



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN - 20250771MN0000515265

क	फ़ाइल संख्या FILE NO.	S/49-69/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-119-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	09.07.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	O-I-O No. MCH/1/AC/KRP/Gr-I/24-25 dated 01.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	09.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Cargo Care 04, 2nd Floor Saurashtra CFS, Mundra



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

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.	
(a)	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 हजार रुपए	
(ब)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.	
(c)	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

The present appeal has been filed by M/s. Cargo Care, 04, 2nd Floor, Saurashtra CFS, Mundra, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/1/AC/KRP/Gr-I/24-25 dated 01.04.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Import Section (Gr-I), Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that M/s. Rayyan Metal Industries situated at B-72, MG Road, Industrial Area Mussorie, Hapur, Mussorie (IEC-ANXPM2169C) filed Bill of Entry No. 2223114 dated 20.02.2024 through their CHA M/s. Cargo Care (AHDPM1017FCH001) for import of "Zinc Ash" (CTH-26201990) & "Zinc Dross" (CTH-26201910). The details declared in the Bill of entry are as under:

Bill of Entry No. & Date	Description of goods	Qty. in MTS	Ass. Value declared(Rs.)	Duty Payable declared(Rs.)
2223114 dated 20.02.2024	Zinc Ash (CTH-26201990)	22.227	22,66,816/-	5,55,143/-
	Zinc Dross (CTH-26201910)	3.743		



2.1 The said Bill of Entry was assessed by the Faceless Assessment Group on "First Check" basis and the same was pushed to Port Assessment Group for further necessary action. The imported goods were examined by the officers of Docks Examination on 26.02.2024 in the presence of Authorized Representative of Custom Broker and samples drawn under Test Memos 1205838 & 1205839 both dated 26.02.2024 were sent to CRCL Kandla for testing. The CRCL, Kandla vide Test Report Lab No. 12023-impo/29.02.2024 dated 04.03.2024 (for Zinc Ash) has submitted his report stating that as under-

"The sample as received is in the form of heterogeneous mixture of greyish friable, non friable metallic & non metallic lumps of irregular shape & sizes having oxidised surfaces together with greyish coarse powder.; It is composed mainly of metallic zinc, oxides of zinc together with small amount of compounds of iron, aluminium & silicious matter. Percentage of Total Zinc Content (% by weight) = 75.91

Percentage of Metallic Zinc (% by weight) = 41.94

Percentage of Lead Content (% by weight) = 0.73

Percentage of Cadmium Content (% by weight) = It does not answered the test for cadmium.;

It has the characteristics of Zinc Ash/ Skimmings.;

Sealed remnant sample returned herewith. ”

The CRCL, Kandla vide Test Report Lab No. 12022-impo/29.02.2024 dated 05.03.2024 (for Zinc Dross) has submitted his report stating as under -

“ Nature: The sample as received is in the form of greyish shiny metallic lumps of irregular shapes & sizes having oxidised surfaces.

Composition: It is composed mainly of metallic zinc & small amount of oxides of zinc, iron & aluminium.

Percentage of Total Zinc (% by weight) = 95.58

Percentage of Metallic Zinc (% by weight) = 92.28

Percentage of Lead content (% by weight) = 0.32

It does not answered the test for Cadmium.

It has the characteristics of Zinc Dross.

Sealed Remnant sample returned herewith ”

2.2 From the above reports, it appeared that the imported cargo declared as "Zinc Ash" & "Zinc Dross" were found to be as declared on testing by the CRCL, Kandla. In compliance for the item under CTH 26201990 "Zinc Skimmings", the Test Report (vide Lab No. 12023-impo/29.02.2024 dated 04.03.2024) has concluded that the imported goods have the characteristics of Zinc Ash/Skimmings and the importer has furnished "Registration Certificate cum-Pass Book for re-finishing/recycling of Hazardous Wastes" bearing no. 12778/UPPCB/Ghaziabad(UPPCBRO/HWM/Ghaziabad date 15.10.2020 (valid till 14.10.2025) as per Policy Condition 2 of Chapter 26 referred above. However, with respect to item under CTH 26201910 "Zinc Dross", although the Test Report (vide Lab No. 12022-impo/29.02.2024 dated 05.03.2024) has concluded that the imported goods have the characteristics of Zinc Dross, however, the importer had not furnished the prescribed documents [as specified in Schedule VIII of the Hazardous and Other wastes (Management and Transboundary Movement) Rules, 2016] as provided in the DGFT Import Policy at the time of filing of BE No. 2223114 dated 20.02.2024.



2.3 The import of the Zinc Dross (under CTH 26201910) is governed by the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016. Chapter III of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 deals with import and export of hazardous and other wastes in/from the country and provides for the strategy and procedure for import of hazardous and other wastes (under Rule 12 & 13).

2.4 In view of above, queries were issued to the importer on 06.03.2024, 12.03.2024, 13.03.2024 & 23.03.2024 and their replies were received on 12.03.2024, 13.03.2024, 14.03.2024 & 28.03.2024 respectively. In response to above queries, the importer uploaded the documents on esanchit in order to fulfil the compliance as mandated under Schedule VIII of the provisions of Hazardous and other waste (Management and Transboundary) Rules 2016 vide different IRNs.

2.5 Out of these documents mandated under Schedule VIII of the provisions of Hazardous and other waste (Management and Transboundary) Rules, 2016, the importer failed to submit the documents mentioned at Sr. No. 5 & 6 of above table in as much as the document mentioned at Sr. No. 6 has not been submitted and the authorisation submitted (Sr. No. 5 of the above table) is for wastes mentioned in Schedule I (Cat. 7.4) of the Hazardous and other waste (Management and Transboundary) Rules 2016 whereas the imported goods (Zinc Dross) fall under Schedule III (B1100) of the Hazardous and other waste (Management and Transboundary) Rules, 2016.

2.6 From the foregoing, it appeared that the imported goods "Zinc Dross" classifiable under Custom Tariff item 27201910 and subjected to verification of documents as prescribed under Schedule VIII of the provisions of Hazardous and other waste (Management and Transboundary) Rules, 2016 is being imported by the importer M/s. Rayyan Metal Industries without submission of relevant documents. The importer for such acts of commission/ omission appeared liable for penalty under Section 117 of the Customs Act, 1962 Also, the Custom Broker M/s. Cargo Care has failed to discharge the obligations as laid down under Customs Brokers Licensing Regulations, 2018 and had appears to have made themselves liable for penalty under Section 117 of the Customs Act, 1962 for such acts of commission/ omission.

2.7 The importer had attended Personal Hearing (through virtual mode)



on 22.03.2024 and presented authorisation issued by Uttar Pradesh Pollution Control Board bearing Ref. No. 12778/UPPCB/Circle1 (UPPCBHO)/HWM/HAPUR/2020 dated 15.10.2020 for Schedule-I, Category 7.4 Non Ferrous metal bearing sludge and residue. They have submitted that this authorization has been issued by UPPCB under Hazardous and other waste (Management and Transboundary) Rules, 2016 for Zinc Dross.

2.8 Consequently, the adjudicating authority passed the following order:

- i. He imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on the importer M/s. Rayyan Metal Industries (IECANXPM2169C) under Section 117 of the Custom Act, 1962.
- ii. He also imposed a penalty of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) on the Custom Broker M/s. Cargo Care (AHDPM1017FCH001) under Section 117 of the Custom Act, 1962.

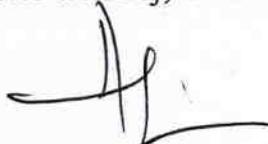
3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that the impugned Order is bad in law being contrary to the facts and circumstances of the case and attendant provisions of law, hence, if permitted to stand would result in grave miscarriage of justice. Because the Order-in-Original is vitiated by non-application of mind as the learned Respondent has failed to apply his independent mind to the vital facts of the case and law attendant thereto and has passed impugned order on the basis of wrong appreciation of the facts on record.

3.2 Because as per para 5.3 of the Impugned Order which reads as under:

"5.3 Further, I found that the Custom Broker M/s. Cargo Care (AHDPM-1017FCH001) had filed the bill of entry with incorrect particulars as discussed above. Whereas, Custom broker has been cast with an obligation under the Customs Brokers Licensing Regulations, 2018 (vide Regulation 10) 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 and exercise due diligence to ascertain the correctness of any information which imparts to a client with reference to any work related to clearance of cargo or baggage and discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay. Therefore, the importer has rendered themselves liable for penal action under Section 117 of Customs Act 1962."

In respect of the above mentioned the learned Respondent has failed to appreciate the pertinent fact that the particulars declared in the Bill of Entry were true and correct which was affirmed by the CRCL, Kandla test report. Henceforth, in view of the above the allegations so levelled against the Appellant for filing the Bill of Entry with incorrect particulars is unsustainable.

3.3 Because there being no wrongdoing on Appellant's part in filing the said Bill of Entry, imposition of penalty on Appellant is ex-facie bad in law. Appellant submits that the case of Department against importer M/s Rayyan Metal Industries is that the importer is not in possession of the Authorization of State Pollution Control Board and the finding against Appellant is that he failed to exercise due diligence and failed to advise the importer to comply with the provision of the Act. In Appellant's submission, the finding is patently perverse as learned Respondent thyself in the Impugned Order has recorded that Appellant in the Personal Hearing dated 22.03.2024 had presented the Authorisation dated 15.10.2020 issued by Uttar Pradesh Pollution Control Board. Thus, the holding of the learned Respondent being contrary in respect of the submission of the Authorisation holding Appellant guilty of not exercising due diligence is ex-facie perverse.

3.4 Because the Adjudicating Authority has gravely erred in imposing penalty under section 117 of the Customs Act, 1962 as the said section stipulates that "any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding four lakh rupees", whereas, in the present case, in filing the said Bill of Entry Appellant had neither contravened any of the provisions of the Customs Act nor abetted the importer hence imposition of penalty under section 117 of the Customs Act 1962, is patently wrong and perverse.




3.5 Because Section 117 of the Customs Act 1962 being a residuary section can only be invoked in cases where no express penalty is elsewhere provided in the Act for any such contravention and failure, whereas in the present case the Appellant has righteously and duly complied with all the provisions of the Customs Act 1962. Because otherwise also, penalty cannot be imposed for the sake of only imposing penalty. In this regard, the Appellant relies upon the case of Akbar Baddruddin Jiwani Vs. C.C. reported in 1990 [47(ELT 161 (SC)], wherein the Hon'ble Supreme Court held that "the discretion to impose penalty must be exercised judiciously. A penalty will ordinarily be imposed in cases where party acts deliberately in defiance of law or guilty of contumacious or dishonest conduct or acted in conscious disregard of its application but not in cases where there is technical or venial breach of the provisions of the Act or where the breach flows from bona fide belief that he is not liable to act in the manner prescribed in the statute." In the case of Hindustan Steel V/s State of Orissa 1978 (2) ELT J 159 (SC), it was held that "an order imposing penalty for failure to carry out the statutory obligation is the result of quasi criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or act in conscious disregard of its obligation".

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 05.06.2025, following the principles of natural justice wherein Ms Reena Rawat, Advocate appeared for the hearing and she re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Import Section (Gr-I), Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal:

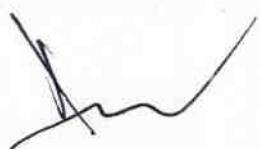
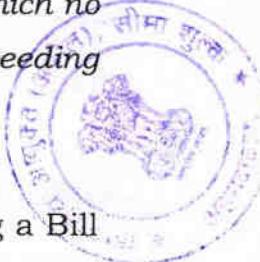
(i) Whether the delay of 2-3 days in filing the appeal should be condoned.

(ii) Whether the imposition of penalty under Section 117 of the Customs Act, 1962, on the CHA is justified on merits, particularly in light of the CRCL Test Report and the nature of obligations under CBLR, 2018.

5.2 The Appellant has sought condonation of a very minor delay of 2-3 days in filing the appeal, attributing it to an "inadvertent mistake by the clerk of the concerned counsel in calculating the statutory period of limitation." Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further condonable period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of 2 days beyond the initial sixty-day period, but within the condonable thirty-day period. The Appellant has attributed the delay to an inadvertent mistake by the clerk of the concerned counsel in calculating the statutory period of limitation. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice and the appeal is admitted.

5.3 Section 117 of the Customs Act, 1962, is a residuary penalty provision that applies where no express penalty is elsewhere provided for any contravention of the Act or rules. It states: *"Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, and for which no express penalty is elsewhere provided, shall be liable to a penalty not exceeding four lakh rupees."*

5.4 The impugned order imposed a penalty on the CHA for filing a Bill of Entry with "incorrect particulars" and for failing to comply with Regulation 10 of CBLR, 2018. However, the critical piece of evidence in this case is the CRCL Kandla Test Report. This report, which is a scientific and objective finding, affirmed the truthfulness of the declaration made in the Bill of Entry by M/s. Cargo Care, stating that "the goods as declared in the Bill of Entry are exactly the same as those are found in the CRCL, Kandla Test Report". This finding directly contradicts the very basis for imposing a penalty on the CHA under

Section 117. If the particulars declared in the Bill of Entry are found to be "exactly the same" as the goods identified by a chemical examination report, then the allegation of "incorrect particulars" cannot stand.

5.5 The position of Law as per various Judicial pronouncements is as under:

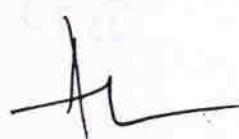
i. **Akbar Badruddin Jiwani Vs. Collector of Customs [1990 (47) ELT 161 (SC)]:**

The Hon'ble Supreme Court, while dealing with confiscation and penalty, held that "the discretion to impose penalty must be exercised judiciously." It is a well-settled principle that penalties are not ordinarily imposed for a mere technical or venial breach where no express penalty is provided, or where the breach flows from a bona fide belief that one is not liable to act in the manner prescribed. While this case did not directly deal with Section 117, it strongly supports the principle that penalties should not be imposed mechanically, especially where there is no deliberate contravention or mens rea.

ii. **Hindustan Steel Ltd. V/s State of Orissa [1978 (2) ELT J 159 (SC)]:**

This is a landmark Supreme Court judgment that clearly laid down the principle regarding imposition of penalties. The Court held: "Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to carry out a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the circumstances. Even if a minimum penalty is prescribed, the authority has the power to refuse to impose penalty when there is a reasonable cause for the failure. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so."

5.6 Applying the principles of above referred judicial pronouncements to the present case, I draw the following conclusions:



- i. The direct evidence of the CRCL Test Report affirms the correctness of the declaration made by the CHA. This removes the very foundation of "incorrect particulars."
- ii. If the declaration was correct, there is no contravention of the Act or failure to comply with a duty to warrant a penalty under Section 117.
- iii. The OIO's conclusion that the CHA failed its due diligence obligation under Regulation 10 of CBLR, 2018, appears to be without basis if the particulars declared were, in fact, truthful and affirmed by scientific analysis. Regulation 10 obliges a Customs Broker to, inter alia, exercise due diligence to ascertain the correctness of information. When the information is confirmed as correct by an independent test report, it would logically follow that due diligence was indeed exercised, or at least that no lack of due diligence led to an "incorrect particular."
- iv. The imposition of a penalty under Section 117 in such circumstances would be a mechanical imposition without judicial application of mind, especially when the department's own scientific report contradicts the premise of the penalty. There is no evidence suggesting that the CHA acted deliberately in defiance of law, was contumacious, dishonest, or consciously disregarded its obligations.

Therefore, based on the findings of the CRCL Test Report, which affirmed the truthfulness of the declaration, and in light of the principles laid down by the Hon'ble Supreme Court regarding the judicious application of penalty provisions, the penalty imposed on M/s. Cargo Care under Section 117 of the Customs Act, 1962, is not sustainable on merits. I therefore set aside the penalty imposed on the appellant.

- 7. The appeal filed by M/s. Cargo Care is hereby allowed.

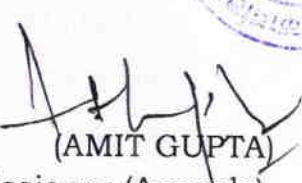


सत्यापित/ATTESTED

 अधीक्षक/SUPERINTENDENT
 संघीय दण्डनियन्त्रण आयोग, अहमदाबाद,
 CUSTOMS (APPEALS), AHMEDABAD

F. No. S/49-69/CUS/MUN/2024-25

2179


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

Date: 09.07.2025

By Registered post A.D/E-Mail

To,
M/s. Cargo Care,
Office Number 04, 2nd Floor,
Saurashtra CFS, Mundra



Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Assistant Commissioner of Customs, Import Section (Gr-I), Customs House, Mundra.
4. Guard File.