



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 - 20260371MN0000555B32

क	फ़ाइल संख्या FILE NO.	S/49-285/CUS/JMN/2025-26
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)	JAM-CUSTM-000-APP-464-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	17.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. 11/Additional Commissioner/2025-26 dated 16.09.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	17.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Seagull Overseas Corporation, No. 136, Royal Province, Block - A, Palasamudram, Gorantla Mandal, Sri Sathyasai, Andhra Pradesh 515241



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 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 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 शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए 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 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	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, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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, 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 रूपए.				
(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; पाँच हज़ार रूपए				
(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 रूपए.				
(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 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

The present appeal has been filed by M/s Seagull Overseas Corporation, No. 136, Royal Province, Block - A, Palasamudram, Gorantla Mandal, Sri Sathyasai, Andhra Pradesh - 515241, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. 11/Additional Commissioner/2025-26 dated 16.09.2025 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs (P), Jamnagar (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed Bill of Entry No. 2838230 dated 24.06.2025 (hereinafter referred to as the "said Bill of Entry") under Section 46 of the Customs Act, 1962 for importing goods viz. (1) Microwavable Cooked Rice (White), (2) Premium Sea Salt, (3) Korean Pancake Mix, (4) Vermicelli (Cellophane Noodle, Sweet Potato Noodle), (5) CJ Bibigo Sesame Oil (Cold Pressed), (6) Bibigo Seaweed Flake, (7) Cup Rice Hot Schicken Mayo, (8) Bibigo Tofu Kimchi Jjigae, (9) Oligosaccharide, (10) Roasted Chestnut, (11) Dasida Anchovy Stock, (12) Georgia Canned Coffee, (13) Buckwheat Soba Sauce, (14) Gold Mayonnaise, (15) Grapefruit Candy, (16) Banana Milk And (17) Instant Ramen Noodles & Snacks as per Commercial Invoice No. GTSOC01 dated 29.05.2025 issued by M/s Goliath Trading and Bill of Lading No. HDMUSELA14140000 dated 28.05.2025. Details pertaining to the CTH, description, quantity, Unit price, value etc., of the said imported goods as declared by the Importer in the said Bill of Entry as well as declared in the Bill of Lading, Commercial Invoice, packing list etc. are as per Table-A of the impugned SCN/OIO.

2.1 During examination of the said goods, it was noticed that there is mismatch in description and quantity of the goods declared by the Appellant at the time of filing of the said Bill of Entry. Upon taking inventory of the goods during examination, it was found that there is shortage in quantity of declared goods i.e. total 1989 packages, as mentioned in Table-B of impugned notice and in place of these, 1986 Packages of 70 other items, as mentioned in TABLE-C of impugned notice, were found concealed alongwith the declared consignment which were neither declared in Commercial Invoice No. GTSOCI dated 29.05.2025 nor in Bill of Entry No. 2838230 dated 24.06.2025.

2.2 Therefore, the entire consignment of imported goods having total value of Rs. 51,78,338/- (Rupees Fifty One Lacs Seventy Eight Thousand Three



Hundred Thirty Eight only) comprising of goods declared in Bill of Entry No. 2838230 dated 24.06.2025 viz. items at Sl. No. 1 to 16 of the Table-D of the impugned order and undeclared goods viz. mentioned at Sl. No. 17 to 86 of the Table-D of the impugned order were placed under seizure in terms of Section 110 of the Customs Act, 1962 vide Panchnama dated 08.07.2025 under the reasonable belief that, the same were liable for confiscation. Therefore, the total assessable value of the goods was taken as Rs. 51,78,338/- (Rupees Fifty-One Lacs Seventy-Eight Thousand Three Hundred Thirty-Eight only) on the basis of copy of Commercial Invoice No. GTSOC01 dated 29.05.2025 as produced by the appellant to determine assessable value in respect of mis-declared goods.

2.3 Accordingly, a Show Cause Notice was issued to the Appellant i.e. M/s Seagull Overseas Corporation, No. 136, Royal Province, Block A, Palasamudram, Gorantla Mandal, Sri Sathyasai, Andhra Pradesh-515241, asking them, as to why:

(i) The goods of value of Rs. 51,78,338/- (Rupees Fifty-One Lacs Seventy Eight Thousand Three Hundred Thirty Eight only) should not be confiscated under Section 111(f), 111(i), 111(1) & Section 111(m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962.

(ii) Customs Duty amounting to Rs. 28,98,390/- (Rupees Twenty-Eight Lacs Ninety-Eight Thousand Three Hundred Ninety only) should not be demanded and recovered under Section 28(4) of the Customs Act, 1962;

(iii) Interest on Customs Duty should not be recovered under Section 28AA of the Customs Act, 1962;

(iv) Penalty should not be imposed under Section 112 of the Customs Act, 1962;

(v) Penalty should not be imposed under Section 114A of the Customs Act, 1962.

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

(a) He ordered to confiscate the entire goods valued at Rs.51,78,338/- (Rupees Fifty-One Lacs Seventy-Eight Thousand Three Hundred Thirty-Eight only) under Section 111 (f), 111 (i), 111 (l) & Section 111 (m) of the Customs Act, 1962, read with Section 119 of the Customs Act, 1962 and gave an option to the Appellant to redeem the said confiscated goods on payment of redemption



fine of Rs.4,00,000/- (Rupees four lakhs only) under Section 125 of the Customs Act, 1962;

(b) He ordered to pay total Customs duty amounting to Rs.28,98,390/- (Rupees Twenty-Eight Lacs Ninety-Eight Thousand Three Hundred Ninety only) under Section 28(4) of the Customs Act, 1962 and since the Appellant has already paid the said duty i.e. [Rs.27,37,799/- (+) Rs.1,60,591/- Rs.28,98,390/-] vide Challan No.2055528520 dated 25.06.2025 and Challan No.1104915471 dated 10.09.2025 respectively, he appropriated the same against the demand of Customs duty and as confirmed;

(c) He ordered to pay interest under Section 28AA of the Customs Act, 1962 and since the Appellant has already paid the said interest of Rs. 5,500/-vide Challan No.1104915471 dated 10.09.2025, he appropriated the same against the demand of interest as confirmed; and

(d) He refrained to impose penalty under Section 112 and Section 114A of the Customs Act, 1962 as the Appellant has exercised the option of payment of Customs duty, Interest as above and Penalty of Rs.4,34,759/- (15% of total Customs duty of Rs.28,98,390/-) vide Challan No. 1104915471 dated 10.09.2025 under Section 28(5) of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs (P), Jamnagar.

3.1 The appellant contends that the Adjudicating Authority erred by imposing a fine in lieu of confiscation despite finding that the case falls under Section 28(5) and Section 28(6) of the Customs Act, 1962. They argue that the language in Section 28(6), which states certain matters shall be "deemed to be conclusive," effectively covers matters of confiscation and fines. Therefore, the appellant submits that there is no legal justification for a separate levy of a fine, making that specific portion of the impugned order legally untenable.

3.2 The appellant disputes the total amount of duty and subsequent penalties demanded under Section 28(4). They assert that due to variations in description, quantity, and value, the actual differential duty payable is only Rs. 1,60,591/-, rather than the much higher amount cited in the order. Consequently, the appellant argues that the 15% penalty required by Section 28(5) should have been Rs. 24,089/- (15% of the differential duty) instead of the



Rs. 4,34,759/- actually charged. As a result, the appellant is seeking a refund of Rs. 4,10,670/-, which they claim was recovered in excess of the statutory requirements.

PERSONAL HEARING:

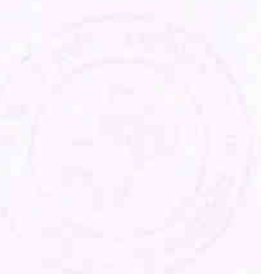
4. Personal hearing was granted to the Appellant on 09.03.2026 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs (P), Jamnagar and the defense put forth by the Appellant in their appeal.

5.1 Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of twelve days beyond the initial sixty-day period, but within the extended thirty-day period. The Appellant has attributed the delay to finding the legal counsel and sending the signed documents to him for drafting and filing appeal memo. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice.

5.2 The core of the dispute lies in the interpretation of the "settlement mechanism" provided under Section 28 of the Customs Act, 1962, versus the "penal/confiscation powers" under Section 124 and 125. The primary legal question is whether the Adjudicating Authority has the jurisdiction to continue penal proceedings (such as confiscation or redemption fine) once an importer has fulfilled the conditions of Section 28(5). To answer this, we must dissect the legislative scheme of Section 28 of the Customs Act, 1962.



5.3 Section 28 provides a structured "voluntary compliance" or "settlement" path. Sub-section (5) provides that any person to whom a notice is served under sub-section (1) or sub-section (4) can pay the duty, interest, and a penalty equal to 15% of the duty within thirty days. Crucially, the law also allows for this payment within 30 days of the issuance of a notice, as seen in the present case where the Appellant made payments during the investigation to mitigate further litigation. The legal effect of this payment is governed by Section 28(6), which states:

"Where the proper officer is of the opinion that the amount of duty and interest... and penalty... has been paid in full within thirty days... the proceedings in respect of such person or other persons to whom the notice is served... shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein."

5.4 The use of the word "shall" in Section 28(6) signifies that the conclusion of proceedings is not at the discretion of the Adjudicating Authority. It is a statutory mandate. Once the "Proper Officer" (which includes the Adjudicating Authority) confirms that the 15% penalty and duty have been paid, the "proceedings" must end. The law does not say "duty proceedings shall end"; it says "the proceedings... shall be deemed to be conclusive." This encompasses all administrative actions arising from the same set of facts, including those initiated under Section 124 for confiscation.

5.7 The judiciary has held that when a specific sub-section provides for a "conclusive" end to proceedings, it creates a legal fiction. This fiction presumes that the offense has been settled in its entirety. The "matters stated therein" in the context of a mis-declaration case include the improper importation itself. Therefore, the "offense" of mis-declaration is settled when the "duty and penalty" for that mis-declaration are paid.

5.8 In the impugned order, the Adjudicating Authority recorded the fact of payment and accepted that the case is covered by Section 28(5). Despite this, he proceeded to "adjudicate" the confiscation. This is a contradiction in terms. One cannot "conclude" a proceeding under Section 28(6) and "continue" it under Section 124/125 simultaneously. The moment the Adjudicating Authority accepted the 15% penalty, he lost the jurisdiction to pass any further orders of confiscation or fine. The "proceedings" had reached their statutory terminus.




5.9 While the Department may argue that Section 124 (Confiscation) is an independent power, for cases involving short-payment or misdeclaration, Section 28 is the "master provision." Any action for confiscation is usually a corollary to the demand for duty. If the primary demand is settled through a statutory compounding mechanism (15% penalty), the corollary actions must also cease. To hold otherwise would allow the Department to "cherry-pick" parts of a settlement, which is impermissible in law. Consequently, I find that the Adjudicating Authority's decision to continue with the imposition of a redemption fine of Rs. 4,00,000/- after accepting the conclusion of proceedings is a legal error and a violation of the statutory scheme of Section 28(6).

5.10 The Department often argues that Section 28 deals with "duty," whereas Section 111/112/125 deal with "offenses" and "confiscation," and thus closure of duty proceedings does not automatically close confiscation proceedings. However, judicial precedents have consistently held that when the root cause of the confiscation (e.g., misdeclaration leading to short payment) is settled under the voluntary payment scheme of Section 28, the branches (confiscation and fine) cannot survive.

5.11 In the case of Karnawat International Pvt Ltd vs Mundra Customs (2024-VIL-1445-CESTAT-AHM-CU), the Tribunal observed that when a Show Cause Notice is issued under Section 28(4) and the importer opts for the conclusion of proceedings by paying the requisite duty, interest, and 15% penalty, the Adjudicating Authority cannot thereafter impose a redemption fine or separate penalties. The legislative intent behind Section 28(6) is to provide a "clean slate" upon payment of the compromised penalty.

5.12 In the present case, the "smuggling" charge was based on the "misdeclaration of quantity and description." Once the Appellant paid the differential duty and the 15% penalty on the basis of the misdeclaration, the "offense" was effectively compounded/settled. Imposing a redemption fine of Rs. 4,00,000/- on top of a 15% penalty is contrary to the spirit of the settlement provisions.

5.13 The Appellant has raised a very pertinent point regarding the calculation of the 15% penalty. The Adjudicating Authority confirmed a penalty of Rs. 4,34,759/-.

- Total Duty: Rs. 28,98,390/-
- Differential Duty (Short-paid): Rs. 1,60,591/-



- Penalty Imposed: 15% of Rs. 28,98,390/- = Rs. 4,34,759/-
- Appellant's Claim: 15% of Rs. 1,60,591/- = Rs. 24,089/-

Section 28(5) refers to penalty equal to 15% of the "duty specified in the notice or the duty so accepted." In cases of short-levy or misdeclaration, the "duty" in question for the purpose of a penalty must necessarily be the "duty sought to be evaded" or the "short-paid duty."

5.14 It is a settled principle of law that a penalty is a percentage of the tax evaded, not the tax payable. If an importer has already paid 95% of the duty and is found to have short-paid 5%, the 15% penalty cannot be levied on the 100% value. To do so would mean penalizing the importer for the portion of the duty he had correctly and timely paid. The Adjudicating Authority's logic that the "entire consignment" was misdeclared and therefore the "entire duty" is the basis for the penalty is flawed. Even in cases of absolute confiscation, the penalty under Section 112 or 114A is linked to the "duty sought to be evaded." Since Rs. 27,37,799/- was already paid by the Appellant prior to any detection of mismatch (as part of the self-assessment of the prior BoE), that amount cannot be termed as "duty sought to be evaded." Only the differential amount of Rs. 1,60,591/- represents the revenue risk. Therefore, the penalty should have been restricted to 15% of the differential duty, i.e., Rs. 24,089/-. The excess amount of Rs. 4,10,670/- paid by the Appellant under protest/duress during adjudication is liable to be refunded.

5.15 The Adjudicating Authority relied on the general powers of confiscation under Section 111. However, he failed to distinguish between a "contested adjudication" and a "voluntary settlement under Section 28(5)." If the Appellant had contested the SCN on merits and lost, the Adjudicating Authority would have been well within his rights to confiscate and fine. But when the statute provides a specific "exit route" via Section 28(6), the general powers of Section 125 must yield to the specific settlement provision. Section 28(6) is a special provision for "conclusion of proceedings." It overrides the general power to continue with a fine.

5.16 Section 28(6) uses the word "shall." It is mandatory, not discretionary. Once the conditions of Section 28(5) are met, the officer has no choice but to deem the proceedings concluded. The Appellant's supplier's error did not result in a change of the total invoice value. The mismatch was variant-based. While this constitutes a technical "misdeclaration," the prompt acceptance and payment of the differential duty show a lack of mens rea. The imposition of a Rs.



4,00,000/- fine on a differential duty of Rs. 1.6 Lakhs is grossly disproportionate and punitive rather than compensatory. The Department cannot accept the "settlement" of the duty demand under Section 28(6) and simultaneously "adjudicate" the offense part under Section 124. The proceedings are a single composite unit based on the same set of facts (the BoE). Conclusion of the "proceedings" means conclusion of the entire matter.

6. In view of the above detailed discussion, I pass the following order:

- a. The Miscellaneous Application for Condonation of Delay is allowed.
- b. I set aside the impugned Order-in-Original No. 11/Additional Commissioner/2025-26 dated 16.09.2025 to the extent of the imposition of the redemption fine and the excess penalty.

The appeal is allowed with consequential relief.



सत्यापित/ATTESTED
 (Signature)
 SUPERINTENDENT
 ऑफिस (अपीलें), अहमदाबाद
 17.03.2026

(Signature)
 (AMIT GUPTA)

Commissioner (Appeals),
 Customs, Ahmedabad

Date: 17.03.2026

F. No. S/49-285/CUS/JAM/2024-25

By Registered post A.D/E-Mail

To,
 M/s Seagull Overseas Corporation,
 No. 136, Royal Province, Block - A, Palasamudram, Gorantla Mandal,
 Sri Sathyasai, Andhra Pradesh 515241

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Commissioner of Customs (P), Jamnagar.
3. The Additional Commissioner of Customs (P, Custom, Jamnagar.
4. Guard File.