	कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421	
A. File No.	:	GEN/ADJ/COMM/445/2026-Adjn-O/o-Pr.Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-33-2026-27
C. Passed by	:	Nitin Saini Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	:	12.10.2026 12.10.2026
E. SCN No. & Date	:	33/2026-27/COMM/N.S./Adjn/MCH dated 05.08.2026
F. Noticee(s)/Co-noticee(s)		M/s. Siyaram Earthmovers Pvt. Ltd and Shri Vishal Sharma, Director, M/s. Siyaram Earthmovers Pvt. Ltd

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है- Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"**केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण**, **पश्चिम जोनल पीठ**, 2nd **फ्लोर, बहुमालीभवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद**-380 004"

"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.

4. उक्तअपीलकेसाथ1000/- रूपयेकाशुल्कटिकटलगाहोनाचाहिएजहाँशुल्क ,व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,व्याज ,शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मदसं॰ 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Siyaram Earthmovers Private Limited (IEC: ABKCS0369Q), having its registered office at F/201, 2nd Floor, Sonam Srivilas, Adeshwar Road, New Golden Nest Phase-15, Sai Furniture, Mira Road (East), Mira Bhayandar, Thane, Maharashtra-401105 (hereinafter referred to as "the Importer" or "the Noticee"), imported goods vide Bill of Entry No. 3865062 dated 13.08.2025 (live consignment) at Mundra Port, declaring the same as "Hydraulic Rock Breaker Spare Parts" under CTH 84314990, with the supplier shown as M/s Suny Industrial (Malaysia) SDN BHD and the Country of Origin declared as Malaysia. Intelligence gathered by the Directorate of Revenue Intelligence (DRI) indicated that the said consignment, as also two earlier consignments imported by the Importer vide Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025 (past clearances), were mis-declared with respect to the Country of Origin, the goods being actually of Chinese origin, with intent to evade Anti-Dumping Duty leviable under Notification No. 11/2024-Cus. (ADD) dated 27.06.2024, which imposes Anti-Dumping duty on Hydraulic Rock Breakers and Alloy Steel Chisels, in fully assembled condition as also in specified assemblies/sub-assemblies, originating in or exported from China PR and Korea RP.

Search and Examination Proceedings

2. Acting upon the said intelligence, officers of DRI conducted search proceedings on 21.08.2025 under Panchnama at the Importer's Ahmedabad premises at Ground Floor, G-12, Karnavati Estate, Sanand Sarkhej Road, Sarkhej, Ahmedabad. During the search, 30 wooden boxes containing breaker machines bearing the marking "Rockhard SB-43", along with Fronthead parts bearing the logo/trademark "CYU" and pistons of different sizes packed in boxes bearing Chinese markings, were found and recovered. Shri Udit Sharma, Manager of the Importer, stated that the said goods had been received from the Importer's own Mumbai unit under Invoice No. SEPL/25-26/01033 dated 19.08.2025, that the goods covered under the said invoice had, in turn, been imported by the Mumbai office from China, and that all import-related work of the firm was handled exclusively by Shri Vishal Sharma, Director. Further scrutiny established a clear documentary linkage, through the said invoice, between the goods found at Ahmedabad and the goods imported vide Bill of Entry No. 3719425 dated 06.08.2025.

3. Separately, the live consignment covered under Bill of Entry No. 3865062 dated 13.08.2025 was placed on hold on 14.08.2025 and examined by DRI officers under Panchnama dated 28.08.2025 at M/s Mundhra CFS Pvt. Ltd., Mundra, whereupon the consignment was found to contain various types of machinery parts appearing to be Hydraulic Rock Breaker parts.

Statements recorded under Section 108 of the Customs Act, 1962

4. The voluntary statement of Shri Vishal Sharma, Director of the Importer, was recorded on 14.10.2025, wherein he inter alia admitted that he is the sole working Director of the company and is solely responsible for procurement, imports, sales

and financial matters; that the company has been importing and trading in earthmoving and excavator spare parts, including Hydraulic Rock Breakers and their parts, since January 2023, mainly from China; and that from May 2025 onwards, the company began routing its imports through Malaysia, specifically through M/s Suny Industrial (Malaysia) SDN BHD, three consignments having been imported through Mundra Port in this manner, viz. those covered under Bill of Entry No. 3865062 dated 13.08.2025, Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025. Shri Vishal Sharma categorically admitted that M/s Suny Industrial (Malaysia) SDN BHD is not a manufacturer but merely a forwarder/trader entity; that the goods were in fact manufactured in China, coordinated by one Ms. Nancy of M/s Ningbo Chengyu Construction Machinery Co. Ltd., China; that the goods were physically loaded from Ningbo Port, China, and were merely routed through Malaysia for export; and that the Malaysian entity had merely facilitated logistics and documentation, including routing through Malaysian freight forwarders. He further admitted that he was fully aware that the goods so imported through Malaysia were of Chinese origin, that Hydraulic Rock Breaker parts manufactured in China are liable to Anti-Dumping Duty under Notification No. 11/2024-Cus. (ADD) even when exported from a third country such as Malaysia, that no Anti-Dumping Duty had been paid on any of the three said consignments despite this knowledge, and expressed his willingness to pay the differential duty voluntarily. He also admitted to having deleted WhatsApp chats exchanged with the Chinese supplier after initiation of the DRI investigation.

5. The voluntary statement of Shri Aritra Ghosh, Deputy Branch Manager of M/s Care Container Lines Pvt. Ltd., the Customs Broker engaged by the Importer, was recorded on 10.11.2025. Shri Aritra Ghosh stated that the Bills of Entry, including Bill of Entry No. 3865062 dated 13.08.2025 and Bill of Entry No. 3719425 dated 06.08.2025, were filed solely on the basis of import documents furnished by Shri Vishal Sharma; that although a query had been raised regarding the applicability of Anti-Dumping Duty at the time of filing the first Bill of Entry, Shri Vishal Sharma had represented that the goods were imported from Malaysia and had furnished a Certificate of Origin issued by the Malaysian Chamber of Commerce, on the strength of which the Bills of Entry were filed; that the Customs Broker had no independent knowledge of the actual Chinese origin of the goods or of the fact that M/s Suny Industrial (Malaysia) SDN BHD was merely a forwarding entity; and that after DRI search proceedings commenced, Shri Vishal Sharma instructed the Customs Broker not to pay customs duty on the subject consignment.

Seizure

6. On the basis of the investigation and reasonable belief that the goods were liable to confiscation under Section 111(m) of the Customs Act, 1962, two Seizure Memos, both dated 15.10.2025, were issued under Section 110 of the Customs Act, 1962. The first seizure memo was in respect of the goods covered under Bill of Entry No. 3865062 dated 13.08.2025 (live consignment), examined at Mundra CFS, and the second seizure memo was in respect of the goods covered under Bill of Entry No.

3719425 dated 06.08.2025 (Out of charged goods lying at premises of Ahmedabad), examined at the Ahmedabad premises of the Importer and detained vide Detention Memo dated 21.08.2025.

Corroborative Findings and Parallel Investigations

7. Investigation further revealed that the trademark "CYU", found embossed on the Hydraulic Breaker parts under seizure, was registered in the name of M/s Ningbo Chengyu Construction Machinery Co., Ltd., China, as ascertained from the website www.registrationchina.com. Verification conducted with the Malaysian Customs Authorities, under the India–Malaysia MoU on Cooperation and Mutual Assistance in Customs Matters dated 12.06.2013, confirmed that M/s Suny Industrial (Malaysia) SDN BHD (since renamed M/s Mytrack Tech Sdn. Bhd. in September 2025) is registered with the Companies Commission of Malaysia only for trading, and is not registered for any manufacturing activity, thereby corroborating that the said entity was merely a trading/forwarding intermediary and that the claimed Malaysian origin was false and mis-declared.

8. Reliance was also placed upon corroborative evidence unearthed during parallel, identical investigations conducted by DRI in the cases of other importers, using the very same overseas supplier, M/s Suny Industrial (Malaysia) SDN BHD, as a common routing conduit, namely: (i) M/s Mansi Equipments, wherein parallel back-to-back invoices (issued by the Chinese supplier to the Malaysian entity, and by the Malaysian entity to the Indian importer, identical save for the supplier's name and declared origin) were recovered, along with a blank/unsigned Certificate of Origin purportedly issued by the Malaysian Chamber of Commerce and insurance certificates issued from China, the proprietor Shri Sanjay Vedprakash Agrawal admitting that all goods imported through Malaysia are of Chinese origin; (ii) M/s Rahul Mining, wherein WhatsApp chats recovered between the proprietor Shri Vikram Parmar and one Ms. Nancy, a sales representative of the Chinese supplier, explicitly discussed routing of goods through Malaysia to avoid Anti-Dumping Duty, changing of containers in Malaysia, and routing of payments through a Malaysian entity, with a specific reference to "Vishal of Siyaram" as another client following the same route, Shri Vikram Parmar's own statements admitting the Chinese origin of the goods and that the Malaysian entity was a mere routing/paper entity; (iii) M/s Mahaveer Distributors, whose partner Shri Rajiv Hosamane Jayaprakash admitted importing Hydraulic Rock Breakers from China for several years through the same Ms. Nancy, the recovered chats referring to him "using another importer's name"; (iv) M/s Shree Rudransh International and M/s Pinakin Impex, whose proprietors admitted that goods declared as being of Malaysian origin were identical to goods earlier imported directly from China, all dealings having been conducted only with Ms. Nancy, based in China; and (v) a WhatsApp group extracted from the mobile phone of Shri Vivek Kotecha of M/s Vikhyat Enterprises, in which one "Betsy", representing herself as being from M/s Kingtrans Container Line (Shenzhen) Co., Ltd., a professional third-country transshipment forwarder, explicitly advised routing Chinese-origin Hydraulic Rock Breakers through Malaysia to "reasonably avoid"

Anti-Dumping Duty, shared a flow-chart depicting change of container and preparation of a fresh set of Malaysian shipping documents at a Malaysian bonded warehouse, advised that the Indian customs clearance agent not be informed that the goods were purchased from China, and explained a financial arrangement whereby payment would be routed through the Malaysian company (with an additional 0.7% handling charge) instead of directly to the Chinese supplier.

Duty Liability

9. The investigation concluded that M/s Siyaram Earthmovers Pvt. Ltd. had imported Hydraulic Rock Breaker Spare Parts of Chinese origin vide the said three Bills of Entry, having a total assessable value of Rs. 1,02,61,670/-. In respect of the two Bills of Entry already cleared for home consumption, viz. Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025, duty of only Rs. 18,83,356/- had been paid as against total duty payable of Rs. 1,49,04,201/-, resulting in short-payment of Rs. 1,30,20,845/-, recoverable under Section 28(4) of the Customs Act, 1962 read with interest under Section 28AA ibid. In respect of the live consignment covered under Bill of Entry No. 3865062 dated 13.08.2025, which remains under seizure, no duty whatsoever had been paid, the total duty payable thereon, on re-assessment, working out to Rs. 76,18,625/-.

Role of Noticees and Extension of Time

10. The investigation attributed the central and active role in the mis-declaration to M/s Siyaram Earthmovers Pvt. Ltd., through its sole working Director, Shri Vishal Sharma, who was found to have knowingly and deliberately adopted a routing mechanism through Malaysia, accepted manipulated invoices and Certificates of Origin, and filed Bills of Entry suppressing the true origin of the goods, with a view to evade Anti-Dumping Duty, the existence of mens rea being further evidenced by his admission of having deleted electronic communications with the Chinese supplier upon initiation of investigation.

11. Since the investigation could not be completed within the mandated six-month period, extension was granted under Section 110(2) of the Customs Act, 1962 upto 13.08.2026, conveyed to the Importer vide letter dated 07.02.2026.

SHOW CAUSE NOTICE-

12.1 Accordingly, M/s. Siyaram Earthmovers Private Limited (Director, Shri Vishal Sharma) (IEC No. ABKCS0369Q), located at F/201, 2nd Floor, Sonam Srivilas, Adeshwar Road, New Golden Nest Phase-15, Sai Furniture, Mira Road (East), Mira Bhayandar, Thane, Maharashtra-401105, were called upon to show cause vide Show cause notice No. 33/2026-27/COMM/N.S./Adjn/MCH dated 05.08.2026, as to why:

(i) The goods covered under Bill of Entry No. 3865062 dated 13.08.2025, declared to contain “Hydraulic Rock Breaker Spare Parts”, and found mis-declaring the Country of Origin and seized vide seizure memo dated 15.10.2025, should not be confiscated/held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(ii) The re-assessment of Bill of Entry No. 3865062 dated 13.08.2025 should not be done to ascertain correct duty.

(iii) Penalty should not be imposed upon M/s Siyaram Earthmovers Private Limited (IEC No. ABKCS0369Q), under Section 112(a), 112(b) and 114AA of the Customs Act, 1962, separately in respect of goods covered under Bill of Entry No. 3865062 dated 13.08.2025 and found mis-declaring the Country of Origin.

(iv) The goods covered under Bills of Entry No. 2025733 dated 13.05.2025 and 3719425 dated 06.08.2025 as per details mentioned in Annexure-A, declared to contain "HYDRAULIC ROCK BREAKER SPARE PARTS" and found mis-declaring the Country of Origin should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(v) The differential customs duty total amounting to Rs. 1,30,20,845/- (Rupees One Crore Thirty Lakh Twenty Thousand Eight Hundred and Forty-Five only) on the import of "HYDRAULIC ROCK BREAKER SPARE PARTS" covered under Bills of Entry No. 2025733 dated 13.05.2025 and 3719425 dated 06.08.2025 as per details mentioned in Table-B, should not be demanded and recovered in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(vi) Penalty should not be imposed upon M/s Siyaram Earthmovers Private Limited (IEC No. ABKCS0369Q), located at F/201, 2nd Floor, Sonam Srivilas, Adeshwar Road, New Golden Nest Phase-15, Sai Furniture, Mira Road (East), Mira Bhayandar, Thane, Maharashtra-401105, under Section 114A and 114AA of the Customs Act, 1962, separately in respect of the goods covered under Bills of Entry No. 2025733 dated 13.05.2025 and 3719425 dated 06.08.2025, and found mis-declaring the Country of Origin and attracting ADD under Notification No. 11/2024-Cus (ADD), as per details mentioned in Table-B.

12.2 Shri Vishal Sharma, (Director) of M/s Siyaram Earthmovers Private Limited (IEC No. ABKCS0369Q), located at F/201, 2nd Floor, Sonam Srivilas, Adeshwar Road, New Golden Nest Phase-15, Sai Furniture, Mira Road (East), Mira Bhayandar, Thane, Maharashtra-401105 is hereby called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Customs House, Mundra having office situated at office of the Customs House Mundra, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 within 30 (thirty) days from the date of receipt of the notice as to why, penalty should not be imposed on him under Section 112(a), Section 112(b), and Section 114AA of the Customs Act, 1962 in respect of Goods mentioned in Annexure-A.

PAYMENT MADE BY THE IMPORTER AND REQUEST FOR CLOSURE / RE-EXPORT

13. Vide e-mail dated 03.09.2026 addressed to this office (adj-mundra@gov.in), M/s Siyaram Earthmovers Pvt. Ltd., through its Director Shri Vishal Sharma, intimated that they have deposited the duty, interest and penalty @15% determined in

respectof Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025, enclosing copies of the e-payment challans/receipts evidencing the said payments, and requested that the proceedings initiated vide the impugned Show Cause Notice, in respect of the said two Bills of Entry, be treated as concluded under Section 28(6) of the Customs Act, 1962.

14. M/s Siyaram Earthmovers Pvt. Ltd. have further, vide e-mail dated 04.09.2026 addressed to this office, requested that the goods covered under the live/seized Bill of Entry No. 3865062 dated 13.08.2025 be permitted to be re-exported, on the ground that since the said goods have not been cleared for home consumption, no loss of revenue has been occasioned to the exchequer, and that such re-export may accordingly be allowed without payment of any redemption fine or penalty. They have relied upon the decisions:-

(i) 1999 (113) E.L.T. 776 (SC)- Supreme Court SIEMENS LIMITED Versus COLLECTOR OF CUSTOMS

(ii) 2001 (137) E.L.T. 623 (Tri. - Kolkata)- SIEMENS PUBLIC COMMUNICATION NETWORKS LTD. Versus CC (AIRPORT) CALCUTTA.

(iii) 2023 (10) TMI 294 - CESTAT MUMBAI- M/s. Goyal Trading Co., M/s. Gulab Fibres, M/s. Unitec Inc. Versus Commissioner of Customs, Nhava Sheva-IIIk

DISCUSSION AND FINDINGS

15. I have carefully gone through the Show Cause Notice dated 05.08.2026, the submissions and payment particulars furnished by M/s Siyaram Earthmovers Pvt. Ltd. (hereinafter “the Noticee”) and Shri Vishal Sharma, Director (hereinafter “the Co-noticee”), and the requests made by them for closure of proceedings under Section 28(6) of the Customs Act, 1962 and for re-export of the live consignment.

16. The case pertains to the import of Hydraulic Rock Breaker Spare Parts by the Noticee vide three Bills of Entry filed at Mundra Port, declared as being of Malaysian origin and supplied by M/s Suny Industrial (Malaysia) SDN BHD, whereas investigation, corroborated by the voluntary admissions of the Co-noticee, verification conducted through the Malaysian Customs Authorities, and evidence gathered in parallel, identical investigations involving the very same overseas entity, has conclusively established that the said goods were, in truth, manufactured in and exported from China, and that the declaration of Malaysian origin was a deliberate mis-declaration intended solely to evade the Anti-Dumping Duty leviable under Notification No. 11/2024-Cus. (ADD) dated 27.06.2024.

17. The instant case, therefore, covers three Bills of Entry, namely, one live/seized consignment (Bill of Entry No. 3865062 dated 13.08.2025) and two past-cleared consignments (Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025), the details whereof are tabulated below:

Bill of Entry No. & Date	Status	Assessable Value (Rs.)	BCD (Rs.)	SWS (Rs.)	ADD Payable (Rs.)	IGST (Rs.)	Total Duty Payable (Rs.)	Duty Paid (Rs.)	Duty Short-paid (Rs.)
3865062 dated 13.08.2025	Live (Seized)	34,71,137	2,60,335	26,034	56,40,598	16,91,659	76,18,625	0	76,18,625
3719425 dated 06.08.2025	Past clearance (Seized)	33,59,393	2,51,955	25,195	54,59,014	16,37,200	73,73,365	9,31,728	64,41,637
2025733 dated 13.05.2025	Past clearance	34,31,139	2,57,335	25,734	55,75,601	16,72,166	75,30,836	9,51,628	65,79,208
Total	-	1,02,61,670	7,69,625	76,963	1,66,75,213	50,01,025	2,25,22,826	18,83,356	2,06,39,470*

Scope of Section 28(6) of the Customs Act, 1962 vis-à-vis the Bills of Entry no. 3719425 and 2025733.

18. The details of the two Bills of Entry pertaining to past clearances or out of charged goods, in respect of which conclusion of proceedings under Section 28(6) has been sought by the importer, are as under:

Bill of Entry No. & Date	Assessable Value (Rs.)	BCD (Rs.)	SWS (Rs.)	ADD Payable (Rs.)	IGST (Rs.)	Total Duty Payable (Rs.)	Duty Paid (Rs.)	Duty Short-paid (Rs.)
3719425 dated 06.08.2025 (Seized)	33,59,393	2,51,955	25,195	54,59,014	16,37,200	73,73,365	9,31,728	64,41,637
2025733 dated 13.05.2025	34,31,139	2,57,335	25,734	55,75,601	16,72,166	75,30,836	9,51,628	65,79,208
Total	67,90,532	5,09,290	50,929	1,10,34,615	33,09,366	1,49,04,201	18,83,356	1,30,20,845

19. As mandated under Section 28(6) ibid, the proper officer is required to determine the duty payable under Section 28(4), together with the interest leviable under Section 28AA, and thereupon ascertain whether the duty, interest and penalty at the rate of fifteen percent stand discharged in full. Where the entire liability so determined stands paid, the proceedings are deemed to be concluded in terms of Section 28(6)(i) of the Customs Act, 1962. It is also noted that entire Section 28 of the Customs Act, 1962 is meant for recovery of duty not levied, not paid, short-levied or short-paid. Such recovery presupposes that the goods have been assessed to duty and cleared for home consumption under an order permitting clearance passed under Section 47 of the Customs Act, 1962, whereupon the liability to duty crystallises and stands quantified. Since the goods covered under aforesaid two BEs had already been cleared for home consumption, the benefit of conclusion of proceedings under Section 28(6) of the Customs Act, 1962 is available to them.

Determination of duty, interest and penalty – Out of Charged goods (BE No. 3719425 and BE No. 2025733)

20. Accordingly, I proceed to determine the duty, interest and penalty payable in respect of the said two Bills of Entry, as below:

Bill of Entry No. & Date	Duty Short-Paid (Rs.)	Days (payment date is 03.09.2026)	Interest Rate	Interest u/s 28AA (Rs.)	Duty + Interest (Rs.)	Penalty Rate	Penalty @15% of Duty (Rs.)	Total amount Payable (Rs.)
3719425 dated 06.08.2025 (seized)	64,41,637	393	15% p.a.	10,40,368	74,82,005	15%	9,66,246	84,48,251
2025733 dated 13.05.2025	65,79,208	478	15% p.a.	12,92,409	78,71,617	15%	9,86,881	88,58,498
Total	1,30,20,845	-	-	23,32,777	1,53,53,622	-	19,53,127	1,73,06,749

21. Thus, the total amount payable towards duty, interest and penalty @15% under Section 28(4) read with Section 28(5) of the Customs Act, 1962, in respect of the said two Bills of Entry, works out to Rs. 1,73,06,749/- (Rupees One Crore Seventy Three Lakh Six Thousand Seven Hundred Forty Nine only), which stands duly paid by M/s Siyaram Earthmovers Pvt. Ltd., as detailed below:

Sr. No.	Date of Challan	Challan No.	Bill of Entry No.	Amount Paid (Rs.)
1	03.09.2026	1738732169	3719425 dated 06.08.2025	84,48,251
2	03.09.2026	1177219026	2025733 dated 13.05.2025	88,58,498
Total	-	-	-	1,73,06,749

22. Since the entire duty liability, together with the applicable interest and penalty @15% as prescribed under Section 28(5) of the Customs Act, 1962, stands duly discharged by M/s Siyaram Earthmovers Pvt. Ltd. in respect of Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025, I hold that the proceedings initiated vide the impugned Show Cause Notice dated 05.08.2026, in respect of the said two Bills of Entry, are liable to be deemed concluded under Section 28(6)(i) of the Customs Act, 1962, in respect of M/s Siyaram Earthmovers Pvt. Ltd. (the Noticee) and Shri Vishal Sharma, Director (the Co-noticee) and the penalty so paid under sub-section (5) of Section 28 being deemed to be a charge for non-payment of duty.

Confiscation – goods covered under the two past-cleared/out of charged Bills of Entry-

23. The goods covered under the said two Bills of Entry viz. 3719425 dated 06.08.2025 and 2025733 dated 13.05.2025, having been mis-declared as to their Country of Origin, do not correspond to the entry made in respect thereof and are, accordingly, held liable to confiscation under Section 111(m) of the Customs Act, 1962. It is important to note that Section 28(6)(i) of the Customs Act, 1962 allows deemed conclusion of the proceedings in respect of such persons or other persons to whom the notice is served under Section 28(1) or Section 28(4) as to the matters stated therein, once the noticees avails the option under Section 28(5) by paying the duty demanded along with applicable interest and penalty within the prescribed period. Further, first proviso to Section 125(1) of the Customs Act, 1962 provides that whenever proceedings are deemed concluded under Section 28(6)(i), the redemption fine is not imposable, in the case of goods which are not prohibited or restricted. Thus, in the case of deemed conclusion of proceedings, redemption fine is a statutory mechanism applicable only when the goods are either prohibited or restricted under the Customs Act or any other law for the time being in force. In the present matter, the goods in question were neither prohibited nor restricted, therefore, I hold that no redemption fine is imposable in respect of the goods covered under Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025, and no further penalty, including under Sections 112, 114A and 114AA of the Customs Act, 1962, survives in respect thereof. I am supported by the order of Hon'ble CESTAT, Ahmedabad in *Balkrishna Industries Ltd. v. Commissioner of Customs, Mundra* [2022 (10) TMI 749 – CESTAT Ahmedabad]. In that case, the Adjudicating Authority had directed that the proceedings be concluded under Section 28(5) and 28(6) "except the goods under seizure," and in respect of the seized goods confirmed the differential duty, ordered their confiscation with an option of redemption on payment of fine, and imposed penalties under Sections 112(a) and 114A of the Customs Act, 1962. The Hon'ble Tribunal held that once the assessee has paid the duty, interest and penalty as provided therein, the proceedings against it stand concluded under Section 28 in their entirety, including confiscation proceedings arising from the seizure of goods.

Adjudication of the Live Consignment (Bill of Entry No. 3865062 dated 13.08.2025)

24. I now proceed to deal with the goods covered under Bill of Entry No. 3865062 dated 13.08.2025, which continue to remain under seizure, no order of clearance for home consumption having been passed in respect thereof. The investigation has conclusively established, on the strength of the admissions of Shri Vishal Sharma, Director, corroborated by the search and examination proceedings, the parallel investigations in identical cases, and the verification conducted through the Malaysian Customs Authorities, that the said goods, declared as being of Malaysian origin, are in fact of Chinese origin, and that the declaration of Country of Origin as Malaysia was a deliberate mis-declaration intended to evade the Anti-Dumping Duty leviable under Notification No. 11/2024-Cus. (ADD) dated 27.06.2024. The said

goods, therefore, do not correspond, in a material particular, namely the Country of Origin, with the entry made in the Bill of Entry, and are accordingly held liable to confiscation under Section 111(m) of the Customs Act, 1962.

25. I note that M/s Siyaram Earthmovers Pvt. Ltd., vide their e-mail dated 04.09.2026, have requested that the said goods be permitted to be re-exported, on the ground that since the goods have not been cleared for home consumption, no loss of revenue has occasioned to the exchequer. Considering the said request, and keeping in view that the goods have remained under Customs seizure since the search/examination proceedings and have not entered the stream of home consumption in India, I allow re-export of the said goods, subject to payment of redemption fine and penalty.

26. The noticee has relied upon various case laws to argue that re-export may be allowed without payment of redemption fine and penalty. In this regard, I find that once the goods have been imported in contravention of the provisions of Customs Act, the goods become liable for confiscation and Section 125 of the Customs Act empowers the adjudicating authority to allow redemption of goods by the importer on payment of fine. However, if the importer doesn't exercise the option of redemption fine, the property in goods vests with the Central government. Therefore, the redemption of goods, even if allowed for re-export, can not be allowed without the payment of Redemption fine. If this proposition of the importer is to be approved, then all illegal importers, if caught, will offer to re-export the goods without suffering any fine/penalty for their attempt to violate the Customs Act, 1962. In this regard, I rely upon the decision of Hon'ble CESTAT in the matter of M/s. Scania Commercial Vehicles India Pvt. Ltd. Versus Commissioner of Customs, Chennai- 2024 (6) TMI 311 - CESTAT CHENNAI wherein the Tribunal held that-

"*The Tribunal held that diesel/industrial engines imported without the mandatory Type Approval and Certificate of Conformity under the Environment Protection Rules, 1986 are 'prohibited goods' and therefore liable to confiscation under Section 111(d). Reliance was placed on Supreme Court authority that 'any prohibition' includes restrictions and that non-compliance with prescribed conditions renders goods prohibited. Confiscation is not discretionary in the sense of being avoidable where the statutory threshold is met; rather, once goods are offending, confiscation follows and only thereafter may the officer exercise discretion under Section 125(1) whether to permit redemption by payment of a fine. An administrative order permitting re-export operates after redemption and does not negate the antecedent requirement of confiscation. [Paras 11, 12, 13, 14]*

Confiscation under Section 111(d) was correctly held to arise on the facts and is a prerequisite to any redemption and administrative permission to re-export.

The Tribunal rejected the appellant's contention that re-export of goods precludes imposition of a redemption fine. It explained that Section 125(1) distinguishes between 'prohibited goods' and 'other goods' and vests the officer with discretion to offer or withhold the option of redemption for prohibited goods. Consequently, releasing

confiscated prohibited goods without imposition of a redemption fine is not supported by law and would undermine the statutory scheme. Administrative permission to re-export is a sequential process that occurs after redemption; bundling the export permission in the adjudicatory order does not convert or negate the requirement to impose a redemption fine where the officer, in his discretion, so directs. [Paras 15, 16]

The Tribunal reiterated that penalty is imposed for breach of a statutory duty and serves a deterrent purpose; the fact that the goods were later re-exported does not erase the earlier unlawful importation. An appellate authority should not routinely interfere with the exercise of discretion by the adjudicating authority unless mala fides or extreme arbitrariness is shown. No such illegality or arbitrariness was demonstrated; hence the imposition of penalty was sustained. [Paras 18]"

In view of the above discussion and findings, I hold that re-export is allowed on payment of redemption fine under Section 125 of the Customs Act, 1962.

Penalty under Section 112(a) of the Customs Act, 1962-

27. I now examine the question of penalty under Section 112(a) of the Customs Act, 1962 in respect of the goods covered under Bill of Entry No. 3865062 dated 13.08.2025. Section 112(a) of the Act, 1962 provides for penalty upon 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 ibid. I have already held above that the said goods are liable to confiscation under Section 111(m) ibid on account of deliberate mis-declaration of Country of Origin by the Noticee and the Co-noticee, with the sole intent of evading Anti-Dumping Duty. The said act squarely falls within the provisions of Section 112(a) of the Customs Act, 1962, and since the goods are dutiable goods other than prohibited goods, the penalty imposable is governed by clause (ii) of Section 112(a) ibid, namely, a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher. Accordingly, I hold that penalty under Section 112(a)(ii) of the Customs Act, 1962 is imposable upon M/s Siyaram Earthmovers Pvt. Ltd. and Shri Vishal Sharma, Director, separately.

Penalty under Section 112(b) – double jeopardy

28. I note that penalty has also been proposed under Section 112(b) of the Customs Act, 1962 upon both the Noticee and the Co-noticee, in respect of the very same goods and the very same acts and omissions. Section 112(b) ibid penalises a person 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, goods which he knows or has reason to believe are liable to confiscation under Section 111 ibid. In the facts of the present case, the acts of mis-declaration which render the goods liable to confiscation under Section 111(m), and the alleged dealing with the said goods knowing them to be so liable, arise out of one and the same transaction and the very same set of facts; there is no separate or independent act of 'dealing with' the goods distinct from the act of import/mis-declaration itself. In these circumstances, imposing penalty upon the very same

persons, for the very same goods and the very same acts, simultaneously under both Section 112(a) and Section 112(b) of the Customs Act, 1962 would amount to penalising them twice over for the same offence, resulting in double jeopardy. I, therefore, hold that once penalty under Section 112(a)(ii) has been imposed as above, no separate penalty is liable to be imposed under Section 112(b) of the Customs Act, 1962 upon M/s Siyaram Earthmovers Pvt. Ltd. or Shri Vishal Sharma, Director.

Penalty under Section 114AA of the Customs Act, 1962

29. Section 114AA of the Customs Act, 1962 provides that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the said Act, he shall be liable to penalty not exceeding five times the value of the goods. The investigation has established, through the recovered parallel invoices in identical cases, the deliberate use of a Malaysian intermediary to generate a fresh set of documents disguising Chinese origin, and the admissions of Shri Vishal Sharma himself, that the Bill of Entry, the commercial invoice and the Certificate of Origin filed in respect of the goods covered under Bill of Entry No. 3865062 dated 13.08.2025 were knowingly false and incorrect in a material particular, namely the Country of Origin of the goods, with the specific intent to evade Anti-Dumping Duty. I, therefore, hold that penalty under Section 114AA of the Customs Act, 1962 is clearly imposable upon M/s Siyaram Earthmovers Pvt. Ltd. and Shri Vishal Sharma, Director, separately in respect of the said Bill of Entry.

ORDER

30. In view of the foregoing discussion and findings, I hereby pass the following order:

A. Order in respect of Bill of Entry No. 3865062 dated 13.08.2025 (Live Consignment)

(i) I hold that the goods covered under Bill of Entry No. 3865062 dated 13.08.2025, declared as “Hydraulic Rock Breaker Spare Parts” and mis-declared as to Country of Origin, having assessable value of Rs. 34,71,137/- are liable to confiscation under Section 111(m) of the Customs Act, 1962.

(ii) Considering the request of M/s Siyaram Earthmovers Pvt. Ltd. made vide their letter dated 04.09.2026, I order that Bill of Entry No. 3865062 dated 13.08.2025 be re-assessed by denying benefit of COO. Upon such re-assessment, I allow re-export of the goods covered under the said Bill of Entry, having an assessable value of Rs. 34,71,137/-, in lieu of confiscation, subject to payment of a redemption fine of Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand only) under Section 125(1) of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakhs fifty thousand only) upon M/s Siyaram Earthmovers Pvt. Ltd. under Section 112(a)(ii) of the Customs Act, 1962. No penalty is imposed upon M/s Siyaram Earthmovers Pvt. Ltd. under

Section 112(b) of the Customs Act, 1962, for the reasons discussed at para 28 above.

(iv) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon M/s Siyaram Earthmovers Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

(v) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon Shri Vishal Sharma, Director, under Section 112(a)(ii) of the Customs Act, 1962. No penalty is imposed upon Shri Vishal Sharma, Director, under Section 112(b) of the Customs Act, 1962, for the reasons discussed at para 28 above.

(vi) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon Shri Vishal Sharma, Director, under Section 114AA of the Customs Act, 1962.

B. Order in respect of Bills of Entry (Out of charged Consignments) No. 3719425 dated 06.08.2025 and No. 2025733 dated 13.05.2025-

The proceedings initiated vide Show Cause Notice No. 33/2026-27/COMM/N.S./Adjn/MCH dated 05.08.2026, in respect of Bill of Entry No. 3719425 dated 06.08.2025 and Bill of Entry No. 2025733 dated 13.05.2025, are hereby deemed to be concluded under Section 28(6)(i) of the Customs Act, 1962, in respect of M/s Siyaram Earthmovers Pvt. Ltd. (Noticee) and Shri Vishal Sharma, Director (Co-noticee), in respect of the matters stated therein, and the penalty already paid under sub-section (5) of Section 28 shall be deemed to be a charge for non-payment of duty.

31. This order is issued without prejudice to any other action that may be taken against the Noticee or the Co-noticee under this Act or any other law for the time being in force.

Nitin Saini
Commissioner of Customs

F.No. GEN/ADJ/COMM/445/2026-Adjn

To,

(i) M/s Siyaram Earthmovers Private Limited, F/201, 2nd Floor, Sonam Srivilas, Adeshwar Road, New Golden Nest Phase-15, Sai Furniture, Mira Road (East), Mira Bhayandar, Thane, Maharashtra-401105. (e-mail: siyaram.mh@gmail.com)

(ii) Shri Vishal Sharma, Director, M/s Siyaram Earthmovers Private Limited, F/201, 2nd Floor, Sonam Srivilas, Adeshwar Road, New Golden Nest Phase-15, Sai Furniture, Mira Road (East), Mira Bhayandar, Thane, Maharashtra-401105.

Copy to:-

(1) The Chief Commissioner, Gujarat Customs Zone, Ahmedabad, for review.

(2) The Additional Director General, DRI, Zonal Unit, Ahmedabad.

(3) The Joint Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).

(4) Deputy Commissioner/Assistant Commissioner (EDI), Customs House, Mundra, with request to upload the Order in the Official Website.

(5) The Superintendent (Legal/Review/TRC) for necessary action.

Digitally signed by
Nitin Saini
Date: 12-10-2026
15:03:24