating authority failed to impose redemption fine under Section 125 of the Customs Act, 1962, merely on the basis that the goods were not physically available for confiscation. It is further observed that the impugned order does not contain any specific finding or reasoning for non-imposition of redemption fine. Accordingly, in my

considered view, the impugned order, to that extent, is a non-speaking order insofar as the issue of non-imposition of redemption fine is concerned.

5.2 It is further observed that the appellant department has relied upon the following case laws

(i) M/s Visteon Automotive Systems India Pvt. Ltd., reported at 2018 (9) G.S.T.L. 142 (Mad.)

(ii) M/s Synergy Fertichem Ltd., reported at 2020 (33) G.S.T.L. 513 (Guj.)

(iii) Final Order No. 11039-11040/2025 DATED 13.11.2025 of Hon'ble CESTAT, West Zonal Bench, Ahmedabad, in the case of Van Oord India Pvt. Ltd. Versus Commissioner of Customs, Ahmedabad in Customs Appeal No. 10679/2024-DB.

wherein it has been held that physical availability of goods is not necessary for imposition of redemption fine.

5.3 It is further observed that the appellant department has also prayed to refer the matter back to Adjudicating Authority to consider it as a fresh with regard that redemption fine is imposable irrespective of the physical availability of the goods.

5.4 In view of the foregoing, it is observed that the adjudicating authority, while passing the impugned order, has not recorded any specific finding or provided cogent reasons for non-imposition of redemption fine under Section 125 of the Customs Act, 1962. It is further noted that the appellant department has relied upon various judicial pronouncements wherein it has been consistently held that physical availability of the goods is not a sine qua non for imposition of redemption fine, and that such fine can be imposed even where the goods are no longer available. In these circumstances, I find that the matter requires reconsideration by the adjudicating authority with due application of the legal position as well as the contentions advanced by the appellant department. Accordingly, I am inclined to remand the matter to the adjudicating authority for passing a fresh, reasoned and speaking order after duly examining the grounds of appeal and affording an opportunity of hearing in accordance with the principles of natural justice.



5.5 Thus, I am of the considered view that remitting of the matter to the lower authority has becomes *sine qua non* to meet the ends of justice. The adjudicating authority is required to examine all the contentions raised by the

appellant department and record his finding and issue order accordingly. In this regard, I rely upon the *case of Prem Steels P. Ltd. - 2012-TIOL-1317-CESTAT-DEL* and the *case of Hawkins Cookers Ltd. -2012 (284) E.L.T. 677 (Tri. - Del)*, which have also relied upon the *case of Medico Labs - 2004(173) ELT 117 (Guj.)*, wherein it has been held that Commissioner (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f. 11.05.2001.

6. In light of the aforesaid facts and circumstances, the appeal filed by the appellant department is allowed by way of remand. The matter is remitted to the adjudicating authority to pass a reasoned and speaking order, in accordance with the principles of natural justice and applicable legal provisions. It is clarified that no opinion has been expressed on the merits of the case or on the submissions made by the appellant department, and the same shall be examined independently by the adjudicating authority.

  
(AMIT GUPTA)

COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.Nos. S/49-37/CA-2/CUS/MUN/MAR/2025-26

Dated -30.03.2026

To,

(i) The Deputy Commissioner of Customs (Review),  
Custom House, Mundra.

(ii) M/s Nijanand Steel, Survey No.: 287/1,  
Plot No. 03, Opp. Panchpipla Complex Street,  
Shapar Road, Shapar-Veraval, Rajkot 360 024



**Copy to:**

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs House, Mundra.
3. The Joint/ Addl Commissioner of Customs, Custom House, Mundra.
4. The Joint/ Additional Commissioner of Customs, Custom House, Mundra. Pl find enclosed one above copy to serve the respondent in person.
5. Guard File.

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