



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
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DIN - 20260171MN000000F7BA

क	फ़ाइल संख्या FILE NO.	S/49-356/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-666-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	28.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Asif Sathi, Flat No. 4104, 41st Floor, B-Wing Orchid Enclave, Belasis Road, Mumbai Central Mumbai 400008



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

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हज़ार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.
	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Appeal has been filed by Shri Asif Sathi, Flat No. 4104, 41st Floor, B-Wing Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AKM/175/2024-25 dated 25.10.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra adjudicating (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present case involves an intricate and wide-ranging investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, which unearthed a large-scale, highly organized smuggling cartel operating through the Mundra Port. The investigation revealed that a common group of persons had established a sophisticated, multi-layered syndicate designed specifically to exploit the regulatory relaxations and procedural flexibilities inherent in the Special Economic Zone (SEZ) to Domestic Tariff Area (DTA) clearance mechanism. This syndicate was created for the primary purpose of importing prohibited and restricted goods—specifically high-value foreign-brand electronic cigarettes and various types of toys requiring mandatory Bureau of Indian Standards (BIS) compliance—by resorting to gross and calculated mis-declaration of description, quality, quantity, and value. While the broader investigation covered a staggering 18 import consignments involving eight different importers, the specific subject of this adjudication is the consignment imported in the name of M/s. M.M. Enterprises (IEC: BMEPM3625G) covered under DTA Bill of Entry No. 2012895 dated 26.08.2022.

2.1 The genesis of the case lies in specific, actionable intelligence gathered by the DRI suggesting a systematic and predatory abuse of the "self-assessment" and "trusted trader" schemes that underpin modern customs operations within the SEZ. The intelligence indicated that a smuggling cartel was utilizing front companies to move prohibited contrabands into the domestic market. Analysis of system data revealed that Vehicle No. GJ12BV0610 was carrying the import consignment imported through Container No. TLLU4615592. Acting swiftly upon this intelligence, DRI officers,



in coordination with the Surat Regional Unit, intercepted the truck near Palsana Chokdi on the National Highway on 01.09.2022.

2.2 The vehicle was found to be carrying Container No. TLLU4615592, which had been cleared from the SEZ Warehouse Unit of M/s. Empezar Logistics, Mundra, and was supposedly destined for a godown in Bhiwandi. Upon interception, the driver, Shri Chuna Singh Rawat, was questioned regarding the nature of the cargo. The preliminary inquiry and the recovery of incriminating documents from the driver—including e-way bills featuring unrelated entities—corroborated the intelligence that the container did not merely contain the declared items but was a vessel for contraband. Given the complexity of the concealment, the vehicle was escorted to ICD Sachin, where DRI officials requested the assistance of mechanical labor and equipment to de-stuff the entire container for an exhaustive examination in the presence of two independent arbitrators (Panchas). During the process, a person named Mr. Parvez Alam arrived at ICD Sachin, introducing himself as the representative of the actual buyers, Shri Mohammad Asif Sathi and Shri Sarfaraj Kamani, confirming the syndicate's oversight of the transit.

2.3 The rigorous examination of the impugned goods at ICD Sachin was conducted under Panchnamas dated 01/02.09.2022 and 19.10.2022. This process revealed a masterclass in smuggling techniques. Amidst the declared cargo of "Head Massagers" and "Exercise Books," officers recovered 107 cartons marked with the brand "DK123 XXL." Upon opening these cartons, they discovered a total of 85,600 pieces of electronic cigarettes of the "Yuoto" brand. These were found in a wide array of flavors clearly designed to appeal to younger demographics, including Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, Milk, and Coffee. These goods, falling under CTH 85434000, are strictly prohibited for import in terms of DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes Act, 2019.

2.4 Furthermore, the examination revealed 89,000 pieces of silicon "Pop up" toys falling under CTH 9503. These items were imported in direct violation of Policy Condition 2 of Chapter 95 of the Customs Tariff. This policy mandates that all imported toys conform to rigorous BIS standards, including IS: 9873 Part 1 (Safety aspects related to mechanical and physical properties), Part 2 (Flammability), and Part 3 (Migration of certain elements). The importer

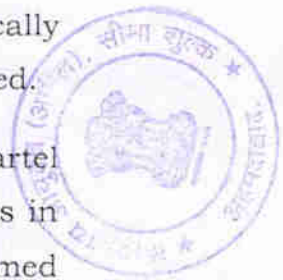


failed to produce any valid BIS compliance certificates, rendering the toys "prohibited goods" under Section 2(33) of the Customs Act, 1962. The examination also found excess quantities of declared items, such as 240 additional Head Massagers and 1,364 Exercise Books. These "filler" goods were strategically used to pad the container, ensuring that the prohibited items remained shielded from the container doors and providing a facade of legitimacy during any casual visual inspection at the port or SEZ gate.

2.5 The investigation into the role and culpability of the noticees revealed a deep-rooted conspiracy characterized by a high degree of planning and division of labor. M/s. M.M. Enterprises, through its proprietor Shri Mohammed Tahir Hanif Menn, acted as a willing front for the syndicate. Shri Tahir Menn admitted that he allowed the smuggling cartel led by Shri Mohammad Asif Sathi to use his firm's IEC and bank accounts in exchange for "rental" monetary benefits ranging from Rs. 15,000 to Rs. 50,000 per consignment. To further insulate the mastermind from detection, Shri Tahir Menn facilitated the creation of dummy firms like M/s. J.H. Enterprises in the names of domestic workers, such as Shri Juma Hamir Halepotra, demonstrating the predatory nature of the syndicate's recruitment.

2.6 A critical aspect of the syndicate's modus operandi was the "crossing" operation, a tactical maneuver designed to disrupt the surveillance of enforcement agencies. After a container was cleared from the Mundra SEZ, the syndicate would monitor its movement in real-time via "Wheelseye" tracking links. To evade detection by agencies tracking e-way bills or container numbers, the syndicate would arrange for the "crossing" of goods at intermediate locations like Navsari or Surat. This involved transloading the contraband from the original container into secondary vehicles, effectively breaking the digital and physical trail between the port of entry and the final destination. In the present case, Shri Parvej Alam was dispatched specifically to oversee this transloading just before the vehicle was tactically intercepted.

2.7 During the investigation, it was revealed that the smuggling cartel had utilized the IEC of M/s. M.M. Enterprises for successful importations in the past. Shri Tahir Menn, Shri Asif Sathi, and Shri Parvez Alam all confirmed in their voluntary statements that a total of 265 cartons (comprising 125 and 140 cartons respectively) had been imported in July and August 2022. These consignments contained approximately 212,000 pieces of electronic cigarettes. Although these goods had already been disposed of in the domestic market and



were not available for physical seizure, the Adjudicating Authority held them liable for confiscation under Section 111, noting that the proceeds of these past crimes were laundered through the same dummy accounts.

2.8 The individual roles in this well-oiled machinery were established through various voluntary statements recorded under Section 108:

- a. Shri Mohammad Asif Sathi (The Mastermind): Sathi was the architect and financier of the racket. He coordinated directly with overseas suppliers in China (such as "Mrs. Shelly") and finalized deals through firms like "AH International Trading Co." and "HK Longcheng Trade Co." He managed the financial trail, collecting cash from domestic purchasers and depositing it into dummy firm accounts to facilitate outward remittances, thereby bypassing legitimate forex regulations.
- b. Shri Mohammed Tahir Menn (The Facilitator): As the proprietor of M.M. Enterprises, he lent the "credibility" of a local business to the cartel. He introduced Shri Baldevsinh to Sathi to handle port-side logistics and was actively involved in monitoring the location of trucks via shared GPS links. He admitted that his firm never conducted any actual business in the goods imported but served merely as a conduit for Sathi's contrabands.
- c. Shri Sarfaraj Kamani (The Associate): A close partner of Sathi, Kamani was involved in the loading phase in China and was identified as a joint owner of the Bhiwandi godowns. Evidence confirmed his participation in planning the import of counterfeit goods and mobile phone accessories infringing the Intellectual Property Rights (IPR) of brands like Vivo, Oppo, and Realme.
- d. Shri Baldevsinh Vala (The Logistical Operative): Operating through M/s. Kalpana Exim, Vala was the operative who manipulated the shipping documents and invoices provided by the overseas suppliers. For ensuring the smooth clearance of prohibited items, he charged Sathi a premium of approximately Rs. 17 Lakhs per container—a fee far exceeding any legitimate forwarding commission.
- e. Shri Samir Sharma (The Customs Broker): A G-Card holder of M/s. Al Cargo Services, Sharma misused the SEZ Online portal's sub-login functionality. He filed the Bills of Entry despite knowing that the descriptions were false. To facilitate the exit of the trucks from the SEZ gate, he submitted e-way bills featuring unrelated parties, ensuring the actual destination remained masked.



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2.9 The investigation also highlighted gross professional negligence on the part of the then-Preventive Officer, Shri Vipin Sharma. Charged with the statutory duty to verify the physical cargo against the invoice, Sharma submitted an examination report stating he had "inspected the lot." The subsequent seizure of nearly 175,000 units of prohibited or un-declared cargo from that very container proved that no meaningful physical examination was ever performed. This "casual approach" provided the syndicate with a virtual "green channel," directly enabling the entry of prohibited contrabands that pose a risk to national health and child safety.

2.10 Under the Customs Valuation Rules (CVR), 2007, the Adjudicating Authority rejected the transaction values declared in Bill of Entry No. 2012895. Rule 12 was invoked because the significant mis-declaration rendered the declared values—and the associated invoices—fraudulent. Consequently, the value was re-determined using the "Best Judgment Method" under Rule 9. A government-approved Chartered Engineer assessed the market price of the seized goods at approx. Rs. 21.67 Crores, compared to a declared value of approx. Rs. 4.43 Lakhs.

2.11 On the basis of the investigation, Show Cause Notice dtd. 31.08.2023 was issued to the appellant and other persons. Consequently, the Adjudicating Authority passed the following order in respect of the appellant.

IN RESPECT OF GOODS IMPORTED AND CLEARED THROUGH BILL OF ENTRY NO. 2012895 DT. 26.08.2022:

- (I) He imposed penalty of Rs. 1,00,00,000/-- (Rupees One Crore Only) upon Asif Sathi (beneficial owner of the imported goods) under Section 112(a)(i) of the Customs Act, 1962.
- (II) He impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) upon Asif Sathi (beneficial owner of the imported goods) under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

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



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3.1 The Appellant contends that the Respondent violated the principles of natural justice by denying the request for a cross-examination of the Chartered Engineer. The Appellant argues that the right to cross-examine a witness whose report forms the basis of an allegation is a legal right, and the Respondent's refusal based on the Appellant's presence during the Panchnama or the age of the Show Cause Notice is legally unsustainable. It is further asserted that under Section 138B of the Customs Act, the adjudicating authority is obligated to examine witnesses before relying on their statements, and failure to do so renders the evidence inadmissible.

3.2 The Appellant challenges the valuation methodology adopted by the Respondent, claiming it relies on a faulty and baseless report by a Chartered Engineer who lacks the specific expertise required for such goods. The appeal points out several deficiencies in the valuation report, including a failure to specify quality parameters, lack of international market price comparisons, and a failure to account for economies of scale associated with bulk imports. The Appellant maintains that the transaction value should be accepted under Rule 3 of the Customs Valuation Rules, as the payments were made through proper banking channels and there is no evidence of "flowback" of money to the foreign supplier.

3.3 The Appellant argues that the Department failed to provide independent evidence to support the charge that he was the "mastermind" or "kingpin" of a smuggling racket. It is submitted that the case is built entirely on the statements of co-accused individuals, which cannot be relied upon without independent corroboration, especially when those individuals may be attempting to shift their own liability. Furthermore, the Appellant notes that despite extensive searches, the investigating authority found no incriminating documents, such as chats or diaries, that would suggest a conspiracy or an intention to undervalue goods.

3.4 Regarding the presence of prohibited or undeclared goods, the Appellant attributes these discrepancies to a wrong supply or "mistake" by the foreign supplier. The Appellant claims he had no opportunity to physically examine the goods before filing the Bill of Entry and only learned of the excess or prohibited items (like toys lacking BIS certificates) through the DRI investigation. Upon discovering the errors, the Appellant requested permission to re-export the offending goods, a request he claims the department unfairly



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ignored.

3.5 Finally, the Appellant contests the imposition of penalties under Sections 112 and 114AA of the Customs Act, arguing that there was no mens rea or intentional suppression of facts. He asserts that lending or using a third-party Importer-Exporter Code (IEC) is not prohibited by law, and therefore, the mere use of another firm's IEC does not constitute an offense. The Appellant maintains that the goods are not liable for confiscation as he correctly declared the details available in the shipping documents and had no intention to evade duty.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh , Advocate, appeared for the hearing on behalf of the appellant and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The crux of the legal debate rests on whether the items in question—Electronic Cigarettes—are "prohibited goods" and whether the Adjudicating Authority (AA) was correct in ordering their absolute confiscation without the option of a redemption fine. The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (PECA), was enacted with the primary objective of protecting the public, particularly the youth and children, from the harmful effects of e-cigarettes. Section 4 of PECA, 2019 explicitly states: "On and from the date of commencement of this Act, no person shall, directly or indirectly, produce, manufacture, import, export, transport, sell, distribute or advertise e-cigarettes, whether as a complete product or any part thereof." Section 5 of PECA, 2019 further prohibits the storage of e-cigarettes. The language of the statute is absolute and leaves no room for "restricted" imports under a license.

The legislature intended a total moratorium on the entry of these goods into the Indian territory.

5.2 Under Section 11 of the Customs Act, 1962, the Central Government has the power to prohibit the import or export of goods for various reasons, including "the maintenance of standards of health and morality." Section 2(33) of the Customs Act defines "prohibited goods" as:

"any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force..."

Since PECA, 2019 is "any other law for the time being in force" that prohibits the import of e-cigarettes, these items automatically become "prohibited goods" under the Customs Act. The Appellant has argued that he should have been given an option to pay a redemption fine under Section 125 of the Customs Act. However, Section 125 provides that: "Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the import or export whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods... an option to pay in lieu of confiscation such fine as the said officer thinks fit."

5.3 The use of the word "may" for prohibited goods gives the Adjudicating Authority the discretion to refuse redemption and order absolute confiscation. It is well-settled law that for goods that are prohibited on grounds of public health, safety, or environment, absolute confiscation is not only appropriate but necessary to ensure that the goods do not find their way back into the market. The principles governing absolute confiscation have been clarified by several higher judicial fora:

- **Sheikh Mohd. Omer vs. Collector of Customs (1983 (13) E.L.T. 1439 (S.C.)):** The Hon'ble Supreme Court held that the expression "prohibition" is not limited to total prohibition but includes any restriction or condition. In the case of E-cigarettes, the prohibition is total.
- **Om Prakash Bhatia vs. Commissioner of Customs (2003 (155) E.L.T. 423 (S.C.)):** The Apex Court clarified that if the goods are imported in violation of a specific prohibition, the authority to confiscate is absolute.

5.4 The Adjudicating authority correctly noted that E-cigarettes are not merely "consumer electronics" but nicotine-delivery systems designed to be addictive. The mis-declaration of these goods as "Screws" or "Washers" was a



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calculated attempt to circumvent a health-related ban. Allowing the redemption of such goods on payment of a fine would defeat the very purpose of PECA, 2019, as the importer could simply sell the goods in the grey market to recover the fine amount, thereby continuing the harm to public health. Therefore, I find that the E-cigarettes are "prohibited goods" and their absolute confiscation under Section 111(d) of the Customs Act, 1962 is legally sound and required in the interest of the public.

5.5 The Appellant has strenuously argued that he cannot be held liable for penalties under Section 112(a) or 114AA as he is not the proprietor of M/s M.M. Enterprises and does not hold the Import Export Code (IEC) used for the subject imports. However, this defense overlooks the contemporary legal landscape of the Customs Act, 1962, which emphasizes substance over form. The Finance Act, 2017 introduced the definition of 'beneficial owner' under Section 2(3A) of the Customs Act, 1962. It defines a 'beneficial owner' as 'any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.' The legislative intent behind this insertion was to target the actual beneficiaries of illicit trade who often hide behind dummy proprietors, shell companies, or 'IEC lenders.' In the current case, the Adjudicating Authority (AA) has correctly applied this provision to look past the registration documents of M/s M.M. Enterprises.

5.6 The investigation reveals a classic 'shadow-owner' operation. The registered proprietor of M/s M.M. Enterprises, upon being questioned, admitted that he had no knowledge of the goods being imported, no contact with the foreign suppliers, and no role in the financial management of the firm. He admitted to lending his IEC to the Appellant for a nominal monthly commission. On the contrary, the Appellant, Shri Asif Sathi, was found to be the 'moving spirit' of the enterprise. The effective control over the 'vaping' consignment—from procurement to distribution—rested solely with him.

5.7 The most damning evidence against the Appellant's 'facilitator' defense comes from his own digital footprint and financial activities. The DRI retrieved extensive chat logs between the Appellant and overseas suppliers in China. These logs contain negotiations on prices per 'puff' of e-cigarettes, shipping terms, and instructions on how to describe the cargo to avoid detection. Logs also show the Appellant giving direct instructions to the Custom House Agent (CHA) regarding the filing of Bills of Entry and payment of port charges.

The investigation mapped the flow of funds, which originated from accounts controlled by the Appellant or were handled in cash/non-banking channels (Hawala) directed by him. The dummy proprietor lacked the financial capacity to fund even a fraction of the multi-crore imports.

5.8 The Appellant's claim that he was merely an employee or an associate is contradicted by the fact that he was the primary negotiator and the sole financial controller. An employee does not negotiate million-dollar deals with foreign suppliers or keep the entire profit. The evidence proves he was the principal, not an agent. Therefore, I concur with the findings of the AA that Shri Asif Sathi is the 'Beneficial Owner' and the 'Mastermind' of the smuggling operation. His acts of omission and commission directly rendered the prohibited goods liable for confiscation, making him squarely liable for the penalty under Section 112(a).

5.9 The Appellant claims his statement under Section 108 was coerced. The retraction of the statement was made as an afterthought during the adjudication stage. As per the Hon'ble Supreme Court's ruling in K.I. Pavunny vs. Assistant Collector reported at 1997 (90) E.L.T. 241 (S.C.), a retracted confession can be used as evidence if it is corroborated by other independent evidence. In this case, the digital evidence (WhatsApp messages) and the physical recovery of E-cigarettes from the containers declared as "Screws/Washers" provide overwhelming corroboration to the initial admission.

5.10 The Appellant has challenged the imposition of penalty under Section 114AA, contending that he had no role in the filing of the Bills of Entry and that there was no "malafide intention" to violate the law. I find this argument to be completely divorced from the factual matrix of the case and the specific statutory requirements of Section 114AA. Section 114AA was inserted into the Customs Act, 1962, by the Finance Act, 2006, as a stringent measure to combat high-end commercial frauds involving falsification of documents. It states:

"If a person 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, in the transaction of any business for the purposes of this Act, shall be liable to a penalty..."

The hallmarks of Section 114AA are that the act must be done "knowingly or intentionally.", the falsehood must relate to something significant (like the description or value of goods), the person liable need not be the one who



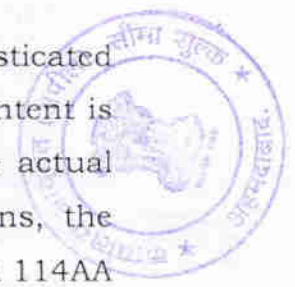
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physically signs the document; it is sufficient if they "cause it to be made or used."

5.11 The Appellant argues that classification is an interpretational issue. This is a gross mis-characterization. If an importer declares "Steam Coal" as "Anthracite Coal" based on a borderline test report, it might be an interpretational dispute. However, when an importer declares "Electronic Cigarettes" (prohibited items) as "Screws, Washers, and Automobile Parts" (hardware), it is a factual falsification. There is no "interpretation" where a vape pen can be mistaken for a mechanical screw. This is a deliberate "Identity Fraud" perpetrated on the Customs department to bypass the Risk Management System (RMS) and circumvent the PECA, 2019 prohibition.

5.12 The Appellant's defense that he did not sign the Bills of Entry is legally irrelevant under Section 114AA. The phrase "causes to be made, signed or used" was specifically drafted to catch the "masterminds" and "beneficial owners" who operate through proxies. The evidence on record, particularly the WhatsApp chats, shows the Appellant instructing the dummy proprietor and the CHA on what descriptions to use in the invoices. By providing false descriptions to the CHA, the Appellant caused the filing of fraudulent Bills of Entry. The CHA and the dummy proprietor were mere instruments in the hands of the Appellant. While Section 112(a) penalizes the "act or omission" that makes goods liable for confiscation, Section 114AA specifically penalizes the "act of lying" to the government. In the present case, the Appellant is liable for both, under Section 112(a) for importing prohibited e-cigarettes and under Section 114AA for intentionally using false invoices and hardware descriptions to hide the identity of those e-cigarettes.

5.13 The mis-declaration was not a "clerical error" but a sophisticated attempt at smuggling through document falsification. The Appellant's intent is proven by the vast difference between the declared hardware and the actual vapes seized. As the beneficial owner who directed these falsifications, the Appellant is squarely liable for the penalty under Section 114AA. Section 114AA was introduced to penalize the intentional use of false and fraudulent documents. The Appellant filed, or caused to be filed, Bills of Entry declaring the goods as hardware items. This was a deliberate act to deceive the Customs officers and smuggle prohibited items. This is not an "interpretational error" or a "classification dispute"; it is a clear case of smuggling.



5.14 The Appellant cited cases such as Radhakishan vs. State of UP to argue a lack of "mens rea." These citations are irrelevant here. In customs smuggling cases, the physical act of mis-declaring prohibited goods is sufficient to attract penalty. The concept of "strict liability" applies to declarations made under the Customs Act. The cases cited by the Appellant relate to "bona fide" disputes in valuation or classification, whereas the present case is one of absolute prohibition and identity concealment.

5.15 In summary, the holistic examination of the evidence on record reveals a pre-meditated and orchestrated attempt to smuggle prohibited Electronic Cigarettes into the country by mis-declaring them as hardware items. The statutory prohibition under PECA, 2019, read with the Customs Act, 1962, leaves no scope for the redemption of such goods, justifying their absolute confiscation in the interest of public health. Furthermore, the identification of the Appellant as the "beneficial owner" is solidly grounded in digital and financial evidence that pierces the veil of the dummy proprietary firm, establishing his de-facto control over the illicit trade. The intentional falsification of documents to bypass customs controls attracts the specific rigors of Section 114AA, which operates independently of the liability under Section 112(a). The subsequent retraction of the Appellant's statement, being a belated afterthought unsupported by evidence of coercion, does not negate the high evidentiary value of his original admission, which is corroborated by overwhelming physical and digital findings. Consequently, I find that the findings of the Adjudicating Authority are well-reasoned, legally sound, and based on a correct appreciation of both facts and law, thereby warranting no interference by this appellate forum.

6. In view of the detailed discussions and findings recorded above, I find no reason to interfere with the Order-in-Original No. MCH/ADC/AKM/175/2024-25 dated 25.10.2024.

7. The Appeal filed by Shri Asif Sathi is hereby rejected.



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

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

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Copy to:

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