



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
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DIN - 20260371MN0000496E51

क	फ़ाइल संख्या FILE NO.	S/49-249/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-CUSTOM-000-APP-890-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/416/AC/NSM/GR.2/24-25 dated 22.09.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Rajendra Trading, 20, Raghukul Industries Estate Opp Gurudhwara Adinathnagar Odhav, Ahmedabad- 382415



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(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.	
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 Rajendra Trading, 20, Raghukul Industries Estate, Opp Gurudhwara Adinathnagar, Odhav, Ahmedabad- 382415, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/416/AC/NSM/GR.2/2024-25 dated 22.09.2024 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant are Importers of "Ice Cream Sticks Birch Wood" under CTH 4421 of the first Schedule of Customs Tariff Act, 1975. The said appellant discharged the tax of IGST in terms of Serial No. 92A of Schedule-II or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate). An analysis of data (DAC No. 09 dated 27.12.2022) in respect of Import of miscellaneous articles of wood such as "Ice Cream Sticks", "Ice Cream Spoon", "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" etc. for the period 01-01-2021 to 15-12-2022, with regard to wrong claims of lower IGST rate @ 12% Adv under CTI 4421 instead of correct IGST @ 18% Adv on miscellaneous articles of wood by classification of goods in wrong IGST Schedules was carried out by the Data Analytics Cell of the Office of Chief Commissioner of Customs, Ahmedabad.

2.1 The appellant has been found to have filed the Bills of Entry as detailed hereunder in **Table-1** of the impugned order for home clearance of the goods viz. "Ice Cream Sticks Birch Wood" under CTH 4421 of the first schedule of the Customs Tariff Act, 1975. The Appellant discharged the tax of IGST in terms of Serial No. 92A of Schedule-II or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate).



Table-1

S. No.	BE NO	BE Date	Quantity	Assess Value (in ₹)	Total duty paid (in ₹)	Total payable (in ₹)	Diff/ Short paid IGST
1	2229268	30-08-2022	6844	358112	87093	110943	23850
2	2230690	30-08-2022	24070	1069040	259990	331189	71198
3	2944322	19-10-2022	27000	1038871	252653	321842	69189
4	2945030	19-10-2022	24650	1121320	272705	347385	74680
5	3115308	01-11-2022	12501	551485	134121	170850	36729
6	3313425	15-11-2022	12972	565231	137464	175109	37644
7	3717973	13-12-2022	18865	853457	207561	264401	56840
TOTAL				5557515	1351588	1721718	370131

2.2 The rate of IGST leviable on the imported goods is as per Schedules-I to VI appended to IGST Notification No. 01/2017-Integrated Tax (Rate)-as amended. It was observed the appellant was classifying their imported miscellaneous goods as above under Serial No. 92A of Schedule-II or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate). Serial No. 92A of Schedule-II of IGST Notification 01-2017-IGST(Rate) prescribes 12% Adv IGST for goods viz. "Idols of wood, stone including marble and metals [other than those made of precious metals]" for CTH 44, 68 or 63. Further, Serial No. 101 of Schedule-II also prescribes 12% IGST on "Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware" under CTH 4421. Other than Serial No. 92A and 101 Schedule-II of IGST Notification 01/2017-IGST(Rate), there is no other entry for CTH 4421 in Schedule II. The Serial No. 92A and 101 of Schedule-II have well defined list of articles of wood covered in entries. The miscellaneous items "Ice Cream Sticks" under CTH 44219190 and "Bamboo Sticks", "Straight



Edge Wooden Ice Cream Sticks" etc. under CTH 44219990 does not merit to be included in Entry No. 92A or 101 of Schedule-II.

2.3 The subject miscellaneous goods do not merit to be included in any of the above entries of Table-I. Therefore, the imported goods which are not specified in any of Schedules I to VI need to be classified under residuary entry viz. Serial No. 453 of Schedule-III and leviable to IGST rate of 18% Adv. The description at Serial No. 453 of Schedule-III is "Goods which are not specified in Schedule I, II, IV, V or VI". Analysis of the said Imports in CTI 4421 revealed that Appellant paid IGST @12% Adv on imported goods, by wrongly claiming them under Schedule-II (Serial No. 92A and 101) instead of Serial No. 453 of Schedule-III to Notification-01/2017-IGST(Rate) as amended. This leads to short payment of IGST. Accordingly, the IGST payable during the period from 01-01-2022 to 15-12-2022 as detailed above works out to 370131/- as detailed in herein above.

2.4 In light of the above, a Show Cause Notice was issued to the Appellant as to why:

- i. The goods having assessable value of 55,57,515/- covered under Bills of Entry as detailed hereinabove, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- ii. the Serial No. 92A or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate) on the goods should not be denied and the same should not be re-assessed at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017;
- iii. The differential duty worked out to 3,70,131/- for Bills of Entry as detailed hereinabove, should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

2.5 Consequently, the Adjudicating Authority passed the order as under:

- i. He ordered to confiscate the said imported goods having assessable value of 55,57,515/- covered under Bills of Entry as detailed herein above, under



Section 111(m) of the Customs Act, 1962; Since the goods were not available, he did not order their confiscation.

ii. He ordered to deny the benefit of Serial No. 92A or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate) on the said imported goods and order to re-assessed them at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017;

iii. He ordered to demand and recover the differential duty worked out to 3,70,131/- (Rupees Three Lakhs Seventy Thousand One Hundred Thirty One Only) for Bills of Entry as detailed herein above, under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

iv. He ordered to impose penalty of Rs. 3,70,131/- (Rupees Three Lakhs Seventy Thousand One Hundred Thirty One Only) under Section 114A of the Customs Act, 1962. However, in case the Appellant pays the duty, interest and applicable penalty within 30 days of the communication of the order, the amount of penalty payable is 25% of Rs. 3,70,131/- as per provisions of Section 114A of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

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

3.1 The appellant contends that the impugned OIO is ex-facie illegal and was passed in a mechanical manner without proper application of mind. A primary grievance is the failure to conduct a mandatory pre-notice consultation as required under Section 28(1) and the Proviso to Section 28(1)(a) of the Customs Act, 1962. The appellant argues that the Adjudicating Authority had already made up its mind that the importer was a defaulter based solely on data from the Data Analytics Cell, effectively bypassing procedural safeguards. Furthermore, the appellant asserts that they were not provided an effective opportunity to be heard, as the order was passed with a pre-conceived notion, thus defeating the ends of natural justice.



3.2 The appellant maintains that they accurately declared the description and HSN code of the imported goods in the Bills of Entry, a fact they claim was accepted by the Adjudicating Authority. They argue that once the description of goods is correctly declared, any discrepancy regarding the IGST rate is a matter of legal interpretation rather than a willful violation or misdeclaration. The appellant further clarifies that they did not take benefit of Entry No. 92A of Schedule II and suggests the OIO was passed hastily without proper investigation into their actual declarations.

3.3 The appellant argues that the imported items, specifically identified as wooden toothpicks and cotton buds, are rightly covered under Entry No. 101 of Notification 01/2017, which carries a 12% IGST rate. They contend that Entry No. 101 serves as a residual entry for Chapter Heading 4421 because it uses wide expressions like "other articles of wood" and "such as," making it illustrative in nature. Alternatively, they argue these items qualify as "Tableware and Kitchenware of wood" under Entry No. 99B of Schedule II (CTH 4419), which also carries a 12% rate. This stance is supported by a cited Advance Ruling (KAR ADRG 18/2023), which classified wooden ice cream sticks and spoons under CTH 4419 at 12% GST.

3.4 A significant portion of the appeal is dedicated to the "revenue neutral" nature of the demand, as the appellant is entitled to Input Tax Credit (ITC) for any IGST paid on imported goods. Relying on various Supreme Court and CESTAT judgments, the appellant argues that in revenue-neutral situations, demands for differential duty and penalties are not sustainable. Consequently, they assert there was no motive for collusion or willful misstatement. Furthermore, they argue that since the dispute relates to a complex interpretation of law and no mens rea exists, the imposition of a penalty under Section 114A is illegal and unjustified.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 09.12.2025, following the principles of natural justice wherein Shri Vikash Agarwal, CA, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.



DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal. The core grievance of the Appellant is that the Adjudicating Authority acted with a pre-conceived notion, relying solely on data analytics without independently evaluating the legal defenses.

5.1 The most fundamental flaw in the impugned Order-in-Original is the blatant disregard for the Principles of Natural Justice. It is an established tenet of administrative law that "justice should not only be done but should manifestly and undoubtedly be seen to be done." In the context of quasi-judicial proceedings under the Customs Act, this translates into the requirement for a reasoned or "speaking" order. Upon a perusal of the OIO, I find that while the Adjudicating Authority has noted the receipt of the Appellant's written submissions, the "Discussion and Findings" section is almost entirely silent on the specific legal and factual points raised therein. The Appellant had raised significant arguments regarding the applicability of Entry No. 101 of Schedule-II (residual entries for Chapter 44) and the concept of Revenue Neutrality. By failing to discuss, analyze, or rebut these contentions, the Adjudicating Authority has rendered the adjudication process a mere formality.

5.2 The Hon'ble Supreme Court in **Assistant Commissioner, Commercial Tax, Department of Works Contract and Leasing, Kota v. Shukla & Bros. [2010 (254) E.L.T. 6 (S.C.)]** emphasized that the requirement of recording reasons is a safeguard against arbitrary exercise of power. The court observed:

*"12. ----- A litigant who approaches the Court with any grievance is entitled to know the reasons for acceptance or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, it hampers the proper administration of justice.--
-----"*

5.3 In the present case, the Adjudicating Authority has merely confirmed the proposals in the SCN without assigning independent reasons as to why the Appellant's defense was unacceptable. This "copy-paste" adjudication



approach is contrary to the judicial discipline expected from a high-ranking officer. In **Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan [2011 (273) E.L.T. 345 (S.C.)]**, the Apex Court laid down elaborate guidelines on the necessity of passing a speaking order. The failure to address the core issue of "intent to evade" while invoking Section 28(4) and Section 114A is a critical omission that strikes at the root of the order's legality.

5.4 By not recording findings on Revenue Neutrality, the Adjudicating Authority has deprived the Appellant of their right to a meaningful appeal. The Appellate Authority cannot guess the mind of the original authority. If the original order is devoid of reasoning, it becomes impossible for the higher forum to determine whether the discretion was exercised judiciously.

5.5 Consequently, I find that the impugned order suffers from "non-application of mind." The Adjudicating Authority has acted as a mere rubber stamp for the allegations in the SCN, which is an anathema to the quasi-judicial process. This procedural impropriety, in itself, is sufficient ground for remanding the matter back to the lower authority for fresh consideration of all the points raised in the Appellant's reply.

5.6 The central dispute pertains to whether wooden items like toothpicks, spoons, and cotton buds fall under HSN 4419 (Tableware and kitchenware, of wood) at 12% IGST or HSN 4421 (Other articles of wood) at 18% IGST. The Adjudicating Authority has mechanically applied the higher rate without a technical analysis of the General Rules for Interpretation (GRI) of the Customs Tariff. According to the HSN Explanatory Notes, Heading 4419 covers articles of wood designed for use in the kitchen or for service at the table. This explicitly includes spoons, forks, salad servers, platters, and similar items. The "Common Parlance Test" dictates that if a product is primarily marketed and used for consuming or serving food (like wooden spoons and knives), it must be classified under 4419.

5.7 These items are traditionally considered part of tableware/kitchenware as they are used at the dining table. If they are excluded from 4419, the Adjudicating Authority must justify why they do not meet the "service at the table" criterion. The SCN and OIO fail to provide this logic. The Appellant heavily relied on Advance Ruling No. KAR ADRG 18/2023 in the case of M/s Ragu Packaging. In this ruling, the Authority for Advance Ruling (AAR) examined wooden ice cream spoons and sticks. The AAR concluded that such



finished wooden articles are used for food consumption and thus fall under HSN 4419, attracting 12% GST. By extension, wooden spoons and knives imported by the Appellant merit the same classification. Furthermore, even if classified under 4421, Entry 101 of Schedule-II of Notification No. 1/2017-IGST (Rate) provides a 12% rate for "Other articles of wood" unless specifically excluded. The Adjudicating Authority has failed to analyze the interplay between these specific entries.

5.8 In **CCE vs. Connaught Plaza Restaurants (P) Ltd. 2012 (286) E.L.T. 321 (S.C.)**, the Hon'ble Supreme Court held that "31-----in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the Legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding." Wooden spoons and toothpicks are sold in grocery and kitchenware sections, not as industrial wood articles. This commercial identity strongly points towards the lower tax slab.

5.9 The Adjudicating Authority has not conducted any "User Test" or "Market Inquiry" to rebut the Appellant's classification claim. A mere reliance on a "Data Analytics Cell" report is not a substitute for a statutory adjudication process. The report is an informational trigger, not evidence in itself. Therefore, the matter requires a deep dive into the technical specifications of each item to determine if they qualify as tableware.

5.10 It is a settled position that where the tax paid is available as credit to the same assessee, the "intent to evade" is generally absent. Reliance is placed on **Jet Airways (India) Ltd. vs. Commissioner [2017 (7) G.S.T.L. J35 (S.C.)]** and **STI Industries vs. Commissioner of C. Ex., Daman [2015 (327) E.L.T. 514 (Tri. Ahmd.)]**. If the transaction is revenue-neutral, the invocation of the extended period of limitation under Section 28(4) and the imposition of penalty under Section 114A are legally unsustainable unless a specific "fraudulent modus operandi" is proven. The impugned order lacks any such finding. In the

impugned order, the Adjudicating Authority has not even attempted to establish a motive for suppression. The Appellant correctly declared the description of the goods (e.g., "Wooden Spoons") and provided the HSN. A mere disagreement between the department and the importer on the interpretation of which HSN code applies does not constitute "suppression." Suppression requires a positive act of concealing information that was required to be disclosed. Since all facts were on record, and the situation is revenue neutral, the Adjudicating Authority must reconsider whether the demand is time-barred and whether Section 114A penalty is applicable at all.

5.11 The failure to evaluate the "Revenue Neutrality" argument has led to the mechanical confirmation of penalties and the extended period. This is a significant legal lapse that necessitates a de novo adjudication to determine if the department has met the high burden of proof required under Section 28(4).

5.12 The Adjudicating Authority has failed to follow the principles of natural justice and has passed a non-reasoned order that ignores the technical submissions of the Appellant. Without a detailed discussion on why the specific classification proposed by the importer is wrong and why the residuary entry is more appropriate, the order remains legally infirm. Given the gaps in the adjudication process, it is just and proper to remand the matter for a fresh decision.

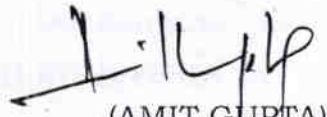
6. In view of the above discussions, the findings of the Adjudicating Authority, and the judicial precedents cited, I pass the following order:

- i. The impugned Order-in-Original No. MCH/416/AC/NSM/Gr.2/2024-25 dated 22.09.2024 is set aside. The matter is remanded to the Adjudicating Authority with the direction to hold a fresh personal hearing and provide the Appellant an opportunity to explain their classification merits.

7. The appeal is allowed by way of remand.

सत्यापित/ATTESTED

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


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

By Speed post /E-Mail

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Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House , Mundra.
3. The Deputy/Assistant Commissioner of Customs, Import Section , Group-2, Custom House, Mundra.
4. Guard File.