



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
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DIN - 20250671MN000000CB77

क	फ़ाइल संख्या FILE NO.	S/49-32/CUS/MUN/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)	MUN-CUSTM-000-APP-106-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.06.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. MCH/864/DC/LD/Gr-II/24-25 dated 27.03.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Swiss Carbonate Plot No. 2139, EFG Shop No. S212, Surbhi Moal, Waghawadi Road, Bhavnagar, Gujarat-364001



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 (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 :	
	<p>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</p>	<p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p> <p>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>
5.	<p>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-</p> <p>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 -</p> <p>(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.</p> <p>(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;</p> <p>(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 रूपये पचास लाख से अधिक न हो तो; पांच हजार रुपए</p> <p>(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 ;</p> <p>(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.</p> <p>(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</p> <p>(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।</p> <p>(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.</p>	
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 रूपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>	



ORDER-IN-APPEAL

Appeal has been filed by M/s. Swiss Carbonate (IEC 2416503561), Plot No. 2139, EFG Shop No. S212, Surbhi Moal, Waghawadi Road, Bhavnagar Gujarat- 364001, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/864/DC/LD/Gr-II/24-25 dated 27.03.2025 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner (Import Gr-2), Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that filed Bill of Entry No. 7800856 dated 15.01.2025 for import of goods declared as "Dense Sodium Carbonate (Soda Ash Dense, For Industrial Use Only, not for medicinal use)" under HSN Code 28362010 through their authorised Customs Broker M/s. Unique Speditorer Pvt Ltd., CB code. AABCU3257BCH001 (hereinafter referred as 'the CB' for sake of brevity). The details of the Bill of Entry are as per Table-A below:

Table-A

Sr. No.	B/E No. & date	Bill of Lading No. & Date Container No.	Declared Goods	Declared HSN Code	Declared Quantity	Declared Assessable Value (in Rs.)	Declared Duty (in Rs.)
1	7800856 dated 15.01.2025	BRQ/IEA/M UN/2499099 4A dated 11.01.2025	Dense Sodium Carbonate (Soda Ash Dense, For Industrial Use Only, not for medicinal use)	28362010	25 MT	485332/-	134607/-

2.1 On scrutiny of EDI import data, it was noticed that the appellant had filed Bill of Entry No. 7800856 dated 15.01.2025 through their Customs Broker (CB) M/s. Unique Speditorer Pvt. Ltd., for import of Dense Sodium Carbonate under HSN 28362010 and as per Bill of Lading, the date of consignment is 11.01.2025. The DGFT vide Notification No. 46/2024-25 dated 30.12.2024 amended import policy of certain HSN code including 28362010 by imposing Minimum Import Price (MIP). The goods imported under HS code 28362010 have been restricted if CIF value per metric ton is below Rs. 20,108. As per Table – A above, the Appellant had declared CIF value of goods or Rs. 4,85,3327- of quantity 25 MT i.e Rs. 19,413/MT which is less than Rs.20,108



per MT.

2.2 Accordingly, goods covered under impugned Bill of Entry No. 7800856 dated 15.01.2025 was put on hold to rule-out possibility of evasion of MIP restrictions. The examination of the goods was carried out at Ashutosh CFS, Mundra on dated 23.01.2025 in the presence of Shri Ravindrasinh Jadeja (H-Card No. H/MNDR1/20231127) representative of the CB M/s Unique Speditorer Private Limited and Shri Jayendu N. Bhatt, MT Yard and operation manager Ashutosh CFS. The seal affixed to the container was found to be ' 34405 ' however seal no. as per BL is '304405'. Thereafter, on visual examination of the said consignment it was found that there were white PP jumbo bags (each weighed 1250 Kg approx.) with the label "SACHI, DENSE SODA ASH". Upon de-stuffing of the whole container, it was found that there were 20 jumbo bags. After opening the PP bags on random basis, it was found that there was small white granules-like substance in the said PP bags.

2.3 During the course of examination, the exact nature and composition of the said substance was not possible to ascertain, visually, hence random samples were drawn from the PP bags and forwarded to the CRCL, Kandla for testing purpose vide Test Memo No. 272/28.01.2025 issued from F.No Cus/SIIB/INT/40/2025- SIIB-O/o Pr-Commr-Cus-Mundra. The CRCL Kandla has reported as under:

"Nature- the sample as received is in the form of white coarse powder.

Composition- It is composed of Sodium Carbonate (Soda ash-Na₂CO₃) (Dense)

Total Alkalinity as Na₂CO₃=98.64% by wt."

2.4 As per para 2.17 of handbook of Procedure, 2023 notified by Director General of Foreign Trade vide public notice No. 01/2023 dated 01.04.2023, date of reckoning import is reproduced below: -

"(a) Date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port."

Further, as per para 11.11 of Handbook of procedure, date of shipment/

dispatch in respect of import will be reckoned as date affixed on the Bill of Lading.

2.5 From the above, it appeared that Bill of Lading No. BRQ/JEA/MUN/24999994A dated 11.01.2025 was issued by shipping line bearing date of issue i.e. 11.01.2025 and Shipped on board date as 11.01.2025. Hence, in terms of para 2.17 and 11.11 of HBP, 2023, date of reckoning of import is 11.01.2025. As mentioned above, vide DGFT Notification No. 46/2024-25 dated 30.12.2024 import policy of certain HSN code including 28362010 was amended. The goods imported under this HSN code have been restricted if CIF value per metric ton is below Rs. 20,108. As per Table-A above, the Appellant Importer had declared CIF value of goods of Rs. 4,85,332/- of quantity 25MT i.e Rs. 19,413/MT which is less than Rs.20,108 per MT. Hence the goods of impugned Bill of Entry became prohibited.

2.6 In view of the above, based on investigations conducted in the matter, *prima facie*, it appeared that the subject goods are imported after the effect of DGFT Notification No. 46/2024-25 dated 30.12.2024 by which import policy has been revised as 'restricted' if CIF value is less than Rs. 20,108/MT, hence, the subject goods of impugned Bill of Entry became prohibited. Therefore, it appeared that the appellant had contravened Section 17 and Section 46 of the Customs Act, 1962. These acts of omission and commission on the part of importer, has made the imported goods of impugned Bill of Entry having declared CIF value of Rs. 4,85,332/- of quantity 25MT, liable for confiscation under Section 111 (d) 111(m) &111 (o) of the Act and has thus rendered themselves liable for penal action under Section 112 (a) (i) of the Customs Act, 1962.

2.7 Appellant, vide their letter dated 21.01.2025 and 26.02.2025, stated that they do not want any Show Cause Notice and personal hearing and they were ready to pay differential duty along with applicable fine and penalty. Further, appellant, vide letter dated 11.03.2025 had requested for waiver of SCN and grant of personal hearing. Personal hearing was given on 17.03.2025 & 20.03.2025, wherein Shri Pankaj Prakash Tulsian, authorized representative of the appellant appeared and re-iterated the submission made vide letter dated 20.03.2025.

2.8 The adjudicating authority vide the impugned order as ordered as under:



- i. He ordered to confiscate the goods i.e Dense Sodium Carbonate HSN 28363010 imported under Bill of Entry no. 7800856 dated 15.01.2025 by way of mis-declaration in contravention of the provision of Section 46 of the Customs Act, 1962 under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962.
- ii. As per the request of the appellant, he gave an option to the Appellant to redeem the confiscated goods on payment of redemption fine of Rs.50,000/- (Rupees Fifty Thousand only) under Section 125 of the Customs Act, 1962 for re-export purpose only.
- iii. He imposed a penalty of Rs.25000/- (Rupees Twenty Five Thousand only) on the Appellant under Section 112(a)(i) of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 It is submitted that the Adjudicating Authority, has not considered the following Points, which were submitted vide written submission dated 20.03.2025:-

- (i) The import in question is part of a single contract for 1000 MT, intended to be shipped in 40-20 Ft containers.
- (ii) Due to operational difficulties at the loading port, one container from the batch could not be loaded. Consequently, a bill of lading was issued for thirty-nine containers, which arrived at Mundra Port and were cleared under BOE No. 7314601 dated 18.12.2024.
- (iii) The contract was finalized in October, 2024 precluding any possibility of withdrawal or renegotiation of the terms.
- (iv) Despite the price being below the fixed MIP, renegotiation of the contract price was not feasible, necessitating the import of the container at the agreed price.
- (v) The circumstances were unfortunate and beyond their control.

3.2 The Adjudicating Authority concluded that the Appellant has contravened the provisions of Section 17 and Section 46 of the Customs Act,

1962, however nowhere in the Order, it is mentioned that which portion of Section 17 and 46 is contravened and mis-declared. All the particulars of section 17 and 46(4A) are declared as per Bill of Lading, Invoice, Country of origin, Certificate of analysis etc, which have been verified by testing the product in CRCL, Kandla. All the documents submitted at the time of filing Bill of Entry are confirming the accuracy and completeness of the information given therein.

3.3 The Adjudicating Authority further, concluded that the value of the goods is misdeclared to the extent of, not imported up to the level of MIP fixed by the DGFT as per DGFT Circular 46/2024-25, however, the fact remains that the value is declared as per the contract for 1000 MT and except this container all the containers are cleared at the same value, which is declared in this container. Copy of earlier Bill of Lading No. BRQ/JEA/MUN/24990994 dated 16.12.2024 is also enclosed herewith as Annexure-3A. As per Section 14 of the Customs Act, 1962, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place for importation. The price of their goods is transaction price on the basis of contract which was executed by buyer and seller and the buyer and seller are not related in terms of Section 14 of the and Customs Valuation Rules, 2007. Hence, misdeclaration of value does not arise.

3.4 The Adjudicating Authority, confiscated the goods under Section 111(d), 111(m), and 111(o) of the said Act, and redeemed the goods for export only under Section 125 of the said act, keeping in mind, perhaps, the goods are "PROHIBITED", however the goods are not "PROHIBITED", rather "RESTRICTED" and there is plethora of judgments wherein the goods are being redeemed for home consumption under Section 125 of the said Act. Importation at the price fixed by the DGFT, is not in our hand, the value declared by the Appellant is on the basis of contract in the month of October 2024, whereas the MIP of the goods is fixed by the DGFT on 30.12.2024. This fixation is not in Appellant's control. There is no mens rea wherein the appellant has intentionally mis-declared the value of there goods inviting penal provisions under Customs Act, 1962. In the case of M/s Pepsi Foods Ltd, Hon'ble Supreme Court held that in order to attract penalty provision, criminal intent or mens rea is a necessary constituent in order to attract penalty. [2010 (260) E.L.T. 481 (S.C.)]

3.5 Further, Hon'ble Supreme Court in the case of M/s Navyuga



Engineering Co. Ltd [(2024) 20 Centax 566 (S.C.)], specified the guidelines for implementation of the provisions of Section 125 of the Customs Act, 1962, wherein it is specified that the goods can be redeemed for home consumption but those goods should not be prohibited goods. Here the goods are not prohibited rather the goods are restricted and shall be redeemed for home consumption on payment of redemption fine under Section 125 of the Customs Act, 1962.

3.6 In case of Yakub Ibrahim Yusuf Hon'ble Tribunal Mumbai held that the goods whose import is permitted subject to restrictions, but liable to be released on payment of fine since they do not cause danger or detriment to health. [2011(263)ELT.685(Tri-Mumbai)]. Further, the Hon'ble Supreme Court, in the case of M/s Atul Automation Ltd, has underscored the difference between what is prohibited and what is restricted. The goods imported or exported without authorisation were found to be restricted goods. Restricted goods have the option of being redeemed and do not deserve the treatment of absolute confiscation, which could be applied only to prohibited goods. [2019 (365) E.L.T. 465 (S.C.)]

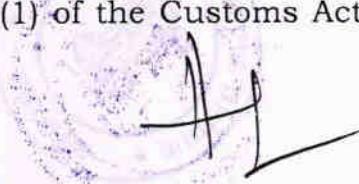
PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 28.05.2025 following the principles of natural justice wherein Shri Vishal Ajay Kumar, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Deputy Commissioner (Import Gr-2), Custom, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 11.04.2025. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 27.03.2025 as 27.03.2025. Hence, 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 a copy of the challan No.1497702894 dtd 07.04.2025 towards payment of pre-deposit of Rs.5700/- As the appeal has been filed within the stipulated time-

limit under Section 128(1) of the Customs Act, 1962 and with the mandatory



pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

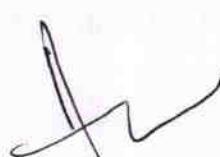
5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- i. Whether the imported goods are liable for confiscation under Section 111(d), 111(m), and 111(o) of the Customs Act, 1962.
- ii. Whether the goods, if confiscated, can be redeemed for home consumption instead of re-export.
- iii. Whether the penalty imposed under Section 112(a)(i) of the Customs Act, 1962, is justifiable and appropriate.

5.2 The Adjudicating Authority found that the appellant contravened Section 17 (Assessment of duty) and Section 46 (Entry of goods on importation) of the Customs Act, 1962. This contravention primarily stems from the import of "Dense Sodium Carbonate" at a CIF value (Rs. 19,413/- per MT) below the Minimum Import Price (MIP) of Rs. 20,108/- per MT, as stipulated by DGFT Notification No. 46/2024-25 dated 30.12.2024.

5.3 Section 46(4A) of the Customs Act, 1962, mandates that an importer presenting a Bill of Entry shall ensure compliance with any restriction or prohibition relating to the goods under the Act or any other law in force. Section 17(4) allows for re-assessment of duty if the self-assessment is not done correctly. The DGFT Notification explicitly states that goods imported under HS code 28362010 are "Restricted" if their CIF value is below Rs. 20,108 per MT. The appellant's import falls squarely within this restriction. The argument that the contract was finalized prior to the notification, making renegotiation impossible, is not under dispute. However, the date of reckoning of import is the Bill of Lading date (11.01.2025), which is after the effective date of the DGFT Notification (30.12.2024). Therefore, at the time of import, the new policy condition was in effect, and the importer was obligated to comply with it.

5.4 Section 111(d) of the Customs Act, 1962, makes goods liable for confiscation if they are imported contrary to any prohibition imposed by or under the Act or any other law. While the Appellant argues that the goods are




"restricted" and not "prohibited," it is a settled legal position that "restrictions" are a form of "prohibition." The Hon'ble Supreme Court in *Union of India v. Auto Steel Industries* (2001 (130) ELT 545 (SC)) held that "restriction" falls within the ambit of "prohibition" as used in Section 111(d). Similarly, in *Shewli Steels Ltd. v. Commissioner of Customs, Mumbai* (2008 (226) ELT 342 (SC)), it was held that any condition or restriction amounts to prohibition.

5.5 Section 111(m) covers goods that do not correspond in value or any other particular with the entry made. While the appellant claims the declared value is the transaction value as per their contract, the imposition of MIP by the DGFT alters the permissible transaction value for import. Failure to adhere to the MIP effectively means the declared value for customs purposes is not in conformity with the prevailing import policy conditions, thereby making it a mis-declaration in the context of the restriction.

5.6 Section 111(o) deals with goods exempted subject to a condition, where the condition is not observed. The DGFT Notification effectively creates a condition for "Free" import (CIF value above MIP), failing which the import becomes "Restricted." The non-observance of this condition makes the goods liable to confiscation under this section as well. Therefore, the Adjudicating Authority's finding that the goods are liable for confiscation under Section 111(d), 111(m), and 111(o) of the Customs Act, 1962, is upheld.

5.7 The appellant strongly argues that the goods are "restricted" and not "prohibited" in an absolute sense, and thus, should be allowed for home consumption upon payment of redemption fine. They rely on *M/s NAVAYUGA ENGINEERING CO. LTD. VERSUS UNION OF INDIA & ANR.* and *Yakub Ibrahim Yusuf v/s Commissioner of Customs, Mumbai*.

5.8 Section 125 of the Customs Act, 1962, provides the option for redemption of confiscated goods. It states that for goods whose importation or exportation is prohibited, the officer adjudging it may give an option to pay a fine in lieu of confiscation. For any other goods, the officer shall give such an option.

5.9 While some judicial pronouncements, including those cited by the appellant, have made a distinction between absolutely prohibited goods and restricted goods for the purpose of redemption for home consumption, it is also a consistent stance of the department and upheld by certain judicial precedents



that where goods are restricted due to non-compliance with a specific policy condition, the option of redemption for home consumption may not always be granted, especially if the non-compliance directly relates to the import policy itself.

5.10 The DGFT Notification No. 46/2024-25 dated 30.12.2024 specifically revised the import policy of HSN 28362010 from 'Free' to 'Restricted' if the CIF value is below Rs. 20,108 per MT. This policy change directly impacts the permissible import of the goods. While the goods are not dangerous or harmful, their import below the prescribed MIP directly contravenes the revised import policy. In such cases, for effective implementation of the trade policy, requiring re-export of the goods, or allowing redemption only for re-export, serves the purpose of upholding the policy restriction. The Adjudicating Authority specifically concluded that the goods "became prohibited" due to the CIF value being less than the MIP and accordingly granted redemption for re-export purpose only. This aligns with the understanding that for policy-driven restrictions, especially those related to minimum prices or quantitative restrictions, upholding the spirit of the policy may necessitate disallowing entry into the domestic market.

5.11 The Adjudicating Authority correctly identified the contravention of the DGFT Notification regarding MIP, which makes the goods liable for confiscation under Sections 111(d), 111(m), and 111(o) of the Customs Act, 1962. The appeal on the point of confiscation is rejected.

5.12 The Hon'ble Tribunal in certain instances has supported the view that where import is in violation of a specific import policy, and the goods are deemed 'prohibited' under Section 111(d) by virtue of being contrary to restrictions, the option of redemption could be conditioned on re-export to ensure strict adherence to the import policy. While the appellant's concern regarding re-export feasibility is noted, the primary objective of the policy is to prevent import below a certain price point. Allowing home consumption would essentially circumvent this objective, even with a fine. Therefore, upholding the Adjudicating Authority's decision, the redemption of goods will be allowed for re-export purposes only.

5.13 Section 112(a)(i) of the Customs Act, 1962, stipulates a penalty for any person who does or omits to do any act which would render such goods



liable to confiscation under Section 111 of the Customs Act, 1962. The penalty can be up to the value of the goods or Rs. 5,000/-, whichever is greater, in the case of prohibited goods.

5.14 The appellant argues that there was no "mens rea" or criminal intent, as the contract was finalized before the MIP notification, and the circumstances were beyond their control. They also highlighted that other containers from the same contract were cleared at the same value prior to the notification. While the argument of "no mens rea" is persuasive in some contexts, the Customs Act operates on a strict liability principle for contravention of import/export regulations. Even if there was no deliberate intent to evade the MIP, the fact remains that the import took place after the notification came into effect, and the declared value was below the prescribed MIP. The appellant, as the importer, is responsible for ensuring compliance with all prevailing laws and notifications at the time of import.

5.15 It is observed that the Adjudicating Authority has imposed a penalty of Rs. 25,000/- on the imported goods with an assessable value of Rs. 4,85,332/- As per Section 112(a)(i), the penalty for goods in respect of which any prohibition is in force (which includes restrictions) is not exceeding the value of the goods or Rs. 5,000/-, whichever is greater. In this case, the value of the goods (Rs. 4,85,332/-) is significantly higher than Rs. 25,000/-. In view of the facts and circumstances of the case, I find that the amount of penalty is justified. Accordingly, I uphold the penalty imposed on the appellant.

6. In view of the detailed discussions and findings above, I uphold the impugned order and reject the appeal filed by the appellant.

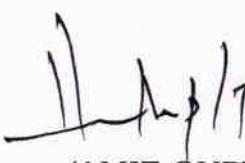


संतापिता/ATTESTED

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

F. No. S/49-32/CUS/MUN/2025-26

 1667


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

Date: 26.06.2025

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1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Deputy/Assistant Commissioner of Customs, Gr-II (Import), Custom House , Mundra.
4. Guard File.

