



सीमाशुल्क(अपील) आयुक्तकार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड IshwarBhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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DIN – 20250971MN0000515381

क	फ़ाइलसंख्या FILE NO.	S/49-54/CA-2/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-174 -25-26
ग	पारितकर्ता PASSED BY	Shri AMIT GUPTA Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.09.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF FINAL ASSESSMENT ORDER/ORDER-IN-ORIGINAL (OIO) NO.	OIO No. MCH/ADC/MK/50/2023-24 dated 24.05.2023 issued by Additional Commissioner, Customs House, Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	01.09.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	Assistant Commissioner of Customs (Adjudication), 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।
(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।
(ब)	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 दायरकरने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) यारु. 1000/- (रूपए एक हजार मात्र) जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एकलाख या उससे कम होतो ऐसे फीस के रूप में रु. 200/- और यदि एकलाख से अधिक होतो 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 अपीलिय अधिकरण, 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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके %10 अदाकरनेपर,जहांशुल्कपाशुल्कएवंदंडविवादमेहैं,यादंडके %10 अदाकरनेपर,जहांकेवलदंडविवादमेहैं,अपीलरखाजाएगा।	
(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 अधिनियमकीधारा 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 काशुल्क 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 Assistant Commissioner of Customs (Adjudication), 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/2023-24, dated 22.08.2023 passed by the Commissioner of Customs, Custom House, Mundra challenging the Order - in - Original No. OIO No. MCH/ADC/MK/50/2023-24 dated 24.05.2023 issued by Additional Commissioner, Customs House, Mundra (hereinafter referred to as the "adjudicating authority") in the case of M/s. Vibrant Uniglobex Pvt Ltd having IEC-AAHCV7188A (hereinafter referred to as the "Respondent")

2. Facts of the case, in brief, are that the Respondent had imported Pink Salt Lumps vide Bill of Entry No. 5749118 dated 07 10.2021 filed by Customs Broker M/s RCC Limited at Mundra Port . The said Bill of Entry No. 5749118 dated 07 10.2021 covered Import of 12 Containers of Pink Salt Lumps under Invoice No. HWS/241/2021 Dated 15.09.2021, having unit Price of 35 USD/MT and total Value of Rs. 8,37,000/- with Country of Origin as Pakistan.

3. On the basis of specific intelligence that above consignment was mis-declared in respect of valuation and that there was another invoice of same invoice number and date having higher unit price of 45 USD/MT and Certificate of Origin No. 20880084 issued by Dubai Chamber were also specifying the same invoice number having Country of Origin as Islamic Republic of Iran, the consignment was put on hold and examined by the officers of Special Intelligence and Investigation Branch (SIIB), Customs, Mundra.

4. It was found that the Respondent is having two sets of Documents having same Invoice No. having same date with same description but change in the Unit Price and Country of Origin of the Cargo/Goods so Imported under Bill of Entry No. 5749118 Dated 07.10.2021 i.e. (i) Invoice was having Unit Price of 45 USD/MT and Country of Origin as Islamic Republic of Iran, (where duty rate is less) and (ii) in another Invoice which they declared with the Bill of Entry having Unit Price of 35 USD/MT and Country of Origin as Pakistan (having higher rate of Duty).

5. It appeared that the Respondent misdeclared the Value of the Goods, which they were supposed to declared as per the provisions of the Customs Act, 1962, while filing Bill of Entry and thereby evaded payment of Customs Duty. Therefore, the impugned Bill of Entry was required to be recalled, reassessed with upward revision in value and thereby revised Duty was required to be recovered alongwith applicable Interest thereon as per the provisions of the Customs Act, 1962.



6. Accordingly, a Show Cause Notice F. No. S/15-79/SIIB-A/Vibrant/CHM/22-23 Dated 30.11.2022 was issued to the Respondent as to why

- (i) The assessable value of Rs.8,37,000/- (Declared Value) in respect of the Imported Goods i.e. Pink Salt Lumps should not be rejected and re-determined as Rs. 10,76,142/- under Section 14 of the Customs Act, 1962 read with Rule 3 & Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (ii) The imported goods i.e. Pink Salt Lamps valued at Rs. 10,76,142 (re- determined value), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (iii) The differential Customs duty amounting to Rs. 7,40,357/- (Rupees Seven lakhs forty thousand three hundred fifty-seven), short paid by them on the said goods, should not be demanded and recovered from importer under Section 28(4) of Customs Act. 1962;
- (iv) Interest should not be recovered from them on the said differential Customs duty under Section 28AA of the Customs Act, 1962;
- (v) Penalty on the importer M/s. Vibrant Uniglobex Private Limited, D-17, Saraswati Nagar, Basni. Jodhpur-342001 should not be imposed under Section 114A of the Customs Act, 1962.

7. Further, the above Show Cause Notice was also issued to M/s RCC Limited, as to why penalty on them should not be imposed under Section 117 of the Customs Act. 1962

8. The adjudicating authority has vide the impugned order adjudicated the above Show cause notice and ordered as under :-

- (i) She rejected the assessable value of Rs.8,37,000/- (Declared Value) in respect of the Imported Goods i.e. Pink Salt Lumps and ordered to re-determine the same as Rs. 10,76,142/- under Section 14 of the Customs Act, 1962 read with Rule 3 & Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (ii) She ordered to recover differential duty under Section 28(4) of Customs Act, 1962.



(iii) She ordered to recover applicable Interest on the differential duty as calculated at (i) above, under Section 28AA of the Customs Act, 1962.

(iv) She disallowed the relinquish of the Cargo requested by the Respondent vide their letter dated 21.10.2021, in terms of Proviso 1 below Section 23 (2) of the Customs Act, 1962.

(v) She ordered to confiscate the imported goods covered in Bill of Entry No. 5749118 Dated 07.10.2021 having revised value of Rs.10,76,142/- under Section 111(m) of the Customs, Act, 1962. However, she gave an option to redeem the goods on payment of redemption fine of Rs. 50,000/- under Section 125 of the Customs Act, 1962.

(vi) She imposed a penalty of Rs. 50,000/- on M/s Vibrant Uniglobex Pvt. Ltd., under Section 114A of Customs Act, 1962.

(vii) She refrained from imposing any penalty on M/s RCC Ltd., Gandhidham under Section 117 of Customs Act, 1962.

9. Being aggrieved with the impugned order to the extent of less penalty imposed on the Respondent under Section 114A of the Customs Act, 1962 instead of penalty equivalent to the duty or interest so determined, the Appellant Department has preferred this appeal on the grounds which are elaborated as below:

(i) The adjudicating authority has erred in imposing penalty as prescribed under Section 114A of the Customs Act, 1962 as apparent in sub-para (vi) of Para 10 of the impugned Order-in-Original.

(ii) The provisions of Section 114A of Customs Act, 1962 are as under

[Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

[PROVIDED that where such duty or interest, as the case may be, as determined under (sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of



the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

PROVIDED FURTHER that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

PROVIDED ALSO that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

PROVIDED ALSO that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

PROVIDED ALSO that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation - For the removal of doubts, it is hereby declared that -

- (i) *the provisions of this section shall also apply to cases in which the order determining the duty or interest under (sub-section (8) of section 28) relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President:*
- (ii) *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]*
- (iii) From the above, it is clear that in present case, the penalty equal to the duty or interest so determined has to be imposed in terms of Section 114A of the Customs Act, 1962. However the penalty imposed by the adjudicating authority, for short-levy, in terms of Section 114A of the Customs Act, 1962, does not appear proper as the penalty imposed to the tune of Rs.50,000/- is not at par with the differential duty involved in the case. Therefore, the penalty imposed by the Additional Commissioner of Customs, Custom House, Mundra is neither proper nor justified. Accordingly, the Penalty



imposed by the adjudicating authority in terms of Section 114A of the Customs Act, 1962 vide impugned order is required to be set aside and order of Adjudicating Authority imposing Penalty should be enhanced in this regard.

10. Copy of appeal memorandum filed by the department in form CA-2 along with enclosures filed by the Appellant Department was sent to the Respondent vide letter dtd. 22.09.2023 for furnishing cross objections. Further, opportunities for personal hearing in the case were given to the Respondent on 22.08.2024, 16.01.2025, 07.02.2025, 04.04.2025 and 18.06.2025. However, no person appeared on behalf of the Respondent.

11. I have carefully gone through the appeal memorandum filed by the Appellant Department as well as the impugned order. The Appellant Department has filed the present appeal on the ground that the penalty imposed under Section 114A of the Customs Act, 1962 is required to be equivalent to the duty or interest so determined whereas the penalty imposed is 50,000/- which is less than the differential duty demand of Rs.7,40,357/- confirmed in the impugned order. It is observed that vide the impugned show cause notice, demand of Customs duty amounting to Rs. 7,40,357/- short paid by the Respondent was raised under Section 28(4) of the Customs Act, 1962. The legal provisions of Section 28(4) are as under :-

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

It is further observed that vide above show cause notice, the penalty under Section 114A of the Customs Act, 1962 was proposed against the Respondent.

The provisions of Section 114A of Customs Act, 1962 are as under



[Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

From the above provision, it is observed that the amount of penalty under Section 114A of Customs Act, 1962 is equivalent to the duty or interest so determined. In the present case the differential duty amount determined and ordered for recovery is Rs. 7,40,357/- . However, the adjudicating authority has imposed a penalty of Rs. 50,000/- only under Section 114A of Customs Act, 1962 which is much below than the equal amount of duty i.e Rs. 7,40,357/- . As per the provisions of Section 114A cited above, I find that there is no discretion available to the adjudicating authority to impose penalty of an amount less than equivalent of duty or interest so determined. Therefore, the penalty of Rs. 50,000/- imposed by the adjudicating authority being less than duty amount confirmed in the impugned order is legally not sustainable. In view of the facts and legal provisions cited above, I enhance the penalty imposed under Section 114A of the Customs Act, 1962 to an amount equal to duty i.e Rs.7,40,357/- from Rs. 50,000/- imposed in the impugned order.

12. It is further observed that vide the impugned order, the adjudicating authority has ordered the recovery of differential duty demanded under Section 28(4) of the Customs Act, 1962. It is further observed that the Respondent has not challenged the impugned order as they have not filed any appeal against the impugned order. Hence the impugned order has attained finality. I also note that the Respondent has neither submitted any cross objection on the appeal filed by the Appellant Department nor appeared for personal hearing.

13. In light of above discussions, I enhance the penalty imposed under Section 114A of the Customs Act, 1962 to an amount equal to duty i.e Rs.7,40,357/- from Rs. 50,000/- impugned order passed by the adjudicating authority.

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



F.No. S/49-54/CA-2/CUS/JMN/2023-24

सत्यापित/ATTESTED

 अधीक्षक/SUPERINTENDENT
 सीमा चुल्क (अपील), अहमदाबाद.
 CUSTOMS (APPEALS), AHMEDABAD.

3140

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

Date:01.09.2025

By Registered Post A.D

To,

1. The Assistant Commissioner of Customs (Adjudication),
Custom House, Mundra,
Mundra
2. M/s. Vibrant Uniglobex Pvt Ltd
D-17, Saraswati Nagar, Basni,
Jodhpur-342001



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.