



सीमाशुल्क(अपील) आयुक्तकार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड IshwarBhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20250971MN0000720819

क	फाइलसंख्या FILE NO.	S/49-03/CA-2/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-185-25-26
ग	पारितकर्ता PASSED BY	Shri AMIT GUPTA Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.09.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF FINAL ASSESSMENT ORDER/ORDER-IN-ORIGINAL (OIO) NO.	OIO No. MCH/ADC/AK/98/2024-25 dated 22.07.2024 (date of issue) issued by Additional Commissioner, Customs House, Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	19.09.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Deputy Commissioner of Customs, Custom House, Mundra.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की

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



4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलियाधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench			
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, 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 हजार 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 हजार रुपए				
(ब)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए।				
(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 अदाकरने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, यादें के %10 अदाकरने पर, जहां के वल दंड विवाद में है, अपील रखा जाएगा।				
(द)	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 यागलतियों को सुधारने के लिए याकिसी 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

The Deputy Commissioner of Customs, Customs House, Mundra (hereinafter referred to as the "Appellant Department") has filed the present appeal under Section 129 D(4) of the Customs Act, 1962 on the basis of Authorisation / Review Order No. 04/OIO/2024-25, dated 21.10.2024 passed by the Principal Commissioner of Customs, Custom House, Mundra challenging the Order - in - Original No. OIO No. MCH/ADC/AK/98/2024-25 dated 22.07.2024 issued by Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as the "adjudicating authority") in the case of M/s. Rina brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 (hereinafter referred to as the "Respondent")

2. Facts of the case, in brief, are that the Respondent submitted Bill of Entry No. 4299516 on June 12, 2021, through their Custom House Agent (CHA), M/s Meenu Rathore, for the import of "Watermelon Seeds for Consumption Purpose" under CTH 12077090. An intelligence alert from the Directorate of Revenue Intelligence (DRI) on July 2, 2021, indicated that watermelon seeds, classified under CTH 12077090, were being imported from Sudan despite an import restriction imposed by the Directorate General of Foreign Trade (DGFT) through Notification No. 03/2015-2020 on April 26, 2021. The alert suggested that the Respondent M/s. Rina Brothers had submitted a manipulated Bill of Lading, claiming it was dated April 15, 2021, while investigation revealed that the actual loading dates for the containers were May 4, May 10, and May 11, 2021-post-dating the DGFT notification.

2.1 The investigation involved recording statements from key individuals, including Mrs. Mariamma Kurian, Manager of M/s Meenu Rathore, and Shri Shantilal Hariram Gajra, Proprietor of M/s Vansh Logistics. Additionally, statements from Shri Malav Rajerrabhai Shah, the General Manager of Rina Brothers, were documented, corroborating the timeline and the intelligence reports.

2.2 Despite the findings, Respondent requested provisional release of the containers, citing their perishable nature. On July 28, 2021, the Deputy Commissioner of Customs granted this request under Section 49 of the Customs Act, 1962 allowing the seeds to be provisionally released upon posting a bond for 100% of the value and a bank guarantee of Rs 5,00,000. The Bill of Entry was assessed provisionally on January 7, 2022.



X

2.3 The outcome of the investigation concluded that the Respondent had deliberately mis-declared the date of the Bill of Lading to facilitate the import of restricted goods. The investigation established that the actual Bill of Lading was dated May 20, 2021, which was after the DGFT's restriction came into effect. The importer admitted during questioning that the shipment took place after the restriction date. The argument that they initiated payment or received quarantine certificates prior to the restriction did not hold, as the date of the Bill of Lading is the key determinant for import compliance.

2.4 Given that the goods were classified as prohibited under Section 11 of the Customs Act, 1962, due to the DGFT restriction, they were seized under Section 111(d) of the Customs Act on July 14, 2021. This seizure led to the issuance of a Show Cause Notice (SCN) vide File no. S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dtd. 30.11.2022, detailing why the imported goods should not be confiscated and why penalties should not be imposed under Sections 112 and 114AA of the Customs Act, 1962.

2.5 The adjudication process concluded with the Additional Commissioner of Customs, issuing Order in Original MCH/ADC/MK/36/2023-24 on May 4, 2023. This order resulted in the confiscation of the goods valued at Rs 51,99,271/- alongside a redemption fine of Rs. 5,00,000 and penalties totaling Rs. 18,00,000 (including Rs. 3,00,000 under Section 112(a) and Rs. 15,00,000 under Section 114AA)

2.6 Following this decision, the Respondent filed an appeal under Section 128 of the Customs Act, 1962 contesting the order. The Commissioner (Appeals) reviewed the appeal and remitted the case back to the adjudicating authority for a fresh examination of the facts, evidence, and submissions while ensuring adherence to the principles of natural justice vide Order-In Appeal No. MUN-CUSTM-000-APP-260-23-24 dtd. 28.02.2024.

2.7 In a subsequent written submission dated May 31, 2024, the Respondent provided additional evidence to support their claims that the goods were shipped prior to the DGFT restrictions. They referenced a sales contract dated January 25, 2021, confirming the order of 90MT of watermelon seeds and highlighted that a 20% advance payment was made on January 28, 2021, well before the notification. Various certificates, including a Health Quarantine Certificate and a Fumigation Certificate, were presented to establish compliance with import regulations. They argued that these documents, issued by Sudanese authorities, indicated that the goods were indeed shipped before the restriction date.



2.8 During a personal hearing on May 31, 2024, Shri V.K. Suman, the authorized representative for Rina Brothers, reiterated these points and submitted the tribunal's earlier ruling in their favor to substantiate their claim. The case remains under review, with the customs authority tasked to reconsider all evidence presented, ensuring a comprehensive examination of Rina Brothers' claims and adherence to legal provisions.

2.9 The Adjudicating Authority found that Investigations revealed that Rina Brothers mis-declared the Bill of Lading date as April 15, 2021, when the actual date was May 30, 2021, after the restriction was imposed. The loading of the seeds occurred post-notification, and the authorized representatives acknowledged that the shipment took place after the restriction was in effect. Consequently, the goods were seized on July 14, 2021, for being imported without the necessary license, thus violating Section 111(d) of the Customs Act, 1962.

2.10 M/s. Rina Brothers before the Adjudicating Authority contended that their goods were shipped prior to the import restrictions imposed by DGFT on 26.04.2021. They reference a ruling from the Hon'ble Tribunal of Ahmedabad (Custom Appeal No. 10647/2023-DB) as a relevant precedent supporting their case. To substantiate their claim, they present several key documents. The Sales Contract, dated 25.01.2021, indicating that the order for 90MT of watermelon seeds was placed before the restrictions. Furthermore, they arranged a 20% advance payment (AED 51,526.80) to the supplier on 29.01.2021, well before the notification date. They stated that the Bill of Lading No. MAEU 208805317 shows that the goods were shipped on 15.04.2021. Additionally critical certificates, including the Phytosanitary Certificate and Fumigation Certificate, were issued on 20.04.2021 and 14.04.2021, confirming that the shipment occurred before the restrictions took effect. Finally, they stated that the draft Bill of Lading was prepared on 10.03.2021, indicating preparations for shipping were made in advance. They argue that under the Foreign Trade Policy (FTP) Policy, goods can be shipped after a notification date if there is a confirmed contract and remittance, both of which were satisfied prior to the restrictions. In light of these, M/s. Rina Brothers requested the cancellation of the subject 'SCN' and the associated bank guarantee. During the Personal Hearing dated 31.05.2024, they also submitted Hon'ble Tribunal order dated 02.01.2024 in their own case to substantiate their claim for import.

2.11 The Adjudicating Authority found that the importer, M/s. Rina Brothers, argued that the goods were placed in the custody of the shipping line before the notification imposing restrictions was issued. They referenced the transitional arrangements in the Foreign Trade Policy, stating that consignments can be shipped after the notification date if there is a confirmed contract supported by a Letter of Credit. They noted that a 20% remittance was made on 29.01.2021, prior to the



notification, and claimed where was no basis for confiscation or penalties. To support their argument, they submitted a copy of a decision from the Hon'ble CESTAT, Ahmedabad, dated 02.01.2024, asserting their case was covered by this judgment indicating that the issue was similarly addressed.

2.12 The adjudicating authority acknowledged that this decision was new and had not been considered before. It was noted that the Tribunal had stated M/s. Rina Brothers complied with the transitional arrangement by paying the full amount for the consignment before the watermelon seeds were classified as restricted. The department's case was based on the restrictions imposed at the time of filing the Bill of Entry. However, the authority pointed out that special provisions under the transitional arrangements allow for exceptions in cases where goods are in transit during the imposition of restrictions.

2.13 The authority emphasized that under the transitional arrangements, imports that were previously unrestricted could still be permitted if they complied with the conditions set out, including the requirement that shipments occur within the validity period of the Letter of Credit established before the restrictions were imposed. Authority noted that M/s. Rina Brothers provided several key documents, including a sales contract, proof of advance payment, the Bill of Lading showing shipment prior to the restriction date, and various certificates indicating compliance with necessary regulations, all of which were issued before the restriction.

2.14 In view of foregoing discussion and findings, the Adjudicating Authority dropped the proceeding initiated against M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 vide Show Cause Notice No. S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022.

SUBMISSIONS OF APPELLANT DEPARTMENT

3. Being aggrieved with the impugned order, the Appellant Department has preferred this appeal on the grounds which are elaborated as below:

3.1 The Adjudicating Authority dropped the proceedings on the ground that the importer made a 20% advance payment on the consignment well before the restriction was enacted and by citing reference to order passed by Hon'ble Tribunal of Ahmedabad Bench on dated 02.01.2024 vide Custom Appeal No. 10647/2023 in case of M/s. Rina Brothers (same Importer) wherein the import was allowed and benefits of Transitional Arrangements was passed to the importer.



3.2 It is pertinent to mention that the restriction on import of "Melon Seeds: Others" was imposed by the Directorate General of Foreign Trade (DGFT) through Notification No. 03/2015-2020 on April 26, 2021. In the instant case the goods i.e. Watermelon Seeds were imported after the imposition of restriction without following the stipulated conditions thus making the goods as prohibited in terms of Section 2(33) of the Customs Act, 1962 and as per the Judgment given by the Supreme Court in case of M/S Om Prakash Bhatia vs Commissioner of Customs, Appeal (civil) 4060 of 2001, wherein it was made clear that any kind of restriction is prohibition. As the goods were imported in contravention to the stipulated conditions it is undisputed that goods are prohibited.

3.3 The Adjudicating Authority has erred in passing benefits of Transition Arrangements' as provided in Para 1.05 of Foreign Trade Policy to the Importer. As per the said para , if an export or import that was initially permitted under the FTP later becomes restricted, the transaction can still proceed, and goods can be imported/exported, if the shipment occurred within the validity of an irrevocable commercial letter of credit that was established before the restriction was imposed. To take advantage of this provision, the exporter or importer must have register the irrevocable letter of credit with the jurisdictional Regional Authority (RA) within 15 days of the restriction's imposition. Following the given conditions, the Import/export will remain valid even after imposition of restriction.

3.4 In cases where the above conditions do not meet, the date of reckoning of import will be the date affixed on the Bill of Lading in case where mode of transport is by Sea as per the Para 9.11 of the Handbook of procedures 2015-2020.

3.5 In the instant case the date of Bill of Lading is 30.04.2021, and the provisions of restriction on the goods were imposed before that i.e. 26.04.2021 The Adjudicating Authority has cited reference of and relied on the order passed by Hon'ble Tribunal of Ahmedabad Bench on dated 02.01.2024 vide Custom Appeal No. 10647/2023 in case of M/s. Rina Brothers (same Importer) wherein the appeal of the importer was allowed and benefits of Transitional Arrangements was passed to the importer. However, the case cited is distinguished from the instant case as in that case M/s. Rina Brothers had paid entire amount of the consignment in question to the overseas exporter, much prior to watermelon seeds being placed under restricted category from free category. There was no scope of registration of Letter of Credit with the Regional Authority, as provided in the Para 1.05 of FTP, as the entire payment was already made before the imposition of restriction. However, in the instant case only 20% of the payment was made through Swift and it can be treated as advance payment, that is general trade practice, that can be refunded, it does not stand equivalent to the irrevocable letter of credit as mentioned in the FTP. FTP allows transaction through Irrevocable letter of credit along with registration with RA within 15 days of imposition of restriction to avail benefit of Transitional Arrangements. However in the instant case the provisions of Transitional Arrangements are not followed thus the Adjudicating Authority erred in providing benefits of Transitional Arrangements in the instant case as same are not applicable.



3.6 The Adjudicating Authority erred in considering Advance payment as equivalent to Irrevocable Commercial Letter of Credit (ICLC). However, Advance payments are prepayments made by the buyer before the goods are shipped. This payment method is typically refundable based on the terms of the sales contract. If the transaction does not proceed as intended such as the seller failing to deliver the goods the buyer may be able to recover their funds, leading to uncertainty for the seller. In contrast, an irrevocable letter of credit is a formal banking instrument that guarantees payment to the seller upon fulfillment of specified terms and conditions. Hence, the provisions of ICLC are not squarely applicable goods in question.

3.7 In view of the above, in the instant case the BL date must be considered as the date of reckoning of Import, which is after the date of imposition of restrictions, thus the goods must be held as prohibited and should have been confiscated under section 111(d) of Customs Act, 1962. Thus Adjudicating Authority has erred in not confiscating the goods under Section 111(d) and not taking penal action as proposed in the SCN.

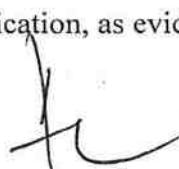
3.8 In view of the above facts and submissions the Order-in-Original No. MCH/ADC/AK/98/2024-25, dated 22.07.2024 passed by the Additional Commissioner of Customs, Custom House Mundra in case of M/s. Rina Brothers is not legal and proper and therefore, in the interest of justice, Commissioner (Appeals), may kindly

- (a) set aside the impugned order.
- (b) refer the matter back to Adjudicating Authority to consider it as a fresh with regard all the charges levelled against the importer vide SCN. No. S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022.
- (c) Grant any relief as may be deemed fit under the law and in the interest of justice.

PERSONAL HEARING

4. Personal hearing in the matter was held on 09.09.2025, wherein Shri Aliakbar Devjani, Advocate, appeared on the behalf of the Respondent. He submitted the following submissions

- The goods were originally classified as freely importable under the Foreign Trade Policy; however, vide DGFT Notification No. 03/2015-20 dated 26.04.2021, the item was shifted from the "Free" category to the "Restricted" category, subject to policy condition No. 4 of Chapter 12, CTA 1975.
- The Department proceeded on the premise that, since at the time of filing of the Bill of Entry the import stood restricted, the consignment was liable for confiscation under Section 111(d) of the Customs Act, 1962, and consequential penalties were imposable.
- He further submitted that the contractual obligation for supply of the seeds was entered into well before the restrictive notification, as evidenced by the sale contract on record

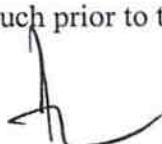


which is accepted and relied by the Adjudicator along with copy of proof of advance remittance of 20% to the foreign supplier in January 2021

- The goods had been handed over to the shipping line on 15.04.2021, i.e., prior to the imposition of restrictions, although the B/L was issued belatedly due to the carrier's internal delay. Various supporting documents draft Bill of Lading, Phytosanitary Certificate, Health Quarantine Certificate, and Fumigation Certificate all dated before imposition of import restriction corroborated that the shipment had indeed been effected before the prohibition date.
- Under Para 1.05(b) of FTP 2015-20 (Transitional Arrangements), if shipment is made within the validity of an irrevocable commercial commitment (such as LC or remittance) prior to imposition of restrictions, the import remains protected notwithstanding subsequent changes. The appellant's advance payment and documentary trail satisfied this condition.
- He further drew specific attention towards the decision of CESTAT in the similar case of the importer themselves for same period wherein CESTAT, Ahmedabad vide its Final Order No. 10001/2024 dated 02.01.2024, have found and held following:
 - The consideration for the consignment stood remitted prior to the DGFT Notification.
 - The shipment had been effected within the original validity of the contractual arrangement, although the B/L was formally issued later due to shipping line delays.
 - The conditions of Para 1.05(b) of FTP were squarely satisfied, entitling the importer to transitional protection.
 - The Tribunal observed that both the adjudicating and appellate authorities had failed to appreciate the factual and legal position, and that the confiscation and penalties could not be sustained.
- The same was also considered and kept in view by the adjudicating authority and in light of the same the CAN was dropped. It is therefore requested that finding of CESTAT, Ahmedabad binding on department may be upheld and the appeal of department be rejected on same grounds.

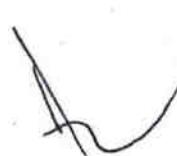


- The subject case was initially adjudicated by Additional Commissioner of Customs Mundra vide O-I-O No. MCH/ADC/MK/36/2023-24 dt: 04.05.2023 wherein he has confirmed the SCN
- The party preferred an Appeal before Commissioner of Customs (Appeals) Ahmedabad and Commissioner of Customs was pleased to consider the facts of the case and remanded the matter back to the Original Adjudicating Authority vide Order in Appeal No: MUN/CUSTM-000-APP-260-23-24 dt 28.02.2024 as matter was considered to the squarely covered by CESTAT Order No: 10003/2024 dt: 02.01.2024 vide Customs Appeal No. 10647/2003 DB in the matter of M/s Rina Brothers. (Copy enclosed as marked "A")
- The Additional Commissioner of Customs Mundra considering the facts and in view of CESTAT Final Order No: 10003/2024 dt: 02.01.2024 dropped the SCN
- This case is entirely covered by the above CESTAT Order passed in our own case.
- Watermelon Seeds was under OGL but the same has been put from "free" to Restricted vide Notification No.03/2015-2020 New Delhi, dated 26.04.2021 read with Notification No. 05/2015-2020 New Delhi, dated 25.04.2018 issued from F.No: 01/93/180/05/AM-18/PC-2(B)-E-1192.
- As Revised Para to Notification No. 05/2015-2020 New Delhi, date.25.04.2018 reads as Further, the import/export on or after the date of such regulation/restriction will be allowed for importer/exporter has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operationalizing such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/regulation.
- The subject consignment has been arrived to Mundra after the Restriction Notification date due to problems/Mistake with MAERSK LINE whereas the subject goods have been handed over to the MAERSK LINE by our supplier M/s Fobic Investment Company LTD Khartoum - Sudan - Ebaid - Khatim on behalf of Fobica limited Dubai UAE on dated 15.04.2021, before the subject restrictions.
- It is to submit the following documents in support of our contention that the goods have been shipped much prior to the restriction imposed for import.




- In this connection it is submitted that this case is entirely covered matter in my case of M/s. Rina Brothers order passed by Hon'ble Tribunal of Ahmedabad Bench dated 02.01.2024 vide CUSTOM APPEAL No. 10647/2023-DB.
- In addition to the above, there are several documentary evidences that show the Shipment has taken place much prior to the restriction imposed by DGFT dated 26.04.2021 such as----

- i. Sale Contract as per invoice No, 5/21 dated 25.01.2021 between shipper M/s Fobica Limited Co. and M/s Rina Brothers for supply of Watermelon Seeds weighing 90MT which is duly stamped and signed with Rubber Stamp by both the parties. It can be seen that the goods were ordered for shipment on 25.01.2021 which is prior to the date of said Notification. In this case as per Sales Contract, 20% of total contract price of AED 2,57,634.00/- i.c., AED 51,526.80/- was to be paid in advance and balance was to be paid against copy of original documents such as Certificates, LDC, Phytosanitary, Health export, Bill of Lading, Invoice
- ii. On 28.01.2021 M/s Rina Brothers requested their banker's M/s Karul Vysya Bank for making above mentioned 20% advance remittance
- iii. On 29.01.2021 above-mentioned agreed remittance amount @20% was remitted to the supplier vide SWIFT MT103 OUTWARD amounting to AED 51,526.80/- to Beneficiary M/s Fobica Limited Co.
- iv. The B/L No. MAEU 208805317 dated 30.05.2021, shipped on Board dated 15.04.2021. clearly shows that goods were handed over to the MAERSK by our supplier M/s Fobic Investment Company LTD. Khartoum - Sudan - Ebaid - Khatim on behalf of Fobica limited Dubai UAE on dated 15.04.2021, well before the Notification date and containers were Shipped on Board on 15.04.2021
- v. Plant Quarantine Form No. 1 This plant quarantine certificate (Phytosanitary Certificate) was issued by Republic of Sudan, Ministry of Agriculture and Forest Tree, Plant Protection Directorate, Plant Quarantine Service on 20.04.2021 . This indicates that shipment has been effected prior to the restriction.
- vi. Fumigation Certificate issued by Republic of Sudan, Ministry of Agriculture and Forest Tree, Plant Protection Directorate, Plant Quarantine Service on




20.04.2021 . This is evident that the goods were shipped before imposition of Import Restrictions

- vii. Health Quarantine Certificate issued by National Ministry of Health, Directorate General of Public Health and Emergency, National Directorate of Health Quarantine, Port Sudan was issued on 14.04.2021 .
- viii. Draft B/L. This is normally prepared by exporter and given to Shipping Line for issuing final B/L. In this case said draft BL was prepared and submitted to Shipping Line on 10.03.2021 .
- It is brought to the notice of your honor that in terms of Para 1.05 (b) of FTP Policy, i.e., Transitional Arrangement, consignment can be shipped after the date of notification if confirmed contract with acceptance of both parties supported by Letter of Credit. However, in this case remittance @ 20% was made well before the notification date in terms of the contract for sale this payment itself prior to the date of Notification and which is one step ahead than the letter of credit It is also appreciated that in this case the 20% of the contract money was paid through Banking Channel prior to the date of restrictions. Therefore, no restrictions will be applicable on this import.
- It is also submitted that certain documents such as Fumigation Certificate, Health Quarantine Certificate, Plant Quarantine Certificates are being issued by Government Authority of the Exporting County and these documents are admissible and they cannot be issued before receipt of goods at Load Port.
- In view of the above it is requested to dismiss the Appeal of Revenue and uphold the order of Additional Commissioner as no material evidence has been brought on record to establish the illegality and impropriety in the order of Additional Commissioner which is subject matter in this Appeal:

DISCUSSION AND FINDINGS

5. I have carefully gone through the appeal memorandum filed by the Appellant Department as well as the impugned order. The issue to be decided in the present appeal is as under :-

- (a) Whether the impugned order passed by the adjudicating authority wherein he has dropped the proceedings initiated against the Respondent vide Show Cause Notice dtd. 30.11.2022, is legal and proper , or otherwise.

5.1 It is observed that the restriction on import of "Melon Seeds: Others" was imposed by the Directorate General of Foreign Trade (DGFT) through Notification No. 03/2015-2020 on April 26, 2021. The investigation established that the actual Bill of Lading was dated May 20, 2021, which




was after the DGFT's restriction came into effect. The outcome of the investigation concluded that the Respondent had deliberately mis-declared the date of the Bill of Lading to facilitate the import of restricted goods without following the stipulated conditions thus making the goods as prohibited in terms of Section 2(33) of the Customs Act, 1962. Accordingly the goods were placed under seizure vide seizure memo dtd. 14.07.2021. Subsequently, the Respondent was issued Show Cause Notice dtd. 30.11.2022 containing proposal as to why the imported goods should not be confiscated and why penalties should not be imposed under Sections 112 and 114AA of the Customs Act, 1962.

5.2 The Show Cause Notice dtd. 30.11.2022 was decided vide Order in Original MCH/ADC/MK/36/2023-24 dtd. 04.05.2023 wherein the adjudicating authority ordered for confiscation of the goods valued at Rs 51,99,271/- alongwith a redemption fine of Rs. 5,00,000 and penalties totaling Rs. 18,00,000 (including Rs. 3,00,000/- under Section 112(a) and Rs. 15,00,000/- under Section 114AA of the Customs Act, 1962). The Respondent challenged the said OIO dtd. 04.05.2023 before the Appellate Authority which remanded the matter to the adjudicating authority for fresh examination of facts, evidence and submissions.

5.3 During the denovo adjudication, the adjudicating authority dropped the proceedings on the ground that the Respondent had made 20 % advance payment for the consignment well before the restriction was imposed and placing reliance on the order dtd. 02.01.2024 passed by the Hon'ble CESTAT, Ahmedabad in case of same Respondent, in Customs Appeal No. 10647/2023. Vide its order dtd. 02.01.2024, the Hon'ble CESTAT had allowed Respondent's appeal in a similar import by extending the benefits of Transitional Arrangements to the Respondent. The provisions of Transitional Arrangements as per para 1.05 of the FTP 2015-20 are reproduced as under :-

"1.05 Transitional Arrangements

"(a) Any License/ Authorisation/ Certificate/ Scrip/any instrument bestowing financial or fiscal benefit issued before commencement of FTP 2015-20 shall continue to be valid for the purpose and duration for which such License/Authorisation/ Certificate/ Scrip/ any instrument bestowing financial or fiscal benefit Authorisation was issued, unless otherwise stipulated.

(b) In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction, or regulation, unless otherwise stipulated. This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity




available and time period of such irrevocable letter of credit. For operationalizing such irrevocable letter of credit, the applicant shall have to register the Letter of Credit with jurisdictional Regional Authority (RA) against computerized receipt, within 15 days of the imposition of any such restriction or regulation."

From the above, it is observed that if an export or import that was initially permitted under the FTP later becomes restricted, the transaction can still proceed, and goods can be imported/exported, if the shipment occurred within the validity of an irrevocable commercial letter of credit that was established before the restriction was imposed. However, for taking benefit of this provision, the exporter or importer must register the irrevocable letter of credit with the jurisdictional Regional Authority (RA) within 15 days of the restriction's imposition. It is pertinent to note that if the above conditions are not fulfilled, then the date of import will be the date affixed on the Bill of Lading as per para 9.11 of the Handbook of procedures 2015-20. In the present case, the adjudicating authority has dropped the SCN proceedings relying on the order dtd. 02.01.2024 passed by the Hon'ble CESTAT, Ahmedabad in case of same Respondent. On going through the said order of Hon'ble CESTAT, it is observed that in that case, the Respondent had already made full payment of the similar consignment much prior to the date of restriction and hence there was no scope of registration of Letter of Credit with the Regional Authority as provided in para 1.05 of FTP cited above. However, in the present case, it is observed that the Respondent have made an advance payment of 20% towards the consignment which cannot be considered as equivalent to the irrevocable Letter of Credit as per FTP as such payment is refundable on the terms of sale and contract while irrevocable Letter of Credit is banking instrument which provides guarantee to the seller on specific terms and conditions. In view of the same, I find that the Transitional Arrangements are not followed in the present case and hence the case cited by the Respondent is distinguishable from the present case. Hence the date of Bill of Lading is to be considered as the date of reckoning of import in this case which is evidently the date after the imposition of restriction. Since the adjudicating authority erred in allowing the benefits of Transitional Arrangement in the present case, I am of the considered view, in the interest of justice, the matter is to be remanded to the adjudicating authority with a direction to consider the date of Bill of Lading as the date of reckoning of import and give findings on the confiscation under Section 111(d) and penalty proposed in the SCN.

5.4 In view of the above, I set aside the impugned order dtd.22.07.2024 and remand the case to the adjudicating authority to decide the case as per directions in para 5.3 above.



6. The appeal filed by the Appellant Department is allowed in above terms.



F.No. S/49-03/CA-2/CUS/MUN/2024-25

3647

सत्यापित/ATTESTED

Amit

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

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

Date: 19.09.2025

By Speed Post/E-Mail

To,

1. The Deputy Commissioner of Customs,
Custom House, Mundra.
2. M/s. Rina Brothers,
Sardar Chowk, Unjha, Mehsana,
Gujarat-384170

Copy to:

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