



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250771MN0000222C21

क	फ़ाइल संख्या FILE NO.	S/49-113/CUS/MUN/2023-24
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-122-25-26
परितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad	
घ	दिनांक DATE	10.07.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	O-I-O No. MCH/ADC/MK/96/2023-24 dated 28.06.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Narendra Narula, Proprietor, M/s. GND Cargo Movers, 217, Peepal Apartment, Sector 17E Dwarka, New Delhi – 110075

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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	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
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.	<p>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-</p> <p>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 -</p> <p>(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.</p> <p>(ख) 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;</p> <p>(ग) 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</p> <p>(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 ;</p> <p>(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.</p> <p>(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</p> <p>(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 ।</p> <p>(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.</p>				
6.	<p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

ORDER - IN - APPEAL

The present appeal has been filed by Shri Narendra Narula, Proprietor, M/s. GND Cargo Movers, 217, Peepal Apartment, Sector 17E Dwarka, New Delhi - 110075, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/96/2023-24 dated 28.06.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that on the basis of specific intelligence gathered by Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra, 2 Bills of Entry bearing No. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 filed by M/s Creative Accessories (here-in-after referred to as "the importer" for the sake of brevity) were put on hold by SIIB Section. The goods declared by the importer in the Bills of Entry are as under:

Bill of Entry & Date	Container No.	Goods Description	Quantity	Value (in Rs.)
3898080 dated 10.05.2021	TCNU 4235992(40)	Earphone Assorted (For Mobile Phone)	12025 DOZ	431457.00
		Plastic Case for Mobile Phone	904 GRS	304083.00
		Packing Material	60.00 Kgs	5830.50
		Battery Model BN34	31 GRS	22013.88
3977807 dated 17.05.2021	TGHU 6912878(40)	Earphone Assorted (For Mobile Phone)	9400 DOZ	252954.00
		Plastic Case for Mobile Phone	1477 GRS	353298.40

2.1 On examination, it was noticed that major proportion of the goods imported were bearing trademarks and logo of various Brands viz. Apple, Vivo, Samsung, Moto, Lava, Infinix, Lenovo, Realme, Boat, One Plus, MI, Oppo etc. It appeared that goods found during examination are branded goods and the importer, M/s Creative Accessories has attempted to import the goods by way of gross mis-declaration and undervaluation and without BIS and IPR NOC.

The details of the goods found during examination are as under:

Table A

Goods covered under bill of entry no. 3977807 dated 10.05.2021 having container bearing no. TGHU6912878 (40') and examined under panchnama dated 10.06.2021/11.06.2021

Sr. No.	Details/Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
1	ABR	Apple Airpods Pro	10	100	1000
2	ABR	Apple Airpods	5	100	500
3	DDK	Apple Airpods Pro	10	100	1000
4	AJKK	Vivo Mobile Battery, Model No.-BK6 (Bulk Packing)	1	600	600
5	AJKK	Infocus Mobile Battery, Model No.-CA486586G (TURBO 5 PLUS) (Bulk Packing)	1	600	600
6	AJKK	Samsung Mobile Battery, Model No.-A8 (Bulk Packing)	1	600	600
7	AJKK	Vivo Mobile Battery, Model No.-BB2 (Bulk Packing)	1	600	600
8	AJKK	Vivo Mobile Battery, Model No.-BK3 (Bulk Packing)	1	600	600
9	AJKK	Vivo Mobile Battery, Model No.-BK6 (Bulk Packing)	1	600	600
10	AJKK	Samsung Mobile Battery, Model No.-BA013ABY (Bulk Packing)	1	240	240
11	AJKK	Infinix Mobile Battery, Model No.-BL 49FX (Bulk Packing)	1	600	600
12	AJKK	Samsung Mobile Battery, Model No.-EBI (A21S) (Bulk Packing)	1	500	500
13	AJKK	Samsung Mobile Battery, C7 PRO.- (Bulk Packing)	1	500	1300
		Samsung Mobile Battery, Model No.-EB-BM415ABY (M-51) (Bulk Packing)		800	
14	AJKK	MOTO Mobile Battery, Model No.-H60 (Bulk Packing)	1	250	600
		Lava Mobile Battery, Model No.-Z60 (Bulk Packing)		250	
		Gionee Mobile Battery, Model No.-F103 (Bulk Packing)		100	
15	AJKK	Samsung Mobile Battery, Model No.-M01 (Bulk Packing)	1	500	600
		Samsung Mobile Battery, Model No.-EB-BG580ABU (M20) (Bulk Packing)		100	
16	AJKK	Vivo Mobile Battery, Model No.-BG7 (Bulk Packing)	1	500	700
		Infinix Mobile Battery, Model No.-BL-39X (Bulk Packing)		200	
17	AJKK	Samsung Mobile Battery, Model No.-BA013ABY (Bulk Packing)	1	300	500

		Lava Mobile Battery, Model No.-Z61 (Bulk Packing)		200	
18	AJKK	Samsung Mobile Battery, Model No.-B8971 (M11) (Bulk Packing)	1	500	500
19	AJKK	Samsung Mobile Battery, Model No.-A20 (Bulk Packing)	1	500	600
		Samsung Mobile Battery, Model No.-EB-BG580ABU (M20) (Bulk Packing)		100	
20	AJKK	Lenovo Mobile Battery, Model No.-BL243 (Bulk Packing)	1	200	500
		Gionee Mobile Battery, Model No.-F103 (Bulk Packing)		100	
		Lenovo Mobile Battery, Model No.-BL242 (A6000) (Bulk Packing)		200	
21	AJKK	Vivo Mobile Battery, Model No.-BHO (Bulk Packing)	1	500	700
		Infinix Mobile Battery, Model No.-BL-39JX (Bulk Packing)		200	
22	AJKK	Samsung Mobile Battery, Model No.-EBBM317ABY (M31S) (Bulk Packing)	1	500	580
		Samsung Mobile Battery, Model No.-C7 PRO (Bulk Packing)		80	
23	AJKK	Samsung Mobile Battery, Model No.-EB-BA750ABU (A10) (Bulk Packing)	1	500	500
24	AJKK	Samsung Mobile Battery, Model No.-EB-BM207ABY (M30S) (Bulk Packing)	1	500	500
25	AJKK	Samsung Mobile Battery, Model No.-C9 PRO (Bulk Packing)	1	500	500
26	BRT	Boat Neck Band Earphone, Model- Rockers 555	20	100	2000
27	MYSA	Realme Neck Band Earphone, Model- RM 100	20	100	2000
28	VKS	Plastic Mobile Back Cover of Different Colors	30	1550	46500
29	BRT	Boat Neck Band Earphone, Model- Rockers 425	10	200	2000
30	BRT	Realme Buds Air Pro +	7	100	700
31	BRT	Realme Neck Band Earphone, Model- Youth Buds 11	3	200	600
32	BRT	Boat Airdopes Model -311	10	100	1000
33	BRT	Realme Pro 4 Bluetooth Airpods	7	100	700
34	DDK	Samsung Wired Ear Phone, Bulk Packing	3	1000	5000
35	GKP	Boat Neck Band Earphone, Model- Rockers 235	9	200	1800
36	GKP	Boat Neck Band Earphone, Model- Rockers 525	29	200	5800
37	DDK	AKG Wired Ear Phone, Bulk Packing	5	1000	5000
38	GKP	Boat Neck Band Earphone, Model- Rockers 425	18	200	3600
39	BRT	Boat Neck Band Earphone, Model- Rockers 535	7	200	1400
40	No Marking	Apple Plastic Airpods Case	2	1200	3200
41	Jimmy	Plastic Mobile Back Cover of Different Colors	1	1000	1973
42	Mittal	Samsung Wired Ear Phone, Bulk Packing	1	200	98000
43	DDK	Boat Neck Band Earphone, Model- Rockers 355	5	100	5800



					45000
44	Sangita	Plastic Packing Material for earphone	9	5000 (53 kgs)	(477 Kgs)
45	UP	Boat wired Earphone, Model- Rockers 325	5	2000	10000
46	UP	Realme wired Earphone, Model- R70	3	2000	6000
47	UP	Realme Buds 4 wired Earphone	2	2000	4000
48	UP	Realme wired Earphone, Model- R50	5	2000	10000
49	UP	Boat wired Earphone, Model- Rockers 325	4	2000	8000
50	UP	Boat wired Earphone, Model- Bass Head 600	3	2000	6000
51	UP	Realme wired Earphone, Model- R80	1	2000	2000
52	Jimmy	Plastic Mobile Back Cover of Different Colors	14	1000	14000
53	713	Plastic Mobile Back Cover of Different Colors	21	920	19320
54	SR	Plastic Mobile Back Cover of Different Colors	128	600	76800
55	UP	Realme wired Earphone, Model- R90	1	1000	1000
56	SRS	Plastic Mobile Back Cover of Different Colors	25 11 2 1	500 600 700 300	2080
		Total	576		

**Table B**

Goods covered under bill of entry no. 3898080 dated 10.05.2021 having container bearing no. TCNU4235992 and examined under panchnama dated 12.06.2021/14.06.2021

Sr. No.	Details/Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
1	GKP	Realme True Wireless Buds, Model- TWS-R 11	23	100	2300
2	OUM	Boat Airdopes Ear Buds Model -441	10	100	1000
3	OUM	Realme Buds Q	5	100	500
4	OUM	Oppo Wired Earphone	22	1000	22000
5	OUM	Samsung Wired Earphone	9	1000	9000
6	OUM	Realme Wired Earphone	20	1000	20000
7	OUM	Vivo Wired Earphone	19	1000	19000
8	OUM	Mi Wired Earphone	10	1000	10000
9	Mysha	Boat Neck Band Earphone, Model- Rockerz 365	10	100	1000
10	SHM	Realme Plus Bass Neck Band Earphone	34	100	3400

11	SHM	Boat Plus Heavy Bass Sport Neck Band Earphone	13	100	1300
12	SHM	Boat wired Earphone, Model- 365	30	1000	30000
13	SHM	Realme wired Earphone, Model- 820	10	1000	10000
14	SHM	Realme wired Earphone, Rockerz	10	1000	10000
15	SHM	Boat Neck Band Earphone, Model- BO-1	13	100	1300
16	SHM	Realme Neck Band Earphone, Model- BU-1	9	100	900
17	JLX	Boat Neck Band Earphone, Model- Rockerz 525	10	200	2000
18	VKZ	Plastic Mobile Back Cover of Different Colors	9	648	5832
19	KNNU	Realme Neck Band Earphone, Model- BASS	2	200	400
20	Sangita	Boat Neck Band Earphone, Model- B 240	44	100	4400
21	Sangita	Realme Neck Band Earphone, Model- R 700	10	100	1000
22	SAWAN	Realme Neck Band Earphone, Model- R 700	14	100	1400
23	Sawan	Boat Plus Sport Neck Band Earphone	10	100	1000
24	SSM	One Plus Buds TWS	10	100	1000
25	KNNU	Realme Neck Band Earphone, Model- R 700	5	100	500
26	KNNU	Boat Neck Band Earphone, Model- B 240	5	100	500
27	KNNU	Boat Plus Sport Neck Band Earphone	5	100	500
28	KNNU	Realme Neck Band Earphone, Model- BASS	2	100	200
29	VKM	Plastic Mobile Back Cover of Different Colors	8	1000	8000
30	IK	Boat Neck Band Earphone, Model- Rockerz 345	10	200	2000
31	IK	ONE PLUS 120BT Neck Band Earphone	5	200	1000
32	IK	Realme Neck Band Earphone, Model- Buds 11	5	200	1000
33	713	Plastic Mobile Back Cover of Different Colors	62	620	38440
34	713	Plastic Mobile Back Cover of Different Colors	51	500	25500
35	713	Plastic Mobile Back Cover of Different Colors	51	890	45390
36	713	Plastic Mobile Back Cover of Different Colors	30	920	27600
37	Punit	Apple Mobile Battery, Model No-5S	1	500	500
38	Punit	Apple Mobile Battery, Model No-SE	1	210	210
39	Punit	Apple Mobile Battery, Model No-11 pro	1	55	55
40	Punit	Apple Mobile Battery, Model No-SE 20	1	55	55
41	Punit	Apple Mobile Battery, Model No-11 Pro Max	1	55	55
42	Punit	Apple Mobile Battery, Model No-11 Pro Max	1	460	460



43	Punit	Apple Mobile Battery, Model No-XS MAX	1	150	150
44	Punit	Apple Mobile Battery, Model No-64	1	2000	2000
45	Punit	Apple Mobile Battery, Model No-11	1	105	105
46	Punit	Apple Mobile Battery, Model No-8G	1	260	260
47	Punit	Apple Mobile Battery, Model No-6G	1	2160	2160
48	Punit	Apple Mobile Battery, Model No-XR	1	30	30
49	Punit	Apple Mobile Battery, Model No-7G	1	1600	1600
50	Punit	Apple Mobile Battery, Model No-7P	1	700	700
51	Punit	Apple Mobile Battery, Model No-8P	1	230	230
52	Punit	Apple Mobile Battery, Model No-6SP	1	170	170
53	Punit	Apple Mobile Battery, Model No-6P	1	1	655
54	Punit	Apple Mobile Battery, Model No-XS	1	140	140
55	Punit	Apple Mobile Battery, Model No-5G	1	130	130
56	Punit	Apple Mobile Battery, Model No-XR	1	120	120
		Total	615		

2.2 It appeared that goods found under both the Bills of Entry i.e 3977807 dated 17.05.2021 and 3898080 dated 10.05.2021 were grossly mis-declared, highly undervalued and also major portion of the goods are counterfeit/fake or copied mobile accessories of various brands such as Apple, ~~boat~~ Real me, Samsung and vivo etc. thereby contravened the various provisions of Customs Act, 1962 and also Intellectual Property Rights of the right holder read with notification no. 51/2010-customs(NT) dated 30.06.2010.

2.3 It appeared that the goods found during the examination of both the bills of entry no. 3977807 dated 17.05.2021 and 3898080 dated 10.05.2021 were grossly undervalued and to ascertain the actual value of the goods, valuation was carried out by searching the similar/identical goods from E-commerce website and the data of the similar/identical goods for contemporaneous import were checked from NIDB website. The goods were valued on the basis NIDB date and DRI alert and 40% of the value of goods shown in e-commerce website.

Sr. No.	Bill of Entry/ BL No.	Container no.	Value of goods
1	3977807 dated 17.05.2021	TGHU6912878 (40')	4,16,76,496/-
2	3898080 dated 10.05.2021	TCNU4235992 (40')	3,12,07,363.4/-

2.4 The goods found during the examination of Bill of Entry no. 3898080 dated 10.05.2021 valued Rs 3,12,07,363/- and Bill of Entry No. 3977807 dated 17.05.2021 valued at Rs. 4,16,76,496/-were seized vide seizure memo dated



28.07.2021 under section 110(1) of the Customs Act, 1962.

2.5 During the course of investigation, statements of different persons involved in the case were recorded and following facts emerged-

- A letter was written to the Additional Commissioner of Customs (Preventive), New Custom House, Near IGI Airport & Air Cargo complex, New Delhi-110037 for search/verification at the premise of Customs broker M/s Sark Enterprises and M/s Creative Accessories, and to withdraw incriminating documents, however on search, no firm named as M/s Creative Accessories, found on the address i.e. 2nd Floor, Plot KH. 311 MIN MAI Bijwasan, Opp. PNB Bank ATM, New Delhi-110061.
- Shri. Rajan Arora employee of M/s Sark Enterprises in his stated intimated that he issued tax invoices to the name of M/s GND Cargo Movers H.No.190/5, Part VI, Sector-5, Gurgaon, Haryana. Shri Narender Narula is the owner of the firm and Shri Prince Rana is his employee.
- From the Whatsapp chat between M/s. Sark Enterprises and Shri Prince Rana it was found that the Custom Duty has been paid through M/s GND Cargo Movers and Shri Prince Rana sent AD Code, Signature verification and letter heads of M/s Creative Overseas to M/s Sark Enterprises. He also edited/corrected the details of Cartons in invoices and packing list, provided KYC and looked after all work of documentation i.e providing of documents, details to CHA, tracking of containers, Custom duty payments, Payment/DO Charges to Shipping lines etc.

2.6 Letters dated 28.06.2021 were written to the Right holders of various brands such as Apple, Boat and Realme etc. to examine the goods and inform about the authenticity of the products and to verify whether there is any violation of IPR rules which comes under provisions of the Intellectual Property Rights (Imported goods), Enforcement Rules, 2007. The representatives of the various right holders inspected the goods and provided an inspection report dated 31.08.2021 on behalf of Imagine Marketing Private Limited in the matter of suspension of goods bearing the mark of brands such as Boat, Apple & Realme. As per their letter, it was confirmed that all the products of Boat, Apple and Realme are fake and found to be in violation of the intellectual property rights of the right holder.



2.7 Further, M/s React India Private Limited having address at Corporate office, 4&5, 1st Floor, Augusta Point, Sector 53, Gurugram 122002, Haryana, Authorised Representative, Samsung India vide their mail dated 21.03.2022 stated that the products of Samsung are counterfeit/fake. Further, M/s Vivo India vide their letter dated 20.05.2022 also stated that the products declared are counterfeit/fake. From the report of all the right holders i.e Boat, Apple, Realme, Samsung, Vivo etc. it appeared that the products covered under the Bills of Entry No. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 are fake or counterfeit and in violation of the intellectual property rights (Imported goods) Enforcement rules, 2007. Further, despite various reminders, no representatives from M/s Oppo India and M/s One Plus came to examine the goods.

2.8 Further, in completing the on-going investigation statements of Sh. Ketan Sood an authorized person on behalf of Sh. Bijendra, proprietor of M/s Creative Accessories was recorded on 19.07.2021, statement of Shri Narendra Narula, Proprietor of M/s GND Cargo Movers was recorded on 01.12.2021 and statement of Sh. Memon Juned Salim, authorized representative of M/s Creative Accessories was recorded on 12.01.2022 and as detailed in the Show Cause Notice.

2.9 On completion of investigation, Show Cause Notice (SCN) bearing no. F.No. S/43-03/Inv.-Creative/SIIBC/CHM/21-22 dated 26.07.2022 was issued to the importer proposing as to why:

- i. The un-declared goods i.e. counterfeit products of various brands viz. Samsung, Apple, Boat, Realme, vivo etc. and the declared goods i.e. electronics and mobile accessories without any brands' trademark/logo, imported vide Bills of entry no. 3898080 dated 10.05.2021 re-valued at Rs 3,12,07,363/- and 3977807 dated 17.05.2021 re-valued at Rs 4,16,76,496/- totaling to Rs 7,28,83,859/- which were seized vide Seizure Memo dated 28.07.2022 should not be confiscated under Section 111(d), Section 111(i), Section 111(l) & Section 111(m), and Section 119 of the Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

ii. Penalty should not be imposed on importer, for their acts of commission and omission discussed here in above under Section 112(a)(i), Section 114AA and Section 117 of the Customs Act, 1962.

2.10 SCN was also issued to the Customs Broker M/s Sark Enterprises as to why penalty under Section 112(a)(i) and Section 117 of the Customs Act, 1962 should not be imposed upon them.

2.11 SCN was also to Shri Narendra Narula, Proprietor of M/s GND Cargo Movers, the forwarder, who was actively involved & conniving in the misdeclaration as to why penalty under Section 112(a)(i) and Section 117 of the Customs Act, 1962 should not be imposed upon him.

2.12 The above SCN was adjudicated by the adjudicating authority wherein she ordered as under :-



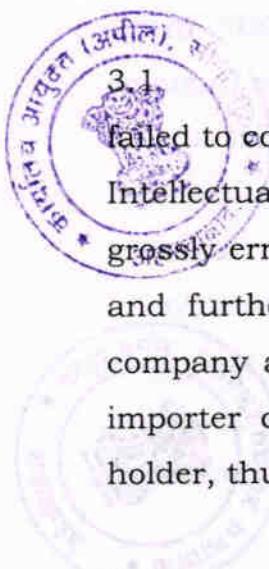
- (i) She ordered for absolute confiscation of the un-declared goods i.e. counterfeit products of various brands viz. Samsung, Apple, Boat, Realme, vivo etc. and the declared goods i.e. electronics and mobile accessories without any brands' trademark/logo, imported vide Bills of entry no. 3898080 dated 10.05.2021 re-valued at Rs 3,12,07,363/- and 3977807 dated 17.05.2021 re-valued at Rs 4,16,76,496/- totaling to Rs 7,28,83,859/- under Section 111(d), Section 111(1), Section 111 (i), Section 111(m), and Section 119 of the Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and ordered for destruction within three months from the receipt of this order. She also ordered M/s Creative Accessories to pay the destruction charges and ensure no environmental pollution and degradation occurs during the destruction.
- (ii) She imposed penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under section 112 (a) (i) and Rs. 5,00,000/- (Rupees Five Lakh only) under section 114AA of Customs Act, 1962 on importer M/s Creative Accessories.
- (iii) She imposed penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under section 112 (a) (i) of Customs Act, 1962 on Shri Narendra

Narula, however she did not impose any penalty under section 117 of Customs Act, 1962.

(iv) She imposed penalty of Rs. 2,00,000/- (Rupees Two Lakh only) under section 112 (a) (i) of Customs Act, 1962 on CB M/s Sark Enterprises however I do not impose any penalty under section 117 of Customs Act, 1962

3. SUBMISSIONS OF THE APPELLANT:

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 adjudicating authority has failed to consider the provisions of the Customs Act, 1962 and the provisions of Intellectual property Rights (Imported Goods) Enforcement Rules, 2007 and has grossly erred in holding that the goods of different brands had been concealed and further observing that the since the goods imported by the importer company are imported without IPR NOC from the Right Holders, thereby the importer company had infringed the intellectual property right of the right holder, thus, making the goods liable for absolute confiscation.

3.2 The appellant has submitted that he is a Proprietor of GND Cargo, New Delhi which is inter alia engaged in documentation of goods imported by air or sea. Thus, the process of his business activities is preparing proper set of documents related to import and submitting it with Customs Broker, who thereafter files Bill of Entries in respect of various importers. The instant issue arises as the above mentioned notice emanates from the findings of investigation as mentioned under para 8.2 of the Notice, which reads as 'the role of the Freight Forwarder Shri Narendra. Narula of M/s GND Cargo is also questionable in as much as it is evident from his statement that he is fully Customs Act, 1962.

3.3 The appellant has submitted that he is a freight forwarder and also a partner in customs broker firm M/s RND Logistics. In the past, the appellant was also engaged in custom clearance work through his concern, namely GND cargo Movers. During the period April, 2021 on being approached by one M/s Creative Accessories, 2nd Floor, Plot KN No. 311, Mn, Main Road, Bijwasan' New Delhi for import of certain mobile accessories through the port of Mundra,

appellant forwarded the said assignment of clearance to M/s. Sark Enterprises, Custom Broker on commission basis. Later the said Customs Broker had filed 02 Bills of Entries bearing numbers 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 on behalf of the above importer company declaring the goods as earphones assorted, plastic cases for mobile phones etc. on the basis of import documents.

3.3 On examination, the quantity and description of the goods were found as per declaration, however, on examination of the cargo the goods were alleged to be bearing names of different brands like Apple, Samsung, Vivo etc. and the investigation also suspected under-valuation. The appellant has further submitted that during investigation, representatives of the right holders informed that the goods were fake or counterfeit and thus, there was violation of intellectual property Rights (Imported Goods) Enforcement Rules, 2007. In his statement, One Shri Rajan Arora, partner of M/s Sark Enterprises, the Customs broker firm, which had filed the subject Bills of Entries, stated that all the paperwork and payment details were given to them by the appellant and that they had issued tax invoice in the name of M/s GND cargo Movers for clearance of the goods. Further, one Shri Ketan Sood, authorized representative of importer, stated that the appellant had sent him to Mundra port to get the goods shifted from CFS to bonded warehouse and that he was informed by the appellant that goods were declared in the Bills of Entries as earphones but Bluetooth earphones / headphones were found during examination.



3.4 In his statement, the appellant had stated that he was working as a mediator between customs broker firm M/s. Sark Enterprises and importer; that he came in contact with proprietor of Importer at Airport, where he was working as a clearing agent; that he was dealing with documentation of instant goods. The appellant had in his submission stated that the instant Notice was also without authority of law as the had been issued without a DIN. That it is settled through various judicial pronouncements that Board's circulars and instructions are binding upon Departmental Officers and any Order, Notice or any other communication issued in contravention of Board's circular/instruction shall be null and void. In this connection, the appellant had relied upon the following judgments of Hon'ble Supreme Court-

- i. Collector of Central Excise, Patna vs. Usha Martin Industries reported in 1997 (94) ELT 460 (SC).

ii. Paper products Ltd. vs. Commissioner of Central Excise reported in 1999 (112) ELT 765 (SC).

iii. Commissioner of Central Excise, Pune vs. Abhi Chemical & Pharmaceuticals Pvt. Ltd. reported in 2005 (181) ELT 351 (SC).

3.5 The appellant had further stated that it was a fact that importer company was known to appellant in his usual course of business, as appellant had met the proprietor of Importer at Air cargo, New Delhi and that appellant had introduced importer to M/s Sark Enterprises, the Customs Broker for clearance of instant goods and accordingly also forwarded the KYC and other import documents received from Importer to the said Customs Broker, but it is absolutely incorrect to say that appellant was involved in clearance of goods imported by instant Importer from various ports. The appellant had also submitted that it was absolutely incorrect to say that appellant had connived with the Importer qua the import of instant goods. On the contrary, the appellant had no prior knowledge about the alleged fake and counterfeit nature of the goods and that neither the appellant nor any other person, whose statements were recorded, have stated so.

3.6 The appellant has submitted that Shri Ketan Sood, in his statement had, inter alia, stated that the appellant had sent him to Mundra port to get the goods shifted from CFS to Bonded Warehouse and that he had informed him that Bluetooth earphones / headphones were found in place of earphones; that the said statement of Shri Ketan Sood was incorrect and improper and as such the appellant had requested for cross examination of said Shri Ketan Sood to bring the true facts at fore. The appellant has further submitted that it had been submitted that in terms of the provisions of Section 138 of the Act, the cross examination of the persons whose statement has been relied upon by the Department cannot be refused unless the Adjudicating Authority had after hearing the party given a finding to the effect that the presence of the witnesses cannot be obtained without undue delay or expense which the officer concerned considers unreasonable. Also, in terms of said Section the Adjudicating Authority before relying upon the statement of a witness against a Noticee, has to ascertain its correctness by examining him and permitting his cross examination. Therefore, the examination in chief of the persons whose statements have been relied upon in the Show Cause Notice were essential to

ascertain the truth and that the opportunity of cross examination was required to be provided to the appellant to defend their position in the interest of justice. However, the learned adjudicating authority had grossly erred in not allowing cross examination which had resulted in gross violation of natural justice.

3.7 The appellant has submitted that it is a trite law that cross-examination is a justifiable right and any order passed without granting cross examination renders the order illegal in view of the law propounded by Hon'ble Supreme Court and various High Courts. The appellant had relied on the following judgments in support of their claim.

- (i) Laxman Exports Ltd. 2002 (143) ELT 21 (SC);
- (ii) Andaman Timber Industries Vs. Commissioner of Central Excise, KolkataII - 2015 (324) ELT 041 (S.C.)
- (iii) Him Logistics Ltd. 2016 (336) ELT 15 (Del.);
- (iv) Basudev Garg 2017 (48) STR 427 (Del.);
- (v) Sampad Naryan Mukerjee 2019 (366) ELT 280 (Cat.); (
- (vi) Commissioner of Central Excise Lucknow Vs. Shyam Traders -2016 (333) ELT 389 (All.); and
- (vii) Hi Tech Abrasives Ltd. Vs. Commissioner of Central Excise & Customs, Raipur 2018 (362) ELT 961 (Chhattisgarh).



3.8 The appellant has submitted that in such an important case, the learned adjudicating authority inspite of being aware that the cross examination was required to be allowed, considering the facts that all the allegations were made on the basis of third party evidences, denied cross examination of witness resulting in gross violation of natural justice. The impugned OIO is therefore not sustainable on these grounds alone.

3.9 The appellant has further submitted that even otherwise the allegations made by the investigation related to violation of violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 are not sustainable as the evidences placed by the investigation to substantiate violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 are based on third party evidences and as such the said allegations are otherwise also not sustainable. Thus, the appellant has submitted that there is no violation of violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 in the instance case.

3.10 Similarly, the appellant though has nothing to do with valuation of goods, however as the allegations of gross undervaluation of the imported goods have been made against the importer company, the investigation had also included the appellant as a part of the allegation. The appellant has submitted that the present allegation of undervaluation is based on the similar / identical goods from E-commerce websites and the data of the similar/identical goods for contemporaneous import from NIDB website (para 4.1 of the Notice refers). However, the investigation has not adduced the above documents which has been primarily been relied in the impugned Show Cause Notice to allege undervaluation on the importer and alleging abetment on the appellant, for which the appellant had made a request to supply the same in interest of justice, which has not been done by the investigation or the learned adjudicating authority. Thus, the investigation and the learned adjudicating has caused gross negligence in holding the violations of prohibitions and undervaluation in the case and as such the appellant is not in a position to make appropriate submissions on the said allegation.



3.11 The appellant has submitted that the Hon'ble Supreme Court in the matter of Kothari Filaments Vs. CC (Port), Kolkata as reported at 2009 (233) ELT 289 (SC) has held that need to supply all documents/reports etc. relied upon in adjudication, not just those formally called as relied upon documents in the Show Cause Notice. Similarly, in the matter of Popular Mart vs. Commissioner of Cus. (ICD TKD), New Delhi as reported at 2016 (341) ELT 310 (Tri. Del.), Hon'ble Tribunal has held that non-supply of both RUDs and non-RUDs for filling an effective and meaningful reply to the show cause notice is against the principles of natural justice. The appellant has further submitted that his firm was involved in clearing cargo of the instant Importer from various ports (Para 8.2 of the Notice refers) which is factually incorrect. The appellant has submitted that his firm was inter alia engaged in undertaking business as a freight forwarder of the appellant importer, not the clearing agent of the importer.

3.12 The appellant has submitted that it has been alleged that the goods imported by the importer company are liable for confiscation under the provisions of Section 111(d), (i), (l) and (m) of the Customs Act, 1962. The provisions of Section 111(d), (i), (l) and (m) of the Customs Act, 1962 are reproduced below :

Section 111. Confiscation of improperly imported goods, etc.. The following goods brought from a place outside India shall be liable for confiscation :-

(a) to (c)

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) to (h)

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) to (k)



(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipments referred to in the proviso to sub-section (1) of section 54;

3.13 The appellant has submitted that it is difficult to understand the stand of the investigation related to invocation of Section 111 of the Customs Act, 1962, as the appellant could never know whether the provisions of Section 111 of the Act ibid can be invoked in the case of importer or otherwise. However, the fact remains that only because the provisions of Section 111 of the Customs Act, 1962 is invoked on the importer firm, then in such case, it does not grant blanket permission to the investigation to invoke penal provisions of the Customs Act, 1962, without bringing out the role of the appellant, which has not been done in the instant case. The appellant therefore says and submits that the provisions of Section 111 of Section 112(a)(i) or Section 114AA of the Customs Act, 1962 is applied to all the noticees in a mechanistical manner. The appellant

therefore says and submits that the premises in the basis of which the allegation has been made on the appellant is baseless and illogical and as the entire allegation has been made on assumptions and presumptions, the said allegations becomes unsustainable and is therefore required to be struck down in interest of justice.

3.14 ~~14.1~~ The investigation has wrongly proposed the imposition of penalty on the appellant under Section 112(a)(i) of the Customs Act, 1962 without considering the facts of the case and thereafter improper and illogical application of the above provisions have been made on the appellant without placing on records his alleged role in the entire set of allegations and as such the imposition of the penalty on the appellant is illogical, arbitrary and as such the same is required to be set aside in interest of justice.

3.15 ~~14.2~~ The provisions of Section 112(a)(i) of the Customs Act, 1962 reads as under :



112. Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 12 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

3.16 The appellant has submitted that from the plain reading of the provisions of Section 112(a)(i) of the Customs Act, 1962 can be made applicable in cases where any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under

section 111, or abets the doing or omission of such an act shall be liable in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater.

3.17 The appellant has submitted that the basis of imposition of penalty on the appellant has arisen in the instant case only due to the reason that the investigation had made an allegation which pointed out that there was violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 by the importer company, to which he has also not accepted that there was any malafide intention or there was any abetment in the so called allegation made by the investigation, then, in such a situation it is difficult to make the said provisions applicable to other persons, who were nowhere concerned with the import.

3.18 The appellant has submitted that when it is established that there is no violation of the intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, then in such a case, it cannot be held that the importer company had imported goods on which there was a prohibition and as such the imposition of penalty on the appellant is not only illogical and illegal and as such is required to be set aside in interest of justice.

PERSONAL HEARING:



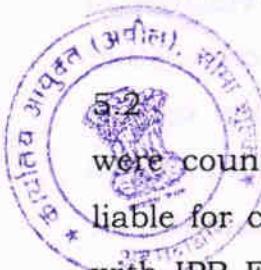
4. Personal hearing was granted to the Appellant on 17.06.2025, following the principles of natural justice wherein Shri Anil Gidwani, Advocate appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner of Customs, 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 appeals which are as follows:

- (i) Whether the adjudicating authority correctly found the Appellant to be involved in acts that rendered the goods liable for confiscation.
- (ii) Whether the imposition of penalty on the Appellant under Section 112(a)(i) of the Customs Act, 1962, is justified.
- (iii) Whether the denial of cross-examination of witnesses by the adjudicating authority constituted a violation of natural justice, rendering the impugned order unsustainable.
- (iv) Whether the Show Cause Notice was defective or based on insufficient evidence.

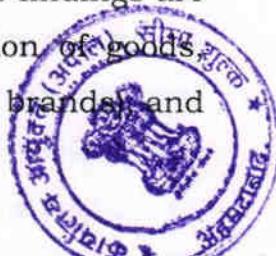


The core finding of the impugned order is that the imported goods were counterfeit/fake, grossly mis-declared, and undervalued, making them liable for confiscation under various sections of the Customs Act, 1962, read with IPR Enforcement Rules, 2007. The Appellant, Shri Narendra Narula, as proprietor of GND Cargo Movers, acted as a freight forwarder and facilitated the import. The impugned order concludes that he was "assisting and conniving with the importer". The evidence on record, including the statement of Shri Rajan Arora (partner of M/s Sark Enterprises, the Customs Broker for M/s Creative Accessories) and Shri Ketan Sood (authorized representative of the importer), suggests that Shri Narula facilitated the movement of goods, including those shifted to bonded warehouses. The detailed findings of IPR infringement and undervaluation of goods that were mis-declared as generic, demonstrate a larger scheme. Given these findings, the adjudicating authority's conclusion that the Appellant played a role in facilitating the import of goods liable for confiscation cannot be dismissed as arbitrary.

5.3 Section 112(a)(i) applies to any person who does or omits to do any act which would render goods liable to confiscation. Since the goods imported by M/s. Creative Accessories (and facilitated by the Appellant) were found liable for absolute confiscation due to mis-declaration, undervaluation, and IPR infringement, the Appellant's actions as a freight forwarder in handling these goods directly attract this penalty. The degree of mens rea for Section 112 penalties is not always absolute and can be inferred from the circumstances. In cases of such widespread violations, facilitation itself is penalized.

5.4 The Appellant's contention of merely handling documentation in the normal course of business, without knowledge of the illegalities, cannot be accepted at face value given the findings of extensive mis-declaration, undervaluation, and IPR infringement. The very nature of the goods (counterfeit branded mobile accessories) would put any diligent freight forwarder or Customs Broker on alert.

5.5 The Appellant has heavily relied on various judgments emphasizing the right to cross-examine witnesses whose statements are relied upon. Key judgments cited include Andaman Timber Industries (2015 (324) E.L.T. 041 (S.C.)) and Basudev Garg (2017 (48) STR 427 (Del.)), which state that denial of cross-examination of relied-upon witnesses, where their statements form the sole basis or a crucial part of the evidence against the assessee, is a violation of natural justice. However, the applicability of this principle depends on whether the statements were the sole or crucial evidence, and if the denial caused prejudice. The impugned order, while implicitly denying cross-examination, also notes that the Appellant's representatives failed to avail opportunities for personal hearing and provide satisfactory explanations. The OIO's findings are based on a confluence of factors, including physical examination of goods, reports from brand right holders (confirming fakeness for multiple brands), and the Appellant's own statements/lack of credible rebuttal.



5.6 While the right to cross-examine is important, it is not an absolute right if the adjudicating authority finds that the presence of the witnesses is not necessary to arrive at a fair conclusion or if the party demanding cross-examination has been non-cooperative. The CESTAT in Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T. 556 (Tri. -Kolkatta)] have held that cross-examination may not be required if the adjudicating authority is satisfied that no new facts would emerge. In the present case, the mis-declaration and IPR infringement were also established by physical examination and brand verification reports, not solely by the statements.

5.7 Given the multi-faceted evidence and the Appellant's alleged non-cooperation in providing satisfactory responses during the investigation, the denial of cross-examination, while a procedural concern, may not be fatal to the order if other independent evidence strongly supports the findings.

5.8 The Appellant's argument that the SCN was defective due to the intelligence not being placed on record or certain documents not being made RUDs is a common contention. However, the SCN provides detailed particulars of the Bills of Entry, goods description, examination findings, IPR issues, undervaluation, and sections contravened. It explicitly mentions that the right holders' inspection reports confirmed the products were fake. This constitutes a sufficiently detailed SCN to apprise the Appellant of the charges and evidence against them. Therefore, the SCN, when read as a whole, adequately put the Appellant on notice regarding the allegations and findings.

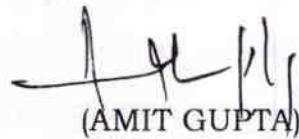
In view of the detailed discussions and findings above, I find no infirmity in the impugned order passed by the adjudicating authority. The findings regarding the Appellant's involvement in facilitating the import of mis-declared, undervalued, and IPR infringing goods are well-supported by the facts on record and are in consonance with the relevant provisions of the Customs Act, 1962. The Appellant's contentions regarding the lack of mens rea and defective SCN are not sustainable given the nature of violations and the evidence presented. While the denial of cross-examination is a procedural concern, in this specific case, the comprehensive nature of other evidence and the Appellant's apparent lack of full cooperation mitigate against this being a fatal flaw.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- (i) I hereby uphold the findings of the adjudicating authority regarding the Appellant's involvement in facilitating the import of goods liable to confiscation due to mis-declaration, undervaluation, and IPR infringement.
- (ii) I hereby uphold the imposition of penalty of ₹ 10,00,000/- (Rupees Ten Lakh Only) on Shri Narendra Narula under Section 112(a)(i) of the Customs Act, 1962.



8. Consequently, the appeal filed by Shri Narendra Narula, Proprietor, M/s. GND Cargo Movers, is hereby rejected.

(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-113/CUS/MUN/2023-24

2358

Date: 10.07.2025

By Registered post A.D/E-Mail

To,

Shri Narendra Narula,
Proprietor, M/s. GND Cargo Movers,
217, Peepal Apartment,
Sector 17 E, Dwarka, New Delhi-110075.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा बुर्ड (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

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