सत्यमेव जयते

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 - 20260171MN0000111C3C

क	फ़ाइल संख्या FILE NO.	S/49-329/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-801-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/172/2024-25 dated 22.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Unite Impex, 54/D-6 Rama Road Industrial Area, Delhi-110015

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 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, 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 M/s. Unite Impex, 54/D-6 Rama Road Industrial Area, Delhi-110015, (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/172/2024-25 dated 22.10.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed bill of entry No 3080911 dated 02.05.2019 through its Custom Broker, for import of goods declared as "COLD ROLLED STAINLESS STEEL COIL" (hereinafter referred to as 'said goods) falling under CTH 7220 9090 of the Customs Tariff Act, 1975 availing the benefit of Sr. No. 967(I) of Notification No. 046/2011 dated 01.06.2011 on the basis of Certificate of Origin purportedly issued by the Ministry of International Trade and Industry, Malaysia. Details of the said bill of entry are as under: The following table:

Sr. No.	Bill of Entry and Date	Description of Goods	Assessable Value (INR)	COO reference no.	Name of Supplier
1.	3080911 02.05.2019	COLD ROLLED STAINLESS STEEL COIL	7074636/-	KL-2019-AI-21-039855 dated 23/04/2019	M/s. MH MEGAH MAJU ENTERPRISE

2.1 An investigation was carried out by the department and letter F. No. DIC/FTA/70/2023-FTA Cell IV-O/o Pr COMMR-DIC-DELHI dated 11.10.2023 issued by Deputy Commissioner & OSD (Cell 4), FTA Cell, Directorate of International Customs, CBIC, indicated that the importer imported "STAINLESS STEEL COILS" classifying the same under CTH 7220 9090 through Malaysia and violating the Rules meant for Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and India Rules, 2009 in order to avail exemption from payment of Basic Custom Duty. In view of the above mis-declaration by the appellant, undue benefit on the basis of the preferential certificate of origin was availed which resulted into misuse of the FTA resulting in evasion of customs duty.

2.2 In view of above, it appeared that the COO No. KL-2019-AI-21-039855 dated 23/04/2019 issued in the name of supplier M/s. MH MEGAH MAJU ENTERPRISE was fake and was never issued by MITI, Malaysia. Thus, the COO certificate submitted by the importer to avail the benefit of Sr. No. 967(I) of Notification No. 046/2011 Customs dated 01.06.2011, is not authentic.

2.3 The details of the consignment and the amount of differential duty as a result of producing the fake certificates of origin are as under:

Sr. No.	B/E No. & Date	A.V.	BCD @ 7.5%	SWS @10% of BCD	IGST @18%	Total duty	Duty Paid	Diff. Duty
1	3080911 Dt. 02.05.2019	7074636	530598	53060	1378493	1427220	1273435	688716

In view of the above, it appeared that the importer had evaded the customs duty to the tune of Rs. 688716/- by submission of fake & forged COO certificate.

2.4 Accordingly, vide Show Cause Notice was issued to the appellant to show cause with the proposals of:

a. Rejection of certificate of country of origin used for availment of concessional rate of customs duty.
b. Confiscation of total quantity of 82870 KGS of goods having total assessable value of Rs. 7074636/- (Rupees Seventy Lakhs Seventy Four Thousand Six Hundred and Thirty Six Only) declared as "COLD ROLLED STAINLESS STEEL COIL MI1 GRADE 201" imported vide Bill of Entry no. 3080911 dated 02.05.2019 under Section 111 (m) and 111 (o) of the Customs Act, 1962.
c. Demand of differential Customs duty of Rs. 6,88,716/- under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

d. Imposition of penalty under Section112(a)(ii) and/or 114A on the Appellant.

e. Imposition of penalty under Section 114AA on the Appellant.

2.5 Consequently, the adjudicating authority passed the following order with regard to Appellant:

i. He ordered to reject/deny the benefit of Notification No. 46/2011-Cus. Dated 01.06.2011, as amended, claimed under sr. no. 967(I) holding the COO Certificate No. KL-2019-AI-21-039855 dated 23/04/2019, a s non-authentic for the reasons stated in foregoing paras.

ii. He ordered for confiscation of the goods declared imported vide Bill of entry No. 3080911 dated 02.05.2019 having total assessable value of Rs. 70,74,636/- (Rupees Seventy Lakhs Seventy Four Thousand Six Hundred Thirty Six Only) under Section 111(m) and 111(0) of the Customs Act, 1962. He imposed redemption fine of Rs. 7,00,000/- (Rupees Seven Lakhs only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

iii. He ordered to confirm and recover the demand of differential duty of Rs. 6,88,716/- (Rupees Six lakh Eighty Eight Thousand Seven Hundred and Sixteen only) under Section 28(8) read with Section 28(4) of Customs Act, 1962.

iv. He confirmed and ordered to recover applicable interest on the differential duty above under Section 28AA of Customs Act, 1962.

v. He imposed a penalty of Rs. 6,88,716/- (Rupees Six lakh Eighty Eight Thousand Seven Hundred and Sixteen only) on the appellant under Section 114A of Customs Act, 1962.

vi. He imposed a penalty of Rs 1,50,000/- (Rupees One Lakh Fifty thousands only) on the appellant under Section 114AA of Customs Act, 1962.

vii. He did not impose penalty under Section 112(a) of the Customs Act, 1962 on the appellant.

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, Custom House, Mundra.

3.1 The Appellant contends that the Certificate of Origin (COO) was submitted in good faith and bona fide belief. At the time of import, the document provided by the supplier was used for self-assessment and duty exemption without any knowledge that it was not genuine. The Appellant emphasizes that they had no mechanism to verify the authenticity of the COO, noting that the regulatory framework for maintaining origin-related information (CAROTAR, 2020) was not in effect at the time of the transaction.

3.2 The appeal highlights that the matter should be considered concluded because the Appellant voluntarily deposited the differential duty, interest, and a 15% penalty. This payment was made in terms of Section 28(5) of the Customs Act, 1962, following a letter from Mundra Customs but prior to the issuance of a Show Cause Notice (SCN). Consequently, the Appellant argues that no further penalties under Section 114A or Section 114AA should be leviable.

3.3 Regarding the confiscation of goods, the Appellant argues that Section 111 is not invokable because the goods had already been cleared for home consumption. Citing various legal precedents, including the Bombay High Court's decision in Bussa Overseas & Properties P. Ltd., the Appellant asserts that once goods are cleared, they cease to be "imported goods" as defined under Section 2(25) of the Customs Act. Furthermore, it is argued that confiscation and redemption fines are legally unsustainable when the goods are not physically available.

3.4 The Appellant further disputes the applicability of Sections 111(m) and 111(o). They claim there was no mis-declaration of material particulars, as a mere claim for exemption does not constitute mis-declaration if the description of the goods is accurate. Additionally, they argue Section 111(o) typically applies to violations of post-import conditions, which is not the case here. Finally, the

Appellant states that Section 114AA is inapplicable because there was no intentional or knowing use of false documents, as the non-genuineness of the COO only came to their light after notification by the authorities.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Sachin Jain CA, 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, Custom House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 I have meticulously examined the case records, the impugned Order-in-Original (OIO), and the submissions made by the Appellant. The procedural history recorded in the OIO indicates that the Adjudicating Authority scheduled personal hearings on 07.03.2024, 23.04.2024, 12.09.2024, and 07.10.2024. The lower authority has categorically stated in Para 8 of the OIO that the noticee failed to appear and failed to submit any defense. Consequently, the case was decided ex-parte under the provisions of Section 122A of the Customs Act, 1962. However, the Appellant has brought forth compelling evidence, specifically an acknowledgment receipt with Inward Entry No. 759 dated 21.05.2024 as per Annexure 8 to the appeal which proves that a written reply to the Show Cause Notice was indeed submitted to the department well before the final hearing dates. This contradiction is not merely a clerical error but a substantive failure of the adjudicatory process.

5.2 An adjudication that proceeds on the false premise that "no defense was filed" is inherently biased and incomplete. The failure to include and analyze the written reply—which contained critical information regarding the pre-SCN deposit of duty and penalties—means that the Adjudicating Authority made its findings while being completely oblivious to the most significant facts of the case.

5.3 The most glaring issue in this appeal is the apparent disregard for the provisions of Section 28(5) of the Customs Act, 1962. The statute provides a specific "voluntary compliance" window where, if the person chargeable with duty pays the amount along with interest and a 15% penalty before the service of notice (or within thirty days of such service), the proper officer "shall not serve any notice" or, if already served, the proceedings "shall be deemed to be concluded." In this case, the Appellant received a "consultative letter" on 27.09.2021 and promptly deposited ₹20,79,622/- via TR-6 Challan on 29.10.2021. This payment explicitly included the differential duty, interest, and the 15% penalty as prescribed under Section 28(5). The Appellant's reply dated 21.05.2024—which the Adjudicating Authority claims was never filed—contained these very details. By ignoring this reply, the lower authority erroneously proceeded to confirm a demand that might have already stood "deemed to be concluded" by operation of law. Confirming a 100% penalty under Section 114A in an order where the 15% penalty was already paid pre-SCN is a direct violation of the legislative intent behind the settlement provisions of the Customs Act.

5.4 The concept of Natural Justice is not a "vague" or "abstract" legal theory but a constitutional mandate derived from Article 14 and Article 21. The doctrine of Audi Alteram Partem requires that a party be given a "meaningful" opportunity to present its case. This "meaningfulness" is destroyed if the authority ignores the written submissions already on its record. If an authority is empowered to pass an order that imposes a heavy financial burden, the obligation to act fairly is at its highest. In the present case, the miscarriage of justice is evident: the Appellant is being penalized twice—once voluntarily and once through a confirmed demand—simply because the Adjudicating Authority failed to read its own inward mail. The failure to provide a "speaking order" that addresses the specific defenses raised by the Appellant (especially the pre-SCN payment) renders the OIO legally unsustainable.

5.5 There is a profound distinction between a "wrong decision" and a "wrong process." While an appellate authority can often correct a wrong decision on merits, a flawed process that excludes the Appellant's primary defense must be rectified at the source. Remanding the matter is necessary because the Adjudicating Authority has not yet exercised its jurisdiction to "judge" the Appellant's actual defense. When an order is passed by "turning a blind eye" to the evidence of payment, the integrity of the tax administration is compromised. A remand in this case is not for "filling up gaps" in the department's case, but for restoring the Appellant's statutory right to a first-tier adjudication where their documents are actually looked at.

5.6 The Adjudicating Authority's confirmed demand for a 100% penalty under Section 114A appears to conflict with the legal status of the case if Section 28(5) applies. The term "shall be deemed to be concluded" creates a legal fiction. Once the 15% penalty is paid along with duty and interest, the law assumes the dispute no longer exists for further adjudication. By continuing to adjudicate and imposing a higher penalty, the Adjudicating Authority has acted ultra vires (beyond its powers). This interpretation is supported by various circulars of the CBIC which encourage the closure of cases through voluntary payment. The lower authority must, therefore, factualize whether the TR-6 challan submitted by the Appellant correlates with the "consultative letter" of 2021. This investigation is factual in nature and belongs to the original jurisdiction of the Adjudicating Authority.

5.7 The cumulative effect of the procedural errors—deciding the case ex-parte, ignoring the receipt of the written defense, confirming a demand that was likely settled pre-SCN, and imposing penalties that disregard statutory closure provisions—leads to the inescapable conclusion that the impugned order cannot stand. To allow such an order to persist would be to condone a complete breakdown of the quasi-judicial process. The interest of justice demands that the case be returned to the Adjudicating Authority to be decided fresh, with all relevant documents on the table and after a physical/virtual hearing where the Appellant can explain their compliance with Section 28(5).

5.8 The Adjudicating Authority has passed the order without having the benefit of examining the TR-6 challans, the consultative correspondence and the specific grounds raised in the Appellant's reply. Deciding the matter at this stage would deprive the Appellant of the first tier of meaningful adjudication on these facts.

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

a. The Order-in-Original No. MCH/ADC/AKM/172/2024-25 dated 22.10.2024 is hereby set aside.
b. The matter is remanded to the adjudicating authority for de-novo adjudication.

7. The appeal is allowed by way of remand.

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

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

F. No. S/49-329/CUS/MUN/24-25 5541

Date: 30.01.2026

By Speed post/E-Mail

To,
M/s. Unite Impex,
54/D-6 Rama Road Industrial Area,
Delhi-110015

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.