



सत्यमेव जयते

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
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DIN - 20251071MN0000222A31

क	फ़ाइल संख्या FILE NO.	1) S/49-95/CUS/MUN/2024-25 2) S/49-96/CUS/MUN/2024-25 3) S/49-97/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-385 to 387-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.10.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	1) Order-in-Original no. MCH/ADC/AK/ 46/ 2024-25 dated 20.05.2024 2) Order-in-Original no. MCH/ADC/AK/47/ 2024-25 dated 20.05.2024 3) Order-in-Original no. MCH/ADC/AK/48/ 2024-25 dated 20.05.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.10.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Lucky Chemicals Corporation, Lucky Heights, 12/3 New Palasiya, Indore, M.P 452007

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।
(ब)	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

	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 :	
	<p>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</p>	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
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>(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;</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; पाँच हजार रुपए</p> <p>(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 ;</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>(d) 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>(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.</p> <p>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.</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

M/s. Lucky Chemicals Corporation, Lucky Heights, 12/3 New Palasiya, Indore, M.P- 452007 (hereinafter referred to as the 'Appellant') has filed three appeals in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Originals issued by the Additional Commissioner of Customs, Mundra, (hereinafter referred to as 'the adjudicating authority') the details as per details in Table-I below :-

Table-I

Sr. No	Appeal File No.	OIO No. & date (herein after referred to as 'impugned order')
1	S/49-95/CUS/MUN/2024-25	MCH/ADC/AK/ 46/ 2024-25 dated 20.05.2024
2	S/49-96/CUS/MUN/2024-25	MCH/ADC/AK/ 47/ 2024-25 dated 20.05.2024
3	S/49-97/CUS/MUN/2024-25	MCH/ADC/AK/ 48/ 2024-25 dated 20.05.2024

2. As the issue involved in all the three appeals is same, they are taken up together for disposal. Facts of the case, in brief, are that the Appellant has filed Bill of Entry No. 7951317 dated 21.03.2022, 7908099 dated 17.03.2022, 7904520 dated 17.03.2022, through their CHA M/s. Shivam Seatrans Private Limited for import of "Mixed Mineral Hydrocarbon Oil" (CTH-27101990). The details declared in the Bill of entry are as under:

Bill of Entry No. & Date	Description of Goods	Qty in Kgs	Ass. Value Declared	Duty Payable Declared
7951317 dated 21.03.2022	Mixed Mineral Hydrocarbon Oil (CTH-27101990)	180955	1,00,93,887/-	24,71,992/-
7908099 dated 17.03.2022	Mixed Mineral Hydrocarbon Oil (CTH-27101990)	181450	1,02,67,301/-	25,14,462/-
7904520 dated 17.03.2022	Mixed Mineral Hydrocarbon Oil (CTH-27101990)	180280	1,02,01,075/-	24,98,243/-

2.1 In the said Bills of entry, 100% examination was done by the Docks examination officers on 26.03.2022, 23.03.2022 and 21.03.2022 respectively



and samples were sent to CRCL, Kandla vide Test Memo No. 1118227 dated 26.03.2022, 1117799 dated 23.03.2022, 1117556 dated 21.03.2022 for testing purpose. The goods/cargo of the said bills of entry were stuffed in 10 x 20 feet containers. The CRCL, Kandla vide Test Report Lab No. 8283/28.03.2022, 8246/24.03.2022, 8192/22.03.2022, has submitted that tested parameters agree with Kerosene, Kerosene Intermediate & Solvent.

2.2 The appellant vide their letter dated 27.04.2022, 06.04.2022 & 06.04.2022 requested for provisional release of the cargo imported vide above Bills of Entry for re-export purpose. The re-export of the cargo was allowed on Test Bond of entire value and Bank Guarantee of 10% of the cargo value and the cargo was provisionally released for re-export purpose and the same was communicated to the importer vide letter dated 29.04.2022. The appellant submitted Bank Guarantee No. 1314NDDG00026323 dated 19.04.2022 amounting to Rs.10,10,000/-, 1314NDDG000026123 dated 19.04.2022 amounting to Rs.10,27,000/-, 1314NDDG000026523 dated 19.04.2022 amounting to Rs.10,21,000/-and Test Bond of full value for release of the cargo. The cargo was re-exported vide Shipping Bill No. 1337148 dated 12.05.2022, 1333487 dated 12.05.2022, 1333646 dated 12.05.2022. On the request of the appellant remnant samples were sent to CRCL, New Delhi with the permission of the competent authority to ascertain the composition and nature of the goods. The Joint Director, CRCL, New Delhi after due testing of remnant samples in respect of the Bills of Entry mentioned in the table in Para 1 above filed by the importer has submitted their report vide letter F. No. 27-Cus/C-22/2022-23 dated 09.09.2022, 27-Cus/C-21/2022-23 dated 09.09.2022, 27-Cus/C-20/2022-23 dated 09.09.2022. The Joint Director, CRCL, New Delhi in their above referred test report has opined that the sample meets the requirement of Kerosene (IS: 1459:2018), Kerosene Intermediate (IS:17793:2022) & Petroleum Hydrocarbon Solvent (IS:1745:2018). These goods were to be classified under CTH No. 27101932, but the same were mis-declared as "Mixed Mineral Hydrocarbon Oil" by declaring wrong classification thereof under CTH 27101990.

2.3 The appellant vide letter dated 18.12.2023 had already submitted their consent to decide the matter on merits and as per the test results and gave their consent to re-assess the said bills of entry. Therefore, following the principle of natural justice no SCN was issued in the matter.

2.4 Consequently, the Adjudicating Authority vide impugned orders as per Table-I above, ordered as under:

- i. He ordered to reject the declared classification i.e. 27101990 of the goods imported vide Bills of Entry No. 7951317 dated 21.03.2022, 7908099 dated 17.03.2022, 7904520 dated 17.03.2022 and ordered to re-classify the goods imported under CTH 27101932 as per impugned orders mentioned at Sr. No. 1,2 and 3 of Table-I above.
- ii. He ordered for confiscation of the goods imported vide Bill of Entry No. 7951317 dated 21.03.2022, 7908099 dated 17.03.2022, 7904520 dated 17.03.2022 declared as " Mixed Mineral Hydrocarbon Oil" under Section 111(d) & (m) of the Customs Act, 1962. However, as the goods had already been exported, he impose redemption fine of Rs.10,00,000/- (Rupees Ten Lakh Only) each on the above detailed Bills of Entry, under Section 125 of the Customs Act, 1962, on the appellant against redemption of the confiscated goods as per impugned orders mentioned at Sr. No. 1,2 and 3 of Table-I above.
- iii. He imposed a penalty of Rs. 2,10,000/- (Rupees Two lakhs ten Thousand Only), Rs. 2,27,000/- (Rupees Two lakhs Twenty-Seven Thousand Only), Rs. 2,21,000/- (Rupees Two Lakhs Twenty-One Thousand Only), respectively on M/s. Lucky Chemicals Corporation under Section 112 (a)(i) of the Customs Act, 1962 as per impugned orders mentioned at Sr. No. 1,2 and 3 of Table-I above .
- iv. He ordered to appropriate the Bank Guarantees submitted by the importer against the aforesaid fine and penalty as per impugned orders mentioned at Sr. No. 1,2 and 3 of Table-I above.

SUBMISSIONS OF THE APPELLANT:

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

3.1 The Appellant has submitted that the Principal Commissioner has exercised powers u/s 110A, as adjudicating authority, and has permitted the re-export of the good wrongly shipped. There was no jurisdiction on part of the Additional Commissioner to re-enter and continue the final adjudication in the subject matter and impose fine U/s 125 and penalties U/s 112(a) of the Custom Act the impugned order cannot be upheld. BE was filed for home clearance of the goods imported. A particular classification was claimed and after 100% examination and testing of the same the classifications were proposal to be altered. However, before such proposal could be affected by the department a request was made for re-shipment of the consignment, to the supplier, as informed by the supplier to the importer that there was a wrong shipment. The request for provisional release for re-export was granted TB Bond of entire value and 10% of Cargo Value as Bank Guarantee. And the goods were exported accordingly. The goods were sent back to the unpaid seller as they did not conform to our order being wrongly shipped. Thereafter, impugned orders were passed, ordering confiscation of the goods which were not in the custody possession of the Customs or the Custodian, on the date of the order, with redemption option of confiscated goods on fine of Rs.2,10,000/-, Rs.2,27,000/-, Rs.2,21,000/- respectively given to the appellant when goods were not available and he was not the owner. The option is mis-directed and not as per Section 125 of the Customs Act, having not been given to the owner. The order is bad in law and is required to be set aside and appeal allowed.



Further the goods imported, are confiscated for mis-declaration of the classification as the actual goods were Kerosene. Which is restricted for import, it is settled law that imported goods permitted to be re-exported cannot be confiscated as held by SC (Full Bench) in case of Siemens Limited [1999 (113) E.L.T. 776 (SC)] wherein it was laid down "Since goods have been re-exported neither redemption fine nor the duty are to be paid". Following the same the redemption fine in this case on goods permitted to be re-exported cannot be upheld and it is required to set aside and appeal allowed. Since no confiscation can be arrived u/s 111 of the Customs Act, the provision for invoking liability u/s 112(a) cannot be upheld as held in the case of Haniff Shabbir [1997 (96) E.L.T. 27 (Mad.)].

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 28.05.2025, following the principles of natural justice wherein Shri Uday M Joshi, Advocate appeared for the hearing. He also submitted further written submissions vide their letter dated 29.05.2025.

4.1 Vide the letter dated 29.05.2025, it is submitted that for coming to conclusion as regards as to what the product is and its classification the product has to undergo required test wherein several parameters are required to be examined and taken into consideration and in absence of any fallacy in that regard no correct conclusion can be arrived by a technical expert or a concerned authority. In the present case also, it is not apparent as to on what basis as the CRCL arrived at a conclusion and given test report as regards the product in question and as to whether all parameters as required have been gone into or not. Under the circumstances, the rejection of classification of goods under import vide impugned order in original is improper. In this regard, reliance is placed on a recent judgment of the Hon'ble Supreme Court in the case of Gastrade International Versus Commissioner of Customs, Kandla reported in (2025) 29 Centax 8 (S.C) wherein the Hon'ble Supreme Court has held that non-examination of any product / article / goods on all the parameters laid down by the Customs authority will always lead to uncertainty and doubt, which are required to be removed when dealing with on confiscatory proceedings. The law laid down by the Hon'ble Supreme Court in the said judgment is squarely applicable to the present case.

4.2 Vide impugned order in original, Adjudicating Authority has confiscated goods under import under provisions of Section 111 (d) and (m) of the Customs Act, 1962 and has imposed redemption fine under Section 125 of the said Act as well as imposed penalty under Section 112 (a) (i) of the said Act. In this regard, it is submitted that in the present case, the goods in question were permitted to be re-exported as back as in April 2022 which accordingly re-exported whereby there was no question of confiscating such goods. In this regard, reliance is placed on the following judgments/decisions:

- A) Siemens Ltd Vs Collector of Customs 1999 (113) E.L.T 776 (S.C.)
- B) Sankar Pandi Vs Union of India 2002 (141) E.L.T. 635 (Mad.) - the said judgment has been upheld by Hon'ble Supreme Court.

4.3 That, as aforesaid, vide impugned order in original penalty under section 112 (a) of the said Act has been imposed which is not sustainable. In view of the fact that, as aforesaid, goods in question are not liable to confiscation whereby there arises no question of imposition of any penalty under the aforesaid provision or otherwise. In this regard, reliance is placed on the following judgment.

A) Haniff Shabbir Vs Collector of Customs 1996(96) E.L.T. 27 (Mad.)

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 On going through the material on record, I find that the following issues need to be addressed:

- i. Whether the re-classification of the imported goods and the finding that the goods are 'Kerosene' (a restricted item) is sustainable in law, especially in light of the Hon'ble Supreme Court's ruling in Gastrade International or otherwise.
- ii. Whether the confiscation of goods under Section 111(d) and 111(m) of Customs Act, 1962 and the imposition of a Redemption Fine under Section 125 of Customs Act, 1962 are sustainable when the goods were already permitted and effected re-export or otherwise.
- iii. Whether the penalty imposed on the Appellant under Section 112(a)(i) of Customs Act, 1962 is sustainable in law, particularly when no confiscation can be upheld or otherwise.

5.2 The Adjudicating Authority's finding that the goods are 'Kerosene' (CTH 27101932) is based on test reports that indicated the samples agreed with Kerosene/Kerosene Intermediate specifications. The Appellant's challenge is based on the recent Supreme Court judgment in Gastrade International v. Commissioner of Customs, Kandla (2025), which is directly applicable to the classification of hydrocarbon oils. The Supreme Court, in the context of classifying hydrocarbon oil (Base Oil vs. High Speed Diesel), laid down the

principle that the 'preponderance of probability' is not the accurate test for classification under the Customs Tariff Act, 1975, especially in confiscatory proceedings. Instead, the more accurate and precise test is the "most akin" test under Rule 4 of the General Rules for Interpretation.

5.3 Crucially, the Supreme Court held that non-examination of the product on all laid down parameters leads to uncertainty and doubt that must be removed in confiscatory proceedings. It noted that an opinion merely stating that a sample has characteristics of a specific product is distinct from an opinion stating that the sample is that product. It ultimately gave the benefit of doubt to the Assessee where the evidence was inconclusive due to partial testing and evasive expert opinions.

5.4 In the present matter, the classification of the imported oil as Kerosene (CTH 27101932) is central to the entire proceeding, as it forms the basis for finding the goods as 'restricted' and, consequently, liable for confiscation and penalty. Given the binding precedent in Gastrade International, a re-determination of the classification, ensuring adherence to the "most akin" test and considering the completeness and conclusiveness of the test reports, is imperative for a just and proper decision. The Adjudicating Authority must thoroughly re-evaluate whether the test reports definitively establish the goods as Kerosene (CTH 27101932) under the stricter standard now mandated by the Supreme Court.

5.5 The Appellant contends that since the goods were permitted and effected re-export, they are not liable for confiscation or redemption fine. They rely on the Supreme Court judgment in Siemens Ltd. v. Collector of Customs (1999), which held that "Since goods have been re-exported neither redemption fine nor the duty were to be paid". The Adjudicating Authority acknowledged the re-export but nonetheless ordered confiscation, imposed the fine, and ordered the appropriation of the Bank Guarantee on the grounds that the goods were initially liable for confiscation. In light of the Siemens Ltd. judgment, which squarely addresses the non-imposition of redemption fine when re-export is effected, the Adjudicating Authority's order, confirming the redemption fine post-re-export, appears *prima facie* inconsistent with this binding judicial precedent.

5.6 The Appellant argues that since no confiscation can be upheld, the penalty imposed under Section 112(a)(i) should also be set aside, citing the Madras High Court judgment in Haniff Shabbir Brothers v. Collector of Customs (1997). This case holds that the imposition of penalty under Section 112 is not

legal when there is no finding regarding the good's liability to confiscation. However, the Madras High Court in *Sankar Pandi v. Union of India* (2002), while following Siemens Ltd. on the non-payment of redemption fine on re-export, explicitly stated that penalty is to be imposed for the violation of the Customs Act. The Supreme Court upheld the *Sankar Pandi* judgment. A penalty is imposed on a person for an act or omission that renders the goods liable for confiscation, irrespective of the actual confiscation order being operationalized. While the penalty may be sustainable for the attempt to import restricted goods by mis-declaration and mis-classification, the issue of the quantum of penalty (which must be proportionate to the offence) and whether the entire issue requires re-adjudication, remains.

5.7 When an Adjudicating Authority's order is based on an interpretation of law that is subsequently refined or fundamentally challenged by a binding Supreme Court precedent (as is the case with *Gastrade International*), and further factual enquiry into the very basis of the classification is necessary, a remand is justified in the interest of justice. The very foundation of the confiscation, fine, and penalty—the finding that the goods are 'Kerosene' based on an assessment of test reports—must be re-examined by the Adjudicating Authority in light of the "most akin" test laid down by the Hon'ble Supreme Court in the *Gastrade International* judgment. The Supreme Court highlighted that failure to test on all parameters can render the evidence inconclusive, and this fresh evaluation is a factual exercise best undertaken by the original authority. The Adjudicating Authority must re-examine the sustainability of imposing a redemption fine in the facts of the case, considering the binding nature of the Supreme Court's ruling in *Siemens Ltd.*, which prohibits the imposition of redemption fine when re-export is carried out.


In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- (i) All the three appeals as per Table-I above are remanded back to the Adjudicating Authority for de novo adjudication as discussed in para 5.4 to 5.7 above.



7. The three appeals filed by M/s. Lucky Chemicals Corporation are hereby allowed by way of remand.



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

(1) F. No. S/49-95/CUS/MUN/2024-25
(2) F. No. S/49-96/CUS/MUN/2024-25
(3) F. No. S/49-97/CUS/MUN/2024-25

Date: 30.10.2025

By Speed Post/E-Mail

To,
M/s. Lucky Chemicals Corporation,
Lucky Heights, 12/3 New Palasiya,
Indore, M.P 452007

सत्यापित/ATTESTED

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

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.
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