सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20260371MN00008808A8

क	फ़ाइल संख्या FILE NO.	S/49-428/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-930-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/ AKM/205/2024-25 dated 27.11.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Asif Sathi, Flat No. 4104, 41st Floor, B-Wing Orchid Enclave, Belasis Road, Mumbai Central Mumbai 400008

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

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by Shri Asif Sathi, Flat No. 4104, 41st Floor, B-Wing Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/205/2024-25 dated 27.11.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. Nikhat Enterprises.

2.2 The specific focus of the impugned OIO involves the activities surrounding a consignment imported by M/s. Nikhat Enterprises (IEC: ANDPB0477C) via Container No. NYKU0844232. In a calculated and professional attempt to bypass automated risk management systems (RMS)

and standard regulatory scrutiny, the goods were initially declared in the Import General Manifest (IGM) as "Floor Clean Mop (Misc Item Non-popular Brand)" under HS Code 96039000. This specific HS code was selected by the syndicate for its low duty profile and the physical volume of the product, which provided ample "void space" for the concealment of high-value contraband.

2.3 When filing the Warehouse Bill of Entry (No. 1011448 dated August 25, 2022), the syndicate slightly adjusted the declaration to include "Back Cover, Exercise Book, and Tempered Glass," creating a "mixed-merchandise" profile. This profile was designed to deter customs officers from conducting a full de-stuffing, as mixed consignments are often perceived as standard low-risk consumer imports. The container was processed through the Mundra SEZ warehouse unit M/s. Empezar Logistics Pvt. Ltd., which, rather than serving its intended statutory purpose for value-addition, manufacturing, or legitimate storage, acted as a high-speed transit point or "revolving door." This facility was utilized to rapidly facilitate the diversion of goods into the Domestic Tariff Area (DTA) under DTA Bill of Entry No. 2012900 dated August 26, 2022, after which the cargo was immediately dispatched to a decentralized distribution hub in Bhiwandi, Maharashtra.

2.4 The investigative trail, supported by GPS tracking and statement analysis, led DRI officers to the Madhvi Compound godowns in Village Rahanal, Bhiwandi. This location was strategically chosen by the cartel for its proximity to major transportation routes serving the Mumbai Metropolitan Region, allowing for rapid "last-mile" distribution to retailers. During the course of investigation, the driver of the transport vehicle (Registration No. GJ-12 BT-4667), Shri Poona, provided a comprehensive voluntary statement under Section 108 of the Customs Act, 1962. His testimony provided an insider's view of the operation, detailing how he received real-time location coordinates and voice instructions via WhatsApp, directing him to offload the cargo from Container No. NYKU0844232 at these specific premises under the cover of night on August 31, 2022.

2.5 During search conducted on September 2, 2022, at Gala Nos. 5, 6, and 7—warehouses managed by the associate Shri Parwej Alam—officers recovered 12 leftover cartons containing 9,600 pieces of "Yuoto" brand e-cigarettes (specifically the XXL 2500 Puffs Disposable Vape model). These items were found hidden behind voluminous stacks of "cover goods," including mops, exercise books, and plastic chocolate moulds. The recovery of these goods

highlighted a severe and intentional breach of the Prohibition of Electronic Cigarettes Act, 2019. Consequently, the recovered 9,600 pieces were placed under absolute seizure as prohibited contraband.

2.6 The investigation unearthed a structured syndicate masterminded by Shri Asif Sathi, a Mumbai-based operative who exercised absolute control over the network's financial, logistical, and communicative architecture. Shri Sathi's modus operandi relied on the systematic exploitation of economically vulnerable individuals to serve as "dummy" proprietors for front entities. Mrs. Nikhat Baig, the declared proprietor of M/s. Nikhat Enterprises, admitted in her statement that she was merely an "on-paper" owner with no knowledge of the firm's actual imports, suppliers, or bank accounts. She had been induced by an intermediary named Shri Kishore to provide her KYC documents, PAN, and Aadhaar, and to sign multiple blank forms in exchange for a nominal fee, which was presented to her as a facilitation fee for a bank loan. This tactic created a legal shielding Shri Sathi from direct culpability and allowing the cartel to burn through IECs once they were compromised. The mastermind coordinated these imports with key associates, including Shri Sarfaraz Kamani and Shri Mohammed Tahir Menn. Together, they managed an "end-to-end" chain that originated with suppliers in China—often managed through shadow entities like M/s. AH International Trading Co. Limited and M/s. HK Longcheng Trade Co. Limited—and concluded with a network of domestic buyers such as Sohail Bhai and Raju Bhai, who specialized in the distribution of contraband into the grey market.

2.7 A critical component of this scheme was the role played by Shri Baldevsinh Vala of M/s. Kalpana Exim, who functioned as the syndicate's primary forwarder, logistics manager, and "fixer" at Mundra Port. Forensic analysis of messages of WhatsApp group "Mm" revealed that Shri Vala was instrumental in the fabrication and manipulation of shipping documents. He would routinely receive original invoices from Chinese suppliers and then alter them to ensure they matched the false, low-value declarations intended for the Bills of Entry. Furthermore, the syndicate employed a tactical "crossing" of containers—a sophisticated counter-surveillance maneuver where goods were de-stuffed and re-loaded into different domestic vehicles immediately after customs clearance but before leaving the port vicinity. This was designed to generate fresh e-way bills with new vehicle numbers, effectively "cleaning" the cargo of its import history. By doing so, the syndicate effectively broke the

digital audit trail, making it nearly impossible for enforcement agencies to link the original import container at Mundra to the final delivery point in Bhiwandi.

2.8 Shri Samir Sharma, a G-Card holder of M/s. Al Cargo Services, filed the false Bills of Entry. He conspicuously and willfully neglected the mandatory due diligence on IEC holders required under the Customs Broker Licensing Regulations (CBLR). Rather than acting as a gatekeeper of the law, he served as a professional enabler, receiving payments ranging from ₹2.5 lakh to ₹3 lakh per consignment for his cooperation.

2.9 Finally, the DRI noted a failure in the regulatory oversight provided by the Customs Preventive Officer, Shri Vipin Sharma. Despite receiving explicit, system-generated examination orders to "examine as per SEZ norms and check description and packages with respect to invoice and packing list," the officer submitted a cursory and misleading report claiming the cargo matched the declarations. This "casual approach" was not merely a procedural lapse; it was the final, critical gap in the safety net that allowed prohibited contraband to flow into the domestic market. The implications of such failures are profound, as they compromise the integrity of the entire SEZ framework, which relies heavily on the trust and diligence of its officers to prevent the leak of goods into the DTA.

2.10 Regarding the valuation of the seized goods, the total absence of a legal market meant that traditional valuation methods were inapplicable. Consequently, the DRI utilized internet-based pricing from the official "Yuoto" brand website (www.yuoto.in), which listed the product at a retail price of ₹2,499 per unit. This valuation brought the total market value of the seized 9,600 pieces to a staggering ₹2,39,90,400. The department has alleged that these goods are liable for absolute confiscation under multiple sub-sections of Section 111 of the Customs Act, 1962, including 111(d) for the violation of absolute prohibitions, 111(f) for non-mention in manifest, and 111(m) for the deliberate and mala-fide mis-declaration of quantity, value, and description.

2.11 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:

- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.

- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.12 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.13 On the basis of the investigation, Show Cause Notice was issued to M/s. Nikhat Enterprise and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. Nikhat Enterprises and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The Adjudicating Authority passed the following order in respect of the appellant.

(I) He imposed penalty of Rs. 20,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.

(II) He imposed penalty of Rs. 10,00,000/- upon the appellant under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant contends that the Adjudicating Authority erred by denying the request to cross-examine the Chartered Engineer whose valuation report was used to allege undervaluation. The appellant argues that cross-examination is a legal right necessary to test the veracity of evidence and that the Respondent's refusal, based on the presence of representatives during the Panchnama or arbitrary timeframes, is a blatant violation of the principles of natural justice. Furthermore, the appellant asserts that Section 138B of the Customs Act mandates the examination of witnesses before their statements can be relied upon in adjudication.

3.2 The appellant challenges the technical validity and legal standing of the valuation report issued by Shri Kunal Ajaykumar. It is argued that the Chartered Engineer, holding a degree in Mechanical Engineering, was not qualified to determine the market value of the imported goods. Substantively, the appellant claims the report failed to justify its findings with specific market data, ignored bulk quantity discounts (economies of scale), and failed to follow the sequential valuation methods prescribed under the Customs Valuation Rules. The appellant further points out that the transaction value should not have been discarded without evidence of contemporaneous imports at different prices.

3.3 The appellant maintains that the "transaction value" declared in the Bills of Entry is accurate and supported by evidence of identical or similar goods imported by others at comparable prices. The appeal highlights that the Department found no incriminating documents—such as chats with suppliers, diaries, or records of "flowback" money—to suggest that any amount beyond the invoice value was paid to the foreign supplier. Since all payments were made through proper banking channels and price was the sole consideration, the appellant argues the declared value must be accepted under Section 14 of the Customs Act.

3.4 The appeal contests the Respondent's finding that the use of front or "benami" entities was illegal. The appellant asserts that there is no provision in the Customs Act that prohibits "lending" or using the IEC of a third party, provided the duties are paid. Citing judicial precedents, the appellant argues that being a "name lender" does not constitute smuggling, and any concerns regarding the misuse of an IEC fall under the jurisdiction of the licensing authority (DGFT) rather than the Customs department for the purpose of

confiscation.

3.5 Regarding the mis-declared or excess goods (such as toys and e-cigarettes), the appellant claims these were the result of a "wrong supply" by the exporter and were not ordered. The appellant notes that they had no opportunity to inspect the goods before filing the Bill of Entry and immediately requested re-export upon learning of the discrepancies from the DRI. Consequently, the appellant argues that there was no mens rea (guilty mind) or intent to evade duty, which is a prerequisite for imposing penalties under Sections 112(a) and 114AA of the Customs Act.

3.6 The appellant argues that the Respondent improperly relied on the statements of co-accused individuals to label the appellant as a "mastermind" or "kingpin". The appeal asserts that these statements were recorded without specific questions regarding the valuation of the non-prohibited goods and were not corroborated by independent documentary evidence. Under settled law, the appellant contends that the testimony of a co-accused who is also charged with the offense cannot be the sole basis for imposing penalties.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh, Advocate, appeared for the hearing and re-iterated the submissions 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, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The primary issue to be addressed is whether the 9,600 e-cigarettes recovered from the Appellant's control qualify as "prohibited goods" and whether the Adjudicating Authority was correct in ordering their absolute confiscation. To determine this, one must look at the intersection of the Customs Act, 1962, and the specialized legislation governing electronic cigarettes.

5.2 The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (hereinafter referred to as the 'PEC Act') was enacted with the objective of protecting public health from the hazards of Electronic Nicotine Delivery Systems (ENDS). Section 4 of the PEC Act explicitly prohibits the "import" of electronic cigarettes into India. This prohibition is absolute and leaves no room for discretionary licensing or conditional imports. Furthermore, the Director General of Foreign Trade (DGFT), exercising powers under the Foreign Trade (Development & Regulation) Act, issued Notification No. 20/2015-2020 dated 26.09.2019, which amended the Import Policy to classify e-cigarettes under the "Prohibited" category. Any goods imported in violation of such a notification are inherently liable to confiscation. Under Section 2(33) of the Customs Act, 1962, "prohibited goods" are defined as:

> *"any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force..."*

5.3 The phrase "any other law for the time being in force" brings the PEC Act, 2019, directly into the ambit of the Customs Act. The Hon'ble Supreme Court in **Om Prakash Bhatia vs. Commissioner of Customs, Delhi [2003 (155) E.L.T. 423 (S.C.)]** clarified that even if a prohibition is not found within the four corners of the Customs Act itself, but is established by any other statute or notification, the goods automatically become "prohibited" for the purpose of Section 111(d). The Court held that if the conditions for import or export are not complied with, it would be considered to be a prohibition... In such cases, the goods are liable to be confiscated.

5.4 In the instant case, the Appellant did not merely import these goods; he attempted to bring them into the country through clandestine means and active concealment. The 9,600 e-cigarettes were found in a godown after having been cleared as part of a consignment mis-declared as "Floor Clean Mops" or "Exercise Books." This deliberate act of mis-declaration under Section 111(m) and concealment under Section 111(i) strips the Appellant of any right to claim redemption.

5.5 The Appellant has argued that he should have been given an option to pay a redemption fine in lieu of confiscation under Section 125 of the Customs Act. I find this argument legally untenable. Section 125 states:

"Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the import or export whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods... an option to pay in lieu of confiscation such fine as the said officer thinks fit."

5.6 The use of the word "may" for prohibited goods versus "shall" for non-prohibited goods grants the Adjudicating Authority the discretion to refuse redemption in cases involving "prohibited goods." **The Hon'ble Supreme Court in Sheikh Mohammed vs. Collector of Customs [1970 (2) SCC 728]** has held that where goods are prohibited and the import involves fraud, mis-declaration, or smuggling, the authority is justified in ordering absolute confiscation. Furthermore, allowing the redemption of e-cigarettes would be a direct violation of the PEC Act, 2019. If the goods were released on fine, the Appellant would necessarily have to "possess," "transport," or "sell" them to recover his costs—all of which are separate criminal offenses under Sections 4, 5, and 7 of the PEC Act. A Customs Officer cannot pass an order that facilitates the commission of further crimes under another statute.

5.7 The Adjudicating Authority correctly identified that the goods were not just "restricted" but "prohibited" for public health reasons. The clandestine nature of the import, utilizing dummy IECs and fraudulent invoices, indicates a deep-seated criminal intent to bypass the law. Therefore, I find that the absolute confiscation under Section 111(d), (f), (l), (m), (n), and (o) of the Customs Act is not only legally sustainable but is the only appropriate remedy to uphold the legislative intent of both the Customs Act and the PEC Act.

5.8 The Appellant has challenged the reliance on statements recorded under Section 108 of the Customs Act. It is a well-settled law that statements made before Customs Officers are not hit by the bar of Section 25 of the Evidence Act, as Customs Officers are not "Police Officers." Reference is made to the landmark judgment of the Hon'ble Supreme Court in **Naresh Kumar Sukhwani vs. Union of India [1996 (83) E.L.T. 258 (S.C.)],** where it was held that a statement made before the Customs officers under Section 108 of the Customs Act is a material piece of evidence collected by the Customs officers and it can be used as substantive evidence. Furthermore, in **Surjeet Singh Chhabra vs. Union of India [1997 (89) E.L.T. 646 (S.C.)],** the Apex Court held that a

confession made before a Customs Officer, even if retracted later, is an admission and binding on the person making it.

5.9 In this case, the Appellant's own statements, corroborated by the statements of Shri Sarfaraz Kamani, Shri Tahir Memon, and Shri Baldevsinh Vala, clearly establish the Appellant's role as the mastermind. The WhatsApp chats recovered from the mobile phones of the associates further provide a digital trail of the conspiracy to import e-cigarettes. The Appellant's contention that the statements were "involuntary" is a standard afterthought and lacks any evidence of coercion or threat at the time of recording.

5.10 The Appellant argues that he is not the IEC holder and thus not the importer. This argument is fallacious. Modern customs law and the Prevention of Money Laundering Act (PMLA) principles, often read alongside the Customs Act, recognize the concept of the "Beneficial Owner." Section 2(3A) of the Customs Act defines "beneficial owner" as any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods. The investigation has unearthed that:

- The Appellant obtained IECs of dummy firms (M/s Nikhat Enterprises, M/s MM Enterprises).
- He controlled the financial flow, depositing cash into dummy accounts to pay foreign suppliers.
- The goods were recovered from a godown under his direct control in Bhiwandi.
- He directed the movement of the vehicle (GJ-12-BV-0610) via WhatsApp.

5.11 In Nazirurrahman vs. Commissioner of Customs, Mumbai [2015], the Tribunal held that if a person uses another's IEC to import goods and controls the transaction, they are the "actual importer." The use of "Front Entities" to smuggle prohibited goods is a serious offense. The Appellant cannot hide behind a dummy proprietor to escape the penal consequences of his actions.

5.12 The Appellant claims a violation of natural justice due to the denial of cross-examination. However, the right to cross-examine is not an absolute right in quasi-judicial proceedings. As held in Kanungo & Co. vs. Collector of Customs, Calcutta [1972 (S.C.)], principles of natural justice do not require that the person who has given information should be examined in the presence of the noticee or that he should be allowed to be cross-examined. In this case, the evidence is not based solely on oral testimony but on:

- Physical recovery of 9,600 e-cigarettes from the Appellant's godown.
- Documentary evidence of mis-declaration in the Bill of Entry.
- Digital evidence (WhatsApp chats) coordinating the smuggling.
- Corroborative statements of multiple co-conspirators.

5.13 Where the documentary and circumstantial evidence is overwhelming, the denial of cross-examination does not vitiate the proceedings. The valuer's report is an expert opinion based on objective market facts, and the Appellant failed to provide any counter-valuation from a certified source to prove the e-cigarettes were worth less than the estimated value.

5.14 The Appellant challenged the unit value of ₹2,499. The Adjudicating Authority correctly observed that since e-cigarettes are "prohibited," there is no "transaction value" in the open legal market. Thus, Rule 3 of the Valuation Rules (Transaction Value) cannot be applied. The authority moved sequentially and adopted Rule 9 (Residual Method). The valuation was based on online market survey of similar Yuoto brand products, listed prices on the official brand website (www.yuoto.in). Given that these are smuggled contraband, the retail market price is a fair indicator of the value for the purpose of calculating the gravity of the offense. The Appellant's demand for "statistical data" for a banned item is illogical, as there is no legal database for the sale of prohibited goods.

5.15 The Appellant cited Andaman Timber Industries vs. CCE regarding cross-examination. However, that case dealt with a situation where the entire case rested on a third-party statement. Here, the case rests on recovery and digital evidence. Regarding the claim that "lending IEC is not illegal," while the act of lending an IEC may be a regulatory violation under the FTDR Act, using a lent IEC to smuggle prohibited goods is a criminal conspiracy under the Customs Act. The cases cited by the Appellant do not provide immunity to a mastermind who uses dummy firms to facilitate smuggling.

5.16 Section 114AA was introduced to curb the use of false and fabricated documents in customs transactions. The investigation has proved that the Appellant "caused to be made" false declarations regarding the description and value of the goods. He was the one who forged the invoices and provided them to the Customs Broker. The mens rea is evident from the concealment of e-cigarettes in mops. Therefore, the penalty under Section 114AA is fully justified.

5.17 The Appellant acted as the kingpin of an organized smuggling syndicate. He systematically exploited the SEZ-DTA clearance route, used

dummy importers to distance himself from the legal risk, and attempted to flood the Indian market with prohibited electronic cigarettes, posing a significant risk to public health and the state exchequer. The findings of the Adjudicating Authority are supported by goods found in the Appellant's warehouse, multiple unretracted statements identifying the Appellant as the financier and mastermind, whatsApp logs showing tracking links and loading instructions, clear prohibition on the product under the 2019 Act. The Adjudicating Authority has correctly applied the law, followed the principles of natural justice commensurate with the gravity of the offense, and imposed proportionate penalties. There is no merit in the appeal.

6. In view of the detailed discussion and findings recorded above, I reject the appeal filed by Shri Asif Sathi.

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

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

F. No. S/49-428/CUS/MUN/2024-25 Date: 30.03.2026

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