



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**  
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DIN - 20260371MN000000F3AB

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| क | फ़ाइल संख्या FILE NO.  | S/49-354/CUS/MUN/2024-25  |
| ख | अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) | MUN-CUSTM-000-APP-914-25-26   |
| ग | पारितकर्ता PASSED BY   | Shri Amit Gupta<br>Commissioner of Customs (Appeals),<br>Ahmedabad  |
| घ | दिनांक DATE  | 30.03.2026  |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.   | Order-in-Original no.<br>MCH/ADC/AKM/205/2024-25 dated<br>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:  | Shri Baldevsinh N. Vala,<br>74, Pratapsinh Devubha Pati,<br>Near Nagbai Mataji Mandir,<br>At Gadhethad,<br>Upleta,<br>Dist Rajkot- 360 460. |



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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 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) | बैगेज़ 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 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 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   |



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|     | amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.  |
| 4.  | मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं             |
|     | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :                         |
|     | सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ   |
|     | <b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>  |
|     | दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016  |
|     | 2 <sup>nd</sup> Floor, Bahumali Bhavan,<br>Nr.Girdhar Nagar Bridge, Asarwa,<br>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.   |
| (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-   |
|     | (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or  |
|     | (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.   |



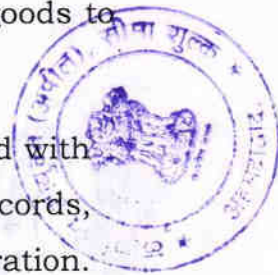
**ORDER-IN-APPEAL**

Appeal has been filed by Shri Baldevsinh N. Vala, 74, Pratapsinh Devubha Pati, Near Nagbai Mataji Mandir, At Gadhethad, Upleta, Dist Rajkot-360 460, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AKM/205/2024-25 dated 27.11.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. Nikhat Enterprises.

2.2 The specific focus of the impugned OIO involves the activities surrounding a consignment imported by M/s. Nikhat Enterprises (IEC: ANDPB0477C) via Container No. NYKU0844232. In a calculated and professional attempt to bypass automated risk management systems (RMS)



and standard regulatory scrutiny, the goods were initially declared in the Import General Manifest (IGM) as "Floor Clean Mop (Misc Item Non-popular Brand)" under HS Code 96039000. This specific HS code was selected by the syndicate for its low duty profile and the physical volume of the product, which provided ample "void space" for the concealment of high-value contraband.

2.3 When filing the Warehouse Bill of Entry (No. 1011448 dated August 25, 2022), the syndicate slightly adjusted the declaration to include "Back Cover, Exercise Book, and Tempered Glass," creating a "mixed-merchandise" profile. This profile was designed to deter customs officers from conducting a full de-stuffing, as mixed consignments are often perceived as standard low-risk consumer imports. The container was processed through the Mundra SEZ warehouse unit M/s. Empezar Logistics Pvt. Ltd., which, rather than serving its intended statutory purpose for value-addition, manufacturing, or legitimate storage, acted as a high-speed transit point or "revolving door." This facility was utilized to rapidly facilitate the diversion of goods into the Domestic Tariff Area (DTA) under DTA Bill of Entry No. 2012900 dated August 26, 2022, after which the cargo was immediately dispatched to a decentralized distribution hub in Bhiwandi, Maharashtra.

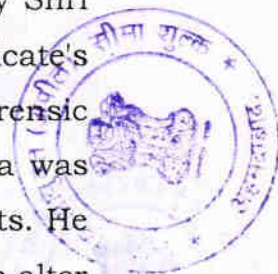
2.4 The investigative trail, supported by GPS tracking and statement analysis, led DRI officers to the Madhvi Compound godowns in Village Rahanal, Bhiwandi. This location was strategically chosen by the cartel for its proximity to major transportation routes serving the Mumbai Metropolitan Region, allowing for rapid "last-mile" distribution to retailers. During the course of investigation, the driver of the transport vehicle (Registration No. GJ-12 BT-4667), Shri Poona, provided a comprehensive voluntary statement under Section 108 of the Customs Act, 1962. His testimony provided an insider's view of the operation, detailing how he received real-time location coordinates and voice instructions via WhatsApp, directing him to offload the cargo from Container No. NYKU0844232 at these specific premises under the cover of night on August 31, 2022.

2.5 During search conducted on September 2, 2022, at Gala Nos. 5, 6, and 7—warehouses managed by the associate Shri Parwej Alam—officers recovered 12 leftover cartons containing 9,600 pieces of "Yuoto" brand e-cigarettes (specifically the XXL 2500 Puffs Disposable Vape model). These items were found hidden behind voluminous stacks of "cover goods," including mops, exercise books, and plastic chocolate moulds. The recovery of these goods

highlighted a severe and intentional breach of the Prohibition of Electronic Cigarettes Act, 2019. Consequently, the recovered 9,600 pieces were placed under absolute seizure as prohibited contraband.

2.6 The investigation unearthed a structured syndicate masterminded by Shri Asif Sathi, a Mumbai-based operative who exercised absolute control over the network's financial, logistical, and communicative architecture. Shri Sathi's modus operandi relied on the systematic exploitation of economically vulnerable individuals to serve as "dummy" proprietors for front entities. Mrs. Nikhat Baig, the declared proprietor of M/s. Nikhat Enterprises, admitted in her statement that she was merely an "on-paper" owner with no knowledge of the firm's actual imports, suppliers, or bank accounts. She had been induced by an intermediary named Shri Kishore to provide her KYC documents, PAN, and Aadhaar, and to sign multiple blank forms in exchange for a nominal fee, which was presented to her as a facilitation fee for a bank loan. This tactic created a legal shielding Shri Sathi from direct culpability and allowing the cartel to burn through IECs once they were compromised. The mastermind coordinated these imports with key associates, including Shri Sarfaraz Kamani and Shri Mohammed Tahir Menn. Together, they managed an "end-to-end" chain that originated with suppliers in China—often managed through shadow entities like M/s. AH International Trading Co. Limited and M/s. HK Longcheng Trade Co. Limited—and concluded with a network of domestic buyers such as Sohail Bhai and Raju Bhai, who specialized in the distribution of contraband into the grey market.

2.7 A critical component of this scheme was the role played by Shri Baldevsinh Vala of M/s. Kalpana Exim, who functioned as the syndicate's primary forwarder, logistics manager, and "fixer" at Mundra Port. Forensic analysis of messages of WhatsApp group "Mm" revealed that Shri Vala was instrumental in the fabrication and manipulation of shipping documents. He would routinely receive original invoices from Chinese suppliers and then alter them to ensure they matched the false, low-value declarations intended for the Bills of Entry. Furthermore, the syndicate employed a tactical "crossing" of containers—a sophisticated counter-surveillance maneuver where goods were de-stuffed and re-loaded into different domestic vehicles immediately after customs clearance but before leaving the port vicinity. This was designed to generate fresh e-way bills with new vehicle numbers, effectively "cleaning" the cargo of its import history. By doing so, the syndicate effectively broke the



digital audit trail, making it nearly impossible for enforcement agencies to link the original import container at Mundra to the final delivery point in Bhiwandi.

2.8 Shri Samir Sharma, a G-Card holder of M/s. Al Cargo Services, filed the false Bills of Entry. He conspicuously and willfully neglected the mandatory due diligence on IEC holders required under the Customs Broker Licensing Regulations (CBLR). Rather than acting as a gatekeeper of the law, he served as a professional enabler, receiving payments ranging from ₹2.5 lakh to ₹3 lakh per consignment for his cooperation.

2.9 Finally, the DRI noted a failure in the regulatory oversight provided by the Customs Preventive Officer, Shri Vipin Sharma. Despite receiving explicit, system-generated examination orders to "examine as per SEZ norms and check description and packages with respect to invoice and packing list," the officer submitted a cursory and misleading report claiming the cargo matched the declarations. This "casual approach" was not merely a procedural lapse; it was the final, critical gap in the safety net that allowed prohibited contraband to flow into the domestic market. The implications of such failures are profound, as they compromise the integrity of the entire SEZ framework, which relies heavily on the trust and diligence of its officers to prevent the leak of goods into the DTA.

2.10 Regarding the valuation of the seized goods, the total absence of a legal market meant that traditional valuation methods were inapplicable. Consequently, the DRI utilized internet-based pricing from the official "Yuoto" brand website (www.yuoto.in), which listed the product at a retail price of ₹2,499 per unit. This valuation brought the total market value of the seized 9,600 pieces to a staggering ₹2,39,90,400. The department has alleged that these goods are liable for absolute confiscation under multiple sub-sections of Section 111 of the Customs Act, 1962, including 111(d) for the violation of absolute prohibitions, 111(f) for non-mention in manifest, and 111(m) for the deliberate and mala-fide mis-declaration of quantity, value, and description.

2.11 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:

- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.

- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.12 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.13 On the basis of the investigation, Show Cause Notice was issued to M/s. Nikhat Enterprise and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. Nikhat Enterprise and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The Adjudicating Authority passed the following order in respect of the appellant.

- (I) He imposed penalty of Rs. 10,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.
- (II) He imposed penalty of Rs. 5,00,000/- upon the appellant under Section 114AA of the Customs Act, 1962.



**SUBMISSIONS OF THE APPELLANT:**

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant contends that the impugned order is "non-speaking"

because it fails to address all grounds raised during adjudication. He argues there is a total lack of documentary evidence to support the allegation that he forged or fabricated documents, asserting that the penalty under Section 114AA is baseless and its imposition violates the principles of natural justice.

3.2 The appellant maintains that he was merely engaged for transportation by Shri Asif Sathi and had no specialized knowledge of Customs clearance, valuation, or BIS compliance. He claims his role was limited to passing messages and documents between the actual beneficiary (Asif Sathi) and the Customs Broker (Samir Sharma). Since he had no means to verify the accuracy of the documents in his possession, he argues he did not render the goods liable to confiscation.

3.3 A significant portion of the appeal challenges the reliance on WhatsApp chats. The appellant argues these chats cannot be used as evidence because they lack the mandatory certificate required under Section 138C of the Customs Act. Furthermore, he alleges the investigation was incomplete and based on "tampered" data, as some messages were deleted by other accused parties and never retrieved by investigators.

3.4 The appellant points out a major factual contradiction regarding the seizure of e-cigarettes. He notes the notice alleges the goods were unloaded on August 31, 2022, from a specific container covered by a Bill of Entry dated August 26, 2022. However, witness statements suggest the goods were actually leftover stock unloaded weeks earlier on August 9. He argues this timeline anomaly proves the notice was misdirected and that the Adjudicating Authority failed to consider this discrepancy.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 10.12.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, 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, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The Appellant's primary defense is that he acted solely as a logistics provider or transporter and had no "conscious knowledge" of the illicit nature of the cargo. However, a deep dive into the investigation reports, the statements of co-accused, and digital forensics reveals that the Appellant's role was far more central and sinister than that of a mere transporter. The investigation, particularly the statement of Shri Mohammad Asif Sathi (the beneficial owner), clearly establishes that the Appellant was the primary architect of the documentation strategy. He was not merely receiving documents; he was active in the "creation" and "modification" of descriptions to ensure the goods bypassed the Risk Management System (RMS) of Customs.

5.2 It was revealed that the Appellant suggested using generic descriptions like "Floor Clean Mop" or "Exercise Books" for high-value prohibited items like Yuoto Brand E-Cigarettes. The Customs Broker, Shri Samir Sharma, in his statement, confirmed that he received instructions and documents directly from the Appellant (via email: baldevvala@gmail.com and kalpanaeximdoc@gmail.com). This bypassed the IEC holder (M/s Nikhat Enterprises), proving the Appellant was the one exercising control over the "transaction of business" with Customs.

5.3 In any legitimate business, transportation charges are based on weight, volume, and distance. However, the Appellant was charging a fixed "clearance fee" of approximately ₹17 Lakhs per container for E-Cigarettes. No legitimate transport service for a container of "Exercise Books" would command such a massive fee. This "premium" was a clear consideration for the "service" of illegal clearance and the inherent risk of smuggling prohibited goods. The acceptance of such a sum is irreconcilable with the plea of "innocent carriage."

5.4 The WhatsApp group "Mm" serves as a critical piece of evidence. In these chats, the Appellant is seen giving specific instructions on the "stuffing" of containers. He advised the syndicate members to place the prohibited items (E-Cigarettes) in the inner-most parts of the container, while placing the "declared goods" (like Mops) near the container door. This was a deliberate tactic to ensure



that a cursory physical inspection would only reveal the declared items. The Appellant coordinated the "crossing" of vehicles. Once the container left Mundra, the cargo was shifted to different trucks at secluded spots to break the "track and trace" mechanism of the E-Way bill system. This high-level logistical manipulation is the hallmark of an organized smuggling mastermind, not a local transporter.

5.5 The Hon'ble Supreme Court and various High Courts have consistently held that in cases of organized smuggling, the "mastermind" who remains behind the scenes but directs the operations is as liable, if not more, than the physical carrier. In the present case, the statements of Shri Asif Sathi and Shri Tahir Menn are consistent, detailed, and mutually corroborative regarding the Appellant's leading role. Here, the Appellant used M/s Nikhat Enterprises as a front while he managed the entire clearance and distribution chain. Therefore, I find that the Appellant's role was that of a Knowing Facilitator and Mastermind. He provided the intellectual and logistical infrastructure required for the smuggling operation. His actions—forging documents, directing concealment, and managing the evasion route—squarely place him within the ambit of Section 112(a) and Section 114AA of the Customs Act, 1962.

5.6 The Appellant has vehemently contested the reliance placed on his statements recorded under Section 108 of the Customs Act, 1962, alleging they were extracted under duress. To address this, it is essential to examine the legal framework and judicial standing of such statements. It is a settled position of law that Customs Officers are not "Police Officers" within the meaning of Section 25 of the Indian Evidence Act. Consequently, a confession made before a Customs Officer is admissible in evidence and is not hit by the bar against self-incrimination in the same manner as a police confession. In *Illias v. Collector of Customs* [AIR 1970 SC 1065], the Constitution Bench of the Supreme Court held that since Customs Officers are not police officers, statements made to them are admissible in evidence. This was further solidified in *K.I. Pavunny v. Asst. Collector (HQ), Central Excise* [1997 (3) SCC 721], where the Apex Court ruled that a statement recorded under Section 108 can be the sole basis for conviction/penalty if it is found to be voluntary and truthful.

5.7 The statements of Shri Mohammad Asif Sathi and Shri Tahir Menn corroborate the Appellant's role in managing the clearance for a fee of ₹17 Lakhs. The WhatsApp chats recovered from the mobile phone of Shri Parvej Alam show active coordination with the Appellant. These chats discuss the exact same

container numbers and logistics mentioned in the Appellant's "confession." The recovery of 9,600 E-Cigarettes from the very godown mentioned in the logistical chain managed by the Appellant provides the "corpus delicti" (the body of the crime) that confirms the truth of the statements.

5.8 The statements recorded under Section 108 are not only legally admissible but are also found to be voluntary, detailed, and extensively corroborated by physical and digital evidence. The belated retraction is rejected as a legal stratagem. Therefore, I hold that the Adjudicating Authority was perfectly justified in relying upon these statements to establish the Appellant's liability.

5.9 Section 114AA was specifically introduced to penalize the use of "false or incorrect" material in the transaction of business under the Customs Act. The Appellant provided forged invoices and packing lists to the Customs Broker. The very act of declaring E-Cigarettes as "Floor Clean Mop" or "Exercise Books" constitutes a "false declaration" caused by the Appellant. The Appellant's argument that he "only passed over messages" is rejected. A person who intentionally acts as a conduit for forged documents "causes" them to be used, thereby attracting the rigors of Section 114AA.

5.10 The Appellant's plea regarding Section 138C compliance is noted but found insufficient to set aside the order. In quasi-judicial proceedings, the "preponderance of probability" is the standard. The chats were recovered from the mobile phones of the Appellant's own associates (Shri Parvej Alam and Shri Tahir Menn). The details in the chats matched the physical reality of the seized goods. However, in Customs adjudication, where statements under Section 108 admit to the contents of such chats, the lack of a certificate does not render the evidence dead.

5.11 The Appellant argues that the goods were "left over stock" from an earlier import on 09.08.2022 and thus not related to the Bill of Entry dated 26.08.2022. Even if this were true, it would only prove that the Appellant was involved in a prior act of smuggling, which does not absolve him. However, the driver's statement specifically links the 12 cartons to the movement of Container No. NYKU0844232. Whether the goods were "left over" from a previous illegal batch or part of the current illegal batch, they remain "prohibited goods" dealt with by the Appellant, making him liable under Section 112.



5.12 The Adjudicating Authority correctly relied on the principle of "conscious knowledge." The Appellant was not just a transporter; he was a "logistics manager" for a smuggling racket. The cases involving "beneficial owners" and "facilitators" are squarely applicable here. The Adjudicating Authority correctly distinguished between an innocent transporter and a conspirator who advises on how to "stuff" containers to avoid detection.

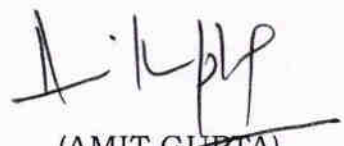
5.13 The Appellant has likely relied on cases where "mere lending of IEC" or "innocent carriage of goods" was not penalized. These are not applicable here for many reasons viz. no innocent transporter receives ₹17 Lakhs per container, the Appellant was giving instructions on concealment, the Appellant was the source of the forged documents provided to the Customs Broker. The principle of audi alteram partem was satisfied as the Appellant was given personal hearings.

5.14 The Appellant was a linchpin in the smuggling syndicate. His actions—ranging from document forgery to advising on concealment and managing a digital-evasive transport route—rendered the prohibited E-Cigarettes liable for confiscation. His claim of ignorance is belied by the sheer volume of incriminating WhatsApp communication and the statements of his co-conspirators. Smuggling of E-Cigarettes is a serious offense, prohibited under the Prohibition of Electronic Cigarettes Act, 2019, and DGFT Notification No. 20/2015-2020. The penalty imposed is proportionate to the value of the goods (₹2.39 Crores) and the gravity of the offense.

6.0 In view of the foregoing, the Appeal filed by Shri Baldevsinh N. Vala is hereby rejected.



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

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

By Speed post A.D/E-Mail

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Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.