



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250571MN0000666A56

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| क | फाइल संख्या FILE NO.  | S/49-10/CUS/JMN/2023-24   |
| ख | अपील आदेश संख्या ORDER-IN-<br>APPEAL NO. (सीमा शुल्क<br>अधिनियम, 1962 की धारा 128क के<br>अंतर्गत)(UNDER SECTION 128A<br>OF THE CUSTOMS ACT, 1962) | JMN-CUSTM-000-APP-015-25-26   |
| ग | पारितकर्ता PASSED BY  | Shri Amit Gupta<br>Commissioner of Customs (Appeals),<br>Ahmedabad  |
| द | दिनांक DATE   | 30.05.2025  |
| इ | उद्भूत अपील आदेश की सं. व दिनांक<br>ARISING OUT OF ORDER-IN-<br>ORIGINAL NO.  | 19/Additional Commissioner/2022-23<br>dated 31.03.2023  |
| च | अपील आदेश जारी करने की दिनांक<br>ORDER- IN-APPEAL ISSUED<br>ON:   | 30.05.2025  |
| छ | अपीलकर्ता का नाम व पता NAME<br>AND ADDRESS OF THE<br>APPELLANT:   | (1) M/s. Sahajanand Shipping Services,<br>404, Swara Park Lane,<br>Opp. Joggers Park,<br>Atabhai Road,<br>Bhavnagar- 364 002. |



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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) | 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/- (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 :  |  |   |   |  |
|  | <table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;"><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2<sup>nd</sup> Floor, Bahumali Bhavan,<br/>Nr.Girdhar Nagar Bridge, Asarwa,<br/>Ahmedabad-380 016</td> </tr> </table>  | 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 |
| 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.   | <p>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-</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> <p>(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 हजार रुपए,</p> <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> <p>(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 हजार रुपए</p> <p>(ब) 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> <p>(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 हजार रुपए.</p> <p>(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</p> <p>(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 ।</p> <p>(द) 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>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>   |  |   |   |  |

**ORDER-IN-APPEAL**

The Present appeal has been filed by M/s. Sahajanand Shipping Services, 404, Swara Park Lane, Opp. Joggers Park, Atabhai Road, Bhavnagar- 364 002 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. 19/Additional Commissioner/2022-23 dated 31.03.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Vessel MV PISC (IMO-8710857) was declared due for arrival at SBY, Alang for breaking up by their shipping agent i.e. the appellant. The appellant also filed the prior Import General Manifest (hereinafter referred to as the 'IGM') No. 2314944 on 23.06.2022 at SBY, Alang. The importer of the vessel i.e. M/s. M.K. Shipping & Allied Industries Pvt. Ltd., Plot No.121, Ship Recycling Yard, Sosiya P.O. Manar, District-Bhavnagar (hereinafter referred to as the 'Importer') has also filed prior Bill of Entry (hereinafter referred to as "BE") No. 9272909 dated 25.06.2022 for seeking the clearance of the vessel. The BE was provisionally assessed on 22.07.2022.

2.1 The appellant i.e. the shipping agent, of the subject Vessel MV PISC (hereinafter referred to as the 'Vessel') intimated about the arrival of the vessel at Bhavnagar anchorage on 03.07.2022. The Officers of the Customs Division, Bhavnagar and Ship Breaking Yard, Alang boarded the vessel for boarding and rummaging on 04.07.2022. During the rummaging, the Customs Officers observed that some goods i.e. Electronic Nicotine Dispensing Devices having label "Traveller Exclusive IQOS" & also having description as Tobacco Heating System 20 Single Moments along with their refills having label "Marlboro designed for use with IQOS" was lying on board of the Vessel. On being asked, Shri Vinay Singh Katoch, Master of the Vessel (hereinafter referred to as the Master of the Vessel MV PISC), stated that he had failed to declare these items in the Import Manifest through oversight and he also stated that due to not having sufficient man power and time for inventorying all the items, he could not put the details in the Import Manifest.

2.2 On physical counting of the stock of the above mentioned goods, 360



Units of Electronic Nicotine dispensing devices along with 24,000 Packets of refills were found on the Vessel.

As per the Circular No. 35/2019-Customs dated 1st October, 2019 read with the Government of India's "The Prohibition of Electronic Cigarettes (production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Ordinance, 2019, the Production, Manufacture, Import, Export, Transport, Sale, Distribution, storage and Advertisement of E-cigarettes including all forms of Electronic Nicotine Delivery System, Heat not Burn Products, e-hookah and the like device is prohibited in the interest of public health to protect the people from harm and for matter connected therewith or incidental thereto. The relevant portion of the Circular No. 35/2019 supra is reproduced as follows for ready reference:

*2. Considering the adverse health impact of e-Cigarettes/ENDS and in order to prevent the initiation of nicotine through e-Cigarettes by non-smokers and youth, with special attention to vulnerable groups, the Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce & Industry has issued the aforesaid Notifications to ensure that Import and Export of Cigarettes or any parts of components thereof such as refill pods, atomisers, cartridges etc. including all forms of Electronic Nicotine Delivery Systems (ENDS), Heat not burn products, e-hookah and the like devices, by whatever name and shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940 under ITC HS Code: 8543 is prohibited in accordance with the Prohibition of Electronic Cigarettes (Prohibition), Manufacturer, Import, Export, Transport, Sale Distribution, Storage and Advertisement Ordinance, 2019.*

2.3 Therefore, in view of the Circular No.35/2019-Customs dated 01.10.2019 read with the Government of India's "The Prohibition of Electronic Cigarettes (production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Ordinance, 2019, the said devices i.e. total 360 Unit & Refill i.e. 24000 Packets were put under detention under the provisions of the Customs Act, 1962, vide Panchnama dated 04.07.2022 for further investigation in the matter. The detained goods i.e. 360 Units of Electronic Nicotine dispensing devices along with 24,000 Packets of refills were transferred to the Bond Store and the same were sealed in presence of Panchas.

2.4 Statement of Shri Vinay Singh Katoch, Master of the Vessel was recorded on 07.07.2022 under the provisions of Section 108 of the Act, 1962 wherein he, inter alia, had accepted that they have failed to declare these items i.e. 360 Units of Electronic Nicotine dispensing devices having label "Traveller Exclusive IQOS & also having description as Tobacco Heating System 20 Single Moments" along with 24,000 Packets of refills having label "Marlboro designed for use with IQOS" in the IGM. The Master of the Vessel stated that he took over the charge of the Vessel from the regular Master at Penang Port (Malaysia) on 13.05.2022; that the previous crew were present on vessel at the time of his joining; that during his captaincy, no trading activity was carried out; that he was deputed to this Vessel as Demolition Crew and he was instructed by his Company to search out Trim & Stability Book, GA Plan, Capacity Plan, Shell Inspection, Bunker sounding, to search all cabins, lockers and to prepare list to bond items kept in Bond Store; that when he joined the Vessel, no proper handing over of the Vessel was done; that previous captain did not even inform about his disembarkation from the Vessel; that they remained busy in collecting the documents from previous crew; that after joining of all crew, they prepared a rough inventory of the Bond items lying in Bond store; that on 29.05.2022, they received the instructions to sail out towards Port Kalang for receiving Bunker; that on 02.06.2022, they were instructed to proceed towards Alang (India) for vessel scrapping purpose; that during the voyage from Kalang Port to Alang (India), they have received Bunker supply at Colombo Port (OPL); that during the voyage from Colombo Port (OPL) to Alang, they had anchored at Cochin (OPL) on 21.06.2022 for receiving Bunker supply but due to bad weather, they could not get it and had to sail out towards Mormugao Port (Goa) for Bunker supply on 24.06.2022 and anchored at Mormugao Port (GO) on 26.06.2022 before heading towards Alang; that after receiving bunker, they sailed towards Alang Port and arrived at Bhavnagar anchorage on 03.07.2022; that during voyage from Port Kalang to Alang, they had prepared the port papers for Colom Port/Mormugao Port/Alang Port; that during the said voyage, they faced rough weather with Rolling-Pitching; that the type of Vessel was Passenger Vessel and there were more than 1000 cabins and more than 33 stores on the Vessel, proper verification/inventorying all the stores was not feasible with only 18 Crew; that some inventory could not be prepared due to time limitation and rough weather during the sailing; that through oversight, he could not prepared the inventories of the goods lying inside store located next to Bond Store of the Star Board Side of Deck No. 2; that after his joining of the MV PISC, he had not received any



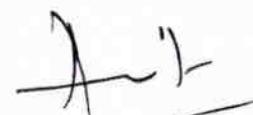
supply except Provision/Bunker; that all above items were on Board the Vessel before his joining; that he had inquired about the price of the detained goods from his foreign based contacts and told that the value of each Device was around 50-75 Dollars; that value of each Refill packets of 20 Heat coils was around 1.50 to 2.00 Dollars.

2.5 Further, a statement of Shri Ashit Pramodrai Parikh, Authorized Signatory of the Shipping Agent was recorded on 07.07.2022 under the provisions of Section 108 of the Act, 1962 wherein he inter alia stated that they had no idea about presence of such items in the Vessel nor they were aware that import of E-cigarettes is prohibited in India; that they came to know about it only after detention of the same by the Customs Officers; that they have gone through the Circular No. 35/2019-Customs dated 01.10.2019 and they agreed that detained goods were prohibited in India as per the said Circular; that it was the case of ignorance on the part of vessel owner and the Captain of the said Vessel.

2.6 Consequently, the detained items i.e. 360 Units of Electronic Nicotine dispensing devices along with 24000 Packets of refills which were not declared in the IGM as described in the table as follows, having approx. value of Rs.60 Lakhs, were placed under seizure vide Memorandum of Seizure dated 08.07.2022, on a reasonable belief that the same are liable for confiscation under Section 111(d) and 111(f) of the Act, 1962:

| Sl.   | Description                        | No. of box | Qty/box                        | Total | Value/box (Rs.) | Total value (Rs) |
|-------|------------------------------------|------------|--------------------------------|-------|-----------------|------------------|
| 1.    | IQOS (Electronic cigarette device) | 360        | 01                             | 360   | 6000            | 2160000          |
| 2.    | Marlboro Cigarette (Heat Sticks)   | 2400       | 10 packets with 20 sticks each | 24000 | 160             | 3840000          |
| Total |                                    |            |                                |       |                 | 6000000          |

2.7 Further, statement of Shri Krupal K. Bhavsar, Director of the Importer was recorded on 07.10.2022 under the provisions of Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that they had purchased the Vessel "MV PISC vide MOA dated 30.05.2022 made between M/s Last Voyage DMCC, Unit No. 3201A-1, SABA-1 Tower, Plot No. JLT-PH1-E3A, Jumeirah Lakes Towers, Dubai, UAE, PO Box No. 391228 and the importer, without



inspection and 'As is Where is" basis; that they have no idea about presence of 360 Units of Electronic Nicotine dispensing devices having label along with 24,000 Packets of refills available on board; that it was the responsibility of the Shipping Agent to declare before Customs in respect of such type of prohibited goods; that they came to know about the same only after detention of the same by the Customs officer; that they had gone through the Circular No. 35/2019-Customs dated 01.10.2019 and they have agreed and understood that the detained goods were prohibited as per the said circular; that they have never seen E-cigarettes and they do not know anything that the said goods were liable for confiscation under Section 111(d) and 111(f) of the Act, 1962.

2.8 The investigation culminated into issuance of Show Cause Notice No. ADC-07/2022-23 dated 21.12.2022 from F. No. Gen/MISC/366/2022-Adjn issued by the Additional Commissioner, Customs (Preventive), Jamnagar wherein M/s Sahajanand Shipping Services, Bhavnagar and the Master of the Vessel MV PISC were called upon as to why:

- i. 360 Units of Electronic Nicotine dispensing devices having label "Traveller Exclusive IQOS and also having description as Tobacco Heating System 20 Single Moments" along with 24000 Packets of refills having label "Marlboro designed for use with IQOS" valued for Rs.60,00,000/- (Rupees Sixty Lakhs Only) should not be confiscated under Section 111(d) and 111(f) of the Customs Act, 1962;
- ii. Penalty should not be imposed upon the appellant i.e M/s. Sahajanand Shipping Services, Bhavnagar (India), 364002, Shipping Agent of the vessel MV PISC under Section, 112 of the Customs Act, 1962.
- (iii) Penalty should not be imposed upon Master of the Vessel MV PISC under Section 112 of the Customs Act, 1962.

2.8 Consequently the adjudicating authority passed the impugned order wherein the adjudicating authority ordered as under:-

- i. He ordered for absolute confiscation of 360 Units of Electronic Nicotine dispensing devices having label "Traveller Exclusive IQOS and also having description as Tobacco Heating System 20 Single Moments" along with 24000 Packets of refills having label "Marlboro designed for use with IQOS" valued for



Rs.60,00,000/- (Rupees Sixty Lakhs Only) under Section 111(d) and 111(f) of the Customs Act, 1962

ii. He imposed penalty of Rs.40,00,000/- (Rupees Forty Lakhs Only) under Section 112(b) of the Customs Act, 1962 upon the appellant i.e. M/s. Sahajanand Shipping Services, Bhavnagar (India), 364002, Shipping Agent of the vessel MV PISC.

iii. He imposed penalty of Rs.3,00,000/- (Rupees Three Lakhs Only) under Section 112(b) of the Customs Act, 1962 upon Shri Vinay Singh Katoch Master of the Vessel MV PISC.

### **3. SUBMISSIONS OF THE APPELLANT:**

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under: -



The appellant acted as 'Shipping Agent' and filed prior Import General Manifest in respect of vessel MV PISC that had arrived at Alang anchorage on 03.07.2022 for breaking from port Penang in Malaysia via Marmagoa. On 04.07.2022, the officers of Customs carried out boarding and rummaging of the vessel. During the course of rummaging, the officers found following goods in packed condition lying in a store room located next to bond store of the star board side of Deck No. 2 of the vessel:

| Sl. | Description                        | No. of box | Qty/box                        | Total | Value/box (Rs.) | Total value (Rs) |
|-----|------------------------------------|------------|--------------------------------|-------|-----------------|------------------|
| 1.  | IQOS (Electronic cigarette device) | 360        | 01                             | 360   | 6000            | 2160000          |
| 2.  | Marlboro Cigarette (Heat Sticks)   | 2400       | 10 packets with 20 sticks each | 24000 | 160             | 3840000          |
|     |                                    |            |                                |       |                 | 6000000          |

3.2 The impugned order is passed in violation of the principles of natural justice inasmuch as the appellant was never put to notice about invocation of sub-section (b) of Section 112 of Customs Act, 1962. Section 112 (b) of Customs Act, 1962 is reproduced below for the ease of ready reference:

"Any person, -

(a) ..

(b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*shall be liable, -*

.."

3.3 The prime requirement of Section 112 (b) is that the concerned person must have knowledge or reason to believe that goods are liable to confiscation under section 111. However, the Adjudicating Authority has not cited an iota of evidence to show that the appellant had any knowledge about presence of the goods on board at the time of filing prior Import General Manifest. In his statement dated 07.07.2022, the master of the vessel has unambiguously explained to the Custom officers about the circumstances in which he took over the vessel, etc. owing to which, he could prepare only part-inventory and that inventory of that particular store room from which incriminating goods were found, could not be prepared due to shortage of manpower and paucity of time. These facts have not been challenged and rebutted in the Show Cause Notice as well as impugned order.

3.4 The Adjudicating Authority has erred in failing to appreciate that there is no rebuttal in the Show Cause Notice to the facts and circumstances explained by the master owing to which they could not complete the inventory before entry of vessel into India. On the other hand, there is no positive evidence to show that the appellant, who was only shipping agent who was acting on the basis of information received from master, had prior knowledge about presence of such goods in one of the stores and despite such knowledge, the appellant went ahead and filed an incomplete prior Import General Manifest. Unless knowledge is alleged and established, the requirement of Section 112 (b) of Customs Act, 1962 is not satisfied.

3.5 The Adjudicating Authority has imposed penalty on appellant under section 112 (b) by citing failure to declare the prohibited goods in the Import General Manifest. In this regard, the appellant has submitted that failure per se



is not covered under the provisions of Section 112 (b). The appellant has submitted that the Adjudicating Authority has relied on the decision of Hon'ble High Court of Madras in the case of Caravel Logistics P. Ltd., 2016 (338) ELT 266 (Mad.) is misplaced inasmuch as the same does not deal with Section 112 (b) of Customs Act, 1962.

3.6 The appellant has submitted that Section 112 (b) of Customs Act, 1962 does not deal with failure to exercise due diligence in filing Import General Manifest, etc. unless the failure is deliberate, intentional and mala fide. In this case, the inability to complete the inventory on the part of master and consequent filing of prior Import General Manifest by appellant based on details received from the master, by itself, is not sufficient to attract the provisions of Section 112 (b) unless it is established based on cogent evidence that it was an intentional act on the part of appellant. In the absence of any positive evidence against appellant, the Adjudicating Authority ought to have followed the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v/s State of Orissa, 1978 (2) ELT (J159)(S.C.) by not imposing penalty under Section 112.



The appellant has relied upon the decision of Hon'ble Tribunal in the case of Ashit P. Parikh v/s Commissioner of Customs, Ahmedabad, 1999 (112) ELT 299 (Tribunal), wherein, penalty that was imposed under Section 112 was set aside on the ground that the appellant was not aware about presence of fish oil on board the ship. In this case also, the appellant was not aware about presence of e-cigarette devices and cigarette sticks on board. Hence, no penalty is imposable on the appellant under Section 112 (b) of Customs Act, 1962.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 08.01.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal and also relied upon Shahi Containers 2003 (158) ELT 51 (Tri-Mumbai) to support quashing of penalty. Due to change in Appellate Authority, fresh Personal hearing was held on 20.05.2025 in virtual mode. Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum.

#### **DISCUSSION AND FINDINGS:**



5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs (Preventive), Jamnagar and the defense put forth by the Appellants in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(i) Whether the imposition of penalty on M/s. Sahjanand Shipping Services (Appellant) under Section 112(b) of the Customs Act, 1962, is legal and proper in the facts and circumstances of the case, particularly in light of the requirement of mens rea and the role of the Shipping Agent.

5.2 The adjudicating authority ordered the absolute confiscation of the e-cigarettes and refills. Section 111(d) of the Customs Act, 1962, provides for confiscation of "any goods which are imported or attempted to be imported... contrary to any prohibition imposed by or under this Act or any other law for the time being in force." Section 111(f) covers "any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest... which are not so mentioned." It is an undisputed fact that the goods in question (e-cigarettes and refills) are prohibited for import into India as per Circular No. 35/2019-Customs dated 01.10.2019, read with the relevant Ordinance. It is also not disputed that these goods were found on board the vessel and were not declared in the Import General Manifest. Therefore, the goods were indeed imported contrary to a prohibition and were not declared in the manifest.

5.3 Based on these facts, the confiscation of the goods under Section 111(d) and 111(f) of the Customs Act, 1962, is found to be legally sound and is hereby upheld. The nature of the goods being prohibited makes them liable for confiscation irrespective of the knowledge or mens rea of the persons involved.

5.4 The core of the Appellant's challenge lies in the imposition of penalty under Section 112(b) of the Customs Act, 1962. Section 112(b) applies to any person who "acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111." The crucial phrase here is "knows or has reason to believe." This implies the necessity of mens rea or a deliberate knowledge/belief on the part of the person being penalized.



5.5 The adjudicating authority, in the impugned order, has imposed penalty on the appellant, stating that they "failed to take due diligence to declare the aforesaid prohibited items in the IGM which they knew that the said goods were liable for confiscation." This finding directly imputes knowledge to the Appellant. However, a closer examination of the investigation records and judicial precedents reveals several weaknesses in this imputation.

5.6 I find that there is Lack of Established Knowledge (Mens Rea):

- o The Master of the vessel in his statement explained that due to physical difficulty he was unable to conduct a thorough inventory of over 1000 cabins and 33 stores with limited crew and time, especially amidst rough weather. This explanation has not been effectively rebutted by the adjudicating authority with positive evidence. The SCN itself mentions that the Master stated he failed to declare the items due to "oversight" and "not having sufficient man power and time."
- o The Shipping Agent (Appellant) also maintained that they relied on the information provided by the Master and had no independent means to verify the presence of such concealed goods. Their role is primarily to facilitate customs procedures based on client information, not to conduct physical inspections of every hidden compartment.
- o The investigation did not unearth any communication, document, or other evidence to suggest that the Shipping Agent had actual knowledge of the e-cigarettes being on board or that they actively conspired to smuggle them. The statements of the Appellant's authorized representative were largely exculpatory regarding mens rea.

5.7 I refer to the below judicial precedents on Mens Rea and Responsibility:

- o The Hon'ble Supreme Court in *Hindustan Steel Ltd. v/s State of Orissa* [1978 (2) ELT (J159) (S.C.)] clearly held that "penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation." In the present case, there is no evidence of deliberate defiance, contumacious conduct, or conscious disregard of obligation with the knowledge of the prohibited goods on the part of the Shipping Agent.
- o The CESTAT in *Ashit P. Parikh v/s Commissioner of Customs*,

Ahmedabad [1999 (112) ELT 299 (Tribunal)] is highly relevant. In that case, penalties under Section 112 were set aside on the ground that the agent/sub-agent was unaware of the presence of prohibited goods (fish oil) on board. The Tribunal emphasized that "there is no material in the notice to rebut this or to show that they were aware that fish oil was on board." This principle directly applies here, as the department has failed to provide such rebuttal or positive evidence of knowledge on the part of the Shipping Agent. The Ashit P. Parikh case also highlighted that the responsibility for filing the manifest lies with the master, and an agent is not liable unless they have specifically bound themselves for such responsibility or are proven to have mens rea.

o Furthermore, the Shahi Containers v. Commissioner of Customs (Import), Mumbai [2003 (158) ELT 51 (Tri. - Mumbai)] judgment explicitly states that the "responsibility for filing full and correct manifest lies with the master of the vessel and not with steamer agent, or slot charterer or cargo forwarders." This reinforces the argument that the primary responsibility for the manifest's accuracy, especially concerning goods concealed on board, rests with the Master. While the Shipping Agent has duties, these do not automatically extend to discovering hidden contraband without any indication or knowledge.

5.8 The adjudicating authority's reliance on Caravel Logistics P. Ltd. is indeed misplaced. That judgment did not delve into the requirement of mens rea under Section 112(b) in the context of a Shipping Agent's responsibility for undeclared goods on a vessel, but rather on the general obligation of a person in charge of a conveyance to deliver a manifest. The specific facts and legal interpretation of mens rea for penalty under Section 112(b) were not the central point of that decision as they are here.

5.9 In conclusion, while the goods are undoubtedly liable for confiscation due to their prohibited nature and non-declaration, the imposition of penalty on the Appellant under Section 112(b) requires a higher threshold of proof regarding their knowledge or active involvement in the smuggling. The evidence on record, particularly the consistent statements of the Appellant's authorized representative and the absence of any contradictory material establishing their mens rea, does not meet this threshold. The adjudicating authority's finding that the Appellant "knew" about the prohibited goods is an assumption not sufficiently supported by the investigation. Therefore, the



penalty imposed on M/s. Sahjanand Shipping Services under Section 112(b) of the Customs Act, 1962, is not sustainable.

6. In view of the above findings, I set aside the penalty of Rs. 40,00,000/- imposed on M/s. Sahjanand Shipping Services (Appellant) under Section 112(b) of the Customs Act, 1962 under Section 112(b) of the Customs Act, 1962, vide Order-in-Original No. 19/Additional Commissioner/2022-23 dated 31.03.2023.

The appeal filed by appellant is hereby allowed.



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

F. No. S/49-10/CUS/JMN/2023-24

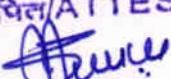
Date: 30.05.2025

By Registered Post A.D/E-Mail

To,  
✓ M/s. Sahajanand Shipping Services,  
404, Swara Park Lane, Opp. Joggers Park,  
Atabhai Road, Bhavnagar- 364 002

Copy to:

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

संकायित/ATTESTED  
  
अधीक्षक/SUPERINTENDENT  
श्रीना शुल्क (अधीक्षक), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD