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 - 20260371MN0000559655

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| क | फ़ाइल संख्या FILE NO. | S/49-416/CUS/MUN/2024-25 |
| ख | अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) | MUN-CUSTM-000-APP-932-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta<br>Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 30.03.2026 |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 30.03.2026 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | Shri Hanif Kapadia,<br>2704, A-Wing Orchid Enclave,<br>Belasis Road, Mumbai Central,<br>Mumbai 400008 |

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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 श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है. |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. |
| | निम्नलिखित सम्बन्धित आदेश/Order relating to : |
| (क) | बैगेज़ के रूप में आयातित कोई माल. |
| (a) | any goods exported |
| (ख) | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो. |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination. |
| (ग) | सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी. |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder. |
| **3.** | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए : |
| | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by : |
| (क) | कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए. |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870. |
| (ख) | सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो |
| (b) | 4 copies of the Order-in-Original, in addition to relevant documents, if any |
| (ग) | पुनरीक्षण के लिए आवेदन की **4** प्रतियां |
| (c) | 4 copies of the Application for Revision. |
| (घ) | पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र ), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-** |
| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the |

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| | 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 सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं | |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : | |
| | सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench** |
| | दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2nd Floor, Bahumali Bhavan,<br>Nr.Girdhar Nagar Bridge, Asarwa,<br>Ahmedabad-380 016 |
| 5. | सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए- | |
| | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of - | |
| (क) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए. | |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees; | |
| (ख) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए | |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ; | |
| (ग) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए. | |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees | |
| (घ) | इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा । | |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. | |
| 6. | उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए. | |
| | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |

**ORDER-IN-APPEAL**

Appeal has been filed by Shri Hanif Kapadia, 2704, A-Wing Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. J.H. Enterprises.

2.2 The specific focus of this proceeding pertains to a high-value consignment imported in the name of M/s. J.H. Enterprises (IEC: AQIPH7863E) via Container No. TGBU5160748 under Bill of Lading No. YMLUS226013593. The investigation into this specific container highlighted

the syndicate's agility in attempting to evade detection once an enforcement action was initiated. As the DRI began intercepting related shipments, the importers, in connivance with the overseas shipper (M/s. Yiwu Surui Imp and Exp Co. Ltd.) and the shipping line (M/s. Huan Ming/Yang Ming Line), attempted a desperate "Change of Destination" (COD) while the vessel was still in transit to Mundra. They sought to divert the container to Jebel Ali, UAE, by manipulating the manifest and preparing two parallel sets of Bills of Lading—one declaring "Floor Clean MOP" for Mundra and another declaring "Household Items" for Jebel Ali. This fraudulent maneuver was intended to erase the shipment's connection to the Indian port and escape the jurisdiction of Indian Customs. Despite these elaborate attempts to divert the cargo, the DRI successfully placed the container on hold, and it was examined at Mundra Port under Panchnama dated September 16/17, 2022.

2.3 The physical examination of Container No. TGBU5160748 yielded an inventory of highly offending and prohibited goods that vastly differed from the manifest. While the documents declared 754 cartons of "Floor Clean MOP," the search actually recovered 200,400 pieces of foreign-brand E-cigarettes and 80,000 pieces of silicon "pop-up" toys. Additionally, the consignment contained 14,000 LCD writing pads and 2,500 head massagers that were used as structural concealment. The E-cigarettes, falling under HS Code 8543, are strictly prohibited for import into India under DGFT Notification No. 20/2015-2020 dated September 26, 2019, and the Prohibition of Electronic Cigarettes Act, 2019. The 80,000 toys were also classified as offending goods due to a total lack of mandatory Bureau of Indian Standards (BIS) compliance as required under Policy Condition 2 of Chapter 95 of the Customs Tariff (specifically IS: 9873 parts 1, 2, 3, 4, 7, and 9). The syndicate's failure to provide safety certifications and the deliberate concealment behind "Floor Clean MOPs" underscored a clear intent to bypass public health regulations and safety standards, posing a significant risk to the domestic market.

2.4 The investigation into the culpability of the parties involved established Shri Mohammad Asif Sathi as the central mastermind and "beneficial owner" of the cartel. He orchestrated the racket by acquiring IECs from dummy firms; in this specific instance, he utilized the services of Shri Tahir Menn to create the firm M/s. J.H. Enterprises by fraudulently using the identity documents of Shri Juma Hamir Halepotra, a caretaker of Asif's bungalow in Bhuj who had no knowledge of the business. The cartel's modus operandi involved a professional division of labor: Shri Baldevsinh Vala of M/s.

Kalpana Exim managed the logistics of "crossing" containers—a process where cleared goods were moved between vehicles or containers at secret locations to evade e-way bill tracking and enforcement checkpoints between Mundra and Bhiwandi. Meanwhile, Shri Samir Sharma, a G-Card holder of a Customs Broker firm, was implicated in submitting manipulated documents to the authorities, often on the instructions of the forwarders rather than the actual IEC holders, whom he had never met.

2.5 Granular details of the coordination were recovered from the "Mm" WhatsApp group, where members discussed the "stuffing" of prohibited items in the containers. Chat logs showed Baldevsinh Vala advising other members to stack E-cigarettes away from the container doors to avoid detection during partial Customs examinations and suggesting that "crossing" was necessary to prevent the DRI from tracking the containers via electronic surveillance. Shri Asif Sathi admitted in his statement that he paid hefty sums—up to ₹17 Lakh per container—for the successful clearance of these prohibited consignments. The investigation also unearthed a financial circuit where cash was collected from domestic buyers like "Raju Bhai" or "Sohail Bhai" and deposited into the bank accounts of the dummy firms to facilitate formal remittances to the foreign suppliers in China, thereby giving the illicit trade a veneer of legitimate commerce.

2.6 The legal and financial implications of the seizure are substantial. Under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the transaction values declared in the documents were rejected due to gross mis-declaration and the absence of any credible price data. Consequently, the value was re-determined sequentially through Rules 4 to 9. Given the absence of identical or similar goods in the valuation database, the value was arrived at using Rule 9 (the residual method) based on a comprehensive market survey and a report from a Government-approved Chartered Engineer. The market price of the seized E-cigarettes alone was estimated at approximately ₹2,400 per piece, totaling ₹48,09,60,000. Combined with the mis-declared toys and electronics, the total value of the offending goods in this single container approached ₹50 Crore.

2.7 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:

- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.
- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.8 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.9 On the basis of the investigation, Show Cause Notice was issued to M/s. J.H. Enterprises and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. J.H. Enterprises and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The Adjudicating Authority passed the following order in respect of the appellant.

**(A) In respect of offending goods i.e E-Cigarettes and toys :-**

(I) He imposed penalty of Rs. 10,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.

**(B) In respect of dutiable goods where bills of Entry not filed :-**

(I) He imposed penalty of Rs. 5,000/- upon the appellant under Section 112(a)(ii) of the Customs Act, 1962.

**(C) Imposition of penalty under Section 114(AA) of the Customs Act, 1962**

(I) He imposed penalty of Rs. 2,00,000/- upon the appellant under Section 114(AA) 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, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The Appellant contends that the Department failed to provide any concrete evidence linking him to the alleged mis-declaration and undervaluation of imported goods. He maintains that his only business association with Shri Asif Sathi was through a domestic online shopping company, M/s. Astrum Trading Pvt. Ltd., which does not possess an Import Export Code (IEC) and was never involved in the subject imports. He categorically denies owning, operating, or financing any of the foreign entities (such as M/s. AH International Trading or M/s. HK Longcheng) or dummy companies used for the alleged smuggling cartel. The Respondent allegedly relied on mere assumptions regarding company initials rather than verifying actual ownership through foreign authorities as requested by the Appellant.

3.2 A significant portion of the appeal challenges the Department's reliance on the statement of Shri Tahir Memn, arguing that the witness was never offered for cross-examination. The Appellant asserts that under Section 138B of the Customs Act, the Adjudicating Authority is obligated to examine witnesses to admit their statements as evidence. He argues that the allegations—specifically those regarding the meaning of initials in company names—are unsubstantiated "in air" statements without corroborating documents. Furthermore, he points out that none of the other co-appellants, including Shri Asif Sathi, provided statements implicating him in the planning, ordering, or financial aspects of the illicit imports.

3.3 The Appellant further argues that the penalties imposed under Sections 112(a) and 114AA are legally unsustainable due to the absence of mens rea (guilty mind) and active participation. He claims he played no role in placing orders, negotiating with suppliers, remitting payments, or filing Bills of Entry, and received no consideration or benefit from the alleged offenses. To support this, he cites a recent CESTAT Ahmedabad order (dated December 5, 2024)

where penalties against him in a related investigation were set aside after the tribunal found the Department's evidence regarding his role to be insufficient.

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh, Advocate, 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, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The evidence indicates that the Appellant, Shri Hanif Kapadia, was not a mere bystander or a simple domestic trader of trimmers as claimed. He shared a common residential building with the mastermind, Shri Asif Sathi, and their business interests were deeply intertwined. The Adjudicating Authority has correctly noted that the Appellant managed the overseas "sourcing arm" of the cartel. The very names of the China-based entities—M/s AH International Trading Co. Ltd. and M/s HK Longcheng Trade Co. Ltd.—are indicative of this partnership. The initials 'AH' represent 'Asif and Hanif', and 'HK' represents 'Hanif Kapadia'. These firms were not independent suppliers but were controlled by the Appellant to facilitate the stuffing of prohibited E-cigarettes into consignments destined for dummy importers in India.

5.2 The smuggling did not occur through a clerical error at the port of discharge but originated at the point of origin in China. The statement of Shri Tahir Menn, recorded under Section 108, provides a granular account of how the Appellant managed the Chinese end. Shri Tahir Menn explicitly stated that the Appellant was responsible for coordinating with Chinese manufacturers and overseeing the concealment of high-value, prohibited E-cigarettes within low-value, bulky items like "Floor Mops" and "LCD Writing Pads." This concealment strategy is a classic hallmark of organized smuggling, intended to deceive the Customs risk management systems.

5.3 The investigation recovered WhatsApp communications and digital records which established that the Appellant was in constant touch with Shri Asif Sathi and the logistics coordinators. These chats discussed "brand availability," "quantities," and "packing patterns"—details that a mere domestic trader would have no reason to be privy to. The Appellant's claim that his association with Asif Sathi was limited to M/s Astrum Trading Pvt. Ltd. is a "colorable device" to mask the illegal import activities. The fact that the same set of individuals managed both the legal (domestic) and illegal (import) streams of the business further proves the Appellant's "knowing concern."

5.4 The concept of "Beneficial Owner" as defined under Section 2(3A) of the Customs Act, 1962, includes any person on whose behalf the goods are being imported. While M/s J.H. Enterprises was the "importer on record," the investigation proved it was a dummy entity. The financial flow and the control over the cargo rested with the Asif-Hanif duo. The Appellant's role as the "associate of the beneficial owner" is appropriate, as he facilitated the illegal entry of goods by providing the sourcing infrastructure in China. Without the Appellant's active management of the foreign firms, the concealment and subsequent mis-declaration would not have been possible.

5.5 In **Commissioner of Customs vs. Candid Enterprises [2001 (130) ELT 404 (SC)],** the Hon'ble Supreme Court held that where fraud and conspiracy are alleged in smuggling cases, the authorities must look at the "substance of the transaction" rather than the outward form. In the present case, the "substance" is an organized cartel where the Appellant acted as the vital link between the Chinese suppliers and the Indian distribution network. His specialized knowledge of the Chinese market and his control over the shipping documents demonstrate that he was an active participant in the conspiracy.

5.7 The Appellant contends that the statements of co-accused cannot be the sole basis for penalty. However, it is a settled law that statements recorded under Section 108 of the Customs Act, 1962, are substantive evidence. In **Naresh Kumar Sukhwani vs. Union of India [1996 (83) ELT 285 (SC)],** the Hon'ble Supreme Court held that a statement made before the Customs Officer under Section 108 is a material piece of evidence and can be used as substantive evidence. Further, in **K.I. Pavunny vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin [(1997) 3 SCC 721],** it was held that if a statement is voluntary and true, it can form the basis of a conviction/penalty even if it is subsequently retracted, provided there is some general corroboration.

5.8 In the instant case, the statement of Shri Tahir Menn is corroborated by the existence of the firms in China bearing the Appellant's initials and the commonality of the modus operandi across multiple consignments. The Appellant's own admission of his close business ties with Asif Sathi provides the necessary nexus.

5.9 The Appellant claims violation of natural justice due to the denial of cross-examination of Shri Tahir Menn. I find that in quasi-judicial proceedings, the right to cross-examination is not absolute. In **Telestar Travels Pvt. Ltd. vs. Special Director of Enforcement [2013 (289) ELT 3 (SC)],** the Hon'ble Supreme Court held that the rules of natural justice do not require an opportunity for cross-examination in every case; it depends on the facts and whether any prejudice is caused. In **Rajesh Gadiya vs. Additional Commissioner of Customs [2025 (394) ELT 349 (Del.)],** the Delhi High Court recently held that where parties are well-acquainted and involved in a common scheme of smuggling, the denial of cross-examination of co-conspirators does not necessarily violate natural justice if the documentary evidence and admissions are sufficient.

5.10 The Adjudicating Authority has rightly noted that the request for cross-examination at the end of the proceedings was a dilatory tactic. Given the depth of the conspiracy and the recovery of prohibited goods, the statements recorded under Section 108 carry significant weight that the Appellant failed to rebut with any credible evidence during the adjudication.

5.11 Section 112(a) and (b) provide for penalties for any person who "abets the doing or omission of any act" which renders goods liable for confiscation or who is "knowingly concerned" in dealing with such goods. The Appellant was "knowingly concerned" in the arrangement of prohibited goods from China. His role in managing the sourcing firms makes him an abettor in the illegal import. The Appellant's argument that he did not sign the Bills of Entry is irrelevant for Section 112. The section targets the "person concerned" or "abettor," not just the signatory.

5.12 Regarding Section 114AA, it penalizes the use of "false or incorrect" documents. The investigation found that parallel Bills of Lading were generated with different descriptions and ports of discharge (Mundra vs. Jebel Ali) to evade detection. As a manager of the Chinese firms that generated these documents, the Appellant is directly liable for "causing to be made/used" such false documents.

5.13 The Appellant cited cases suggesting that mere association does not prove guilt. However, those cases typically involve accidental associations or lack of financial nexus. Here, the nexus is structural and functional. The Adjudicating Authority correctly applied the ratio of **Collector of Customs, Madras vs. D. Bhoormull [1983 (13) ELT 1546 (SC)],** which states that the Department is not required to prove its case with "mathematical precision." The cumulative effect of the circumstances—the nature of the goods, the dummy importers, the China-based firms, and the intercepted communications—leads to the inescapable conclusion of the Appellant's guilt.

5.14 The Appellant has contended that the goods in question are merely electronic items and do not warrant such severe penalties. I find this argument to be legally flawed and scientifically ignorant. The E-Cigarettes in question are "prohibited goods" under Section 2(33) of the Customs Act, 1962, read with the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (PECA, 2019).

5.15 The PECA, 2019, was enacted with the primary objective of protecting the Indian populace, particularly the youth, from the harmful effects of Electronic Nicotine Delivery Systems (ENDS). Section 4 of the PECA, 2019, explicitly prohibits the production, manufacture, import, export, transport, sale, distribution, storage, and advertisement of e-cigarettes. The inclusion of "Import" within this prohibition directly links the PECA to the Customs Act, 1962. Consequently, any person involved in the import of these items is committing a breach of a statutory prohibition intended for public safety.

5.16 Under Section 11 of the Customs Act, 1962, the Central Government has the power to prohibit the import or export of goods for the maintenance of public health or the prevention of deceptive practices. The PECA, 2019, serves as the notifying statute for this prohibition. Therefore, the 200,400 units of E-Cigarettes recovered from the consignment of M/s J.H. Enterprises fall squarely within the definition of "prohibited goods." Unlike "restricted goods," which can be cleared upon payment of duty and fulfillment of conditions, "prohibited goods" are liable for absolute confiscation under Section 111(d) of the Customs Act.

5.17 The investigation found that these prohibited items were not merely mis-declared but were actively concealed behind "Floor Mops" and "LCD Writing Pads." This demonstrates a mens rea to bypass the statutory ban. The Appellant, by facilitating the sourcing and stuffing of these items through China-based

firms, was a primary actor in the introduction of these hazardous products into the Indian market. The market value of the prohibited E-Cigarettes alone is estimated at Rs. 48.09 Crores, highlighting the massive scale of the illegal operation and the potential damage to public health.

5.18 The consignment also contained 80,000 pieces of Toys. These are "restricted" items that require compliance with Bureau of Indian Standards (BIS) regulations under the Toys (Quality Control) Order. The absence of BIS markings and valid test reports renders these toys unsafe for children. The illegal import of non-compliant toys is as serious a violation as the import of E-Cigarettes, as it exposes vulnerable children to potential chemical and physical hazards.

5.19 Upon a comprehensive review of the findings and the evidence on record, I find no merit in the Appellant's contentions. The role of the Appellant as a key associate in the smuggling cartel is well-established through his connection with the China-based front companies and corroborated by the statements of his associates. The Adjudicating Authority has followed the due process of law and provided sufficient opportunity for defense. The penalties imposed are proportionate to the gravity of the offense involving prohibited goods valued at over Rs. 48 Crores.

6. In view of the detailed discussion and findings recorded above, I reject the appeal filed by Shri Hanif Kapadia.

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

F. No. S/49-416/CUS/MUN/2024-25 246 to 247 Date:30.03.2026

By Speed post A.D/E-Mail

To,
Shri Hanif Kapadia,
2704, A-Wing Orchid Enclave,
Belasis Road, Mumbai Central,
Mumbai 400008

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House ,Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.