



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल **4th Floor**, हडको भवन **HUDCO Bhawan**, ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**  
नवरंगपुरा **Navrangpura**, अहमदाबाद **Ahmedabad - 380 009**  
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250671MN0000808180

क	फ़ाइल संख्या FILE NO.	S/49-13/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- 099 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	24.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. MCH/ADC/AK/265/2023-24 dated 27.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	24.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Barter International 304, Sanskar Complex, 150 Feet Ring Road, NR KKV Circle, Rajkot-360005







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। 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 रुपए 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 :
	<div>सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</div> <div><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></div>
	<div>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</div> <div>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</div>
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 हजार 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 हजार 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 हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.





**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Barter International, 304 , Sanskar Complex, 150 Feet Ring Road, NR KKV Circle, Rajkot-360005, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/ADC/AK/265/2023-24 dated 27.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed Home Consumption Bill of Entry No. 9876800 dated 29.01.2024 for import of goods declared as "CSK Self Drilling Screws" imported from China PR. The aforesaid BE was assigned to ICD Garhi Harasaru for assessment in FAG and FAG officer pushed the BE citing "Importer filed BE on 29.01.2024 and BL date of Consignment is 03.01.2024. DGFT vide notification No. 55/2023 issued on 03.01.2024 amended import policy of HS code 7318 i.e. Screw. The goods imported under this HS code has been prohibited if CIF value is less than Rs. 129/- kg. Importer has declared CIF value of goods approx. 72 Rs./Kg. Accordingly, goods fall under prohibited category and liable for confiscation under section 111(d) of Custom Act, 1962.

2.1 In view of the notification No. 55/2023 dated 03.01.2024 issued by DGFT, it was observed that the CIF value of goods imported vide impugned B/E No. 9876800 dated 29.01.2024 is below than the prescribed rate of Rs. 129/Kg per MTS in terms of above said DGFT Notification. Therefore, the imported goods appeared to be liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 and thereby rendering the importer liable for penalty under Section 112(a) of the Customs Act, 1962.

2.2 The appellant submitted their written submission in the matter vide letter dated 15.02.2024. The appellant further submitted that the value of the goods may loaded to the extent of Rs. 129 and assess the duty accordingly and release the cargo.

2.3 The adjudicating authority passed the order as under:





- (i) He ordered to reject the declared value of the imported goods under Rule 12 of the Custom Valuation Rules, 2007 and order to re-determine the same to Rs. 35,47,500/- under Customs Valuation Rules, 2007 and order to recover differential duty amounting to Rs. 5,88,317/-.
- (ii) He ordered for confiscation of the goods imported vide Bill of Entry No. 9876800 dated 29.01.2024 having re determined value of Rs. 35,47,500/- ( Rs. Thirty Five Lacs Forty Seven Thousand Five Hundred ) under Section 111(d) & 111(m) of the Customs Act, 1962. However, he gave an option to the appellant to redeem the confiscated goods on payment of redemption fine of Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962.
- (iii) He imposed a penalty of Rs. 60,000/- (Rupees Sixty thousand Only) on the appellant under section 112(a)(i) of Customs Act, 1962.

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

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

3.1 It is submitted that impugned order of the Adjudicating authority is erroneous and contrary to the law laid down by the Hon'ble Supreme Court G.S. Chatha Rice Mills and is therefore ab-initio void and is, therefore, required to be set aside. The interpretation of day and date given by the Hon'ble Supreme Court in the case of G.S. Chatha Rice Mills had been ignored in the adjudication order. The adjudicating authority decided the case against the appellant on the argument that as per Para 2.17 of the Hand Book of Procedure 2015-20 issued by DGFT, the date of reckoning of import is decided with reference to the shipment and there is no mention of time at which the prohibition was issued. However, this issue had been settled by the Hon'ble Supreme Court in the matter of Union of India Vs. G.S. Chatha Rice Mills 2020 (374) E.L.T. 289 (S.C.) wherein it has been ruled that when a law is enacted, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common



*[Handwritten signature]*



defense of the decision against the appellant.

notification, in relevant part, reads as follows :

2015.

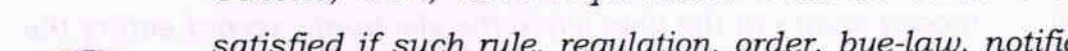
website [www.egazette.nic.in](http://www.egazette.nic.in)".

Mills. Para (A) of the aforementioned decision is relevant to this case.

3.4 Section 8 of Information Technology Act, 2000, runs as

"8. Publication of rule, regulation, etc., in Electronic Gazette

Where any law provides that any rule, regulation, or



7



*Provided that where any rule, regulation, order, bylaw, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form".*

Accordingly, considering the provisions of Information Technology Act, the time of publication of the Gazette notification is the point of effect of the notification on the day of its publication.

3.5 The Hon'ble Apex Court in the case of Union of India Vs. G.S.Chatha Rice Mills reported in 2020 (374) E.L.T. 289 (S.C.) held as follows:

*"58. With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification No.5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification No.5/ 2019, applies to bills of entry presented for home consumption after the notification was uploaded in the e-C1azette at 20.46.58 hours on 16 February, 2019".*

3.6 Section 13 of the Information & Technology Act, 2000 runs as follows:

*13. Time and place of dispatch and receipt of electronic record.*

*(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.*

*(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely :—*

*(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—*

*(i) receipt occurs at the time when the electronic, record enters the designated computer resource; or*

*(ii) if the electronic record is sent to a computer resource of the*





addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section, —

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

"usual place of residence", in relation to a body corporate, means the place where it is registered.

3.7 In the case of the appellant, DGFT Notification No.55/2023 dated 03.01.2024 was uploaded in the e-Gazette by the Dept. of Publication on 03.01.2024 at 22:07:20 + 05:30' hours. The said goods in container No.TGBU3 562115 were brought into the port area for loading on 01.01 2024 at 14:14:56 hrs. Chinese Standard Time (CST). It was given out of charge for export on 02.01.2024 at 18:00:00 hrs. CST. The cargo was loaded on board the ship (Shimin) on 03.01.2024 at 08:39:32 hrs.-(CST). Immediately on receipt of the goods, carrier of the said goods issued Bill of lading No.800310214407 on 03.01.2024. The ocean vessel Shimin set sail from Tianjin, China on 03.01.2024 at 16:30 hours (CST). Chinese Standard Time is 2 hours and 30 minutes ahead of Indian Standard Time.

3.8 In other words, after issuing the Bill of Lading, the vessel set sail, considering the time difference with Indian Standard Time, 8 hour and 7 minutes





before uploading the notification in the e-Gazette. Even ignoring the time difference with China, the vessel set sail 5 hours and 37 minutes prior to uploading/—publishing the notification in the e-Gazette. Therefore, it cannot be said that the prohibition applies to the goods, which were set to sail after the issuance of the Bill of Lading, based on the notification published in the e-Gazette at a later time in the day. The aforementioned decision of the Hon'ble Supreme Court makes it apparent that the notifications issued under Customs Act and Fa-feign Trade Regulation Act or under the policies and procedures formulated there under will have effect only from the "time it has entered into the designated computer resource. In this context, section 13 of the Information Technology Act, 2000 is very relevant. Accordingly, the case is required to be decided in favour of the appellant as the vessel with the goods had set sail from Tianjin, China much before the notification was uploaded in the computer resource.

3.9 Effect of the time the Notification issued in e-Gazette was not considered in the adjudication order. The Adjudicating authority failed to take into account the effects of notifications issued in e-Gazette as decided by the Honble Supreme Court in the case of G.S. Chatha Rice Mills. In this case, the Hon'ble Supreme Court held that with a change in the manner of publishing gazette notification from analogue to digital, the precise time when the gazette is published in-the electronic mode assumes significance. It has also been held that in an era electronic publication of gazette notification and electronic filing of Bills of Entry, the revised date of import duty applies to Bills of Entry presented for home consumption after the relevant time the notification was uploaded in the e-Gazette. Para (L) Hon'ble Court's decision in the case of G.S.Chatha Rice Mills is relevant to the case and is relied upon which deals with the effect of notifications issued in e-gazettes.

3.10 Giving effect to the Notification to a time period prior to the publication of the Notification in the e-Gazette is amounting to retrospective application of the notification which is not provided in the notification or anywhere else. In the aforementioned case of G.S.Chatha Rice Mills, the Hon'ble Supreme Court ruled that the legal position which needs emphasis is that the entrustment of the power to issue a notification enhancing the rate of duty under section 8A of the Customs Act is not accompanied by a statutory of entrustment of the authority in the central government to exercise with retrospective effect. An enhancement of the rate of duty pursuant to the exercise of power under



*[Handwritten signature]*



section 8A can only be prospective. In this decision, the Hon'ble Supreme Court held that the effect of notification is not applicable before the time it was uploaded in the e-Gazette.

3.11 Notification issued under The Foreign Trade (Development & Regulations) Act, 1992 (FTDR) is not a Central Law within the meaning of General Clauses Act, and therefore cannot take effect from the day of its issuance of the notification. The adjudicating authority has decided the case against the appellant on the ground that According to Para 2.17 read with Para 11.11 of Hand Book of Procedure 2015-20 issued by DGFT, the date of reckoning of import is decided with reference to the date of shipment/ dispatch of goods from supplying country and hence he has decided the case by not giving any weightage to the time at which the notification was uploaded in the e-Gazette. However, the Hon'ble Apex Court in its decision in- G.S.Chatha Rice Mills examined this argument in the light of the provisions—of the General Clauses Act and held that notifications issued under delegated legislation are not covered under section 5(3) of General Clauses Act and therefore the time of uploading is relevant to the notification.

3.12 The Handbook of Procedure is issued in pursuance of the provisions of Paragraph 1.03 of Foreign Trade Policy which is part of a delegated legislation and does not come within the purview of section 5(3) of General Clauses Act, 1897 and therefore not a legislation to give effect to the entire day on which the notification was issued ignoring the time at which the e-Gazette was uploaded. In view of the law settled by the Hon'ble Supreme Court in the case of G.S. Chatha Rice Mills, enhancement of value for the purpose of deciding import policy condition was irregular and the enhanced value should be reverted to the original value and the excess amount of custom duty charged should be refunded to the appellant.

3.13 Enhancement of the value to bring it up to the non-prohibited value of import, and simultaneous imposition of a penalty for considering the value declared in the Bill of Entry as prohibited for import, were contradictory stances taken in the adjudication order and are therefore deemed illegal. Without prejudice to the claim that the Appellants are entitled to clear the goods on transaction value declared without any enhancement free of any import prohibition it is stated that apparent from the conduct of the appellant that there was no act or omission on their part to import and otherwise prohibited goods





and the value based prohibition on import by way of a notification was given effect only after the vessel carrying the goods of the importer set sail from Tianjin, China. The bonafide character of the import is apparent from the conduct of the appellant in as much as, he in order to overcome the difficulty of prohibition, which he assert to be not applicable in his case, vide his letter dated 15.02.2024 agreed to pay duty in consonance with the notification. According to the notification, the CIF value had to be minimum Rs.129/- per kg. to be eligible for free import. Accordingly, the value was enhanced vide the aforementioned order of adjudication. Accordingly, a differential duty of Rs.5,88,317/- was confirmed against the import in the adjudication order, which was paid. Under such circumstances, the goods become eligible for free importation and therefore the penalty could not have been imposed upon the appellant nor the goods could have been ordered for confiscation. Hence, there is a dichotomy in the stance of the adjudicating authority which is required to be rectified by clearing the goods at transaction value and without any policy restriction of import.

3.14 Considering the law laid down in the Case of G.S. Chatha Rice Mills, the time on the date at which the notification was uploaded in e gazette is the point of commencement of value based prohibition and therefore the it is not applicable to the current import as the bill of lading was issued and the vessel set sail much before the time the notification was uploaded. According to para 11.11 of the hand book of procedure, the date of shipment in respect of Imports is to be reckoned with the date affixed on the Bill of Lading.

3.15 Further, according to section 3 of the FTDR Act, 1992, all notifications prohibiting restricting or otherwise regulating import and export shall be deemed to have been issued under section 11 of the Customs Act, 1962. The 9.19 Section 3 (3) of FTDR Act, 1992 is a deeming provision to bring all notifications issued under foreign Trade Policy under the provisions of section 11(1) Customs Act, 1962. Hence, the provisions of section 11(1) of Customs Act will override all other provisions and accordingly all such notifications take effect only after publishing it in the official Gazette.

3.16 Notification No.55/2023 dated 03.01.2024 had been issued in exercise of powers conferred section 3 & 5 of FT(DR) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2023 as amended from item to time. According to section 3(2) of FTDD Act also, it is mandatory to publish a notification of prohibition in the official gazette. Similarly, under





section 5 of the FTDR Act, 1992, also mandate that the notification shall be issued in the official gazette. Section 5 is reproduced below for ease of reference:

*5. Foreign Trade Policy.—*

*The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:*

*Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette."*

3.17 According to para 1.02, amendment to foreign trade policy can be issued only by means of a notification. A conjugal reading of Para 1.02, section 3 & 5 and 11(1) of FT(DR), 1992 and section 11(2) & 11(3) of Customs Act, 1962, the notification of prohibition takes effect only with its publication in the official gazette and in the absence of a retrospective effect provision, such notifications takes effect only from the time it is published in the e-Gazette and the law laid down by the Hon'ble Apex Court in G.S.Chatha Rice Mills will prevail in deciding the value based prohibition imposed by notification No.55/2023 dated 03.01.2024. Hence, it cannot be alleged that there was violation of any of the aforementioned provisions in respect of the import carried out by the appellant. The appellant states that there has been no importation of the goods in question contrary to the prohibition imposed because the goods set sail even before the prohibition came into effect. Referring to the legal precedent set by the Hon'ble Apex Court in the case of G.S. Chatha Rice Mills, it cannot be asserted that the importation occurred in violation of the prohibition. The time of issuance of the Bill of Lading must be considered in relation to the time of publication of the notification in the e-Gazette. This would confirm that no violation of the prohibition indeed occurred in the importation of the goods. Therefore, the goods should not be subject to confiscation for violation of section 111(d) of the Customs Act, 1962.

3.18 According to section 111(m) of the applicable statute, goods may be subject to confiscation if they do not correspond in respect of value or any other particulars mentioned in the Bill of Entry. In the present case under dispute, the adjudicating authority determined that the goods are liable for confiscation due to the alleged incorrect declaration of value for the CSK Self Drilling Screw





imported under Bill of Entry No. 9876800 dated 29.01.2024. However, this finding against the appellant is erroneous as no investigation was conducted to substantiate that the transaction value declared by the appellant in the Bill of Entry was incorrect. The appellant agreed to declare the value at Rs. 129/- per kg only to navigate the prohibition imposed after the vessels had set sail from Tianjin, China. The appellant had no means of influencing the prohibition. To facilitate clearance of the goods, the appellant, through their letter dated 15.02.2024, agreed to pay the differential duty by considering the value as Rs. 129/- per kg. This agreement cannot be construed as an admission of undervaluation in the Bill of Entry. It was merely a technical arrangement to overcome the prohibitions, which were being arbitrarily interpreted against the appellant, disregarding the established legal precedents such as those set by the Hon'ble Apex Court in the case of G.S. Chatha Rice Mills. Hence, the appellant asserts that the transaction value stated by them in the Bill of Entry was correct, and the assessment should be conducted at this value. Additionally, the appellant requests the refund of the differential duty amounting to Rs. 5,88,317/- paid by them pursuant to the impugned original order. Therefore, there has been no violation of section 111(m), and consequently, the goods are not liable for confiscation under any provisions within this section.

3.19 The Hon'ble Delhi High Court in *Rajeev Khatri v. Commissioner of Customs [(Export) (CUSAA 3/2021 & CM APPL. 5517/2021 dated July 4, 2023)]* set aside the penalty order passed under Section 112(a) of the Customs Act, 1962 ("the Customs Act") and held that assessee cannot be penalized for abetting the illegal import as there is no evidence that assessee has knowledge of the import of prohibited goods. In the case of *M/s. Amritlakshmi Machine Works & Another v. The Commissioner of Customs [2016(335) E.L.T.225]* wherein the Hon'ble Bombay High court held that imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt, as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty. Observed that, mens rea is necessary element for imposing penalty under section 112(a) of the Customs Act. Hon'ble Apex Court, in the case of *Akbar Badruddin Jiwani, Versus Collector Of Customs*, reported in 1990 (47) E.L.T. 161 (S.C.), held that for imposing penalty under section 112 of the Customs Act, mens rea is a necessary element. The operative portion of the judgment is reproduced below:

*"58. In the present case, the Tribunal has itself specifically stated that the appellant has acted on the basis of bona fide belief that the goods*





were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation required to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.

59. We refer in this connection the decision in *Merck Spares v. Collector of Central Excise & Customs, New Delhi - 1983 E.L.T. 1261*, *Shama Engine Valves Ltd. Bombay v. Collector of Customs, Bombay - 1984 (18) E.L.T. 533* and *Madhusudan Gordhandas & Co. v. Collector of Customs, Bombay - 1987 (29) E.L.T. 904* wherein it has been held that in imposing penalty the requisite mens rea has to be established.

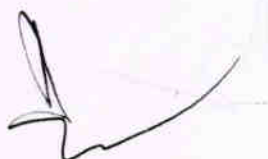
3.20 In the facts and circumstances of the case and in the absence of mens rea and the law laid down in the aforementioned decisions of various judicial authorities, no penalty under section 112(a)(i) is imposable upon the appellant.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 29.05.2025, following the principles of natural justice wherein Shri Gervasis Thomas , Advocate , appeared for the hearing in virtual mode and he re-iterated the submission 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 Hose, Mundra and the defense put forth by the appellant in their appeal. The Appellant has filed the present appeal on 12.04.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 27.02.2024 as 28.02.2024. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the challan No. 2048079267 dtd.29.02.2024






towards payment of entire duty , Redemption fine and penalty amounting to Rs.17,49,259/-. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal:

- (i) Whether the adjudicating authority correctly interpreted and applied the effective date of DGFT Notification No. 55/2023 dated 03.01.2024, particularly regarding the relevance of the time of its e-publication vis-à-vis the Bill of Lading date.
- (ii) Whether the principle laid down by the Hon'ble Supreme Court in Union of India Vs. G.S. Chatha Rice Mills (2020 (374) E.L.T. 289 (S.C.)) concerning the effective date and time of e-Gazette notifications, and the impact of the Information Technology Act, 2000, was adequately considered by the adjudicating authority.
- (iii) Whether the goods, having been shipped prior to the effective time of the prohibition notification, should be considered as not prohibited, and consequently, whether the confiscation and penalties are sustainable.
- (iv) Whether the impugned order is a speaking order that has adequately addressed all the Appellant's submissions and binding judicial precedents.

5.2 The critical point of contention is the effective date and time of the DGFT Notification. The adjudicating authority's reliance on the Handbook of Procedure, which states that "the factor of time is deemed irrelevant," appears to be in direct conflict with the evolution of statutory interpretation concerning electronic publications. While historically, the law might have disregarded fractions of a day, the advent of e-Governance and digital publication necessitates a more precise approach. The Customs Act, 1962, and the Customs Tariff Act, 1975, deal with the determination of duty based on rates "in force" on a particular date. The term "in force" implies actual operational effect. When a notification is published electronically, its operational effect can be precisely



*Handwritten signature*



ascertained by the time of its uploading. Relying solely on the date without considering the time of e-publication in the current digital landscape would create uncertainty and injustice, especially when an importer has acted in good faith based on the policy in effect at the time of shipment.

5.3 The Hon'ble Supreme Court in Union of India Vs. G.S. Chatha Rice Mills (2020 (374) E.L.T. 289 (S.C.)) extensively dealt with the issue of the effective date of notifications published in the e-Gazette. The Court, while acknowledging that Section 15(1) of the Customs Act refers to "date" and not "time," emphatically stated that "legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense. Second, regulatory governance is evolving in India as new technology replaces old and outmoded ways of functioning." The Supreme Court held that the notification came into force only at the precise time it was uploaded in the e-Gazette (20:46:58 hours on 16.02.2019 in that case), and not from midnight of that date. This landmark judgment clearly establishes the relevance of the time of e-publication.

5.4 Furthermore, the Supreme Court specifically referred to the Information Technology Act, 2000, particularly Section 8, which led to the exclusive e-publishing of the Gazette of India from 01.10.2015. This Act provides legal recognition to electronic records and facilitates electronic governance, emphasizing precision and transparency. The adjudicating authority's reliance on a Handbook of Procedure paragraph that disregards "time" directly contradicts this binding pronouncement of the Apex Court and the spirit of the Information Technology Act. The principle established in G.S. Chatha Rice Mills is directly applicable to the present case. If the goods were shipped from China (and the Bill of Lading was issued) prior to 22:07:20 hrs (IST) on 03.01.2024, then the prohibition, which became effective only at that precise time, cannot be applied retrospectively to goods already in transit. The Madras High Court in Ruchi Soya Industries v. Union of India [W.P. No. 21207 of 2018, decided on 14 July 2020] also followed the G.S. Chatha Rice Mills ratio, emphasizing the prospective effect of such notifications.

5.5 Given the binding nature of the G.S. Chatha Rice Mills judgment, if the Appellant can establish that the goods were shipped (or the Bill of Lading was issued) prior to 22:07:20 hrs (IST) on 03.01.2024, then the prohibition introduced by Notification No. 55/2023 would not apply to this consignment.





The Appellant has provided details suggesting the vessel sailed much before the notification was uploaded. If the prohibition is not applicable, then the goods cannot be deemed "prohibited goods" under Section 111(d) or 111(m) of the Customs Act, 1962. Consequently, if there is no violation leading to confiscation, then the redemption fine under Section 125 and the penalty under Section 112(a)(i) would also not be sustainable.

5.6 The Appellant's act of agreeing to pay differential duty based on a higher valuation (Rs. 129/- per kg) was a measure to facilitate clearance, not necessarily an admission of the applicability of the prohibition. This demonstrates bona fides in an attempt to resolve the dispute, which should be duly considered.

5.7 A speaking order is one that addresses the material contentions raised by the parties and provides reasoned findings. In the present case, the Appellant clearly raised the critical issue of the time of e-publication of the DGFT notification and extensively cited the Hon'ble Supreme Court's judgment in G.S. Chatha Rice Mills. However, the impugned order appears to have summarily dismissed this crucial aspect by merely reiterating the stance of the Handbook of Procedure that "time is deemed irrelevant." This constitutes a failure to properly address a material and legally significant argument supported by a binding Apex Court precedent. The adjudicating authority was bound to either follow the Supreme Court's ruling or distinguish it with cogent reasons, neither of which appears to have been done effectively in the impugned order. This renders the order non-speaking on a fundamental issue.

6. The impugned order suffers from a fundamental infirmity in its failure to correctly interpret and apply the law regarding the effective date and time of e-Gazette notifications, particularly in light of the binding precedent set by the Hon'ble Supreme Court in Union of India Vs. G.S. Chatha Rice Mills. The adjudicating authority's continued reliance on the Handbook of Procedure (which disregards time) without considering the statutory framework of the Information Technology Act, 2000, and the clear pronouncements of the Apex Court, constitutes a significant legal error. To ensure that principles of natural justice are fully complied with and a just decision is reached, it is imperative that the adjudicating authority re-examines the entire matter afresh, specifically focusing on the precise time of the DGFT notification's e-publication and its effect





on the consignment's import status, taking into account the G.S. Chatha Rice Mills judgment and all submissions made by the Appellant.

7. In view of the detailed discussions and findings above on each of the issues, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:


(i) I hereby set aside the Order-in-Original No. MCH/ADC/AK/265/2023-24 dated 27.02.2024.

(ii) I remand the matter to the adjudicating authority with a direction to reconsider the case afresh. The adjudicating authority shall ascertain, with verifiable evidence, the exact time of shipment/dispatch of the goods from the country of origin (or the issuance of the Bill of Lading, whichever is earlier and relevant for determining the time of import) and its relation to the effective time of the notification. The ratio laid down by the Hon'ble Supreme Court in Union of India Vs. G.S. Chatha Rice Mills (2020 (374) E.L.T. 289 (S.C.)) and the provisions of the Information Technology Act, 2000, shall also be taken into account while determining the applicability of the prohibition to the Appellant's consignment. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. - Del)] holding that Commissioner (Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

8. The appeal filed by M/s. Barter International is hereby remanded for de novo adjudication with specific directions as above.



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

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

F. No. S/49-13/CUS/MUN/2024-25

Date: 24.06.2025

1690



By Registered post A.D/E-Mail

To,  
M/s. Barter International,  
304, Sanskar Complex,  
150 Feet Ring Road,  
Nr.KKV Circle, Rajkot-360 005.



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.