



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250871MN0000888DED

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| क | फ़ाइल संख्या FILE NO. | S/49-324/CUS/AHD/24-25 |
| 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) : | AHD-CUSTM-000-APP-162-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 07.08.2025 |
| ड | उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | Order – In – Original No. 09/AC/ICD/IMP/2025, dated 12.02.2025 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 07.08.2025 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | M/s PVD Enterprise, 403, Upnishad Complex, Nr. Shreyas Railway Crossing, Ambawadi, Ahmedabad – 380 015 |



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| 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 व्रेणियों 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 भद्र 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शर्व के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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 |



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| | 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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench |
| | दूमरी मंड़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2 nd 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 रुपए 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 रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच 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 रुपए 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, मार्गे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, 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

M/s PVD Enterprise, a Proprietorship concern with Shri Parthiv Dave, as its sole Proprietor / Owner situated at 403, Upnishad Complex, Nr. Shreyas Railway Crossing, Ambawadi, Ahmedabad – 380 015 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order – In – Original No. 09/AC/ICD/IMP/2025, dated 12.02.2025 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs, ICD – Khodiyar, Gandhinagar (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed Bill of Entry No. 9358888, dated 22.12.2023 to import various parts and accessories of printing machinery such as ADF Unit, CD Unit, Toner, Scanner Unit, Laser Unit, Pick Up Unit etc.

2.1 Further, to ascertain the physical condition of the goods, opinion of the Chartered Engineer Shri D. P. Jani (Reg. No. F-108975-3) was sought. The Chartered Engineer inspected the said consignment covered under Bill of Entry 9358888, dated 22.12.2023 and vide report Ref. No. DPJ 2024-25/19 dated 18.04.2024 observed that:

- The items are old and used spare parts/sub-assemblies of various models of copier machines;
- The parts are of Cannon make copier machines;
- These parts together cannot be assembled as a complete copier machine;
- These are spare parts and hence not capital goods;
- There were no serial numbers, model make, etc. details on the majority of the parts;
- The consignment consist mainly of plastic parts, i.e., motherboards, power supply, right doors, slider, pick up unit, drum unit etc;
- THE KEY PART MOTHER BOARD IS FOUND TO BE OF 2006 MAKE;

2.2 Further, the Chartered Engineer also inspected the goods mentioned in Bill covered under Entry 9358888, dated 22.12.2023 and vide report Ref. No. DPJ/2024-25/19 dated 18.04.2024 opined that:

- The items are old and used parts of copier machines;
- The items are not capital goods;
- The total life of the parts range from 10-15 years;
- Mother boards have already passed their maximum life of 15 years, so, the residual life is not ascertained;
- The year of manufacturing of other parts are not ascertained but considering their physical condition it appears that they are 3-4 years old;




2.3 The above said goods covered under Bill of Entry No. 9338888, dated 22.12.2023 filed to import old and used spare parts / sub-assemblies of various models of copier machines (as ascertained by the Government Empanelled Chartered Engineer) Further observations with regard to the importability of second hand electronic and IT Goods notified under the Electronics and IT goods are following:-

- i. *Import of Second Hand Goods other than capital goods is restricted goods as, per point II of para 2.31 of FTP, 2023, and the same are importable against an authorization from the DGFT;*
- ii. *As per point II of para 2.31 of Foreign Trade Policy (FTP), 2023, all Second Hand Goods other than capital goods are "restricted" goods. As per condition of point 11 of para 2.31 of the FTP they are importable against an authorization from the DGFT.*

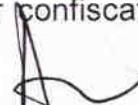
Thus, in the nutshell, as per the provisions of Foreign Trade Policy, 2023, issued by the DGFT the subject goods (Second Hand Goods other than capital goods - old and used spare parts) (i) are "restricted" goods as per para II of para 2.31 of Foreign Trade Policy (FTP), 2023; (ii) as per condition of point 11 of para 2.31 of the FTP the import of these goods required an Authorization from the DGFT.

2.4 In view of the above, the said importer failed to submit required authorization from DGFT for imports of said goods viz., Second Hand Goods other than capital goods (old and used spare parts). Therefore, the goods appeared to be liable for confiscation under Section 111(d) & 111(0) of the Customs Act, 1962. In view of this, the goods covered under Bill of Entry No. 9358888, dated 22.12.2023 were examined under Panchnama dated 24.04.2024 and subsequently seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 24.04.2024 as there were reasons to believe that the goods were liable for confiscation under Section 111 of the Customs Act, 1962.

2.5 Legal provisions:-

- (1) The import of Second Hand Goods other than capital goods (old and used spare parts) is governed by point II of para 2.31 of the Foreign Trade Policy, 2023 issued by the DGFT wherein as per condition point II of para 2.31 of the PTP, 2023, the import of the said goods requires an Authorization from the DGFT;
- (2) In absence of the requisite authorization from the DGFT, the import of the said goods would be prohibited under condition point II of para 2.31 of the FTP, 2023 read with Section 2(33) of the Customs Act, 1962. Also, the goods so imported are to be treated as 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962;

In view of the above the said goods are liable for confiscation under Section



111(d) and Section 111(o) of the Customs Act, 1962;

(4) Further, for the said act of commission and omission on the part of the Appellant for attempting the import of said "prohibited goods" rendered them liable for penalty under Section 112 (a) (i) / 112 (b) (i) / 114A of the Customs Act, 1962;

(5) The Appellant never declared before the Customs that the said were prohibited within the preview as per condition of point II of para 2.31 of the FTP, 2023 read with Section 2 (33) of the Customs Act, 1962. The Appellant, in another similar case of fraudulent import of the said / similar goods was booked by Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad and Show Cause Notice No. DRI/AZU/GI/Enq-06 (Int-09)/2018 dated 18.02.2019 was issued by the Pr. Additional Director General, DRI, AZU, and was arrested by the Directorate of Revenues Intelligence for his active connivance as Custom House Agent. Thus, the Appellant, knowingly and intentionally filed the said documents for import of the said "prohibited goods" rendering himself liable for Penalty under Section 114AA of the Customs Act, 1962;

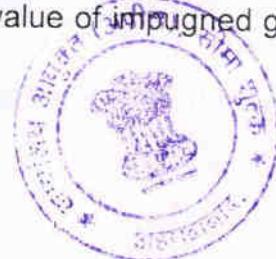
2.6 Shri Partiv Vijaykumar Dave (CHA code APHPD4367HFT001), also acted as a Custom House Agent, in filing the subject Bills of Entry. As a CHA, he did not advise his client with the provisions of the law vis-a-vis filed the Bill of Entry for import of the said "Prohibited" goods. As such, he had failed to comply the obligations of Customs Broker as specified in Regulation 10 of Customs Brokers Licensing Regulations, 2018. Further, he had concerned himself with the subject "Prohibited Goods" which he had known or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Thus, he was liable for Penalty under Section 112 (b) (i) of the Customs Act, 1962.

2.7 Thus, a Show Cause Notice under F. No. VIII/48-51/ICD/PVD/2024, dated 10.2024 was issued to Shri Parthiv Dave S/o Vijaykumar Dave, Proprietor of the Appellant proposing, as to why:

- i. The seized old and spare parts (BE 9358888, dated 22.12.2023) placed under seizure vide Seizure Memo 24.04.2024 should not be confiscated under the provisions of Section 111 (d) and Section 111(o) of the Customs Act, 1962;
- ii. Penalty should be imposed upon him under Section 112 (a) (i) / 112 (b) (i) / 114A of the Customs Act, 1962;
- iii. Penalty should not be imposed upon him under Section 114(AA) of the Customs Act, 1962.

2.8 The adjudicating authority vide the impugned has passed the order as detailed below:-

- i. He has rejected the value of the impugned goods, i.e., old and spare parts, declared by the Appellant and accepted the value of impugned goods to be Rs.



4,95,645/- as has been valued by the Chartered Engineer;

ii. He has ordered the confiscation of the old and spare parts (BE 9358888, dated 22.12.2023) placed under seizure vide Seizure Memo 24.04.2024 under the provisions of Section 111 (d) and Section 111(o) of the Customs Act, 1962. However, he gave an option to the Appellant to redeem the goods on payment of redemption fine of Rs. 50,000/- under Section 125 (1) of the Customs Act, 1962;

iii. He has imposed a penalty of Rs. 10,000/- on the Appellant (Prop. Shri Parthiv Dave) under Section 112 (b) (i) of the Customs Act 1962;

iv. He has refrained from imposing any penalty under Section 114 A of the Customs Act, 1962 in accordance to the proviso given in Section 114 A of the Customs Act, 1962;

v. He has imposed a penalty of Rs. 10,000/- on the Appellant (Prop. Shri Parthiv Dave) under Section 114 (AA) of the Customs Act 1962;

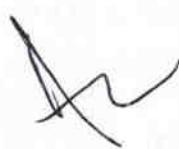
3. Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant have filed present appeal. The Appellant have, *inter-alia*, submitted detailed submissions on following points in support of their contentions:

- That the impugned order is non speaking, limitation, incorrect, improper, illegal, devoid of merits and unsustainable in the eye of law, therefore the Appellant most respectfully request to quash and set aside with consequential relief that may deem fit in the facts and circumstances and in the interest of justice and equity;
- That while conducting seizure, a Seizure Memo dated 24.04.2024 was issued, which does bear the DIN. It is further submitted that the generation of DIN on all communications issued by the department to a tax payer is a mandatory requirement which is mandatory and implemented in the year 2019. In this regard, they referred the Circular bearing No.37/2019 in F. No. 394/39(14)2018 (Inv-Cus.);
- That the assessing officer for the best reason known, has disregarded the mandatory requirement of the above referred circular. It is not out of place to submit that this infraction was also brought on record and contained in the reply to the SCN. In the case on hand, Seizure Memo is a fountain head of cause of action and any action arise out therefrom is incorrect, illegal, improper etc. thus the subsequent actions initiated by way of issuing of SCN is a clear case of contempt of the circular supra, and actions thereunder is sustainable and therefore, the appellant respectfully request to quash and set aside the impugned SCN and the order, in the interest of justice and equity;
- That the Appellant uploaded on the system and filed Bill of Entry No.9358888 together with invoice, packing list etc. on 22.12.2023, for assessment and issuance of out of charge order. It was found from the custom portal that the assessment of the said BE was carried out. According to the custom law, once Bill of Entry is assessed, it becomes an order as held by various tribunal and



courts. Therefore, once assessment order is completed, further line of action would be filing of appeal. In the case on hand instead of filing appeal against the assessed Bill of Entry, the officer prejudicially attempted re-assessment by way of entrusting assignment to the CA is an improper illegal in as much as that the Doctrine of FUNCTUS OFFICIO came into effect and all acts initiated are vitiated by error of law. Thus, the appellant respectfully request to declare the order appealed against as non-est and actions thereunder required to be quashed and set aside;

- That after the completion of assessment, the assessing officer waited for nearly 4 month time and initiated action under the guise of SUSPECT, assigned and entrusted the job to a Chartered Engineer for physical inspection of the imported cargo. The Chartered Engineer has issued his Inspection and Verification report bearing Report No. DPJ/2024-25/19 dated 18/04/2024. Further, the Assessing Officer on 24.04.2024 had drawn a Panchnama and simultaneously seized the imported goods;
- On 19/10/2024 a show cause notice came to be issued which was received by the Appellant on 21.10.2024 beyond 6 month period [Section 110 (2)]. The Appellant found that the RUDs referred to in the SCN were not found. The Appellant issued on different dates, communications requesting the officer to make available the RUDS as without which reply to notice was not possible. The Appellant issued on 17.12.2024 the 5th reminder to make available the RUDs; that if the department fails to supply the relied-upon documents or evidence mentioned in the SCN, it can have significant consequences i.e. limitation provided in Section 110(2) of the Customs Act, 1962 (CA for short) since in absence of relied-upon RUD, merely by issuance only notice without supplying RUD became infructuous hit by the 6 month limitation provided in section 110(2) of the CA;
- That it is very much relevant and pertinent that non supply of RUDs resulted in vitiates the notice invalid or unsustainable; that failure to provide the relied-upon documents is seen as denial of natural justice as the importer is not given a fair opportunity to respond to the allegations. Further, non –supply of documents gives an unfair advantage to the Department, as the importer is not able to adequately respond to the allegations. In this circumstance, a juxtaposition case and reliance is placed on the ratio of case law decided in the case of CCE vs. M/s. K. Mohan & Co.(2011) 3 SCC 133, wherein it was held that non-supply of relied-upon documents vitiate the SCN;
- That in another case, in the matter of CCE v. M/s Akruti City Limited (2015) 2 SCC 475 wherein the Hon'ble Court has observed that failure to provide relied-upon documents can be denial of natural justice;
- In view of the facts, circumstances and the law laid down by the Apex court provided herein before, they most respectfully request to allow the appeal with




consequential relief deem fit and also prays to quash and set aside the SCN and order appealed against in the interest of justice and equity;

- That the Department has sought opinion of the empaneled Chartered Engineer of the imported goods. The Chartered Engineer vide his No. DPJ/2024-25/19 confirmed in an unequivocal language that the imported goods namely, used second hand refurbished parts meant for replacement purpose opined that they falls under Policy Para 2.31 (I) (II) notwithstanding the facts that imported goods merits and falling under specific entry provided in policy para 2.31 (I) (c) This is classic example where the Chartered Engineer prejudicially acted causing irreparable hardship to the Appellant. Further it is contended that the Chartered Engineer in cryptic manner without giving cogent convincing reason and ground, arrived the conclusion and opined that the imported goods falling under policy para 2.31 (I) (II) and therefore the said report be declared as devoid of merits in the interest of justice;
- Further assuming without admitting, it is contended that once the assessing officer held that cargo falls under Policy para 2.31 (I)(II) no condition provided in the policy to appoint and assign job to the Chartered Engineer; that where there are two category appearing in the policy, one which is specific entry prevail over the general entry;
- That the order appealed against is non -speaking in as much as that despite pointing out the defect in the reply in respect non generation of DIN in the Seizure Memo referred to in earlier para, the adjudicating authority has neither disputed nor distinguished the facts and remained silent. Therefore, the order impugned being non-speaking required to be quashed and set aside in the interest of justice;
- That the SCN is issued beyond the period of 6 month as provided in Section 110 (2) of the CA. The date chronological events are:

Seizure of goods conducted on 24/04/2024. After conducting the seizure, SCN for confiscation ought to be issued within 6 month from the date of seizure i.e. on or before 23.10.2024 whereas the SCN was signed on 19.10.2024 and received on 21.10.2024 that too without RUDS relied on in the notice. In absence or failed to supply relied upon documents or evidence mentioned in the SCN it is bad in law and termed as NO NOTICE. That the communication of SCN without accompanying relied upon is termed as defective and in absence thereof and can take the place of full and complete SCN. Further the relied upon document were made available in the month of December after the 5th reminder issued by the appellant.

- Without prejudice to the contention raised in the aforesaid para, the adjudicating authority failed to remain in the adjudicating process given by CBIC. The appellant further submits that the personal hearing of the aforesaid SCN was



conducted on 13.01.2025, the impugned order was signed and issued on 12.02.2025 and received by them on 21.02.2025. Appellant herewith appeal to decide the fate of the present appeal in the interest of justice;

- As regards para 4 of the captioned Show Cause Notice, the Empaneled Chartered Engineer, reinforce our contention by holding that the goods are old and used spare parts of various models of copier machines and there is no doubt but he is twisted by holding that the importability of used parts governed by the provisions of CRO,2012. That the facts and law is diametrically opposite in as much as that only and specific entry Sr. No.17 of the schedule namely COPYING MACHINES/DUPLICATORS BEARING IS 13252 (PART-10) 2010 importable against Authorization issued by the DGFT Authority. That the facts on record is, we have imported refurbished /re-conditioned spares of copier machine being the capital goods as held in the schedule to that CRO. That the facts proves beyond doubt that imported goods are the four corner of policy para 2.31(I) (Ic). Further it is submitted that the imported goods are not the capital good as admittedly stated by the Chartered Engineer and classified in para 2.31 (II) of the FTP -2023 but the All electronic and IT goods which is notified under the Electronics and IT Goods (Requirement of Compulsory registration) Order, 2012 as per CRO is classified under para 2.31 (I) (Ib) and once copying machine is capital goods then its parts are the capital goods as classified in para 2.31 (I) (Ic);
- From the above chronological order, it becomes abundantly clear that SCN, complete in all respect received in the month of December, 2024 which is much beyond the period of limitation of 6 month. The Appellant submits and request to dismiss the SCN as issued beyond the statutory period as provided in Section 110 (2) of the CA in the interest of justice;

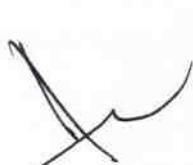
PERSONAL HEARING:

4. Personal hearing in the matter was held on 18.06.2025. Shri Parthiv V. Dave, Proprietor of the Appellant, appeared for hearing on behalf of the Appellant. He had reiterated the submissions made at the time of filing of appeal. He further submitted the claim of waiver of demurrage quantified and demanded and raised by the Custodian / CFS in the interest of justice and equity.

DISCUSSION & FINDINGS:-

5. I have carefully gone through the appeal memorandum as well as records of the case and the submissions made by the Appellant during the course of hearing. The issues to be decided in the present appeal are whether:

- i. The Seizure Memo dated 24.04.2024 issued without bearing DIN, in the facts and circumstances of the case, is legal and proper or otherwise.;





- ii. The RUDs mentioned in the SCN supplied beyond the period of 06 months as provided in Section 110 (2) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;
- iii. The Report of the Government Empanelled Chartered Engineer, in the facts and circumstances of the case, is legal and proper or otherwise;

5.1 The Appellant has filed the present appeal on 17.03.2025. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 12.02.2025 has been shown as 21.02.2025. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted E-receipt Customs (Internet) Duty Payment of ICEGATE bearing No. 6782418759, dated 15.03.2025 for Rs. 1500/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of penalty of Rs. 20,000/- under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. It has been contended by the Appellant that the Seizure Memo dated 24.04.2024 issued without generating and quoting of Document Identification Number (DIN) is illegal, improper and thus subsequent action initiated by way of issuing Show Cause Notice is clear case of contempt of the Circular No. 37/2019-Cus, dated 05.11.2019. On perusal of the documents placed on record, I find that it is not disputed that the goods covered under Bill of Entry No. 9358888, dated 22.12.2023 were examined in the presence of the representative of the Appellant under Panchnama dated 24.04.2024 and subsequently seized under Seizure Memo dated 24.04.2024. There is also no dispute raised by the Appellant that the Seizure Memo was not served to them or their representative, on the date it bears, immediately on effecting the seizure. Thus, I am of the considered view that the Seizure Memo made in the presence of the representative of the Appellant and served to the representative of the Appellant immediately on the date of seizure itself, to effectuate seizure does not become invalid merely in absence of DIN or even subsequent generation of the same. This view is supported by the judgment of the Hon'ble Kerala High Court in the case of *Suresh Kumar P.P. vs. Dy. Dir., Directorate General of GST Intelligence (DGGI)*, reported in 2020 (41) G.S.T.L. 17 (Ker.), wherein it was held that:

"9. Therein any communication which does not bear the electronically generated DIN and not covered by the exceptions in paragraph 6 are rendered invalid as per para 4. The exceptions are (i) technical defects in generating DIN, and (ii) communications regarding investigation, enquiry, verification, etc. to be issued with short notice or urgent situations. As far as the exceptions are concerned, they have to be regularized within 15 days of its issuance. As pointed out by the Learned Standing Counsel for the appellants, the mandatory requirement does not take in a seizure order as issued at Exhibit P4, in the presence of the Directors. There is also no dispute



raised by the appellants that Exhibit P4 was not served on them, on the date it bears, immediately on effecting the seizure.

10. The Circular Exhibit A6 at its beginning refers to the requirement of DIN, to ensure transparency and accountability. The 1st paragraph is extracted hereunder:

"In keeping with the Government's objectives of transparency and accountability in indirect tax administration through widespread use of information technology, the C.B.I. & C. is implementing a system of electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its offices to taxpayers and other concerned persons. To begin with, the DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. Subsequently, the DIN would be extended to other communications. Also, there is a plan to have the communication itself bearing the DIN generated from the system".

[underlining by us for emphasis]

Evidently there are communications which would not be covered by the very nature of it and all communications are not brought under the mandatory requirement. Exhibit P4 seizure order, by the nature of its issuance, to the appellants in their presence would not be included, as there could be no suspicion raised of its issuance, on the date and time it bears and its author. The objective is also for the assessee to ensure the genuineness of the document as having been issued on the date and by the officer who has issued it. This prevents any abuse by the Departmental officers of pre-dating communications and ratifying actions by authorizations subsequently made out in the files. We do not think, Exhibit P4 issued to the appellants, which is also an order of seizure of documents, made in the presence of the appellants, to effectuate seizure requires a DIN or even subsequent generation of the same. The invalidity argued on that ground does not survive. As far as summons at Annexures A2 and A3, there is proper generation of DIN, which has been verified by the Learned Senior Counsel and the Instructing Counsel and communicated to us by the time the hearing concluded. The argument addressed on the basis of Annexure A6 does not, hence, stand for further consideration.

6.1 It is pertinent to mention that Suresh Kumar P.P. had filed a Special Leave Petition against the above judgment and order of Hon'ble Kerala High Court, before the Hon'ble Supreme Court of India, which was dismissed by the Hon'ble Supreme Court of India reported in 2021 (50) G.S.T.L. J73 (S.C.) [07.01.2021]. Hence, the contention of the Appellant that the Seizure Memo dated 24.04.2024 issued without generating and quoting of Document Identification Number (DIN) is illegal, improper and contempt of the Circular *supra*, is legally not sustainable and accordingly rejected.



7. It has been contended by the Appellant that in absence of RUDs, merely by issuing the Show Cause Notice without supplying RUDs became infructuous and is hit by the 6 months limitation provided under Section 110 (2) of the Customs Act, 1962. In this regard, it is pertinent to mention that the late supply of Relied upon Documents (RUDs) in a Show Cause Notice (SCN) does not render the SCN time-barred, as the time-bar depends on the date of issuance of the SCN, not the date of providing RUDs. The time-bar status hinges on the issuance date of the SCN, not the provision of RUDs. If the SCN was issued within the statutory time limit, late supply of RUDs does not make it time-barred. In the instant case, it is not disputed that the Show Cause Notice have been issued beyond the statutory limitation period prescribed under Section 110 (2) of the Customs Act, 1962. Thus, I am of the considered view that the Appellant could have sought time in filing reply of the Show Cause Notice, till RUDs have been supplied to them, however, this situation does not affect the limitation period for issuing the SCN. Hence, the contention of the Appellant that the merely by issuing the Show Cause Notice without supplying RUDs is hit by limitation, is legally not sustainable and accordingly rejected.

8. It has further been contended by the Appellant that the Chartered Engineer vide Report No. DPJ/2024-25/19 has in cryptic manner without giving cogent convincing reason and ground, arrived the conclusion and opined that the imported goods namely, used second hand refurbished parts meant for replacement purpose falls under Policy Para 2.31 (I) (II), whereas the imported goods merits and falls under specific entry provided in Policy Para 2.31 (I) (c). It is observed that the Chartered Engineer had issued the Report on the request of the department after physical examination of the impugned goods and has issued the Report in the nature of opinion of an expert in the field. I find that that the adjudicating authority has correctly arrived at the conclusion based on the report of the Govt. Empanelled Chartered Engineer that the goods imported under the Bill of Entry No. 9358888, dated 22.12.2023 were old and used spare parts and has held that *"as per the provisions of Foreign Trade Policy, 2023, issued by the DGFT, the subject goods (Second Hand Goods other than capital goods – old and used spare parts) (i) are "restricted" goods as per para II of para 2.31 of Foreign Trade Policy (FTP), 2023; (ii) as per condition of point II of para 2.31 of the FTP the import of these goods required an Authorization from the DGFT"*. In this regard, it is observed that the Appellant in their appeal memorandum have not submitted any details contrary to the report of the Chartered Engineer to substantiate their contention. Mere a contention without any documentary evidence cannot be considered as evidence to establish that the impugned imported goods merits and falls under specific entry provided in Policy Para 2.31 (I) (c). However, no evidences, whatsoever it may be, have been placed on record in support of the contention. Hence, I do not find any infirmity in the findings of the adjudicating authority, accordingly, the contentions of the Appellant are legally not sustainable and accordingly are rejected.



9. On perusal of the impugned order, it is observed that the adjudicating authority has ordered for confiscation of the imported goods under Section 111 (d) and 111 (o) of the Customs Act, 1962 and also imposed penalties under Section 112 (b) (i) and Section 114 AA of the Customs Act, 1962. However, it is observed that the Appellant in their appeal memorandum have not made any submissions in respect of the confiscation of the goods and penalties imposed upon them. Therefore, I uphold the order of the adjudicating authority confiscating the import goods under Section 111 (d) and 111 (o) of the Customs Act, 1962. Consequently, the imposition of redemption fine with respect to the confiscated goods under Section 125 (1) of the Customs Act, 1962 is required to be upheld. Further, the penalties imposed under Section 112 (b) (i) and Section 114 AA of the Customs Act, 1962 are also upheld.

10. It is observed that the Appellant in addition to the above grounds have also requested to grant waiver of demurrage charges and demanded by the Custodian / CFS, in the interest of justice and equity. However, it is observed that this issue of waiver of demurrage charges is not a part of the impugned order. Therefore, I am not required to record any findings on the issue of waiver of demurrage charges.

11. In view of the above discussions and finding, the impugned order passed by the adjudicating authority is required to be upheld.

12. Accordingly, the appeal filed by the Appellant is rejected.

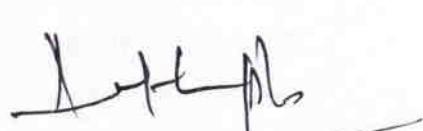


सत्यापित/ATTESTED

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

F. No. S/49-324/CUS/AHD/24-25

2895


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

Date: 07.08.2025

By Registered post A.D

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M/s PVD Enterprise,
403, Upanishad Complex,
Nr. Shreyas Railway Crossing,
Ambawadi,
Ahmedabad – 380 015,

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Assistant Commissioner, Customs, ICD – Khodiyar, Gandhinagar.
4. Guard File.