सत्यमेव जयते

सीमाशुल्क(अपील) आयुक्तकाकार्यालय,अहमदाबाद

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

चौथीमंज़िल **4th Floor,** हडकोभवन**HUDCO Bhawan,** ईश्वरभुवनरोड़**Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाषक्रमांक **Tel. No. 079-26589281**

DIN - 20260171MN0000000FBF

क	फ़ाइलसंख्या FILE NO.	S/49-504/CUS/MUN/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-636-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.01.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/ZDC/349/2025-26 dated17.10.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	01.01.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Vikas Ventures V/138, Vilakkanamkode, Pattanchery-678532, Kerala

आयुक्त (अपील), अहमदाबाद

1	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम **1962** कीधारा **129** डीडी **(1)** (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे **3** महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods exported
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगीऔरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट,1870केमदसं.**6** अनुसूची **1** केअधीननिर्धारितकिएगएअनुसारइसआदेशकी **4** प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी **4** प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, **1962** (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. **200/-** (रूपएदोसौमात्र)यारु.**1000/-**(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.**6** कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.**200 /-** औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.**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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016

5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहै,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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 M/s Vikas Ventures , V/138, Vilakkanamkode, Pattanchery-678532, Kerala, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/ZDC/349/2025-26 dated 17.10.2025 (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 an alert was received from the NCTC regarding the potential concealment of prohibited or restricted items. Consequently, the import consignment covered under IGM No. 1121162 dated 30.01.2025, comprising 13 containers under H-Bill of Entry No. 8178261 dated 04.02.2025, was placed on hold by the SIIB for examination. The consignment belonged to M/s Vikas Ventures (IEC AAWFV1697A). The goods declared in the subject Bill of Entry are "Technical Grade Urea (for industrial use)" (hereinafter referred to as "the impugned goods"), classified under HSN code 31021090. The shipment was imported through Mundra Port (INMUN1) and was facilitated by their Custom House Agent, M/s Rishi Kiran Logistic Pvt. Ltd. (hereinafter referred to as "the CB"). Pursuant to the NCTC alert, the impugned goods under Bill of Entry No. 8178261 dated 04.02.2025 were placed on hold for a detailed examination by the SIIB section of the Custom House, Mundra. The details of B/E are as under: -

Table-A

B/E No. & Date	Item Description	Declared (Net wt.) Qty. (MTS)	County of Origin	CTH	Declared Assessable Value (INR)	Total Duty (INR)
8178261, dated 04.02.2025	"Technical Grade Urea (for industrial use)" CTH - 31021090	285	UAE	31021090	1,08,88,639/-	26,66,628/-

2.1 The examination of the goods was carried out at M/s. Saurashtra Freight Pvt. Ltd, CFS, APSEZ, Mundra under panchnama on 07.02.2025 in the presence independent panchas and Shri Hansraj Umarav, H-Card holder of CB M/s Rishi Kiran Logistic Pvt. Ltd. and CFS representative Shri Digvijay Sharma, Sr. Executive, M/s. Saurashtra Freight Pvt. Ltd.-CFS, APSEZ, Mundra.

2.2 The representative of the CB provided copies of the Bill of Entry along with other import documents, including Bill of Lading No. SMSMUN005165 dated 30.01.2025, Invoice No. INV-1276 dated 28.01.2025, and the corresponding Packing List. Upon opening the container, it was found that the goods were packed in 50 kg HDPE bags. The description printed on the bags read "Technical Grade Urea (Industrial Use)." Upon further examination, the HDPE bags were opened, revealing granular white coloured material inside. Further, in order to ascertain parameters i.e. Nature, Classification, Grade, composition etc., 06 representative samples (in triplicate for each PRD) were drawn on the basis of marka/PRD and sealed in the presence of Shri Hansraj Umarav, H-Card holder of CB M/s Rishi Kiran Logistic Pvt. Ltd. The samples were later forwarded to CRCL Kandla vide TM no. 288/2024-25 to 293/2024-25 dated 07.02.2025.

2.3 The 06 representative samples drawn on the basis of marka/PRD and sealed in the presence of Shri Hansraj Umarav, H-Card holder of CB M/s Rishi Kiran Logistic Pvt. Ltd., were forwarded to CRCL Kandla vide TM no. 288/2024-25 to 293/2024-25 dated 07.02.2025. The CRCL, Kandla vide test reports dated 25.02.2025 submitted their report which stated that based on the test parameters the sample does not meet the requirement of Urea - Technical grade w.r.t Biuret content as per IS: 1781-2022. As per IS 1781:2022 and IS 5406:2024, the chemical composition of technical-grade and fertilizer-grade urea differs, particularly in parameters such as biuret content and moisture content. According to the test reports received from CRCL, Kandla, the sample did not meet the biuret content requirement for technical-grade urea as specified in IS 1781:2022. Based on the biuret content, the sample appeared to be fertilizer-grade urea as per IS 5406:2024. Consequently, the test results dated 25.02.2025 received from CRCL, Kandla, were communicated to the appellant via email on 28.02.2025 and again on 03.03.2025, for review and acceptance. The appellant classified goods under CTH 31021090.

2.4 Summons dated 03.03.2025 were issued to the appellant for recording their statement. However, the appellant requested a 20-day extension on medical grounds to comply with the summons and ensure the presence of an authorized representative. Accepting the request, fresh summons dated 11.03.2025 were issued, requiring their appearance on 02.04.2025. On that date, the statement of Shri Krishnaprasad R, a partner of M/s Vikas Venture, Pattacherry, Kerala, was recorded under Section 108 of the Customs Act, 1962.

2.5 In view of investigation, it appeared that appellant had tried to clear the goods i.e. "fertilizer grade Urea" by mis declaring them as "Technical grade (for industrial use)" and mis classifying them under CTH 31021090 instead of correct CTH 31021010 in order to bypass restriction imposed by DGFT vide Notification No. 79/2023 dated 18.03.2024 wherein import of fertilizer grade urea has been allowed through State Trading Enterprises (STE) only. Since the appellant is not a State Trading Enterprises as mentioned in above said notifications, hence, impugned goods i.e. Fertilizer grade urea which were imported in guise of Technical Grade urea (for industrial use) became prohibited in nature.

2.6 In view of the above, it appeared that since DGFT vide Notification No. 79/2023 dated 18.03.2024 revised policy condition of import of Urea fertilizer grade under CTH 31021010 and allowed import of fertilizer grade urea only through State Trading Enterprises approved by DGFT. Hence, prima facie, it appeared that in order to bypass restriction imposed by DGFT vide Notification No. 79/2023 dated 18.03.2024, the appellant had attempted to import "Fertilizer grade urea" classifiable under CTH 31021010 by mis declaring them as "Technical grade Urea (for industrial use)" under CTH 31021090 vide B/E No. 8178261 dated 04.02.2025. Since, M/s Vikas Ventures is not a State Trading Enterprises approved by DGFT vide Notification No. 79/2023 dated 18.03.2024, for import of Fertilizer grade urea, goods imported vide impugned B/E No. 8178261 dated 04.02.2025 became prohibited in nature and hence, due to above mentioned mis declaration of description and CTH, goods imported vide B/E No. 8178261 dated 04.02.2025 having total qty. of 285 MTS and declared assessable value of Rs. 1,08,88,639/- (Rs. One crore, eight Lakh, eighty-eight thousand, six hundred and thirty-nine only) appeared to be liable for confiscation under section 111(d) and (m) of the Customs Act, 1962 and the said act of omission and commission on the part of appellant, appellant had rendered themselves liable for penalty under section 112 (a) of the Custom Act, 1962.

2.8 In light of the above, a Show Cause Notice was issued to the Appellant as to why:

i.The declared description i.e. Technical Grade urea (for industrial use) of goods imported vide 01 impugned Bill of Entry no. 8178261 dated 04.02.2025 should not be rejected and same to be re-determined as Fertilizer Grade Urea.

ii. The classification of the goods imported vide impugned Bill of Entry no. 8178261 dated 04.02.2025 i.e. 31021090 declared by the appellant should not be rejected and those goods are re-classified under CTH 31021010.

iii. The imported goods vide BE No. 8178261 dated 04.02.2025 having declared weight of 285 MTs and declared assessable value of Rs. 1,08,88,639/- should not be considered as prohibited as much as these goods have been attempted to import in contravention of DGFT Notification No. 79/2023 dated 18.03.2024.

iv. The imported goods found as "Fertilizer Grade Urea" having declared weight of 285 MTs and declared assessable value of Rs. 1,08,88,639/- should not be confiscated under Section 111 (d) & (m) of the Customs Act, 1962.

v. Penalty under Section 112 (a) of the Customs Act, 1962 should not be imposed upon them for the reasons discussed in para supra.

vi. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon them for the reasons discussed in para supra.

2.4 Consequently, the Adjudicating Authority passed the order as under:

(i). He ordered to reject the declared description i.e. Technical Grade urea (for industrial use) of goods imported vide 01 impugned Bill of Entry no. 8178261 dated 04.02.2025 and order to re-determine the same as Fertilizer Grade Urea.

(ii). He ordered to reject the classification of the goods imported vide impugned Bill of Entry no. 8178261 dated 04.02.2025 i.e. 31021090 declared by the appellant and order to re-classify the impugned goods under CTH 31021010.

(iii). He ordered to consider the impugned goods imported vide BE No. 8178261 dated 04.02.2025 having declared weight of 285 MTs and declared assessable value of Rs. 1,08,88,639/-, as prohibited as much as these goods have been attempted to import in contravention of DGFT Notification No. 79/2023 dated 18.03.2024.

(iv). He ordered to confiscate the imported goods found as "Fertilizer Grade Urea" having declared weight of 285 MTs and declared assessable value of Rs. 1,08,88,639/-, under Section 111 (d) & (m) of the Customs Act, 1962.

(v). He imposed the Penalty of Rs.5,00,000 (Rupees Five Lakh only) under Section 112 (a) of the Customs Act, 1962 upon the Appellant for the reasons discussed in para supra.

(vi). He imposed the Penalty of Rs.2,00,000 (Rupees Two Lakh only) under Section 114AA of the Customs Act, 1962 for the reasons discussed in para supra.

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 failing to follow the legal precedent established by the Hon'ble Supreme Court in Gastrade International versus Commissioner of Customs, which mandates that compliance with all delineated parameters is necessary to determine the nature of goods. The appellant argues that a deviation in only one parameter biuret content does not sufficiently prove the goods are "Fertilizer Grade Urea" rather than "Technical Grade Urea," especially since there is no evidence that the remaining specifications for Fertilizer Grade Urea were met. Consequently, the appellant asserts that the impugned order for confiscation under Section 111 (d) and (m) and the subsequent penalties under Section 112 (a) and Section 114AA are legally untenable.

3.2 Furthermore, the appellant challenges the order for absolute confiscation, arguing that the authority should have allowed for the re-export of the goods. The appellant notes that the overseas supplier confirmed their willingness to take the goods back in a letter dated November 24, 2025. It is further argued that the dispute is a technical matter of classification arising from sampling and testing, and because there is no evidence of mens rea on the part of the appellant, the imposition of penalties is unjustified. Finally, the appellant claims that the original notice failed to provide evidence bringing them within the scope of Section 114AA, rendering that penalty invalid.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 16.12.2025, following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal. He further filed additional submissions as under :-

- Following submissions and citations are rendered for kind consideration with regard to the request made by the appellant for re-export of goods covered by the order impugned.

- The appellant is not left with any option but to re-export the goods which are otherwise technical grade urea except for minor variation in one parameter. i.e. biuret content. By citing this, Ld. Adjudicating Authority has ordered for absolute confiscation of goods, without applying the most akin test laid down by Hon'ble Supreme Court in the case of Gastrade International.

- The appellant hereby relies upon the following amongst large decisions, wherein, it is held that no fine and penalty is imposable on goods that are permitted re-export.

(i) Kenda Farben India Pvt. Ltd., 2019 (369) ELT 1225 (T)

(ii) Zenith Rubber & Plastic Works, 2010 (262) ELT 272 (Tri.-Mumbai)

(ii) Lalkamal Enterprises, 2018 (364) ELT 856 (T)

(iv) Central Marketing Agency, 2004 (178) ELT 601 (Tri-Kolkata)

(v) Venus Gems & Jewellery, 2002 (142) ELT 388 (Tri. - Del.)

- In view of above, it is prayed to permit re-export the goods without imposing fine and penalty, and oblige.

- It is submitted that they are incurring heavy loss on a daily basis as goods are lying at port, since February, 2025.

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. I have carefully examined the Adjudicating Authority's findings which rely primarily on the CRCL test reports highlighting Biuret content (1.02% to 1.26%) as the justification for re-classifying the goods under CTH 3102 1010 (Fertilizer Grade). Firstly, it is essential to distinguish between the two relevant standards: IS 1781:2022 for Technical Grade Urea (TGU) and IS 5406:2024 for Fertilizer Grade Urea (FGU). While the Adjudicating Authority correctly notes that the Biuret content exceeded the 0.8% limit for TGU, this single deviation does not automatically transform the substance into FGU for Customs classification purposes. Classification must be based on the predominant character and the summation of all technical specifications defined by the rule-making authority.

5.1 Secondly, I find that the CRCL test was limited to only a few parameters (Moisture, Nitrogen, Biuret, and Particle Size). However, IS 1781:2022 stipulates several other critical parameters such as Ammonium Salts (0.01% Max), Residue on ignition (0.002% Max), Iron content (0.0002% Max), and pH of 10% solution (7.0 to 9.5). In the absence of testing for these exhaustive specifications, the department's conclusion that the goods conform strictly to FGU (and not a slightly off-spec TGU) is speculative. Thirdly, the legal position on partial testing has been decisively settled by the Hon'ble Supreme Court in Gastrade International vs. Commissioner of Customs, Kandla (2025) 29 Centax 8 (S.C). The Apex Court held that:

"Application of the principle of preponderance of probability does not provide an accurate test. The more accurate and precise test will be whether the goods in question are 'most akin' or most similar to the specified goods... Non-examination of any product/ article/ goods on all the parameters laid down by the customs authority will always lead to uncertainty and doubt, which are required to be removed when dealing with confiscatory proceedings."

5.2 In the present case, the Adjudicating Authority applied the "preponderance of probability" by assuming that because one parameter (Biuret) matched the FGU range, the entire consignment must be FGU. This approach fails the "Most Akin" test. Given that the goods were declared as TGU, packed as TGU, and priced significantly higher (commercial parlance test), a slight deviation in Biuret levels which could result from the manufacturing process or storage cannot override the overall character of the goods without exhaustive laboratory verification of all parameters. Consequently, the benefit of doubt in this technical overlap must reside with the Appellant.

5.3 The Adjudicating Authority ordered absolute confiscation under the premise that Urea, being a canalized item, falls under the category of "prohibited goods" when imported by a private entity without an STE license. I find this interpretation legally narrow and inconsistent with the broader framework of Section 125 of the Customs Act, 1962. Section 125(1) provides that:

"Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation 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 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :"

5.4 The use of the word "may" for prohibited goods grants a discretionary power to the Adjudicating Authority to allow redemption. This discretion, however, must be exercised judiciously and not arbitrarily. Absolute confiscation should be the exception, reserved for goods that are intrinsically harmful to public health, security, or morality. Furthermore, the Hon'ble Supreme Court in Commissioner of Customs v. Atul Automations Pvt. Ltd. [2019 (365) E.L.T. 465 (S.C.)] clarified that "prohibited goods" under Section 2(33) include goods that do not satisfy the conditions for import. However, the Court distinguished between items that are absolutely prohibited and those that are restricted. In cases of restricted items where no mala fide intent is established, the appropriate course of action is to allow redemption for re-export.

5.5 The Adjudicating Authority in the impugned order relied on several judgments, such as Om Prakash Bhatia v. Commissioner of Customs [2003 (155) E.L.T. 423 (S.C.)], to justify absolute confiscation on the grounds that any violation of an import condition renders the goods "prohibited." While the principle in Om Prakash Bhatia remains valid, its application to the facts of this case is flawed. That ruling dealt with over-invoicing for fraudulent drawback claims a clear instance of financial fraud against the exchequer. In contrast, the present case is a technical dispute over chemical specifications (Biuret levels) where the Appellant has actually paid a significantly higher market price (Rs. 38/kg) compared to the subsidized domestic rate (Rs. 5/kg), thereby negating any intent to defraud.

5.6 The impugned order also cited cases involving "ingenious concealment" (e.g., gold hidden in appliances). I find such citations entirely inapplicable. Here, the goods were openly declared as "Technical Grade Urea," the packaging explicitly stated the grade, and the values matched the international market benchmarks for industrial urea. There was no attempt to hide the identity of the cargo. In this regard, I place reliance on the following case laws which are applicable in the present case:

a. Siemens Ltd. vs. Collector of Customs [1999 (113) E.L.T. 776 (S.C.)]: The Supreme Court held that where goods are imported under a bona fide belief and the error is technical, the option for redemption/re-export must be granted.

b. Hargovind Das K. Joshi vs. Collector of Customs [1992 (61) E.L.T. 172 (S.C.)]: The Court emphasized that absolute confiscation is a harsh measure and quasi-judicial authorities must exercise their discretion under Section 125 to allow redemption unless the goods are inherently dangerous.

c. G.V. International v. Commissioner of Customs [2014 (304) E.L.T. 641 (Del.)]: The Delhi High Court held that for restricted goods, the right to re-export should generally be allowed if the importer does not wish to clear them for home consumption, as this preserves the status quo ante.

The reasoning in these cases applies perfectly here because the "offending" nature of the goods (high Biuret) was only discovered post-import through laboratory analysis, and the Appellant immediately sought re-export once the discrepancy was noted, proving their bona fides.

5.7 In view of the specific facts and circumstances of this case, I find the following grounds compelling for allowing the appeal and substituting absolute confiscation with an option for re-export:

a. Absence of Financial Incentive and Mens Rea: In any case of alleged misdeclaration, the "motive" of the importer is a critical factor in determining the severity of the penalty. The Appellant imported the goods at a price of approximately Rs. 38/kg (market value for industrial grade). In contrast, Fertilizer Grade Urea (FGU) in India is heavily subsidized and distributed at approximately Rs. 5.36/kg. Had the Appellant intended to smuggle FGU under the guise of TGU, they would have attempted to import it at a much lower declared value to maximize profit. The payment of the full commercial price for TGU establishes a clear lack of mens rea. The discrepancy in Biuret levels (1.02% vs 0.8%) appears to be a manufacturing or technical oversight rather than a deliberate attempt to bypass canalization laws.

b. Role of the Overseas Supplier: The Appellant has produced a categorical commitment from the overseas supplier, M/s. Gulf Fertilizers and Chemicals FZE, via their letter dated 24.11.2025. The supplier has acknowledged the concern and has expressed readiness to take the cargo back.

c. Principle of Proportionality and Avoidance of "Capital Death": Absolute confiscation is the "capital punishment" of the Customs Act. It should be applied only when the goods are "tainted" or inherently dangerous to the national interest. Here, the goods are a common industrial raw material. Ordering absolute confiscation of cargo worth over Rs. 1 Crore for a 0.22% deviation in Biuret content a deviation discovered only upon testing is grossly disproportionate. Such a harsh measure would lead to the total depletion of the Appellant's working capital, which is contrary to the ease of doing business and the judicial principles of proportionality.

d. Neutralizing the Policy Violation: The primary objective of the DGFT canalization policy for Urea is to prevent the diversion of subsidized fertilizers for industrial use. By allowing re-export, the goods are removed from Indian territory entirely. This action ensures that the policy objective is met 100%, as the goods never enter the domestic market. Therefore, re-export with a redemption fine serves the dual purpose of (a) penalizing the technical non-compliance and (b) upholding the integrity of the Foreign Trade Policy.

6. In view of the above discussions, the findings of the Adjudicating Authority, and the judicial precedents cited, I pass the following order:

I. The Absolute Confiscation ordered by the Adjudicating Authority is hereby set aside.

II. The Appellant is given an option to re-export the 285 MT of impugned goods on payment of a Redemption Fine of Rs.5,00,000/- (Rupees Five Lakhs Only) under Section 125 of the Customs Act, 1962.

III. The penalty under Section 112(a) of the Customs Act, 1962 is reduced to Rs. 2,00,000/- (Rupees Two Lakhs Only).

IV. The penalty under Section 114AA of the Customs Act, 1962 is set aside, as there is no evidence of intentional use of "false" documents, but rather a technical disagreement on chemical parameters.

V. The re-export shall be completed within 60 days from the date of payment of the fine and penalty.

7. The Appeal is partially allowed in the above terms.

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

F. No. S/49-504/CUS/MUN/2025-26/5142

Date: 01.01.2026

By Speed post /E-Mail

To,
M/s Vikas Ventures
V/138, Vilakkanamkode,
Pattanchery-678532, Kerala

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

Copy to:

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.