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 – 20260671MN0000212912

क	फ़ाइल संख्या FILE NO.	S/49-01/CUS/JMN/APR/2026-27
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) :	JMN-CUSTM-000-APP-18-26-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	24.06.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. : 26/Additional Commissioner/ 2025-26 dated 13.03.2026 passed by the Additional Commissioner, Customs (Prev), Jamnagar.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	24.06.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Meena Refractories Pvt. Ltd. 8A – National Highway, Survey No. 137P, Village: Lalpar, Wankaner, Gujarat - 363621

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 है.
	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(	**बैगेज़ के रूप में आयातित कोई माल.**
(a)	any goods imported on baggage
(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 दस्तावेज़ों 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 हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 सम्बंन्ध 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, केंद्रीय 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	2nd 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 रुपए.**	
(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 रुपए**	
(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 रुपए.**	
(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

M/s. Meena Refractories Pvt. Ltd., 8A – National Highway, Survey No. 137P, Village: Lalpar, Wankaner, Gujarat - 363621 (hereinafter referred to as "the Appellant") have filed the present appeal against the OIO No. : 26/Additional Commissioner/ 2025-26 dated 13.03.2026 (herein after referred to as "the impugned order") passed by the Additional Commissioner, Customs (Prev), Jamnagar, Gujarat (herein after referred to as "the adjudicating authority").

2. Facts of the case, in brief, are that the appellant filed Bill of Entry No. 6187405 dated 09.12.2025 for import of goods i.e. "Alumina Carbon Bricks" and classified the same under CTH 6902 2030. The goods were imported from M/s. Power Zone Contracting LLC, Al Jubail, Saudi Arabia. The said Bill of Entry was assigned to the Faceless Assessment Group for assessment. During the course of assessment, a query dated 15.12.2025 was raised by the Faceless Assessment Group observing that, from the photographs/images submitted in respect of the imported goods, the same appeared to be old and used refractory bricks, i.e. Other than capital goods, the import of which requires authorisation from DGFT in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. The appellant failed to furnish any reply or produce the requisite authorisation as mentioned above. Therefore, the said Bill of Entry was forwarded to the Port Assessment Group (PAG) for adjudication, as the goods falls under the category of restricted goods imported without a valid authorisation.

2.1 Further, during the local assessment, the officers of the ICD, Morbi also raised query on 19.12.2025 that upon perusal of the uploaded pictures of the import goods – Alumina Carbon Bricks, the FAG has concluded that the goods are old and used Refractory bricks i.e. Other than Capital Goods which requires authorisation from the DGFT as per para 2.31(ii) of the FTP, 2023. Subject goods fall under the category of the restricted goods without any valid authorisation, therefore, appears to be liable for confiscation. Therefore, the appellant was requested to submit valid DGFT authorisation in this regard, if any, along with their specific reply.

2.2 Examination of the imported goods was conducted under Panchnama dated 31.12.2025 at ICD, Morbi in the presence of the appellant and the Customs Broker/CHA. During examination, the goods were found to be old and used refractory bricks, i.e. goods other than capital goods, import of which requires DGFT authorisation in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. Since the appellant failed to produce the requisite DGFT authorisation and had not declared the old and used nature of the goods, the goods appeared liable for confiscation under Sections 111(d) and

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111(m) of the Customs Act, 1962. The goods were thereafter seized vide Seizure Memo dated 31.12.2025 and handed over to the custodian M/s Navkar Corporation for safe custody of the imported goods.

2.3 Further, opinion of a Government-approved Chartered Engineer, Shri Pankaj N. Udani, was obtained, who vide Report No. PNU/SLI/25-26/207 dated 08.01.2026, after detailed examination and analysis of the consignment, opined that the imported Alumina Carbon Bricks were old and used. The Chartered Engineer also certified that the declared value of the goods was fair and reasonable. The said Bill of Entry was got cancelled automatically by system on 08.01.2026, therefore, the appellant filed fresh /new Bill of Entry No. 6943986 dated 17.01.2026 for the processing and clearance of the above said imported goods.

2.4 In view of the above facts, it appeared that the appellant was aware that the imported goods were old and used goods falling under the category of goods other than capital goods, import of which is restricted and requires valid authorisation from DGFT in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. Although the appellant submitted that they were in the process of obtaining the requisite authorisation from DGFT, no such valid authorisation was produced till date. Therefore, Show Cause Notice No. ADC-23/2025-26 dated 19.02.2026 was issued proposing demand of Customs duty amounting to Rs.5,47,767/- under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA, confiscation of the goods under Sections 111(d) and 111(m), and imposition of penalties under Sections 112(i) and 114AA of the Customs Act, 1962.

2.5 Further, the appellant in the present matter, have paid the Customs duty of Rs. 5,47,167/-, along with applicable interest of Rs. 19,449/- and penalty of Rs. 82,165/- (being 15% of Customs duty) in terms of Section 28(5) of the Customs Act, 1962, vide Challan No. 2059613911, 1621827266 & 1349931568 all dated 19.02.2026 in respect of the said Bill of Entry. Accordingly, they requested to conclude the proceedings under Section 28(6) of the Customs Act, 1962.

2.6 After following the principles of natural justice, the Show Cause Notice dt. 19.02.2026 was adjudicated vide impugned order, whereby the adjudicating authority dropped the demand of Customs duty and interest, imposed penalty of Rs. 50,000/- under section 112(a) and Rs. 1,00,000/- under Section 114AA of the Customs Act , 1962. The adjudicating further order to confiscate the imported goods valued at Rs. 19,75,002/- under Section 111(d) and 111(m) of the Customs Act, 1962 but allow the appellant to re-export the goods without payment of redemption fine.

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3. Being aggrieved and dissatisfied by the impugned order, the appellant filed appeal with Commissioner(A), Customs, Ahmedabad vide appeal dated 04.04.2026 on 08.04.2026. In their defence submission, they have raised and submitted various points, gist / summary of the same are mentioned below:

A. Impugned Order Beyond the Scope of Show Cause Notice:

The Appellant submits that the impugned Order travelled beyond the scope of the show cause notice by imposing a mandatory re-export condition, whereas the show cause notice had only proposed confiscation with an option of redemption fine under Section 125 of the Customs Act. The Appellant had consistently sought waiver of show cause notice and personal hearing and requested imposition of reasonable redemption fine for home consumption. It is settled law that an adjudication order cannot travel beyond the show cause notice and therefore the mandatory re-export condition is liable to be set aside on this ground alone.

B. Mandatory Re-export Condition is Bad in Law:

The direction mandating re-export is contrary to Section 125 of the Customs Act and settled judicial precedents. The goods in question are at best "restricted goods" and therefore redeemable on payment of redemption fine. The Appellant had never sought re-export of the goods and such condition was imposed suo motu by the Adjudicating Authority relying upon Selvam Industries v. CC – 2021 (377) ELT 458 (Tri.-Chennai) and Sankar Pandi v. UOI – 2002 (141) ELT 635 (Mad.).

The issue is no longer res integra. The Hon'ble Madras High Court in CC v. M/s. Magal Engg. Tech – CMA No. 1135/2020 categorically held that imposition of mandatory re-export condition is not envisaged under Section 125 of the Customs Act. Similarly, the Hon'ble High Court of Andhra Pradesh & Telangana in CC v. M/s. HBL Power Systems – CEA No.175/2018 held that in absence of any statutory provision empowering adjudicating authorities to direct compulsory re-export, no such condition can be imposed.

Further, this Hon'ble Appellate Authority itself has consistently taken the same view in M/s. D. Bhatia and Company – Order-in-Appeal No. S/49-488/CUS/MUN/2025-26 dated 20.11.2025 and M/s. Torrent Electro India – Order-in-Appeal No. S/49-136/CUS/MUN/2023-24 dated 30.10.2025, wherein mandatory re-export conditions imposed under Section 125 were set aside as legally unsustainable.

The Appellant further submits that re-export to Saudi Arabia is practically impossible due to prevailing wartime conditions and disruption of maritime trade routes in the Middle East. Hence, the impugned condition is contrary to law, impractical, and liable to be quashed.

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C. Appellate Authority May Determine Redemption Fine Instead of Remand:

The Appellant intends to clear the goods for home consumption upon payment of appropriate redemption fine. However, due to prolonged detention of goods, ICD and demurrage charges have accumulated substantially. All necessary documents for determination of redemption fine, including Bill of Entry, valuation report, quantity and weight details, are already available on record and undisputed. It is settled practice that in matters involving redemption fine, appellate forums should themselves determine reasonable redemption fine instead of remanding matters for de novo adjudication, particularly where delay results in mounting demurrage and ICD charges. Reliance is placed on the observations of the Hon'ble Supreme Court in Mahendra Prasad Agarwal v. Arvind Kumar Singh – 2026 INSC 175, wherein unnecessary remands and "consider jurisprudence" were deprecated as being contrary to effective justice delivery. Therefore, this Hon'ble Authority may itself determine appropriate redemption fine in the interest of justice.

D. Redemption Fine Should be Reasonable and Proportionate:

The purpose of redemption fine is only to neutralize the margin of profit and therefore it must remain proportionate and reasonable. It is a settled and consistent practice across judicial forums that in cases involving restricted/second-hand goods, redemption fine is ordinarily fixed at around 10% of CIF value and penalty at 5%. Reliance is placed on M/s. Navpad Enterprises v. CC – Final Order dated 10.03.2008, wherein the Tribunal, after considering several precedents, held that redemption fine should ordinarily be restricted to 10% and penalty to 5% of value. Similar view was reiterated in Omex International v. CC – Final Order dated 18.02.2015.

In the present case, ICD charges have already exceeded the likely redemption fine solely because of the unlawful mandatory re-export condition imposed by the Department. The Appellant had throughout acted bona fide, cooperated with the investigation, waived show cause notice and personal hearing, and voluntarily paid customs duty and interest under Section 28(5). Thus, imposition of excessive redemption fine would defeat the very purpose of Section 125. Appropriate abatement/deduction on account of ICD charges may therefore kindly be granted and only nominal redemption fine may be imposed.

E. Penalty under Section 112(a) is Not Sustainable:

Penalty under Section 112(a) requires a positive act or omission rendering goods liable to confiscation. The Appellant had imported the goods on a bona fide belief that they were new Alumina Carbon Bricks, as reflected in the Purchase Order, Invoice, Product Safety Data Sheet, Certificate of Analysis, and Certificate of

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Origin issued by the Supplier. There was no occasion for the Appellant to suspect that the goods were old and used.

The present case is one of misrepresentation by the foreign supplier and not one involving conscious or deliberate violation by the Appellant. Neither the show cause notice nor the impugned order brings any evidence such as parallel invoices, communications, or inculpatory statements showing knowledge or involvement of the Appellant.

Reliance is placed on Rajesh Gandhi v. CC – 2008 (227) ELT 530 (CESTAT-Mumbai), wherein it was held that knowledge that goods are liable to confiscation cannot be presumed merely from circumstances and the burden lies upon the Revenue to establish such knowledge through cogent evidence. Penalty provisions being penal in nature must be construed strictly. Accordingly, penalty under Section 112(a) is liable to be set aside.

F. Penalty under Section 114AA is Not Sustainable:

Penalty under Section 114AA requires proof of knowingly or intentionally making false declarations. In the present case, the Appellant consistently maintained that it had no knowledge that the goods were old and used until examination of the consignment. No evidence has been brought on record by the Department to establish deliberate misdeclaration, mens rea, or conscious involvement of the Appellant.

Reliance is placed on Kamal Sehgal v. CC (Appeals) – 2020 (371) ELT 742 (CESTAT-Delhi), wherein it was held that penalty under Section 114AA can be imposed only where there is sufficient evidence regarding prior knowledge and intentional wrongdoing, and such mens rea cannot be presumed.

In absence of any evidence such as parallel import documents, incriminating communications, or admissions establishing intentional false declaration, the penalty imposed under Section 114AA is unsustainable in law and liable to be set aside.

G. Without Prejudice, Penalties are Excessive and Liable to Reduction"

Without prejudice to the above submissions, even assuming arguendo that penalties are leviable, the quantum imposed is highly excessive and disproportionate. The penalties of Rs. 50,000/- under Section 112(a) and Rs. 2,00,000/- under Section 114AA are not commensurate with the nature of the alleged contravention or the likely redemption fine.

It is a settled practice in similar matters that penalty is generally restricted to around 5% of CIF value, as recognized in Navpad Enterprises v. CC and Omex International v. CC. Further, the Appellant acted bona fide throughout the proceedings, cooperated fully with the investigation, and voluntarily paid customs duty and interest under Section 28(5). These mitigating circumstances deserve due

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consideration. Accordingly, the penalties, if any, may kindly be substantially reduced and in any event restricted to a reasonable amount not exceeding 5% of CIF value.

The appellant prays that quash and set aside the mandatory condition of re-export imposed vide para 15(iii) of the impugned Order and determine an appropriate amount of redemption fine as per the peculiar facts and circumstances of the present case, and in any case, at a rate not exceeding 10% of CIF value. Also prays to determine an appropriate abatement for ICD charges payable by the Appellant. Also requested to quash and set aside the penalty of Rs. 50,000/- and Rs. 2,00,000/- imposed under the act or in the alternative, reduce the quantum of both penalties, and in any case, at a rate not exceeding 5% of CIF value.

PESONAL HEARING: -

4. The appellant, vide letter e-mail dated 12.05.2026, requested for early hearing giving reason that the imported goods are lying at ICD, Morbi and incurring huge ICD chargers per day; that the goods are essential input product for manufacturing process, and their unavailability is detrimental to their business. Request of the appellant has been accepted on the based on merits and cause / reason shown. Personal hearing date was provided to the appellant. Shri .Parthiv Joshi, advocate attended personal hearing on behalf of the Appellant in virtual mode held on 21.05.2026. He reiterated the submissions made in appeal memorandum. He also submitted additional submission vide letters dated 17.05.26 & 21.05.26.

4.1 The appellant vide his additional submission dt. 17.05.2026 submitted *that that due to the substantial passage of time during the pendency of the present appeal, ICD charges have accumulated significantly. A latest Proforma Invoice reflecting the ICD charges as on date is annexed as Annexure O. It is therefore prayed that an abatement of ICD charges amounting to Rs. 5,82,448/-, or to the extent of the redemption fine as may be determined by the Ld. Appellate Authority, whichever is higher, be granted. Such relief is justified since, had the Ld. Adjudicating Authority imposed an appropriate redemption fine instead of the unwarranted re-export condition, the Appellant would have been able to secure release of the goods upon payment of such fine. The impugned direction has caused serious prejudice to the Appellant, resulting in substantial accumulation of ICD charges, erosion of profits, and additional financial losses due to non-availability of the imported goods for captive consumption. In these circumstances, and in the interest of justice, proportionality, and settled legal principles, it is humbly*

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prayed that appropriate abatement of ICD charges be granted and the redemption fine, if any, be imposed at a nil or nominal level.

4.2 The appellant further vide his additional submission dt. 21.05.2026 submitted that the Appellant makes the following submissions on the ***limited issue – as to whether a post-facto DGFT Authorization is mandatory pre-condition for imposition of Redemption Fine in case of restricted goods?***

It is submitted that in the present case, the Appellant had placed purchase order for new alumina carbon bricks, and the supplier-exporter had always represented selling of 'shaped and solid' bricks. Relevant contractual documents in that regard are already submitted as Annexure B through C/4 of the Memo of Appeal.

Further, as import of new alumina carbon bricks is neither prohibited nor restricted under the Customs Act, 1962 or Foreign Trade Policy, 2023 – there was no reason for the Appellant to obtain a DGFT License. Whereas the Appellant realised simultaneously with the Customs Department during examination that the supplier-exporter has supplied 'old and used' bricks instead. The Revenue has not produced any evidence or investigated so as to demonstrate that the Appellant had intentionally or knowingly prepared parallel-transaction documents to misguide the Customs authorities.

In such case, there was no requirement or occasion for the Appellant to obtain a DGFT Advance Authorization prior to importation. In any case, in order to demonstrate their bona fides, the Appellant has made a post-facto application to DGFT, which is still pending with the DGFT office as on date. The Appellant has sent reminder emails to the DGFT indicating the sub-judice nature of this matter, but no response is received. Copies of said pending Application and reminder emails are attached herewith as ***<u>Annexure P</u>***.

In any case – the moot question of law is – whether the Ld. Appellate Authority can deny imposition of redemption fine on the ground that the Appellant has not obtained DGFT authorization. The submissions in this regard as follows:

First, availability or otherwise of a DGFT authorization is not a condition-precedent in the present case.

- *In identical facts, where the import goods were restricted and where redemption fine was imposed for re-export only, the Hon'ble Supreme Court in* ***CC v. M/s. Atul Automations – CA/1057/2019*** *held that:*

  > *"Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore find no error*

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with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the customs authorities with fine under Section 112(a) of the Customs Act,1962."

Notably, in the aforesaid case, the ***DGFT had declined to issue an authorization to the importer****. Even in such extreme situation, the importer was allowed to redeem the goods, as they fell in 'restricted' category.*

The Supreme Court also upheld the dropping of section 114AA penalty.

Application*: In the present case, the Appellant stands on a better footing than the importer in Atul Automations (supra). The Appellant has applied to DGFT for authorization to demonstrate their bona fides. Pertinently, the as per para 2.31(ii) of FTP, 2023 – there are no special conditions of eligibility for obtaining the advance authorization for 'alumina carbon bricks'. Whereas other categories (such as capital goods) require compliance with various other laws such as Electronics and IT Goods Order, 2021, CRO, 2021, or other Environmental, Safety, Health norms, or certification from Chartered Engineer – alumina carbon bricks do not require any such condition.* ***Thus, the Appellant already substantially complies with the import condition. Thus, unexplained delay on part of DGFT should not prejudice the entitlement of the Appellant to get the goods cleared on payment of appropriate redemption fine.***

- *The Hon'ble Bombay High Court in* ***Commissioner v. Kargawal Corporation – Customs Appeal No. 5/2007*** *vide Judgment dated 23.09.2021 allowed the appeal and reduced the redemption fine. Notably, the adjudicating authority therein had imposed the redemption fine on a higher side specifically because the importer could not produce a DGFT license (see para 6 of the Judgment). However, the Hon'ble Court deprecated this finding, and held that levy of appropriate redemption fine (after considering margin of profit and demurrage) cannot be vitiated on unrelated factors such as absence of DGFT license.*

Second, availability or otherwise of a DGFT authorization does not clothe the Ld. Adjudicating Authority of powers it does not otherwise possess

- *It is trite position of law that what cannot be done directly, cannot also be done indirectly. Whereas the Appellant has submitted several decisions holding that section 125 of the Customs Act, 1962 does not empower the proper officer to impose a mandatory pre-export condition; it is submitted that merely because the DGFT application is long-pending, the entitlement of the Appellant to clear the goods on payment of redemption fine cannot be prejudiced. The Ld. Adjudicating*

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Authority is not clothed with special powers, which are otherwise not available to it, merely because the Appellant could not produce post-facto DGFT authorization in time due to its pendency with DGFT office.

- *Therefore, it is submitted that it is no longer res integra that mandatory pre-export condition is beyond the statutory mandate of section 125, and it is **not a form of permissible redemption fine**.*

In view of the above, it is humbly submitted that the Ld. Appellate Authority may impose a reasonable and calculated redemption fine. The Appellant also undertakes to produce the DGFT authorization if it is received within time. In any case, the Appellant maintains that it is substantially compliant with the import-conditions as per para 2.31(ii) of the FTP, 2023. In such case, it is not reasonable that the imported goods are held up at ICD, Morbi, accumulating significant charges."

DISCUSSION & FINDINGS:

5. Before going into the merits of the case, it is observed from Form C.A.-1/ appeal submission letter dated 04.04.2026 that the impugned order dated 13.03.2026 was communicated to the appellant on 13.03.2026, and the present appeal has been filed on 08.04.2026. Therefore, it is filed within the normal period of 60 days prescribed for filing an appeal.

5.1 It is further observed that the appellant, with respect to the payment of mandatary pre-deposit for filing appeal, has submitted that an amount of Rs. 18,750/- i.e. 7.5% of Penalty in dispute of Rs.2,50,000/- paid vide Challan No. 7404791245 dated 04.04.2026 in compliance of the provisions of section 129E of the Customs Act, 1962, which fulfil the requirement of pre deposit under the provisions of Section 129E of the Customs Act, 1962.

5.2 As the appeal has been filed within the stipulated time-limit under Section 128 of the Customs Act, 1962 and with fulfilling the requirement of mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal. One set of the appeal memorandum has been forwarded to the adjudicating authority for comments vide this office letter dated 13.05.2026, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant. It is also put on record that the communication of personal hearing date was given to the

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appellant as well as the adjudicating authority in follow of principle of natural justice and link of the same shared to them to attend PH through virtual mode.

6. I have carefully examined the impugned order, the Appeal Memorandum filed by the appellant, the written and oral submissions made during the course of personal hearing, and the documents available on record. From the records available, the main issues arising for determination in the present appeal are whether the adjudicating authority was justified in directing re-export of the goods instead of allowing clearance of the imported goods for home consumption on payment of redemption fine, and whether the penalties imposed upon the appellant under Sections 112(a) and 114AA of the Customs Act, 1962 are legally sustainable in the facts and circumstances of the case.

6.1 I find that it is on record that the imported goods namely "Alumina Carbon Bricks" were found, upon physical examination conducted under Panchnama dated 31.12.2025 and also as per the opinion of the Government-approved Chartered Engineer, to be old and used refractory bricks. It is observed from the records that no valid DGFT authorisation for the import of the old and used goods in question was available on record at the relevant time, which fall under the category of goods other than capital goods and whose import is restricted in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. Therefore, I find that the imported goods were rightly held liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962 by the adjudicating authority. The appellant has also not disputed the confiscability of the goods and has accepted the duty liability by voluntarily paying customs duty, interest and penalty under Section 28(5) of the Customs Act, 1962.

6.2 The main dispute in the present appeal is regarding the decision of the adjudicating authority to allow only re-export of the goods. The appellant contends that the goods should have been allowed to be redeemed for home consumption on payment of redemption fine instead of directing re-export. On careful examination of the impugned order, I find that the show cause notice dated 19.02.2026 proposed confiscation of the goods under Sections 111(d) and 111(m) of the Customs Act, 1962 and also proposed imposition of redemption fine under Section 125 of the Customs Act, 1962. However, the show cause notice did not contain any proposal for mandatory re-export of the goods. It is a settled legal principle that an adjudication order cannot go beyond the allegations and proposals made in the show cause notice. Therefore, the direction of the adjudicating authority requiring mandatory re-export of the goods, without any such proposal in the

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show cause notice, is not legally sustainable.

6.3 Further, I find force in the contention of the appellant that Section 125 of the Customs Act, 1962 does not specifically give power to the adjudicating authority to impose a condition of compulsory re-export while granting an option to redeem confiscated goods. The appellant has argued that Section 125 only provides for redemption of confiscated goods on payment of redemption fine and does not contain any provision authorising imposition of mandatory re-export condition. I find merit in this contention.

It is observed from the case law quoted by the appellant wherein, the Hon'ble Madras High Court, in the case of *CC v. M/s. Magal Engg. Tech – CMA No. 1135/2020*, has clearly held that imposition of a re-export condition under Section 125 of the Customs Act is not contemplated under law. Similarly, the Hon'ble High Court of Andhra Pradesh & Telangana, in the case of *CC v. M/s. HBL Power Systems – CEA No. 175/2018*, held that where there is no specific statutory provision granting such power to the adjudicating authority, a condition of mandatory re-export cannot be imposed.

6.4 I find that the appellant in his appeal memorandum submitted and quoted as under :

B8. Similarly, the Hon'ble High Court of Andhra Pradesh and Telangana in CC v. M/s. HBL Power Systems - CEA/175/2018 held that:

> *"We are of the view that the Tribunal was justified in holding that, <u>in the absence of a specific provision conferring power on the adjudicating authority to direct re-export of the goods as a condition precedent for grant of redemption on payment of fine, no such power was available to be exercised by the authorities concerned</u>. It is only if power is conferred on the authority under the Act or the Rules, can it be exercised in terms thereof; and, in the absence of any specific provision in the Act or the Rules which confer on the adjudicating authority the power to direct the importer to re-export the goods, we find no error in the order of the Tribunal"*

B9. It is submitted that this Ld. Office has consistently taken a similar view where mandatory re-export conditions were imposed in the following matters:

- *Order-in-Appeal No. S/49-488/CUS/MUN/2025-26 (DIN: 20251171MN0000000EEE) dated 20.11.2025 of M/s. D. Bhatia and Company:*

  "5.5 However, I find that the impugned order has directed the re-export of the goods upon payment of a redemption fine of Rs. 15,50,000/- under section 125 of

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the customs Act, 1962. This portion of the order, mandating re- export as a condition for redemption, is contrary to various decisions of the Hon'ble High courts and the CESTAT. Section 125 of the customs Act does not confer any authority upon the adjudicating officer to impose conditions such as compulsory re-export when permitting redemption of confiscated goods. The provision merely empowers the authority to offer an option to redeem the goods on payment of fine in lieu of confiscation. Its scope cannot be expanded to include the imposition of restrictive conditions like mandatory re-export.

5.8 In view of the above findings, the appeal is partly allowed. The direction in the impugned order mandating re-export of the goods is hereby set aside."

- *Order-in-Appeal No. S/49-136/CUS/MUN/2023-24 (DIN: 20251071MN00003303CB) dated 30.10.2025 of M/s. Torrent Electro India – in a similar factual matrix where imported goods were found to be 'second hand' and thus restricted as per FTP, 2023, it was held:*

"5.4 I find substantial merit in the Appellant's contention based on the clear distinction established by the Hon'ble Supreme Court. Hon'ble Supreme Court in Commissioner of Customs v. Atul Automations Pvt. Ltd. [2019 (365) E.L.T. 465 (S.C.) has explicitly upheld the principle that a harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will not detract from the redemption of such restricted goods imported without authorization upon payment of the market value. The Court categorically stated that "There will exist a fundamental distinction between what is prohibited and what is restricted.". This judgment directly applies to the instant case, as the goods were found to be restricted items for import (Second Hand Capital Goods without authorization under Para 2.31 of FTP).

5.6. The imposition of a condition that redemption is only for re- export is indeed beyond the scope of the Adjudicating Authority's power under Section 125. Thus, the condition that the goods must be redeemed for re-export purpose only is legally unsustainable and is hereby set aside."

6.5 The appellant also filed additional submissions vide letter dated 21.05.2026 during the course of personal hearing - whether a post-facto DGFT Authorization is mandatory pre-condition for imposition of Redemption Fine in case of restricted goods ?

"In any case – the moot question of law is – whether the Ld. Appellate Authority can deny imposition of redemption fine on the ground that the Appellant has not obtained DGFT authorization. The submissions in this regard as as follows:

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First, availability or otherwise of a DGFT authorization is not a condition-precedent in the present case.

- *In identical facts, where the import goods were restricted and where redemption fine was imposed for re-export only, the Hon'ble Supreme Court in CC v. M/s. Atul Automations – CA/1057/2019 held that:*

  > *"Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the customs authorities with fine under Section 112(a) of the Customs Act, 1962."*

  Notably, in the aforesaid case, the DGFT had declined to issue an authorization to the importer. Even in such extreme situation, the importer was allowed to redeem the goods, as they fell in 'restricted' category.

  The Supreme Court also upheld the dropping of section 114AA penalty.

  Application: In the present case, the Appellant stands on a better footing than the importer in Atul Automations (supra). The Appellant has applied to DGFT for authorization to demonstrate their bona fides. Pertinently, the as per <u>para 2.31(ii) of FTP, 2023 – there are no special conditions of eligibility for obtaining the advance authorization for 'alumina carbon bricks'. Whereas other categories (such as capital goods) require compliance with various other laws such as Electronics and IT Goods Order, 2021, CRO, 2021, or other Environmental, Safety, Health norms, or certification from Chartered Engineer – alumina carbon bricks do not require any such condition. Thus, the Appellant already substantially complies with the import condition</u>. Thus, unexplained delay on part of DGFT should not prejudice the entitlement of the Appellant to get the goods cleared on payment of appropriate redemption fine.

- *The Hon'ble Bombay High Court in Commissioner v. Kargawal Corporation – Customs Appeal No. 5/2007 vide Judgment dated 23.09.2021 allowed the appeal and reduced the redemption fine. Notably, the adjudicating authority therein had imposed the redemption fine on a higher side specifically because the importer could not produce a DGFT license (see para 6 of the Judgment). However, the Hon'ble Court deprecated this finding, and held that levy of appropriate redemption*

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fine (after considering margin of profit and demurrage) cannot be vitiated on unrelated factors such as absence of DGFT license.

Second, availability or otherwise of a DGFT authorization does not clothe the Ld. Adjudicating Authority of powers it does not otherwise possess

- *It is trite position of law that what cannot be done directly, cannot also be done indirectly. Whereas the Appellant has submitted several decisions holding that section 125 of the Customs Act, 1962 does not empower the proper officer to impose a mandatory pre-export condition; it is submitted that merely because the DGFT application is long-pending, the entitlement of the Appellant to clear the goods on payment of redemption fine cannot be prejudiced. The Ld. Adjudicating Authority is not clothed with special powers, which are otherwise not available to it, merely because the Appellant could not produce post-facto DGFT authorization in time due to its pendency with DGFT office.*
- *Therefore, it is submitted that it is no longer res integra that mandatory pre-export condition is beyond the statutory mandate of section 125, and it is not a form of permissible redemption fine."*

6.6 It is observed from the submissions made by the appellant in the appeal memorandum as well as during the course of personal hearing that the main grievance of the appellant is against the direction of the adjudicating authority requiring mandatory re-export of the goods. The appellant has contended that such direction travels beyond the scope of the show cause notice, which had proposed confiscation of the goods under Sections 111(d) and 111(m) of the Customs Act, 1962 and imposition of redemption fine under Section 125 of the Act, but did not contain any proposal for mandatory re-export. The appellant has further relied upon various judicial pronouncements, including *CC v. HBL Power Systems*, *CC v. Magal Engg. Tech.*, and *CC v. Atul Automations Pvt. Ltd.*, to contend that Section 125 of the Customs Act, 1962 does not contemplate imposition of a mandatory re-export condition while granting redemption of confiscated goods. The appellant has also raised specific contentions regarding the distinction between prohibited and restricted goods, the effect of non-availability or pendency of DGFT authorization, and the permissibility of redemption of restricted goods for home consumption on payment of redemption fine.

6.7 I find that the impugned order does not contain any detailed examination or findings on the aforesaid legal submissions, judicial precedents, and contentions raised by the appellant as detailed above. Since these issues have a direct bearing on the legality and sustainability of the direction for mandatory re-export, I am of the considered view that they require proper examination and adjudication by the original adjudicating authority. Further, it is observed that the adjudicating authority ordered re-export of the imported goods without obtaining the appellant's views/comments on the proposed re-

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export. The records do not indicate that any opportunity was afforded to the appellant to present its position on this aspect before passing the impugned order.

6.8 Accordingly, in the interest of justice and in order to ensure compliance with the principles of natural justice, I deem it appropriate to remand the matter to the adjudicating authority under Section 128A(3) of the Customs Act, 1962. In this regard, reliance is placed upon the judgment of the Hon'ble Gujarat High Court in *Medico Labs* [2004 (173) E.L.T. 117 (Guj.)], the judgment of the Hon'ble Bombay High Court in *Ganesh Benzoplast Ltd.* [2020 (374) E.L.T. 552 (Bom.)], and the decisions of the Hon'ble Tribunal in *Prem Steels Pvt. Ltd.* [2012-TIOL-1317-CESTAT-DEL] and *Hawkins Cookers Ltd.* [2012 (284) E.L.T. 677 (Tri.-Del.)], wherein the appellate authority's power to remand under Section 128A(3) of the Customs Act, 1962 has been recognized.

6.9 In view of the foregoing discussion, the appeal is allowed by way of remand. The impugned order is set aside and the matter is remanded to the adjudicating authority for de novo adjudication in accordance with law. It is expressly clarified that no opinion or views have been expressed on the merits of the case.

सत्यापित/ATTESTED

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

Vishwajeet Singh
24.06.2026.

(Vishwajeet Singh)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

F. No. S/49-01/CUS/JMN/APR/2026-27 Dated: 24.06.2026

By email (as per Section 153(1) of the Customs Act, 1962)

To
M/s. Meena Refractories Pvt. Ltd.
8A – National Highway, Survey No. 137P,
Village: Lalpar, Wankaner,
Gujarat – 363621
(email: adv.parthivjoshi@gmail.com)

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2. The Commissioner of Customs, Jamnagar Customs (Prev)., Jamnagar , Gujarat. (email: commr-custjmr@nic.in)
3. The Additional Commissioner of Customs, Jamnagar Customs (Prev)., Jamnagar , Gujarat. (email: commr-custjmr@nic.in adj-custjmr@nic.in)
4. The Deputy/Assistant Commissioner of Customs, ICD-Morbi, Rajkot. (icd-morbi@gov.in).
5. Shri Parthiv Joshi, Advocate on behalf of M/s. Meena Refractories Pvt. Ltd. Wankaner. (adv.parthivjoshi@gmail.com)
6. Guard File.