



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

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|   |                                                                                                                                      |                                                                                                       |
|---|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| क | फ़ाइल संख्या FILE NO.                                                                                                                | S/49-424/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-916-25-26                                                                           |
| ग | पारितकर्ता PASSED BY                                                                                                                 | Shri Amit Gupta<br>Commissioner of Customs (Appeals),<br>Ahmedabad                                    |
| घ | दिनांक DATE                                                                                                                          | 30.03.2026                                                                                            |
| ङ | उद्भूत 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 Hanif Kapadia,<br>2704, A-Wing Orchid Enclave,<br>Belasis Road, Mumbai Central,<br>Mumbai 400008 |



|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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                                                                                                                           |

|     |                                                                                                                                                                                                                                                                                                          |
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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                                                                                                                  |
| (d) | 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।                                                                                                                 |
|     | 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 Hanif Kapadia, 2704, A-Wing Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008, (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.

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.

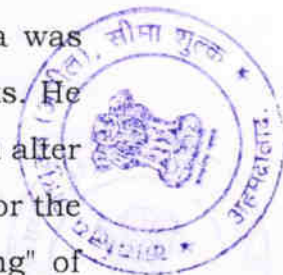
2.4 The investigative trail, supported by GPS tracking and statement analysis, led DRI officers to the Madhvi Compound godowns in Village Rahanal, Bhiwandi. This location was strategically chosen by the cartel for its proximity to major transportation routes serving the Mumbai Metropolitan Region, allowing 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.

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. 3,00,000/- 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 Department failed to provide any concrete evidence linking him to the mis-declaration or undervaluation of goods. He maintains that his business association with Mr. Asif Sathi was limited strictly to a domestic entity, M/s. Astrum Trading Pvt. Ltd., which did not engage in import or export activities. He categorically denies owning or controlling the overseas companies in China or Hong Kong—such as M/s. AH International Trading or M/s. HK Longcheng Trade—that were allegedly used to route undervalued goods into India. The Appellant argues that the Department never verified the ownership of these foreign firms through international authorities despite his request to do so.

3.2 A significant ground of appeal is the Respondent's failure to grant the cross-examination of Mr. Tahir Memn, whose statement formed the primary basis for the charges against the Appellant. The Appellant argues that Mr. Tahir's claims—such as assuming the letter "H" in a company name stood for "Hanif"—were mere conjecture and lacked documentary support. He asserts that under Section 138B of the Customs Act, the adjudicating authority is obligated to examine witnesses before relying on their statements, and denying this opportunity violates the principles of natural justice and renders the incriminating material unusable.

3.3 The Appellant asserts that he had no knowledge of the specific contents of the containers and was not involved in placing orders, negotiating with suppliers, or filing Bills of Entry. He argues that he received no financial consideration or additional benefits from the alleged smuggling activities, which further demonstrates a lack of mens rea (guilty mind). Since the essential ingredients of "knowledge" and "intent" are missing, he contends that he cannot be classified as an abettor or conspirator under the law.

The appeal challenges the imposition of penalties under Sections 112(a) and 114AA of the Customs Act, 1962. The Appellant argues that Section 112(a) is inapplicable because he did not perform or omit any act that rendered the goods liable for confiscation. Furthermore, he contends that Section 114AA is not invocable because he did not sign or use any false or incorrect import documents. He maintains that any alleged infraction was entirely unintended and bona fide, and therefore the impugned order should be quashed in the interest of justice.



**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh, Advocate 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 has essentially sought to distance himself from the smuggling activities by claiming a lack of "direct" involvement in the filing of documents in India. However, after a thorough review of the investigative findings and legal precedents, I find this defense to be devoid of merit. The modern landscape of Customs law, especially post the 2017 amendments, places significant emphasis on the "Beneficial Owner." Section 2(3A) of the Customs Act defines a beneficial owner as any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods.

5.2 In the instant case, the investigation revealed that the Appellant, Shri Hanif Kapadia, was not a mere passive observer. He was the controller of the supply side of the smuggling operation. The entities in China, namely M/s AH International Trading Co. Ltd and M/s HK Longcheng Trade Co. Ltd, were the vehicles used to generate the fraudulent documents (invoices and packing lists) that facilitated the entry of prohibited goods into India. The nomenclature of these firms—'AH' (Asif and Hanif) and 'HK' (Hanif Kapadia)—is not a coincidence. These are proprietary identifiers of the partnership between the Appellant and Shri Asif Sathi. By providing the logistical and documentary infrastructure in China, the Appellant ensured that prohibited E-Cigarettes could be concealed within consignments of "Mops" or "Massagers."

5.3 When the very source of the goods (the overseas supplier) is controlled by the same individuals who are the ultimate beneficiaries in India, the corporate veil must be pierced. The Appellant, by managing these Chinese firms, directly "caused" the mis-declaration to occur at the point of origin. Therefore, his argument that he did not sign the Bills of Entry in India is

technically true but legally irrelevant, as he was the architect of the fraud that culminated in those filings.

5.4 The Appellant's contention that the Adjudicating Authority erred in relying upon the statements of co-accused and digital evidence requires a deep legal analysis. In Customs proceedings, the standard of proof is the preponderance of probability, and the evidentiary value of statements recorded under Section 108 is significantly higher than those recorded under the Code of Criminal Procedure.

5.5 A Customs Officer is not a "Police Officer" within the meaning of Section 25 of the Evidence Act. Consequently, a confession made before a Customs Officer is admissible in evidence. The Hon'ble Supreme Court in **Naresh Kumar Sukhwani v. Union of India 1996 (83) ELT 258 (SC)** explicitly stated that the statement of a co-accused can be used to connect an individual with the contravention of the Act. In the present case, the statements of Shri Mohammed Tahir Menn and Shri Asif Sathi are categorical. They identified the Appellant not merely as a director of a domestic firm but as the primary coordinator for the Chinese entities (M/s AH International and M/s HK Longcheng) that shipped the prohibited e-cigarettes.

5.6 The Appellant argues that these statements lack corroboration. This is factually incorrect. The investigation recovered extensive WhatsApp chat data from the mobile phones of Shri Asif Sathi and Shri Baldevsinh Vala. These chats are contemporaneous evidence of the conspiracy. Specifically the chats contain explicit instructions on how to "stuff" the e-cigarettes behind the declared "Mops" to avoid detection during visual inspections. It also contains discussions regarding payments, undervaluation, and the sharing of profits between the Appellant and Asif Sathi were found. The Appellant was referred to in these chats in the context of his management of the Chinese firms, corroborating the testimony of Shri Tahir Menn.

5.7 While the Appellant now claims innocence, he failed to provide any credible explanation for his name being associated with the overseas supplying firms at the initial stage of investigation. The Hon'ble Supreme Court in **K.I. Pavunny v. Assistant Collector 1997 (90) ELT 241 (SC)** held that if a statement is voluntary and not the result of coercion, it forms a valid basis for adjudication. The precision and consistency between the verbal statements of the co-accused and the recovered WhatsApp logs create an unbreakable chain

of evidence. The recovery of 9,600 e-cigarettes from the Bhiwandi godown—exactly matching the descriptions in the syndicate's communications—serves as the ultimate physical corroboration of the digital and oral evidence. Therefore, I find that the evidentiary value of these materials is robust and more than sufficient to establish the Appellant's active role in the smuggling ring.

5.8 The Appellant has raised a technical defense that he cannot be penalized because he was not the "importer of record" and did not sign the Bills of Entry. However, the architecture of the Customs Act, specifically Sections 112(a) and 114AA, is designed to capture not just the front-facing importer, but the "beneficial owners" and "facilitators" who orchestrate the fraud.

5.9 Section 112(a)(i) provides for the imposition of penalty on "any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111." In the instant case, the goods are liable to confiscation under Section 111(d) and Section 111(m). The Appellant's role as the controller of the supplying firms in China (M/s AH International and M/s HK Longcheng) constitutes a direct "act of commission." By preparing invoices that mis-declared the contents as "Mops" or "Head Massagers," the Appellant performed the foundational act that rendered the goods liable to confiscation upon their arrival in India. The Appellant's management of the overseas entities that knowingly shipped prohibited items under false covers makes him a primary participant in the offense.

5.10 Section 114AA was introduced specifically to penalize individuals who "knowingly or intentionally make, sign or use, or cause to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular." The Appellant's argument that he did not sign the Bill of Entry is fallacious. The section uses the term "causes to be made." By issuing fraudulent invoices and packing lists from China, the Appellant provided the essential documents that caused the Customs Broker in India to file a false Bill of Entry. The intent to defraud is evident from the "stuffing" instructions found in the WhatsApp chats. The Appellant's issuance of false invoices from his Chinese firms falls squarely within the "causing to be used" limb of Section 114AA.

5.11 The Appellant claims his actions were bona fide. However, the recovery of prohibited E-Cigarettes (valued at over Rs. 2.39 Crores) concealed within low-value mops is incompatible with a bona fide defense. This is a case of

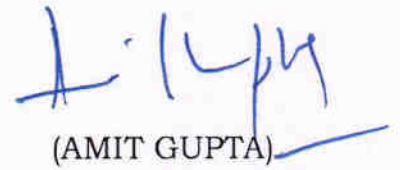
pre-meditated smuggling. The Appellant, as a partner in the firms that generated these false descriptions, cannot plead ignorance of the very business he managed.

5.12 The smuggling of E-Cigarettes is not just a fiscal offense but a violation of the Prohibition of Electronic Cigarettes Act, 2019, which was enacted for public health. The Appellant's role in supplying these prohibited items through a web of dummy companies and mis-declared documents represents a grave threat to the regulatory framework. The Adjudicating Authority correctly applied the principles of the Customs Valuation Rules, 2007, to re-determine the value of the seized goods based on market surveys and official brand prices, as the declared transaction value was a result of collusion and fraud. I find no reason to interfere with the well-reasoned order passed by the Adjudicating Authority. The evidence of the Appellant's partnership in the supplying firms, combined with the corroborative statements and digital evidence, sufficiently establishes his active participation in the smuggling cartel.

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

- i. The appeal filed by Shri Hanif Kapadia is hereby rejected.





(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-424/CUS/MUN/2024-25  
256 to 257

Date:30.03.2026

By Speed Post A.D/E-Mail

To,  
Shri Hanif Kapadia,  
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Mumbai 400008

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.

