सत्यमेव जयते

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 - 20250871MN000071237F

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| क | फ़ाइल संख्या FILE NO. | S/49-83/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-168-25-26 |
| ग. | पारितकर्ता PASSED BY | Shri Amit Gupta<br>Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 08.08.2025 |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | Order – In – Original No. MCH/ADC/AK/25/2024-25 dated 29.04.2024 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 08.08.2025 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | M/s Kashish Impex,<br>Office No. 5, Ground Floor, Plot No. 37, Sunshine Arcade-2, Sector 8, Gandhidham – 370 201. |

कार्यालय आयुक्त (अपील) सीमा शुल्क अहमदाबाद

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| 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 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 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 |

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| | 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,<br>Nr.Girdhar Nagar Bridge, Asarwa,<br>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-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(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 Kashish Impex, Office No. 5, Ground Floor, Plot No. 37, Sunshine Arcade-2, Sector 8, Gandhidham – 370 201 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/25/2024-25 dated 29.04.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that appellant, a Customs Broker, filed Bill of Entry for import of "Cold Rolled Stainless Steel Coils Grade J2" at Mundra Port for the importer M/s Shrutam Metals Private Limited (IEC: ABJCS9334A), detailed as under:

| Bill of Entry No. & Date | Description of Goods | CTH | Qty. (Net wt.) Kgs. | Declared Value in (INR) | Declared Duty Payable (INR) |
|---|---|---|---|---|---|
| 8665899 dated 07.11.2023 | Cold Rolled Stainless Steel Coils Grade J2 | 72199090 | 55236 | 51,48,193 | 14,27,850 |
| | Total | | | 51,48,193/- | 14,27,850/- |

2.1 As per Circular dated 20.10.2023 issued by Ministry of Steel, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification. Further, vide CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is further clarified that mandatory clarification is required only for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel. Accordingly, as declared CTH 72199090 is mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory clarification/NOC from Ministry of Steel was required in the instant case before clearance of the said goods.

2.2 The Importer vide letter dated 15.03.2024 addressed to the Deputy Commissioner, Dock Examination Section submitted the BIS NOC. During the course of verification of documents in RMS Cell, Dock Examination Section, it was observed that:

"In response of Dept's mail for NOC verification, the MoS replied that 'the attached letter was not issued by Ministry of Steel'. It is evident from said mail, Importer has submitted fake/forged NOC."

2.3 In view of the above, it appeared that the imported goods have become liable for confiscation under Section 111(o) of the Customs Act, 1962. As the imported goods have become liable for confiscation under Section 111(o) of the Customs Act, 1962, the Importer is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962. Further, it appeared that the Importer has submitted fake/forged Ministry of Steel NOC for clearance of the imported goods. Therefore, the Importer is also liable for penalty under Section 114AA of the Customs Act, 1962.

2.4 Being Custom Broker (CB), the appellant is bound to comply with Customs Brokers Licensing Regulations (CBLR), 2018. The relevant Regulations of the CBLR, 2018 is reproduced below for ease of reference:

> *" 10. Obligations of Customs Broker — A Customs Broker shall —*
>
> ...
>
> *(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non¬compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
>
> ...
>
> *(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;*

2.5 As per CBLR, 2018, it is the duty of the appellant to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. However, the appellant failed to advise their client M/s. Shrutam Metals Pvt Ltd regarding submission of genuine BIS NOC from Ministry of Steel. Further, appellant failed to discharge their duties properly as they have not brought the fact of submission of forged/counterfeit NOC to the notice of the Customs which indicates their involvement in attempting to clear the impugned consignment by submission of forged/counterfeit BIS NOC purported to be issued by Ministry of Steel and in suppressing the said facts with a malafide intention by collusion with the said Importer. Therefore, it appeared that the appellant has contravened Customs Brokers Licensing Regulations (CBLR) made under Section 146(2) of the Customs Act, 1962. From above, it appeared that the appellant is liable for penal action under Section 117 of the Customs Act, 1962.

2.6 The Importer vide letter dated NIL, received by Customs Authorities on 16.04.2024 submitted that they received a call from Number +919717929681 with name Shyam who ensured about NOC and after some days they received mail from tcqco@gov-steel.com and got NOC and that after submission of NOC, they came to know that the NOC was forged and that they called on that mobile number too many times but no response was received. The Importer has further submitted that they applied for NOC on 02.04.2024 and got the same on 08.04.2024 which was verified by the Customs. The Importer further submitted that they do not want Show Cause Notice and Personal hearing and requested to release the goods.

2.7 The appellant vide letter dated 22.04.2024 has submitted that they received BIS NOC from the Importer vide letter dated 15.03.2024 and submitted the same in RMS Cell, Dock Examination Section, for verification from Issuing authority and that on receipt of instructions from RMS Cell, they uploaded the NOC in e-Sanchit and after verification of the same by department, they came to know that the said NOC has not been issued-by Ministry of Steel and that there is no type of involvement from their side. The appellant further submitted that they do not require Show Cause Notice and Personal Hearing.

2.8 Consequently the adjudicating authority passed a impugned speaking order wherein the adjudicating authority ordered as under :-

i. He refrained from holding the goods imported vide Bill of Entry No. 8665899 dated 07.11.2023 having declared assessable value of Rs. 5148193/-, liable to confiscation under Section 111(o) of Customs Act, 1962.

ii. He refrained from imposition of penalty under Section 112(a)(ii) of Customs Act, 1962 on the Importer M/s Shrutam Metals Private Limited.

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iii. He ordered to impose a penalty of Rs. 13,50,000/- ( Rs. Thirteen Lac Fifty Thousand Only) on the Importer M/s Shrutam Metals Private Limited under Section 114AA of Customs Act, 1962.

iv. He ordered to impose a penalty of Rs. 2,50,000/-(Rs. Two Lac Fifty Thousand Only) under Section 117 of Customs Act, 1962 on the appellant.

v. The goods imported vide Bill of Entry No. 8665899 dated 07.11.2023 were to be released only after payment of applicable duties and Penalties as above.

**3. <u>SUBMISSIONS OF THE APPELLANT:</u>**

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 appellant has submitted that the impugned order is passed without jurisdiction in as much as contravention of CBLR, 2018, if any, can be looked into in accordance with procedure prescribed under CBLR, 2018 by the competent authority and not in any other manner.

3.2 The appellant has submitted that the Adjudicating Authority has erred in failing to appreciate that this is not a case involving failure on the part of appellant to advise the importer to comply with the requirement of obtaining NOC from Ministry of Steel inasmuch as it is a matter of record that the importer had produced the said NOC. The appellant had no means to verify the correctness of the same inasmuch as the access to the portal mentioned in the impugned order lies with the importer only and not Custom Broker. As such, there is no breach of any provision or regulation of CBLR, 2018.

3.3 The appellant relied upon the following decisions wherein it is held that no penalty is imposable under Section 117 without establishing mens rea:

(i) Syndicate Shipping Services Pvt. Ltd., 2003 (154) ELT 756 (Tri.- Che).

(ii) Vijendra Singh CHA, 2017 (7) TMI 272- CESTAT ALLAHABAD.

**PERSONAL HEARING:**

4. Personal hearing in the matter was held on 20.05.2025 wherein Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum.

**DISCUSSION AND FINDINGS:**

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

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(1) Whether the adjudicating authority had the proper jurisdiction to impose a penalty on the Customs Broker under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018.

(2) Whether mens rea is an essential ingredient for imposing penalty under Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, and if so, whether it has been established and whether the Appellant, as a Customs Broker, failed in its obligations under CBLR, 2018, in a manner that warrants penalty.

5.2 Firstly, I take up the issue whether the adjudicating authority had the proper jurisdiction to impose a penalty on the Customs Broker under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018. The Appellant has raised a fundamental jurisdictional challenge, which warrants primary consideration. The Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) are a self-contained code governing the licensing and obligations of Customs Brokers. Regulation 18 of CBLR, 2018, specifically deals with "Penalty," stating:

*"(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F-card holder who contravenes any provisions of these*

*regulations or who fails to comply with any provision of these regulations."*

Furthermore, Regulation 19 of CBLR, 2018, titled "Appeal," specifies the appellate forum:

*"(1) A Customs Broker or F-card holder, who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act:"*

*"(Provided that a G-card holder aggrieved by any order passed by the Deputy Commissioner or Assistant Commissioner of Customs under these regulations may prefer an appeal under section 128 of the Act to the Commissioner of Customs (Appeals) against the orders of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, who shall proceed to decide the appeal expeditiously within two months of the filing of the appeal.)"*

5.3 It is evident from these regulations that the power to impose penalties for contraventions of CBLR, 2018, is specifically vested in the Principal Commissioner or Commissioner of Customs. Section 117 of the Customs Act, 1962, is a residuary provision that applies only "where no express penalty is elsewhere provided for such contravention or failure." Since CBLR, 2018, itself provides specific provisions for penalties for its contravention, recourse to the residuary Section 117 by an Additional Commissioner for alleged breach of CBLR appears to be an exercise of powers beyond the scope prescribed by law.

5.4 The adjudicating authority, being an Additional Commissioner, is not the authority specified in Regulation 18(1) of CBLR, 2018, to impose penalties on a Customs Broker for contravention of CBLR. Even if the alleged contravention were to be viewed broadly as a failure to comply with a provision of the Customs Act (by way of Section 146(2) which enables CBLR), the specific mechanism and designated authority under the special regulations (CBLR) should prevail over the general residuary provision of Section 117. Therefore, on the sole ground of jurisdiction, the penalty imposed on the Appellant under

Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018, is not sustainable.

5.5 Now I come to the issue whether mens rea is an essential ingredient for imposing penalty under Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, and if so, whether it has been established. Even assuming, without conceding, that the adjudicating authority had the jurisdiction, the imposition of penalty under Section 117 requires the establishment of mens rea or a deliberate intention to contravene the law. The Hon'ble Supreme Court has consistently held that mens rea is an essential ingredient for imposing penalties, particularly when the provisions involve elements of deliberate evasion or fraudulent intent.

5.6 In Cosmic Dye Chemical Vs Collector of Central Excise, Bombay [1995 (75) ELT 721 (SC)], the Supreme Court emphasized the necessity of mens rea for imposing penalties under fiscal statutes. Similarly, in UOI Vs Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3(SC)], the Supreme Court reiterated that for penalties linked to "fraud, collusion, wilful misstatement, suppression of facts or contravention... with intent to evade payment of duty," mens rea is indispensable. A mere breach of law, without a deliberate intention to evade, is not sufficient for imposing a penalty.

5.7 Applying these principles to Customs Brokers, the Tribunal has specifically addressed the requirement of mens rea for penalties under Section 117. In Syndicate Shipping Services Pvt. Ltd., 2003 (154) ELT 756 (Tri.-Che), it was clearly held that "mere failure by the Custom House Agent to carry out his duties in accordance with law by itself is not sufficient ground to impose personal penalty under section 117 of the Customs Act, 1962 unless there is evidence to show that the failure was on account of mala fide intention." The Tribunal noted that if the CHA was an active abettor, there would be more direct evidence of their involvement.

5.8 In the present case, the adjudicating authority's finding that the Customs Broker failed to discharge its duties properly and indicated "involvement in attempting to clear the impugned consignment by submission of forged/counterfeit BIS NOC ... and in suppressing the said facts with a malafide intention by collusion with the said Importer" is a serious charge. However, the impugned order does not provide concrete evidence to establish this mala fide intention or collusion.

5.9 The Appellant's submission that they had no means to verify the genuineness of the NOC from the Ministry of Steel's dedicated portal, as access might be restricted to the importer, needs to be considered. While a Customs Broker has a duty of due diligence, expecting them to independently verify every document through restricted portals, especially when the importer themselves provides a document, might be an onerous expectation in the absence of any suspicious circumstances brought to the CB's notice. The adjudicating authority has not presented any evidence of prior knowledge, active participation in forging the document, or any benefit derived by the Customs Broker from the submission of the forged NOC.

5.10 The fact that the importer eventually produced a genuine NOC and the goods were regularized also dilutes the gravity of the initial submission of a forged document, at least concerning the Customs Broker's mens rea, unless direct involvement in the forgery or knowledge of its falsity is proven. The absence of specific findings on how the Customs Broker knew the NOC was forged, or how they colluded with the importer, weakens the case for imposing a penalty that requires mens rea.

5.11 Therefore, in the absence of clear, cogent, and irrefutable evidence establishing mens rea on the part of appellant regarding the forged NOC, the imposition of penalty under Section 117 of the Customs Act, 1962, is not sustainable. A mere suspicion or a general failure to exercise utmost diligence, without proof of deliberate intent or active abetment, does not warrant such a penalty.

5.12 In light of the detailed discussions and findings, particularly the jurisdictional infirmity and the absence of established mens rea, I find that the penalty imposed on M/s. Kashish Impex under Section 117 of the Customs Act, 1962, cannot be sustained. The CBLR, 2018, provides a specific framework and designated authority for addressing contraventions by Customs Brokers, and the residuary Section 117 should not be invoked in such cases, especially by an authority not specified in the special regulations. Furthermore, the Department has failed to provide sufficient evidence to prove any deliberate intention or mala fide on the part of the Appellant to warrant the imposition of penalty.

6. In view of the above findings, the penalty of Rs. 2,50,000/- (Rupees Two Lac Fifty Thousand Only) imposed on the Appellant, M/s. Kashish Impex, under Section 117 of the Customs Act, 1962, vide Order-in-Original No. MCH/ADC/AK/25/2024-25 dated 29.04.2024, is hereby set aside.

7. The appeal filed by M/s. Kashish Impex is hereby allowed.

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

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

F. No. S/49-83/CUS/MUN/2024-25 2849

Date: 08.08.2025

By Registered post A.D/E-Mail

To,
M/s. Kashish Impex,
Office No. 5, Ground Floor, Plot No. 37,
Sunshine Arcade-2, Sector 8,
Gandhidham – 370 201.

Copy to:
1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.