



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 - 20260371MN000000A003

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| क | फ़ाइल संख्या FILE NO. | S/49-145/CUS/JMN/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) | JMN-CUSTM-000-APP-472-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 31.03.2026 |
| ङ | उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO. | Order-in-Original no. 19/ADC/2023-24 dated 23.04.2024 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 31.03.2026 |
| | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | M/s Sudh priya plasticchem pvt Ltd J-A/42A, Phase I Ashok vihar Opp Murga market New Delhi- 110052 |



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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 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 |



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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 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 व्याज 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 व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच 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 व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए. |
| (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. |



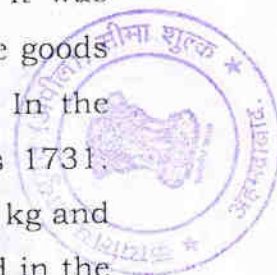
ORDER-IN-APPEAL

Present appeal has been filed by M/s Sudh priya plasticchem pvt Ltd, J-A/42A, Phase I Ashok vihar, Opp Murga market, New Delhi- 110052, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. 19/ADC/2023-24 dated 23.04.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed a Bill of Entry No. 7029302 dated 06.06.2012, through their CHA M/s. A. M. Sodder & Co. Pipavav. The cargo description as mentioned in Bill of Entry was Non-Woven Fabrics of seven different dimensions falling under Chapter Heading 56039400 with CIF value of USD 63690.80 and customs assessable value of Rs.35,99,135.26.

2.1 The above cargo was imported from the consigner, M/s. Ocean Way Transportation Limited, A/504 No. 19, Hualou lane (Tianyihaojing), Haishu, Ningbo, China. As per B/L, the container No. NYKU56909890 (40Feet) having seal no. CN0271388 had 1663 Bags. While in packing list No. AMIT20120103 dated 21.02.2012, Number of package was mentioned as 1731 Bags. At the time of physical examination of said cargo, 1731 package were found. Sample was drawn vide Test memo No. Imp/036/12-13 dated 12.06.2012 for checking of the presence of Hazardous dyes if any, in the imported goods. The test report No. TC/LM/SE/01530312-2340/2012-13(Part I) received from Textile Laboratory & Research Centre, Mumbai indicated no hazardous chemicals in the dyes.

2.2 During the course of examination of the subject goods, it was noticed that Bill of Lading No. NYKS2334369090 showed weight of the goods as 25800 kg, contained in 1663 bags stuffed in the said container. In the packing list the weight was shown as 52000 kg and bags shown as 1731. However, on weighing the goods, weight of the cargo found to be 46710 kg and 1731 bags. There were variations in the actual weight of the goods and in the documents. Clarifications for the same were asked by the department at that time. Department had also written a letter to NYK line (India) Ltd., New Delhi to clarify the same.



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2.3 The CHA M/s. A.M. Sodder filed reply to the query raised by the department on behalf of the appellant. In their reply the appellant requested to release goods and submitted Bond of Rs.10,38,417/- and Bank Guarantee of the same amount. NYK Line (India) Ltd has also submitted their reply vide letter dated 28.06.2012, in which they have enclosed the Shipping Instruction and Customs document received from the Shipper for issuance of B/L. Ongoing through the document submitted by the line, it was found that customs documents were in Chinese language. Translated copy of the same was submitted by the line where the total of invoice value was shown as USD 118144.12. Accordingly, the Bill of Entry was assessed provisionally. Duty amount of Rs. 10,38,417/- was paid by the noticee vide TR-6 challan No. 2004380666 on dated 03.09.2012.

2.4 The documents/Invoice submitted by the shipper were in Chinese language, the same were forwarded to DRI on 30.06.2015 for verification from overseas. The overseas inquiry revealed that value of goods declared before China Customs was USD 118144.12. While declaration made before Indian Customs was USD 63690.80. The overseas inquiry conducted through DRI reveals that the invoice was grossly undervalued and the Bill of Entry is required to be finalized by considering the assessable value at USD 118144.12.

2.5 A summon dated 16.09.2015 was issued to Shri Amit Jain, Director of M/s. Sudh Priya Plasticchem Pvt. Ltd., Delhi (appellant), to provide facts and documents which are material evidence to the verification of documents in Chinese language. The appellant did not honor the summons by personal appearance but submitted letter dated 19.09.2015, in which they submitted that they desire to bring out the fact mentioned in their letter dated 09.10.2014, addressed to the Commissioner of Customs, Jamnagar, therein they had given all the available facts and details pertaining to the case. They also enclosed a copy of their letter dated 01.10.2014, addressed to the Chief Commissioner of Customs, Ahmedabad, reiterating the same. Further they also enclosed a chart containing information regarding import of similar goods along with their assessed value at a number of port and ICD's in the Country including Pipavav Port. They further requested that the matter may be finalized on the basis of the documents submitted by them and the facts brought out in their letter addressed to the Chief Commissioner of Customs, Ahmedabad and Commissioner of Customs (Prev.), Jamnagar. From the appellants's letter it appeared that they did not intend to cooperate with the investigation. Further, the data provided by the appellant cannot be relied upon in the present case as in the inquiry revealed that quantity and weight of the goods have also been



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mis-declared. The letters addressed to the Commissioner of Customs, Jamnagar and the Chief Commissioner of Customs, Ahmedabad are only request for finalization of assessment and release of bank guarantee. These letters do not contain any reply to the fact that the goods were mis-declared with reference to quantity, weight and value.

2.6 The importer in their import documents viz. Bill of Lading, Commercial Invoice, Packing List etc. submitted at the time clearance indicate the quantity as shown below:

| Sr. No | Description | Sheets | Weight (in Kg.) | Bags |
|--------|--------------------|--------|--------------------------|------|
| 1 | Commercial Invoice | 42596 | - | - |
| 2 | Packing List | 42596 | 52000 Gr. Weight | 1731 |
| 3 | Bill of Lading | - | 50269 Net Weight / 25800 | 1663 |

2.7 At the time of physical examination 1731 packages weighing 46710 Kg were found. It therefore appeared from the B/L quantity and packing list that cargo was in excess of 68 bags (quantity) and 24469 Kg (weight). The appellant was asked to clarify the reason for variation in the quantity/weight of the cargo vide letter dated 15.06.2012. However, the appellant has submitted their reply vide their letter dated 28.06.2012 without any clarification for the variation and submitted customs documents received from shipper. The documents also indicate only 25800 Kg and 1663 packages. From the above, it is appeared that the appellant has mis-declared the quantity of goods under import and undervalued the goods as is evident from overseas inquiry conducted through DRI. Therefore, it appeared that the said 1731 packages weighing 46710 Kg valued at Rs.66,10,164/- were liable for confiscation under Section 111(m) of the Customs Act, 1962 and the appellant is liable for penal action under Section 112(a) of the Customs Act, 1962.

2.8 The CHA M/s A.M. Sodder & Co. has filed the reply to the query raised by the department on behalf of the appellant. However, it appeared that they have abetted with the appellant in the evasion of duty by mis-declaring the quantity, weight and value of the imported goods to evade payment of customs duty. Being Customs Broker, it was their duty to guide the appellant properly and in the event of any mis-declaration, inform the department, which

they failed to do, resulting in rendering the goods liable for confiscation. It therefore appeared that M/s. A. M. Sodder failed in discharging the obligations stipulated in Customs Broker Licensing Regulations 2013. Therefore, it appeared that M/s. A. M. Sodder was liable to penalty under Section 112(a) of the Customs Act, 1962, as well as liable to separate proceedings under Customs Broker Licensing Regulations 2013.

2.9 Therefore, M/s Sudh Priya Plasticchem Pvt. Ltd. were issued a show cause notice No. VIII/10-442/ADC/O A/2015 dated 18.12.2015 so as to why:

(i) The Imported goods should not be assessed finally, by rejecting the declared value under Rule 12 of the Customs Valuation Rules, 2007 and re-determining the value of imported goods at Rs.66,10,164/- as per Section 14 of the Customs Act, 1962 and applicable Customs duty should not be assessed and differential customs duty of Rs.8,68,737/- should not be recovered from them under Section 18(2) of the Customs Act, 1962 read with the terms of Bond executed by them read with Section 28 of the Customs Act, 1962.

(ii) The goods under import vide B/E 7029302 dated 06.06.2012, valued at Rs.66,10,164/- should not be confiscated u/s 111(m) of Customs Act, 1962.

(iii) Interest should not be recovered on the differential amount under Section 18(3) read with Section 28 AA of the Customs Act, 1962.

(iv) Penalty should not be imposed upon them under Section 112 read with Section 114A of the Customs Act, 1962.

(v) Penalty should not be imposed upon them under Section 114 AA of the Customs Act, 1962.

2.10 Consequently, the Adjudicating Authority confirmed the demand along with applicable interest and penalty vide Order-in-Original no. 10/Additional Commissioner/2016 dated 23.02.2016. M/s. Sudh Priya Plasticchem Pvt Ltd preferred Appeal against the Order-in-Original No. 10/Additional Commissioner/2016 dated 23.02.2016 and which was upheld vide Order-in-Appeal JMN-CUSM-000-APP-037-16-17 dated 26.10.2016.

2.11 The appellant preferred appeal before the Hon'ble CESTAT. The present proceeding has been taken up on account of order of Hon'ble CESTAT, Ahmedabad vide its Final Order No. 11485/2023 dated 12.07.2023 in Customs Appeal No.10116 of 2017-18 in the matter of M/s. Sudh Priya Plasticchem Pvt Ltd whereby Hon'ble CESTAT has set aside the Impugned Order-in-Appeal No. JMN-CUSM-000-APP-037-16-17 dated 26.10.2016 passed by the



Commissioner (Appeals), Ahmedabad and remanded the matter back to the adjudicating authority with direction to pass a fresh order after observing the principles of natural justice.

2.12 Consequently, the adjudicating authority passed following order:

(i) He rejected the declared value of Rs.35,99,135.26/- for 46710 kgs of Non Woven Fabric imported under Bill of Entry No. 7029302 dated 06.06.2012 under Rule 12 of the Customs Valuation (Determination of value of the Imported goods) Rules, 2007 and re-determine to Rs. 66,10,164/- under Rule 9 of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

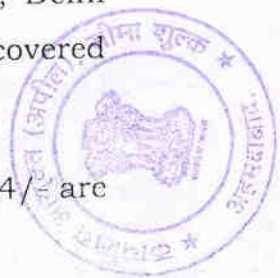
(ii) He ordered for final assessment of bill of entry No. 7029302 dated 06.06.2012 in above terms as held at Para 22 of this order and confirm the demand of differential duty of Rs. 8,68,737/- (Rupees Eight Lakhs Sixty Eight Thousand Seven Hundred Thirty Seven only) under Section 28(4) of the Customs Act, 1962. He ordered to appropriate the duty amount of Rs.10,38,417/- already paid and the balance amount of differential duty should be paid by / recovered from the appellant forthwith in terms of Bond and Bank Guarantee submitted at the time of provisional assessment of the goods.

(iii) He ordered to charge and recover applicable interest payable on the differential duty amount of Rs. 8,68,737/- under section 18(3) read with section 28AA of the Customs Act, 1962.

(iv) He imposed penalty of Rs.8,68,737/- (Rupees Eight Lakhs Sixty Eight Thousand Seven Hundred Thirty Seven only) plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above on the importer M/s. Sudh Priya Plasticchem P Ltd, Delhi under Section 114A of the Customs Act, 1962 should be paid by / recovered from the importer forthwith.

(v) He held that 46710 kgs of Non Woven Fabrics valued at Rs.66,10,164/- are liable to confiscation under Section 111(m) of the Customs Act, 1962.

(vi) He imposed redemption fine of Rs.7 Lakhs (Rupees Seven Lakhs only) under Section 125 of the Customs Act, 1962 in lieu of confiscation of goods to be paid and recovered from the appellant by enforcing Bond and Bank Guarantee submitted at the time of provisional assessment of the goods.



(vii) He did not impose any penalty on the appellant under Section 112 of the Customs Act, 1962 as penalty is already imposed on the appellant under Section 114A of the Customs Act, 1962.

(viii) He imposed penalty of Rs.5,00,000/- (Rupees Five Lakhs only) on M/s. Sudh Priya Plastics P Ltd, Delhi under Section 114AA of the Customs Act, 1962 which should be paid by/recovered from the appellant forthwith.

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 (P), Jamnagar. 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:

3.1 The appellant contends that the Adjudicating Authority erroneously rejected the declared transaction value of US \$63,690.80, which was supported by commercial invoices and bank remittances. They argue that under Section 14(1) of the Customs Act, 1962, the price actually paid is the conclusive basis for valuation. The appellant asserts that the revenue failed to provide "solid reasons" or cogent evidence of "extra" remittances to the supplier to justify rejecting this transaction value. Furthermore, they claim the authority ignored NIDB data and contemporaneous import data of similar goods, which are the standard methods for re-verifying value.

3.2 A central grievance is the Respondent's reliance on a "piece of paper" specifically a translated, unauthenticated computer printout of a foreign declaration obtained by the DRI. The appellant argues this document is not a legal invoice and lacks authentication from the supplier, a digital signature, or any supporting statement recorded under Section 108 of the Customs Act. They contend that international carriers like NYK Line are responsible for transportation, not value declaration, making their shipping instructions an improper basis for value enhancement. Citing Supreme Court and CESTAT precedents, the appellant maintains that foreign export declarations cannot be used to override the importer's declared value.

3.3 The appellant alleges significant procedural lapses, specifically the failure to issue a mandatory notice under Rule 12(2) of the Customs Valuation Rules (CVR) 2007 before proceeding with re-determination. They also challenge the jurisdiction of the Adjudicating Authority, asserting that the Commissioner of Customs (Prev.) Jamnagar is not the "Proper Officer" to finalize provisional assessments under Section 18(2) for imports at Pipavav Port. They argue that



the assessment must be finalized by a Deputy Commissioner before any "offence" can be adjudicated, and that combining assessment and adjudication proceedings is a misuse of power.

3.4 The appeal disputes the legality of confiscating goods that were already cleared under provisional assessment and are no longer physically available. The appellant argues that a valuation dispute does not constitute a "mis-declaration" or an "offence" under Section 111(m), especially when there is no evidence of willful suppression or intention to evade duty. Finally, they challenge the imposition of penalties under Sections 112(a), 114A, and 114AA, stating that the importer cannot be penalized for a supplier's potential actions in a foreign country and that the essential ingredients for such penalties—fraud or intentional false statements—are entirely absent.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on Shri 26.02.2026 following the principles of natural justice wherein Shri H K Hirani, Consultant, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal. He also made written and oral submissions at the time of personal hearing.

4.1 The oral submissions contest the legality of enhancing import values based on unauthenticated documents obtained from foreign customs authorities, specifically a Chinese-language invoice photocopy stamped by the Indian Consulate. The appellant argues that the original adjudication was flawed because it failed to apply an independent mind following a Tribunal remand, erroneously bypassing the mandatory finalization of provisional assessment under Section 18(2) of the Customs Act 1962. Furthermore, they assert that the Additional Commissioner lacked the jurisdiction to adjudicate a provisional assessment and that the imposition of redemption fines and penalties is illegal since the goods were already cleared and no intention to evade duty was proven. The appellant emphasizes that under the Customs Valuation Rules (CVR) 2007, transaction value remains the primary criteria, and existing judicial precedents prohibit using uncertified foreign declarations to reject declared values.

4.2 The written submissions reinforce the argument that the adjudicating authority's fresh order merely rubber-stamped the previous one without re-examining the issues as directed by the Tribunal. The appellant contends that the "piece of paper" relied upon by the DRI a translated invoice from the shipping line cannot override a commercial invoice supported by actual



bank remittances. They highlight procedural lapses, noting that no mandatory notice under Rule 12 of CVR 2007 was issued to reject the declared value, nor was there any investigation into "extra" remittances to prove under-valuation. The submissions also challenge the use of "preponderance of probability" in valuation matters, arguing that the department failed to provide cogent evidence or contemporaneous import data from the NIDB to justify a value hike. Ultimately, the appellant seeks to set aside the Order-in-Original, arguing that the supplier's potential over-valuation for export benefits in China should not result in the importer being penalized in India.

DISCUSSION AND FINDINGS:

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

5.1 The most critical legal infirmity in the impugned order is the attempt to adjudicate a "short levy" or "mis-declaration" while the assessment of the relevant Bill of Entry is still legally provisional. Section 18 of the Customs Act, 1962, serves as a complete and self-contained code for cases where a final assessment cannot be made immediately. The legislative intent behind Section 18 is to allow for the clearance of goods upon the execution of a bond and security, while leaving the final determination of duty liability open for a future date when all necessary enquiries are completed. Under Section 18(2), the "Proper Officer" is statutorily mandated to "finally assess" the duty on the goods as soon as the information/documents required for such assessment are available.

5.2 The legal position is firmly established that as long as a provisional assessment remains "provisional" and has not been "finalized" by a speaking order, no demand for duty under Section 28 of the Act can be sustained. Section 28 applies to cases where duty has not been levied or has been short-levied; however, in a provisional assessment, the "levy" itself is not yet concluded. The Hon'ble Supreme Court and various Benches of the CESTAT have consistently held that the process of finalization under Section 18 must precede any demand for differential duty or any penal proceedings related to valuation.

5.3 In the instant case, the record is devoid of any "Speaking Order" of finalization passed by the Deputy or Assistant Commissioner of the Appraising Group (the Proper Officer for assessment). Instead, the Additional Commissioner (Preventive) directly issued a Show Cause Notice (SCN) under Section 124 and



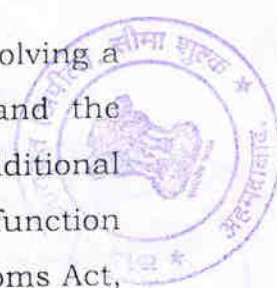
Section 28. This constitutes a gross procedural and jurisdictional error. The invocation of Section 28 during the pendency of a provisional assessment is legally prohibited because Section 28 is a recovery mechanism for duties that have already been "assessed" but found to be short. Since the assessment here is still "open," any differential duty should have emerged from the finalization process under Section 18(2), rather than through a separate adjudication proceeding.

5.4 Furthermore, the Hon'ble Supreme Court in *Canon India Pvt. Ltd. Vs Commissioner of Customs* [2021 (376) E.L.T. 3 (S.C.)] held that the nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, under section 28 of CA 1962, is broadly a power to review the earlier decision of assessment. Hence the section comes into play only when assessment is final. The relevant portion of the judgment reads as follows:

"12. The nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, is broadly a power to review the earlier decision of assessment. Such a power is not inherent in any authority. Indeed, it has been conferred by Section 28 and other related provisions. The power has been so conferred specifically on the proper officer which must necessarily mean the proper officer who, in the first instance, assessed and cleared the goods i.e. the Deputy Commissioner Appraisal Group."

5.5 The Adjudicating Authority has effectively jumped the gun by attempting to adjudicate a "short-levy" that has not yet been legally determined through the prescribed assessment route. This premature adjudication renders the impugned order void-ab-initio.

5.6 The issue of jurisdiction in this matter is multifaceted, involving a fundamental conflict between the roles of the "Assessing Officer" and the "Adjudicating Authority." The Appellant has correctly argued that the Additional Commissioner (Preventive) lacks the statutory authority to perform the function of "Finalizing" a provisional assessment. Under the scheme of the Customs Act, 1962, particularly Section 2(34), a "Proper Officer" is defined in relation to any functions to be performed under the Act as the officer who is assigned those functions by the Board or the Principal Commissioner/Commissioner of Customs. For the purpose of assessment (including provisional assessment under Section 18), the Board through various Circulars has assigned the role of



"Assessing Officer" to the Deputy or Assistant Commissioner of the respective Appraising Group at the Custom House.

5.7 In the present case, the Additional Commissioner (Preventive) has stepped into the shoes of the Assessing Officer without having been legally assigned the task of assessment. This is a jurisdictional overreach. While an Additional Commissioner is empowered to "adjudicate" a Show Cause Notice for confiscation and penalties under Section 122 of the Act, such adjudication can only proceed once a final determination of the assessable value has been made by the Proper Assessing Officer. The Hon'ble Supreme Court in *Sayed Ali vs. Commissioner of Customs 2011 (265) E.L.T. 17 (S.C.)* held that:

"Only such a Customs Officer who has been assigned the specific functions of assessment and re-assessment of duty can be considered as the 'proper officer' for the purposes of Section 28."

5.8 By extension, in a case of provisional assessment, the only officer competent to finalize the assessment and determine the actual duty liability is the Assessing Officer of the Group. By directly issuing an order that purports to both finalize the value and impose penalties, the Additional Commissioner has bypassed the entire assessment hierarchy of the Custom House. This "shortcut" approach not only violates the statutory scheme of Section 18 but also denies the Appellant the right to a two-tier challenge: first against the assessment order and subsequently against any adjudication order.

5.9 Furthermore, the Adjudicating Authority often functions based on investigation reports from agencies like the DRI. However, the law mandates that even if the DRI provides information suggesting under-valuation, that information must be transmitted to the "Proper Officer" for assessment to finalize the Bill of Entry. The adjudication wing cannot unilaterally declare an assessment "final" as a byproduct of an offence proceeding. Consequently, the impugned order suffers from a patent lack of jurisdiction, as it seeks to determine duty liability in a capacity not vested in the Additional Commissioner.

5.10 The impugned order holds the goods liable for confiscation under Section 111(m). I find this unsustainable for two reasons. First, the goods were cleared under provisional assessment. When the department itself is "not sure" of the value, it cannot simultaneously allege that there is a "willful mis-declaration." Second, for Section 111(m) to apply, there must be a "material particular" that does not correspond with the entry. Since the value is the subject of the provisional assessment, the "entry" itself is not final.



5.11 Given the extensive discussion above, it is evident that the Adjudicating Authority has skipped a mandatory step in the Customs process. The law requires that the Deputy/Assistant Commissioner must first issue a "Speaking Order" under Section 17(5) or 18(2) rejecting the transaction value and re-determining it, if applicable, after following the sequential rules (Rule 4 to Rule 9 of CVR 2007). Only after the assessment is finalized and a "mis-declaration" is established through "positive evidence" can an SCN be issued for confiscation and penalty.


5.12 By combining these steps and relying on unauthenticated documents, the Adjudicating Authority has caused a miscarriage of justice and violated the principles of natural justice. The observations of the Hon'ble CESTAT in the first remand were not followed in letter and spirit. The Adjudicating Authority was directed to "pass a fresh order after observing the principles of natural justice," which implies a fresh look at the legality of the evidence and the assessment status. Therefore, the matter must be sent back to the Proper Officer (Assessing Authority) for the formal finalization of the provisional assessment.

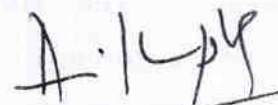
6. In view of the detailed discussion and findings above, I pass the following order:

- a. The impugned Order-in-Original No. 19/ADC/2023-24 dated 14.02.2024 is hereby SET ASIDE.
- b. The matter is REMANDED to the Proper Officer (Deputy/Assistant Commissioner of the concerned Appraising Group) for the finalization of the provisional assessment of B/E No. 7029302 dated 06.06.2012 in terms of Section 18(2) of the Customs Act, 1962.



The appeal is allowed by way of REMAND.

सत्यापित/ATTESTED

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


 (AMIT GUPTA)

Commissioner (Appeals),
 Customs, Ahmedabad

F. No. S/49-145/CUS/JMN/2024-25

Date: 31.03.2026

By Registered post A.D/E-Mail

To,
 M/s Sudh priya plasticchem pvt Ltd
 J-A/42A, Phase I, Ashok vihar
 Opp Murga market, New Delhi- 110052

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs (Preventive), Custom, Jamnagar.
4. Guard File.

