



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN -20251071MN0000222D01

क	फाइल संख्या FILE NO.	S/49-180/CUS/MUN/2023-24
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-383-25-26
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.	Order-in-Original no. MCH/ADC/MK/227/2023-24 dated 04.01.2024
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 Caltex Impex, Panvel Plaza CHS, 2nd Floor, Flat No.202, Kaveri Enterprises, Plot No.11, Sector-11, Panvel, Navi Mumbai



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



	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 मंजिल, 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)	(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।	
(a)	(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)	(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	
(ब)	(ब) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	(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।	
(c)	(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)	(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 हैं, अपील रखा जाएगा।	
(d)	(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 Caltex Impex, Panvel Plaza CHS, 2nd Floor, Flat No.202, Kaveri Enterprises, Plot No.11, Sector-11, Panvel, Navi Mumbai, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/227/2023-24 dated 04.01.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner of Customs, Mundra.

2. Facts of the case, in brief, are that Intelligence gathered by the Central Intelligence Unit (CIU) and Special Intelligence Investigation Branch (SIIB) of Custom House Mundra indicated that Natural Garnet, which is a restricted item for export, was being exported by some exporters in illegal manner by way of mis-declaring the same as Ramming Mass (RITC Code 38160000). Acting upon the intelligence, inquiries were initiated by the CIU and later transferred it to SIIB, which revealed that Shipping Bill No.2149179 dated.01.07.2023 covered under Invoice No. CI/002/23-24 dtd.27.06.2023 was filed by the appellant through the Customs Broker M/s.Varma& Sons. The details of the consignment covered vide Shipping Bill No.2149179 dated.01.07.2023 filed by Caltex Impex is as follows

TABLE A

S/B No. & Dt.	Invoice No. &Dt	Quantity	Shipper
2149179/01.07.2023	CI/002/23-24 DT.27.06.2023	53.950 MTs	Al-Magwa Engineering & Contracting Co. Will P.O. Box No.9390, 61004, East Ahmadi, Kuwait

2.1 On enquiry, it was found that the goods mentioned in the Shipping Bill were not available as the container had not come inside the gate of the Mundra Port, so the goods were not registered. The goods were placed at the RDS Empty Yard and were not yet Gate-in. Further, information received that Caltex were attempting not 2 but 10 containers of Natural Garnet to export in the guise of Ramming Mass, which were placed in at RDS Empty Yard. Search was conducted at RDS Empty Yard vide Panchnama dated 10-11.07.2023 wherein it was found that Caltex had placed with them not 10 but 20 containers of Natural Garnet which had arrived at RDS Empty Yard on 04.07.2023. The list of the containers transported from factory stuffing godown to RDS Empty yard is as follows :



Table-B

Container Line M/s.CMA CGM	Container Line M/s. ASN Shipping Agencies Pvt. Ltd
Booked by M/s. Star Impex, Mumbai	Booked by M/s. Gurukripa Shipping & Logistics (I) Pvt. Ltd.
CI/002/23-24 dated.27.06.2023	CI/007/23-24 dated.28.06.2023
CI/003/23-24 dated.27.06.2023	CI/008/23-24 dated.28.06.2023
CI/004/23-24 dated.27.06.2023	CI/009/23-24 dated.28.06.2023
CI/005/23-24 dated.27.06.2023	CI/010/23-24 dated.28.06.2023
CI/006/23-24 dated.27.06.2023	CI/011/23-24 dated.28.06.2023
US.\$135/- PMT	US.\$125/- PMT
Consignee was Al Magwa Engineering & Contracting Co. Will P.O.Box 9390, 61004, East Ahmadi Kuwait	Consignee was J F J General Trading LLC, Dubai UAE
FCIU3741619	IALU2265187
CMAU3015349	CMAU1573491
TRLU9703207	IALU2263097
TEMU5810822	SCZU7526447
TCLU2789494	GLDU3044092
APZU3830084	CMAU1428410
TRHU1004951	IALU2263287
GESU1108376	IALU2268709
CAIU3862485	IALU2241550
APZU3330812	CMAU1412310

2.2 Representative samples were drawn from the containers mentioned at Table B vide Panchnama dated 10/11.07.2023 and sent for testing to M/s.IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala 690001 and the Test Result are mentioned below:-

Table-C

Test Memo No.	Sample Ref. No. Test Report No.	Natural Garnet %
666/19.07.2023	IRERC/106-A/23ML-1975	96.2%
667/19.07.2023	IRERC/106-B/23ML-1977	95.8%
668/19.07.2023	IRERC/106-C/23ML-1979	95.1%
669/19.07.2023	IRERC/106-D/23ML-1981	95%

2.3 The Natural Garnet were placed under seizure vide seizure memo dated 21.09.2023 which were available in the twenty containers mentioned at Table B and copy handed over to Shri Arpit Singh, Proprietor of M/s.RDS Empty Yard, Mundra and Shri Avisanna, Authorised Person of M/s.Caltex and Shri Navnath. Further, it was found that these containers were loaded from the godown hired by Caltex at Plot No.42, Sector-10A, GIDC, Gandhidham for which they had self-sealing permission from Custom House Kandla, wherein search



was conducted vide Panchnama dated 11/12.07.2023 and Representative samples were drawn and sent for testing. Subsequent, to the confirmation on the goods being as Natural Garnet, these goods were also seized on 21.09.2023. This investigation pertains to Garnet found in 20 containers mentioned at Table-B only and attempted to export vide S/Bill No. 2149179/01.07.2023 Invoice No. CI/002/23-24 DT.27.06.2023.

2.4 The exporter declared the goods as Ramming Mass (RITC Code 38160000). Whereas, it appeared that the Central Govt had in his capacity as Additional Secretary to the Government of India had from F. No. 01/91/171/22/AM 19/EC issued an Order vide Notification No 26/2015-20 dated 21.08.2018 on behalf of the Central Government under the provisions of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 (Hereinafter referred to as "the FTDR Act, 1992") to amend the Export Policy of "Beach Sand Minerals" in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import items. In terms of said Notification No.26/2015-20 dated 21.08.2018, Garnet classifiable under CTH 25132030 could only be exported through Indian Rae Earth Ltd. (IREL). However, in the instant case the exporter tried to export the same by way of mis-declaring the same as 'Ramming Mass' to avoid the restriction, however, the goods were found as Garnet classifiable under CTH 25132030, which are restricted in nature. Thus the non-compliance of the existing DGFT Policy makes the goods as Prohibited and exporter tried the same by way mis-declaring and mis-classifying the same.

2.5 No private person is permitted to export Beach Sand and Minerals. M/s. IREL, who were notified as canalizing Agency for export of Natural Garnet falling under CTH No. 25132030 also publishing SOP for Export Policy of Beach Sand Minerals and Production/Selling and export was regularized. From the above, it is evident that with effect from 21.08.2018 and pursuant to issue of aforesaid Notification No. 26/2015-20 dated 21.08.2018 by the Central Government, the export of Beach Sand Minerals and particularly the Natural Garnet falling under CTH No. 25132030 has been brought under the regime of State Trading Enterprises (STEs) and M/s. Indian Rare Earth Ltd. (Hereinafter referred to as "M/s. IREL") were notified as canalizing agency in this respect. No private person has been permitted to export Natural Garnet falling under CTH No. 25132030. Consequent to issue of aforesaid Notification dated 21.08.2018, M/s. IREL being canalizing agency placed on their website the SOP for export of Natural Garnet etc. Beach Sand Minerals by the producers/sellers, who were



desirous to export the Beach Sand Minerals.

2.6 During investigation summons were issued to the Exporter, M/s.Caltex Impex and Shri Avisanna appeared as per summons on 10.08.2023 as an authorized representative of owner of Caltex by furnishing letter dtd.08.08.2023 wherein he interalia stated that:

- Shri Navnath Narain Golie had asked him to oversee the operation at the godown at Gandhidham.
- Shri Navnath had procured Garnet from Rajasthan.
- Shri Navnath had hired the IEC of M/s.Caltex Impex from its Proprietor for exporting of Garnet by declaring it as Ramming Mass.
- Shri Nikon Bhanushali arranged containers for export from Container line.
- Shri Navnath is the beneficial owner of the attempted export of Garnet.

2.7 Shri Avisanna appeared as authorized representative on behalf of Shri Navnath as per summons on 30.08.2023 wherein he interalia stated that:

- Shri Navnath had informed him that for an amount Rs. 1,25,000/- the IEC of M/s.Caltex Impex was subletted by Shri Asif.
- Shri Navnath had also asked Shri Nikon Bhanushali to file Shipping Bills, which Shri Nikon Bhanushali further asked to Shri Ravindrasinh Jadeja of M/s.

Varma & Sons.

- Shri Navnath had paid Rs.40000/- for the godown at Gandhidham to Shri Gopal Rameshchandra Agarwal.
- The Garnet was procured by Shri Navnath from M/s. Aries International Company, Bhilwara, Rajasthan.
- The Garnet quantity procured was 560MTs and 90MTs was procured on 60 days credit at the rate of Rs.8000/- PMT. The quantity of 90MTs is at godown at Gandhidham.
- Ten containers were booked through forwarder M/s. Star Impex from container line M/s.CMA CGM Agencies (1) Pvt. Ltd which was bound for Kuwait and through forwarder M/s Gurukrupa Shipping & Logistics (I) Pvt. Ltd booked 10 containers from container line M/s. ASN Shipping Agencies Pvt. Ltd which was to be shipped to Dubai.

2.8 Shri Avisanna appeared as per summons on 06.10.2023 wherein he inter-alia stated that:



- Shri Navnath had issued total 10 invoices covered under those 20 containers and produced all the 10 invoices.
- The above invoices were issued by Shri Navnath only to shift the goods to Mundra and these containers were not allocated against any of the invoices. Shri Navnath had told him against the 09 invoices no shipping bills were to be filed. The first shipping Bill No.2149179 dated. 01.07.2023 were filed but after knowing the export could not be allowed, they had not allowed any of the containers to move inside the Port area.
- He had been shown the Test Result of representative samples sent to IREL for testing and through the test result Nos. IRERC/106-A/23-ML-1975, IRERC/106-B/23-ML-1977, IRERC/106-C/23-ML-1979, IRERC/106-D/23-ML-1981 the samples were confirmed to consist of minimum of 95% Garnet, he put his signature on them.

2.9 Summons were issued to Ravindrasinh Bharatsinh Jadeja alias Ravirajsinh Jadeja and he appeared on 09.09.2023:

- Shri Nikon Bhanushali had instructed him to file Shipping Bill for M/s.Caltex Impex. He asked the representative of the Customs Broker to file the Shipping Bill.
- He had received the loaded 20 containers for shipment.
- He submitted weighment slips of all the twenty containers.
- He had asked his friend Shri Vikramsinh to park 20 containers at M/s.RDS Empty Park.
- He was not aware that the goods to be exported was Garnet by declaring it as Ramming Mass.

2.10 Summons were issued to the Customs Broker M/s. Varma & Sons, but he did not appear, however a letter dated 06.10.2023 has been received wherein he had informed that:

- They are not having any documents related to Garnet and are not aware of any such consignment.
- They had filed Shipping Bill of M/s. Caltex Impex after receiving KYC, Invoice No.02, and Packing List and the description was Ramming mass through factory stuffing container.
- After filing of SB when asked to send all relevant documents like container, RFID Seal number, drawback declaration etc to the Exporter, the exporter said cargo was not ready and well send all the relevant documents once the cargo is ready.



- Thereafter they have not received any communication from exporter nor received the relevant documents, hence have not proceeded it further.

2.11 Summons were issued to Shri Nikon Bhanushali with queries, he furnished his reply by email on dt. 12.10.2023 as under:-

- He is not having any documents related to Garnet and are not aware of any such consignment. He had a meeting with Shri Navnath Narayan Gole related to Export of Ramming Mass for factory stuffing containers and after receiving all KYC documents from Navnath forwarded the same to Shri Ravindrasinh Jadeja for filing and asked Exporter to send all relevant documents like Container number RFID seal Number Drawback declaration etc, the exporter said cargo was not ready and sill send all the relevant documents once cargo was ready. Further no communication from the Exporter received hence not processed.

2.12 Summons were issued to Shri Navnath Narain Gole:

- By email dtd.13.10.2023 regarding containers booking, he confirmed that he had booked the containers of CMA CGM and ASN Shipping Agencies Pvt. Ltd.
- Navnath Narayan Gole appeared on 21.10.2023 to furnish his statement wherein he interalia stated that On being asked he was doing the procurement of Rice and Agro Commodities for Exporters.
- He had met Shri Akbar at an Agro Expo held at Goregaon Exhibition Centre, Mumbai.
- Shri Akbar was the export manager at M/s.Al-Magwa Engineering & Contracting Co Kuwait and M/s. J.F.J General Trading LLC, Dubai UAE and had asked him to supply Garnet as it was in demand for cleaning the big oil pipes and also sand blasting, thereafter he started for looking for sellers of Garnet. He had procured Garnet from M/s.Aries International Company, Bhilwara, Rajasthan vide Invoice No. PI/EXP/001 and PI/EXP/002 dt.03.05.2023. As he did not have his own IEC so he had asked his friend Shri Asif to use his IEC i.e. M/s.Caltex Impex(AZVPK9841P).
- Shri Asif had agreed to give IEC against payment of Rs.1,25,000/-, after paying the amount, Shri Asif had allowed to use the IEC for export of Rice and other Agro Commodities. But he had used the IEC for exporting Garnet to the Supplier Al-Magwa Engineering & Contracting Co Kuwait and M/s. J.F.J General Trading LLC, Dubai UAE by declaring it as Ramming Mass. I had hired godown and got self-sealing (permission from Custom House, Kandla) at Plot No.42, Sector-10A,



GIDC, Gandhidham and stored the goods in the godown, He had planned to export garnet and other agro commodities from the godown at Plot No.42, Sector-10A, GIDC, Gandhidham.

- On being asked whether he had planned and stuffed 20 containers from the godown Plot No.42, Sector-10A, GIDC, Gandhidham, he negated and stated that, he had stuffed the garnet in twenty containers and had planned for only two containers whose container numbers was not decided.
- Due to Cyclone and heavy rain the godown at Plot No.42, Sector-10A, GIDC, Gandhidham was damaged badly, meanwhile to shift the goods to a better place he had issued 10 invoices for hiring 20 containers, these 20 containers required to be placed where there was a facility of crane/ Kalmar to transfer those 20 containers from trucks to the ground, as the rent for RDS Empty yard was cheap and was having facility of crane, he had okayed to shift the container to RDS Empty yard.
- On being asked that the containers were stuffed from their godown, then how could he say that the goods stuffed were not for export, he stated that due to cyclone some of the goods were damaged, so he had sent Avisanna to assess how much goods were in good condition and inside the bags, as some goods were spilled due to cyclone Biporjoy and heavy rain.
- After Avisanna spoke to him he had booked the containers on the basis of invoices and asked Nikon Bhanushali to file only one Shipping Bill for two containers.
- He had planned for only two containers. Due to Cyclone and heavy rain the godown at Plot No.42, Sector-10A, GIDC, Gandhidham was damaged badly, meanwhile to shift the goods to a better place he had issued 10 invoices for hiring 20 containers, those 20 containers required to be placed where there is facility of crane/ Kalmar to transfer these 20 containers from trucks to the ground, as the rent for RDS Empty yard was cheap and was having facility of crane, he had okayed to shift the container to RDS Empty yard.
- On being asked whether he had stuffed the Garnet from the godown Plot No.42, Sector-10A, GIDC, Gandhidham, he stated that on his behalf Shri Avisanna stuffed the goods from the godown Plot No.42, Sector-10A, GIDC, Gandhidham as after the cyclone his Garnet were damaged.
- So he had hired the containers and stuffed the goods and unloaded them at RDS Empty Yard Mundra with the help of Shri Ravindrasinh.Jadeja. He had no intention for exporting them on date.03.07.2023.
- On being asked whether he had booked the containers he stated that he had issued invoices for M/s.Al-Magwa Engineering & Contracting Co Kuwait and




M/s. J.F.J General Trading LLC, Dubai UAE and had booked containers from M/s. Star Impex, Mumbai (CMA CGM Agencies (I) Pvt. Ltd) and M/s. Gurukrupa Shipping & Logistics (I) Pvt. Ltd. (ASN Shipping Agencies Pvt. Ltd.) respectively.

- After showing the statements of Shri Avisanna dated. 10.08.2023, 30.08.2023 and 06.10.2023, wherein he had informed that the containers were booked by Shri Nikon Bhanushali, he stated that he had informed Avisanna that he had issued invoices for stuffing of goods inside the container, and told him that he had given one Invoice to Shri Nikon Bhanushali for filing Shipping Bill, he had mis-understood and told that Nikon Bhanushali had booked the containers also.

Further he wanted to say that container stuffed with garnet were not allotted against any of the Invoices as mentioned in Avisanna's statement dated.06.10.2023.

- On being asked he stated to no specific container stuffed with garnet were covered under Invoice No. CI/002/23-24 DT.27.06.2023 and S/Bill No.2149179 dated.01.07.2023.

- On being asked that he stated that the containers were booked on 29.06.2023 and 30.06.2023 on the basis of Invoice dated.27.06.2023 and 28.06.2023, he had asked Shri Nikon Bhanushali to file S/Bill for Ramming Mass and he filed S/Bill through Shri Ravirajsingh Jadeja. He had researched locally in Mundra that it was risky to export Garnet by mis-declaring the goods as Ramming Mass, so he did not allot any two containers for the Invoice No. CI/002/23-24 DT.27.06.2023 and S/Bill No.2149179 dated.01.07.2023, and hence he not gives Container Numbers, RFID Seal numbers, Drawback declarations to Shri Nikon Bhanushali. Further he did not ask Nikon Bhanushali to file S/Bills for the remaining 09 invoices.

- On the request of SIIB Section he had submitted the remaining 09 invoices i.e. CI/003-006/23-24 dated.27.06.2023, CI/007-011/23-24 dated.28.06.2023, but they were never given to Shri Nikon Bhanushali for issuing S/Bills.

- He had been shown the e-way Bill Nos 271613532596, 261613553411, 281613548174, and 221613558047 which was generated for movement of trucks laden with 10 containers from Plot No.42, Sector-10A, GIDC, Gandhidham to RDS Empty Yard Mundra.

- Further other 10 containers were transported by trucks but their e-way Bill was not made they were transported on the basis of Invoice.

- He had been shown the Original Mineralogical Analysis Report test reports issued by IREL (India) Limited, Research Centre, Kollam 691001, the test reports mention the amount in % of Garnet, he put the dated signature.

- He had been shown the Seizure Memo dated.21.09.2023 wherein the 20



containers which he had loaded.

- The Godown and the goods were damaged due to Cyclone and Heavy rain at Gandhidham. To protect the Garnet getting damaged further, he had issued 10 invoices for hiring 20 containers, those 20 containers required to be placed where there was facility of crane/ Kalmar to transfer those 20 containers from trucks to the ground, as the rent for RDS Empty yard at Mundra was cheap and was having facility of crane, so he agreed to shift the container to Mundra at RDS Empty yard, Mundra.
- He researched locally in Mundra, that it was risky to export Garnet by mis-declaring the goods as Ramming Mass, so he did not allot any containers for the Invoice No. CI/002/23-24 DT.27.06.2023 and S/Bill No.2149179 dated.01.07.2023, and did not give Container Numbers, RFID Seal numbers, Drawback declarations to Shri Nikon Bhanushali. hence the seizure of goods contained in the 20 containers was not correct.
- He agreed that the seizure for any two containers would have been valid as it was covered under Invoice dated.27.06.2023 and 28.06.2023. It is kindly requested to allow him to give permission to de-stuff the containers and take back the cargo back to town and settle the payments.
- He also requested to charge the penalty and fine against the attempted to export of garnet in the two containers. He did not want any show cause notice or personal hearing in the matter, he also requested to issue letters to the container line to waive off the detention charges.

2.13 Shri Avisanna, Autorised representative of the Beneficial Owner Shri Navnath Narain Gole wrote letter dated 29.09.2023 wherein he requested for grant permission for back to town of the Garnet placed under seizure on 21.09.2023 and requested for waiver of detention and demurrage charges from the shipping line.

2.14 Vide Notification No. 47/2015-20, dtd.31.01.2018 the Central Government notified the Indian Trade Classification (Harmonized System) of Export Items, 2018 under Section 5 of the FTDR Act, 1992 read with Para 2.01 of the Foreign Trade Policy 2015-2020. Later on, vide Order/Notification No. 26/2015-2020 dated 21.08.2018 issued by the Central Government under Section 3 of the FTDR Act, 1992, added entry at Sr. No. 98A in the Schedule 2 of the ITC (HS). In effect, the export of Beach Sand Minerals notified in the said entry No. 98A were brought under STE and they were canalized through M/s. IREL. In the Notification No. 26/2015-2020, it was specified at Para No. 4 thereof



by the Central would be regulated in terms of the Policy under at Sr. No. 98A of Chapter 26 of Schedule 2 Export Policy. The specific entry under Custom Tariff Item 25132030 refers to Garnet. The Notification No. 26/2015-20 adds the condition in export policy that goods with Item Description Beach Sand Minerals as listed viz. ilmenite, Rutile, Garnet, Monazite, Zirconetc. will be exported by State Trading Enterprises only and the Policy Condition mentions the export will be through Indian Rare Earth Ltd (IREL) only. Thus, the goods tested by CRCL, New Delhi have been found to be natural garnet hence classifiable under Custom Tariff Item 25132030 specifically. The specific mineral "Garnet" is also mentioned under column "Item description" in DGFT Notification 26/2015-2020 dated 21.08.2018. The word Beach Sand Mineral has to be taken as generic term and not specifically only those minerals mined on beach. The natural garnet is found both on beach and inland. It cannot be the aim of policy makers to have the policy prohibition only for Ilmenite, Rutile, Garnet, Zircon etc. which is found on beach sand and not inland. The Custom Tariff Item 25132030 is specifically mentioned in the Notification ibid and this Tariff Item also does not differentiate between garnet found on Beach Sand and Mineral inland in India. Thus the beach sand mineral is to be read only an indicative class of goods/Generic class of goods. It cannot be aim of any policy maker just to prohibit a type of mineral which are found in beach and Same mineral are if found/mined in land can be allowed to be exported freely under export policy.

2.15 Vide Notification No. 57/2015-20, dtd.31.03.2020, issued under Section 5 of the FTDR Act, 1992, the Central Government extended validity of Foreign Trade Policy 2015-20 till 31.03.2021, which was otherwise going to expire on 31.03.2020. Vide Notification No. 60/2015-20, dtd31.03.2021, the validity of the Foreign Trade Policy 2015-20 was extended further upto 30.09.2021. In the instant case, the Test Reports of IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala 690001 clearly show that the subject goods pertaining to the shipping bill No.2149179 dated 01.07.2023 attempted to be exported by M/s.Caltex Impex. The statement of Shri Navnath Narain Gole, Beneficial Owner of M/s.Caltex Impex was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that the goods attempted to be exported by them is garnet. It is evident that even after having known that the goods were Garnet, Shri Navnath had mis-declared and mis-classified their export goods in the Shipping Bill they had filed before the Customs officer, with respect to the description of the goods as "Ramming Mass"

and they had declared the classification of the subject goods covered under the



said Shipping Bills under Custom Tariff Item 38160000, whereas there exists specific heading 25132030 for "natural garnet". Hence, the classification of their export goods ought to have been made under Custom Tariff Item 25132030 instead have declared classification under CTH 38160000. When specific description is ascertained on the basis of test report, the contention of the exporter to classify the Natural Garnet under 38160000 which is for 'Others' category is totally incorrect, irrelevant, inconsistent and deliberate act of mis-declaration with respect to the description and classification of the export goods, which is in violation of the provisions of Section 50 of the Customs Act, 1962.

2.16 From the facts discussed in foregoing paras, it appeared that by adopting Modus Operandi of mis-declaration of the goods, the said exporter attempted to export the subject consignment. They appeared to have deliberately mis-declared the goods before Customs Authorities and thereby has contravened the provisions of the Section 50 and 51 of the Customs Act, 1962 as well as Section 11 of the Customs Act, 1962 in light of their contravention of the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, Para 2.01, 2.02 and 2.20 of the Foreign Trade Policy 2015-20, in as much as they had intentionally mis-declared and mis-classified the goods under export with sole aim to circumvent the restrictions imposed against its export in terms of Notification No. 26/2015-20, dtd.21.08.2018 issued under Section 3 of the FTDR Act, 1992. Therefore, the seized goods as mentioned in above paras appear to be treated as "Prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 and "Smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The export goods of M/s.Caltex Impex seized on 21.09.2023 at Mundra are liable for confiscation under Section 113 (d) and 113 (i) of the Customs Act, 1962.

2.17 From the facts discussed above, it appeared that Shri Navnath Narain Gole, who had purchased the Import Export Code from the Proprietor Shri Asif of M/s.Caltex Impex, Panvel Plaza CHS, 2nd Floor, Flat No.202, Kaveri Enterprises, Plot No.11, Sector-11, Panvel, Navi Mumbai (IEC No.AZVPK9841P) for an amount of Rs.1,25,000/-, the beneficial owner in this case is Shri Navnath Narain Gole, as Shri Navnath had paid him off for using the IEC, Shri Navnath with the intent to export Natural Garnet mis-declared the goods in the 10 Invoices out of which he had sent Invoice No.CI/002/23-24 dtd.27.06.2023 to Shri Nikon Bhanushali for filing Shipping Bill. Shri Nikon forwarded the KYC




and export documents to Shri Ravirajsingh Jadeja alias Ravindrasinh Jadeja who further had given to the representative of the Customs Broker M/s. Varma & Sons to file the shipping bill. Meanwhile, Shri Navnath booked 20 containers, 10 each containers for shipment from M/s. CMA CGM Agencies (I) Pvt. Ltd through forwarder M/s. Star Impex, Mumbai for shipment to Kuwait whose Invoice were CI/002/23-24 to CI/006/23-24 i.e. total 5 invoices addressed to M/s. Al-Magwa Engineering & Contracting Co. Will P.O..Box 9390, 61004, East Ahmadi Kuwait wherein goods were described as Ramming Mass. Shri Navnath booked 10 each containers for shipment from M/s. ASN Shipping Agencies Pvt. Ltd through forwarder M/s. Gurukrupa Shipping & Logistics (I) Pvt. Ltd to Dubai whose Invoice were CI/007/23-24 to CI/011/23-24 i.e. total 5 invoices addressed to M/s. JF J General Trading LLC, Dubai UAE wherein goods were described as Ramming Mass.

2.18 The Customs Broker M/s. Varma & Sons filed the Shipping Bill on the basis of the exports documents available with them and thereafter waited for the Exporter to furnish details of the containers, etc. The containers had not gated-in for the Invoice No.CI/002/23-24 dtd.27.06.2023 pertains Shipping Bill No.2149179 dated.01.07.2023 was filed. After filing of Shipping Bill, the shipment was put on hold by SIIB Section, Custom House, Mundra. The Officers of SIIB found that the goods mentioned in the Shipping Bill were not available as the container was not come inside the gate of the Mundra Port, so the goods were not registered. The goods were found placed at the RDS Empty Yard. Further, information received that Caltex were attempting not 2 but 10 containers of Natural Garnet to export in the guise of Ramming Mass, which were placed in at RDS Empty Yard. Search was conducted at RDS Empty Yard vide Panchnama dated.10-11.07.2023 wherein, it was found that Caltex had placed with them not 10 but 20 containers of Natural Garnet which had arrived at RDS Empty Yard on 04.07.2023. It was also came to notice that Shri Navnath had given self-sealing permission from Custom House Kandla at their warehouse having address at Plot No.42, Sector 10A, GIDC, Gandhidham. On 11/12.07.2023, the officers of SIIB Kandla Custom House had also searched the godown premise under Panchnama dated.11-12.07.2023 and had drawn samples for sending for testing to IREL, Kollam, Kerala. The reports from IREL were perused by the authorized representative Shri Avisana on 21.09.2023. On the basis of the Test Report and confession statement of Shri Avisana, the Natural Garnet weighing 557,130 Kgs valued at Rs.44,57,040/- were placed under seizure on 21.09.2023. For seizure of the goods weighing 92,870 kgs



available at warehouse at Plot No.42, Sector 10A, GIDC, Gandhidham vide this office letter was communicated to SIIB Section, Custom House, Kandla. In this Investigation Report, goods found at Godown which falls under the jurisdiction of Custom House, Kandla is not covered.

2.19 Shri Navnath requested for release of the goods for back to town, goods weighing 557,130 Kgs available at M/s.RDS Empty Yard, Mundra. Section 7 of the Foreign Trade (D&R) Act 1992 provides:

"Importer-exporter Code Number.

7. No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General."

2.20 It can be inferred from above, that IEC is mandatory for import and IEC holder himself can import/export from that particular IEC. Further, it is trite that when a law requires a thing to be done in a particular manner, it has to be done in that particular manner and recourse to any other manner is necessarily forbidden. In view of the above, it is clear that subletting of IEC is against the purpose and procedure specified by FTDR Act and FTP. Therefore, the matter of subletting of IEC is being referred to Concerned regional office of DGFT.

2.21 From the facts and circumstance of the case, Investigation Report No.S/15-02/INQ/CALTEX IMPEX/SIIB-F/CHM/23-24 dated 23.10.2023 was issued proposing as under:

- The exporter was well aware about the actual facts of the case, it appears that M/s.Caltex Impex, had deliberately mis-declared the subject goods with respect to material particulars such as description and classification and attempted to illegally export the same even when they were not having the canalization certificate from M/s. Indian Rare Earth Limited (IREL) as required in terms of Notification No. 26/2015-20 dated 21.08.2020 issued by DFGT. By the act of commission and omission of mis-declaring the subject goods export of which was restricted and attempting to export illegally the same, M/s.Caltex Impex have rendered the subject goods covered under Shipping Bill Nos. 2149179 dated.01.07.2023 liable for confiscation under Section 113 (d) and 113(i) of Customs Act, 1962. Therefore, M/s. Caltex Impex through its beneficial owner Shri Navnath Narain Gole have rendered themselves liable for penalty under Section 114



(i) of the Customs Act, 1962.

b. The exporter has knowingly submitted false and incorrect declaration in the invoice and Shipping Bill No.2149179 dated.01.07.2023 submitted before Customs authorities. The exporter has thereby rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

c. Shri Asif, Proprietor of M/s.Caltex Impex had sold the IEC to Shri Navnath Narain Gole for an amount of Rs.1,25,000/- As Shri Asif had failed to fulfil his responsibility under section 50 of the Customs Act, 1962 regarding verification truth and accuracy in declaration filed on his name. So, he is liable for penalty under Section 117 of the Customs Act, 1962.

2.22 In light of the above and on the basis of evidences collected during investigation by SIIB Custom House Mundra, there appears a case to allege against M/s.Caltex Impex, represented by its beneficial owner Shri Navnath Narain Gole, under the provisions of the Customs Act, 1962. Shri Navnath Gole vide his statement dated 21.10.2023 had submitted that they do not want any SCN or Personal Hearing in the matter.

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

- She ordered to confiscate 53.950 MTS of the seized goods viz. "Natural Garnet" contained in 2 containers covered under Shipping Bill No.2149179 dated 01.07.2023 having declared FOB Value of Rs.4,86,437.39/- and 5,03,180 kgs of "Natural Garnet" contained in the remaining 18 containers having total quantity of 557130 Kgs having declared Value of Rs.44,57,040/- (Rupees Forty Four Lakhs Fifty Seven Thousand and Forty Only) export of which is restricted and attempted to export improperly & illegally, the exporter have rendered the subject goods liable for confiscation under Section 113(d) & 113 (i) of the Customs Act, 1962. However, she imposed Redemption Fine Rs. 10,00,000/- (Rs. Ten Lakhs only) in lieu of confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962, to redeem the goods only for the purpose of Back to Town (BTT);
- She imposed penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on the exporter, viz., M/s. Caltex Impex, holding IEC No. AZVPK9841P under Section 114(i) of the Customs Act, 1962;



- iii. She imposed penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on the exporter, viz., M/s. Caltex Impex, holding IEC No. AZVPK9841P under Section 114AA of the Customs Act, 1962;
- iv. She imposed penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on Shri Asif, Proprietor of M/s Caltex Impex, holding IEC No. AZVPK9841P under Section 117 of the Customs Act, 1962.

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 The Adjudicating Authority confiscated the goods under Section 113(d) and 113(i) of the Customs Act 1962. Section 113(d) & 113(i) read as under;

*" SECTION 113-The following export goods shall be liable to confiscation : -
(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77; "*

3.2 The RDS empty container yard is used exclusively for empty containers, there can be no reason for loaded container to be in the said yard. RDS empty container yard is more than 50 km away from Mundra port; the goods were not within the customs area/station hence the goods were not liable to confiscation. There was no attempt to export. The goods were more than 50-75 kms from the customs area/port, by no stretch of imagination it can be considered to be an attempt to export. Assuming but without conceding, the purported to be permission to self- sealing was taken from the Kandla Customs authorities, the Mundra Customs authorities have no jurisdiction to deal with goods; it was within the jurisdiction Kandla customs only, Therefore, the impugned order is passed by the officer who do not have power to do so; hence, impugned O-I-O is liable to set aside.

3.3 Appellant submits that section 113(d) of the stipulate that any goods



entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this act. It is submitted that the term "entry made under the Act" means an entry made under Section 50 of the Customs Act 1962. For application of section 113(d) the precondition is that the goods do not correspond in respect of value or any material particular with the entry made under the Customs Act. In the present case no shipping bill is filed as provided under section 50 of the Customs Act, hence, no entry is made; therefore, confiscation of the goods under Section 113(d) is erroneous and illegal. therefore, confiscation under section 113(d) as well as 113(i) is liable to be set aside.

3.4 ~~Adjudicator~~ The Adjudicating Authority failed to appreciate that the goods seized at RDS empty yard and GIDS Gandhidham, the goods are confiscated under section 113(d) and 113(i). For confiscation under section 113(d) the said section provides, either there should be an attempt to export the goods or the goods should have been brought within the customs area for the purposes of export. Both these conditions are not satisfied in the case of appellant. The Adjudicating Authority confiscated the impugned goods under section 113(i) of the Customs Act 1962. Section 113(i) referred to above empowers the Customs authorities to confiscate any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

3.5 The Adjudicating Authority failed to appreciate that there was no attempt to export of the impugned goods; The goods were not brought within the limits of any Customs area for the purpose being exported. The goods were only for safety, were kept in the containers due to cyclone and were about 50-75 KM away from the Mundra port, therefore, confiscation under section 113(i) is erroneous and illegal. The Adjudicating Authority ordered to confiscate all the goods for mis-declaration. It is respectfully submitted that no shipping bill was filed for 18 containers. no entry under section 50 of the Customs Act was made, no declaration of any kind was made, therefor, confiscation all the cargo for mis-declaration is erroneous and unsustainable in law. The Appellant respectfully submits that the Ld. Respondent, with utmost respect to it, completely failed to appreciate the above facts and the legal provisions, thereby committed a serious and grave error of law as well of facts, thus, passed the impugned order without application of mind or improper application of mind and passed an erroneous and unsustainable order.



3.6 The classification of the goods as held by the Adjudicating authority is "Ex Facie" untenable and liable to be quashed and set aside. Assuming but without conceding, it is submitted that "Garnet" falls in two chapters of the Customs Tariff, chapter 25 and 71; under chapter 71 CTH-7103 and 7104; the "Garnet" is a descriptive word and it includes "natural garnet and or semi precious garnet and or synthetic garnet and or re-constructed garnet". Further, the IREL test report only state percentage of garnet in the sample and do not specify as to whether the goods tested by them are "natural garnet and or semi precious garnet and or synthetic garnet and or re-constructed garnet". Assessment and classification of garnet is directly related to its nature; In absence of such specification, it is only assumption and presumption of the Customs authority that the goods are restricted as per the above notification, which has no base to stand. The Adjudicating Authority held that the goods attempted to be exported in violation of Notification No.26/2015-20 dated 21-08-2018, particularly entry 98A thereto. The Appellant submits that the impugned goods are not covered by the Notification No.26/2015-20 dated 21-08-2018, entry 98A; column 2 of notification is for the Tariff Headings and column 4 for the goods which reads as "Beach sand minerals [limonite, Rutile, Leucoxene] (Titanium bearing minerals), Zircon, garnet, sillimanite and monazite(uranium and Thorium); and the last item in column 2 of the said notification is CTH-25132030; "Garnet" falls in two chapters, chapter 25 and 71; CTH 251320 covers-Emery, Natural Corundum, Natural garnet and other natural Abrasives; the goods are declared "Natural Abrasive Stone"; which is appropriately covered under CTH 25132090.

3.7 In order to contravene the said notification goods shall satisfy both the conditions, e.g the goods shall be as stated in column 4 and fall under CTH mentioned in column 2. In the present case no shipping bill is filed; there is no declaration at all. In view of aforesaid submissions, there is no misdeclaration as contemplated under Section 113(i) of the Customs Act. Therefore, confiscation of the impugned goods under Section 113(i) is illegal, erroneous and hence not sustainable in law. The adjudicating authority, with utmost respect to it, passed the impugned order without application of mind and or improper application of mind, therefore, the impugned order is non est in the eye of law and therefore, liable to be quashed and set aside.

3.8 Section 114(i) of the Customs Act empowers the Customs



Authorities for levy penalty on any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty under section 114(i) of the Customs Act 1962. In view of the foregoing submissions it is submitted that the appellant has not committed any act or omissions and or have not aided or abetted in omission or commission of such acts or has not violated the said DGFT notification which have allegedly rendered the said goods liable to confiscation under any sub- section of Section 113 of the Custom Act 1962. Therefore, levy of penalty under section 114(i) erroneous and unsustainable in law. Section 114AA provides levy of penalty on any person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Thus, Section 114AA specifically deals with cases where documentation, which is incorrect or false. No shipping bill is filed; no documents prepared or submitted to the Customs authorities, no declaration is made; no goods brought near the limit of the Customs port. The impugned order merely reproduced the legal provisions of Section 114(i) & 114AA and section 117 of the Customs Act 1962; no iota of evidence neither brought on record nor discussed in the impugned OIO to sustain the penalty under Section 114(i) & 114AA & 117 of the Customs Act 1962.

3.9 It is submitted that Adjudicating Authority imposed penalty under section 117 for selling his IEC to another person. There is no evidence to that effect. there is no provision under FTDA to sale the IEC; Adjudicating Authority failed to appreciate that the IEC is issued by the DGFT authorities under FTDA and the Adjudicating Authority do not have jurisdiction to deal with the FTDA, hence penalty under section 117 is without jurisdiction and therefore, unsustainable. Further, Adjudicating Authority has imposed penalty under section 114(i) of the Customs Act, its settled law that when a penalty is imposed under section 114(i) then section 117 is not invocable. The Adjudicating Authority, with utmost respect to it, miserably failed and neglected to consider these facts and legal provisions and has been swayed in passing the Impugned Order by imposing penalty under all the Sections of the Customs Act where any penalty can be imposed on totally irrelevant reasoning. The Impugned order, therefore, deserves to be quashed and set aside being perverse and illegal.

3.10 No show cause notice either written or oral was issued, impugned order is passed on the back of the appellant in violation of elementary principles



of natural justice. In view of the facts and circumstances as stated in foregoing paragraphs, it is manifestly clear that the issue, in the present case involves interpretation of provisions of Customs Act, Customs Tariff Act, Foreign Trade (Development and Regulation) Act 1992; Rule 11 and 14 of Foreign Trade (Regulations) Rules 1993 and Notification No.26/2015-20 dated 21-08-2018; As already submitted, the appellant was entertaining a bonafide belief. It has been held by the Hon'ble Tribunal in large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions.

PERSONAL HEARING:

4. It is pertinent to mention that the appellant had not submitted the challan for pre-deposit along with appeal. Personal hearing was granted to the Appellant on 29.04.2025, following the principles of natural justice. The Advocate Shri Jhamman Singh vide letter dtd. 29.04.2025 requested for adjournment of 1 month as the appellant was in the process of making payment of pre-deposit. Thereafter vide letter dtd. 08.05.2025 another personal hearing was fixed on 29.05.2025 and the appellant was specifically informed about the non payment of pre-deposit.

4.1 Shri Jhammam Singh, Advocate appeared for the hearing held on 29.05.2025 in virtual mode on behalf of the appellant. He re-iterated the submission made at the time of filing the appeal. He also sent additional written submissions and copies of orders and judgments relied upon the following case laws :-

- Ranjit Export Private Ltd Vs. Collector of Customs, Madras reported at 1985(21)ELT353(HC-MAD)
- K Babu Rao & Others Vs. Collector of Customs, Cochin reported at 1986(26)ELT 766(Tri-Chennai)
- Bhanabhai Khal;pabhai Patel Vs. Collector of Customs & Central Excise , reported at 1987(28)ELT 489(Tri-Bombay)
- DOOARS Transport Pvt Ltd Vs. Collector of Customs, (Preventive) reported at 1993(64)ELT322(Tr-Kolkatta)
- BABBAN KHAN Versus COLLECTOR OF CUSTOMS (PREVENTIVE) 1993(64)ELT352 (Tribunal)
- RAMAYAN IMPEX Versus COMMISSIONI R OF CUSTOMS (EXPORTS). NAVA SHEVA--2005 (189) E.L.T 446 (Tri-Mumbai)




- Sachdeva & Sons v. Collector of Customs reported in 1987 (29) E.L.T. 917
- GOPAL AGARWAL Versus COMMISSIONER OF CUSTOMS, New Delhi-2015 (326) E.L.T. 593 (Tri - Del.)
- PROPRIETOR, CARMEL EXPORTS & IMPORTS Versus COMMR. OF CUS., COCHIN-2012 (276) E.L.T 505 (Ker.)

He also requested for short adjournment of 15 days for enabling the appellant to make predeposit

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 during hearing as well as additional submissions filed.

5.1 The right to appeal is a creation of statute and must be exercised subject to the conditions laid down in the statute itself. The primary issue is the Appellant's failure to deposit the mandatory pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Section 129E(i) of the Customs Act, 1962, explicitly mandates:

"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,— (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs]".

5.2 The Order-in-Original imposed penalties aggregating to Rs. 9,00,000/-. As only the penalties and fine are in dispute, and no duty is directly in dispute, the mandatory pre-deposit is 7.5% of the aggregate penalty amount imposed, which is Rs. 67,500/-. The appeal memo submitted by M/s Caltex Impex acknowledged the pre-deposit requirement, initially stating, "7.5% of penalty as per Section 129E is deposited " but the challan no. is kept blank , and later a ground for appeal stated that Rs. 67,500/- was "paid and deposited". However, when the personal hearing was fixed on 29.04.2025, the appellants' advocate requested vide letter dtd. 29.04.2025 for adjournment of 1 month as



the appellant was in the process of making payment of pre-deposit. Further the office of the Commissioner (Appeals) issued a notice on 08.05.2025, explicitly informing the Appellant that "till date you have not made the pre-deposit as prescribed under Section 129E of the Customs Act, 1962". During the Personal Hearing on 29.05.2025, the Advocate, Shri Jhamman Singh, informed the Commissioner (Appeals) that the pre-deposit was not made at the time of submitting the appeal and that "they are in the processes of making the predeposit". He also specifically requested a "short adjournment for enabling the appellant to make predeposit". The record of the Personal Hearing, dated 29.05.2025, confirms this request for adjournment to make the pre-deposit, indicating that the mandatory deposit was still outstanding as of that date.

5.3 The appeal was filed without the necessary pre-deposit, which is a mandatory statutory requirement for the appeal to be 'entertained'. The core legal principle at hand is established in Section 129E(i) of the Customs Act, 1962, which explicitly states that the Commissioner (Appeals) "shall not entertain any appeal" unless the appellant has deposited the prescribed percentage of the duty or penalty in dispute. The word "shall not entertain" in Section 129E creates an absolute bar for the appellate authority to proceed with the merits of the case in the absence of the stipulated pre-deposit. The appellate authority has no discretionary power to waive the pre-deposit below the statutory percentage, which was explicitly removed by the 2014 amendment to Section 129E. In the instant case, despite having been notified and given an opportunity during the hearing, the Appellant failed to provide proof of the mandatory deposit before the final consideration of the appeal.

5.4 The records conclusively demonstrate that the mandatory deposit was not made at the time of filing the appeal, nor by the date of the Personal Hearing. The office of the Commissioner (Appeals) formally notified the Appellant on 08.05.2025 that the pre-deposit as prescribed under Section 129E was "not made" till that date. During the Personal Hearing on 29.05.2025, the Appellant's advocate, Shri Jhamman Singh, conceded that the mandatory pre-deposit was "not made at the time of submitting the appeal" and requested an adjournment to enable the Appellant to make the deposit. The Appellant was aware of the statutory defect but failed to rectify it before the final consideration of the appeal, confirming a clear and sustained non-compliance with the jurisdictional requirement of Section 129E. In line with the settled legal position, the appeal is not entertainable.

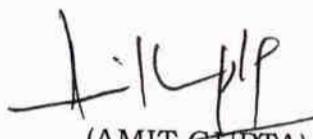


5.5 Since the appeal cannot be entertained due to the fatal procedural defect of non-payment of the mandatory pre-deposit, it is not necessary and indeed impermissible to proceed to discuss the merits of the appeal. The appeal is therefore rejected solely on the ground of non-compliance with the statutory pre-condition.

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

- i. The appeal filed by M/s Caltex Impex against the Order-in-Original No. MCH/ADC/MK/227/2023-24 dated 04.01.2024 is hereby rejected on the grounds of non-compliance with the mandatory pre-deposit requirement under Section 129E(i) of the Customs Act, 1962, without entering into the merits of the case.




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

Date: 30.10.2025

F. No. S/49-180/CUS/MUN/2023-24

By Speed post/E-Mail

To,
M/s Caltex Impex,
Panvel Plaza CHS, 2nd Floor,
Flat No.202, Kaveri Enterprises,
No.11, Sector-11, Panvel,
Navi Mumbai

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Mundra.
3. The Additional Commissioner of Customs, Custom, Mundra.
4. Guard File.

