सीमाशुल्क(अपील) आयुक्तकाकार्यालय,अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ IshwarBhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN-20260171MN000000CA1D

क	फ़ाइलसंख्या FILE NO.	S/49-07/CA-2/CUS/KDL/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	KDL-CUSTM-000-APP- 79 -25-26
ग	पारितकर्ता PASSED BY	Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	21.01.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	KDL/ADC/DPB/05/24-25 Dated 29.05.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	21.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	The Deputy Commissioner of Customs (Adjudication), Office of the Commissioner of Customs, New Custom House, Near Balaji Temple, Kandla, Gujarat.

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 imported on baggage
(ख(	**भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.**
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	**सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.**
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	**पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :**
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	**कोर्ट फी एक्ट,1870 के 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)	**पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां.** **यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.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 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 अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd 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 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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके %10 अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके %10 अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(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.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	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 Deputy Commissioner of Customs (Adjudication), New Custom House, Kandla (hereinafter referred to as 'the appellant department') has filed the present appeal in terms of Section 129D (4) of the Customs Act, 1962 on the basis of Review Order dated 30.07.2024 issued by the Commissioner, Customs, Kandla challenging Order – In – Original No. KDL/ADC/DPB/05/2024-25 dated 29.05.2024 (hereinafter referred to as "the impugned Order") passed by the Additional Commissioner, Custom House, Kandla (hereinafter referred to as "the Adjudicating Authority") in case of M/s Shivay Enterprise, situated at Ward 9/B, Plot No. 2, Zala Joravarsinh, Bharat Nagar, Gandhidham, Gujarat (hereinafter referred to as 'the Respondent').

2. Facts of the case, in brief, are that, the case originated from specific intelligence developed by the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, alleging that the Respondent had imported goods through Kandla Special Economic Zone (KASEZ) by mis-declaring Automotive Diesel Fuel as "Base Oil", with the intention of circumventing restrictions imposed under the Foreign Trade Policy.

2.1 Pursuant to the said intelligence, it was alleged that Bill of Entry No. 2008042 dated 12.08.2021, covering 185.41 MTs of goods valued at ₹1,01,09,035.27, was filed by M/s. A.B. Warehousing, KASEZ, on behalf of the Respondent, for clearance of the goods from SEZ to the Domestic Tariff Area (DTA), declaring the goods as "Base Oil".

2.2 On 12.08.2021, officers of Customs and DRI intercepted four chemical tankers in which the said imported goods were loaded. The tankers were detained at KASEZ under panchnama. Simultaneous searches were conducted at the premises of M/s. A.B. Warehousing and other connected premises. During the course of investigation, it was noticed that the total consignment was distributed into eight chemical tankers, all of which were subsequently detained.

2.3 Searches were also conducted at the declared business premises of the Respondent. According to the department, the premises were found either non-functional or incorrect. Further follow-up searches were carried out at the premises of various alleged buyers, transporters and logistics service providers connected with the movement and disposal of the goods.

2.4 Representative samples of the detained goods were drawn under panchnama dated 13.08.2021 and were sent for testing to the Central Excise & Customs Laboratory, Vadodara. As per the test reports dated 27.08.2021, the

samples were reported to meet the specifications of Automotive Diesel Fuel as per IS:1460-2017 and were stated to be "other than Base Oil".

2.5 On the basis of the said test reports, the department formed a view that the goods were wrongly declared as "Base Oil" classifiable under CTH 27101971, whereas they were correctly classifiable as Automotive Diesel Fuel under CTH 27101944, which attracts a different rate of duty and is subject to import restrictions.

2.6 It was alleged that, as per the Import Policy ITC (HS) read with the Foreign Trade Policy, Automotive Diesel Fuel is permitted to be imported only by State Trading Enterprises and specified oil marketing companies, and that the noticees were not authorized entities for such import. Accordingly, the impugned goods were treated as restricted/prohibited goods.

2.7 The department further alleged that the goods were imported by deliberate mis-declaration of description and classification, and that the entire modus operandi involved warehousing of the goods in KASEZ, pumping the goods into chemical tankers and transporting the same to storage terminals and end-users in the Domestic Tariff Area.

2.8 Based on the investigation, the goods were seized under the provisions of Section 110 of the Customs Act, 1962, and the conveyances used for transportation were seized under Section 115 of the Act, on the allegation that they were used for carriage of mis-declared and prohibited goods.

2.9 Statements of various persons including proprietors, partners of warehousing firms, transporters, drivers, employees of logistics companies, alleged buyers and persons stated to be controlling the operations were recorded under Section 108 of the Customs Act, 1962 during the course of investigation. The department relied upon these statements and documentary evidence to allege conscious involvement and knowledge on the part of the noticees.

2.10 During the course of investigation, a request was made by the noticee for allowing re-export of the impugned goods. The matter was examined by the competent authority and, after due consideration, permission for re-export of the goods was granted, subject to fulfillment of the prescribed conditions.

3. A Show Cause Notice dated 26.04.2023 was issued proposing:

- confiscation of the imported goods under Sections 111(d), 111(f) and 111(m) of the Customs Act, 1962;
- confiscation of the conveyances under Section 115 of the Act;
- imposition of redemption fine under Section 125; and
- imposition of penalties upon the Respondent and other noticees under the relevant provisions of the Customs Act, 1962.

4. Thus, the Show Cause Notice dated 26.04.2023 was adjudicated by confirming the allegations of mis-declaration and policy violation, ordering confiscation of the goods and conveyances, imposing redemption fine and penalties, as detailed in the impugned Order.

5. Being aggrieved with the impugned Order, the Appellant department has filed the present appeal and mainly contended that:

- The Adjudicating Authority passed the impugned Order-in-Original No. KDL/ADC/DPB/05/2024-25 dated 29.05.2024 without properly appreciating the gravity of the offence and without imposing redemption fine and penalties commensurate with the nature and extent of violations committed by the importer, the SEZ Unit and the DTA client. In the instant case, the declared assessable value of the confiscated imported goods was ₹1,01,09,035.27, and the value of eight confiscated chemical tankers was ₹56,00,184. However, redemption fine of only ₹5,00,000 under Section 125 and ₹3,00,000 under Section 115(2) of the Customs Act, 1962, totaling ₹8,00,000, was imposed. Penalties of ₹35,000 under Section 112(a), ₹3,00,000 under Section 114AA, and ₹1,50,000 under Section 117, aggregating to ₹4,85,000, were imposed, which are grossly disproportionate to the value and nature of the offence.
- The adjudicating authority failed to appreciate that, in respect of Bill of Entry No. 2008042 dated 12.08.2021, the importer/DTA client and the SEZ Unit deliberately mis-declared the quantity, mis-classified the goods, and undervalued the same to avoid payment of applicable anti-dumping duty and differential customs duty. Such mis-declaration, mis-classification and undervaluation were unearthed during investigation and established through test reports.
- The investigation clearly revealed that the importer/DTA client and the SEZ Unit failed to comply with Section 46(4A) of the Customs Act, 1962, which mandates true, correct and accurate declaration. Further, Section 17 of the Customs Act, 1962 requires self-assessment by the importer, ensuring correct classification, value and applicable duties. Rule 75 of the SEZ Rules, 2006 also mandates self-declaration for inward and outward movement of goods from SEZ. Being a warehousing service provider, the SEZ Unit was fully aware of the nature, specifications and characteristics of the goods and deliberately suppressed the true description and classification.
- The adjudicating authority, in para 37 of the OIO, recorded a categorical finding that the importer and SEZ Unit mis-declared the description and

CTH of the goods, which were restricted in nature and permitted to be imported only by State Trading Enterprises. Accordingly, the goods were held liable for confiscation under Sections 111(d), 111(f) and 111(m) and penal action under Sections 112, 114AA and 117 of the Customs Act, 1962.

- Although the goods were provisionally released and re-exported, the adjudicating authority imposed redemption fine of only ₹5,00,000, which is less than 10% of the value of goods, without any justification. Such abysmally low redemption fine and penalties are neither proper nor legal, considering the scale of mis-declaration, undervaluation and attempted illegal importation of 185.41 MT of Automotive Diesel Fuel.
- Penalties of ₹75,000 each were imposed on Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi under Section 114AA, aggregating to ₹3,00,000, despite Section 114AA permitting penalty up to five times the value of goods. The penalty imposed is negligible compared to the assessable value of ₹1,01,09,035.27 and does not reflect the seriousness of the offence.
- The adjudicating authority further erred in treating the goods as merely "restricted" instead of "prohibited". In terms of Notification No. 36/2015-2020 dated 17.01.2017, issued under Section 5 of the FTDR Act, 1992 read with Para 2.01 of the FTP 2015-2020, Automotive Diesel Fuel (CTH 27101944) is permitted to be imported only by State Trading Enterprises. The importer failed to establish eligibility under Para 2.20 of the FTP.
- As held by the Hon'ble Supreme Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta [1970 (2) SCC 728 = 1983 (13) ELT 1439 (SC)], the expression "any prohibition" includes restrictions, and restriction is a form of prohibition. Further, in Union of India v. Raj Grow Impex LLP [2021 (377) ELT 145 (SC)], the Hon'ble Supreme Court held that goods imported in contravention of notifications issued under Section 3 of the FTDR Act are deemed to be prohibited goods under Section 11 of the Customs Act, 1962.
- Accordingly, the goods were required to be treated as prohibited goods, attracting penalty under Section 112(a)(i) and not under Section 112(a)(ii). Given the assessable value of ₹1,01,09,035.27, penalty up to the said amount could have been imposed. The imposition of penalty of merely ₹5,000 each under Section 112(a) is therefore legally unsustainable.
- In view of the gravity of the offence, the gross mis-declaration and undervaluation, the attempted illegal import of Automotive Diesel Fuel, and the arrest of two persons under Section 135(1) of the Customs Act, 1962, the redemption fine and penalties imposed are wholly inadequate and not commensurate with the offence. Accordingly, the redemption fine

and penalties imposed under the impugned Order-in-Original deserve to be set aside and enhanced.

6. A communication dated 11.07.2025, enclosing a copy of the appeal memorandum, was issued to the respondent seeking their comments on the matter. In adherence to the principles of audi alteram partem, personal hearings were scheduled on 15.10.2025, 27.10.2025, 11.11.2025 and 26.11.2025. However, the respondent neither filed any cross-objections nor appeared for the personal hearings. Accordingly, the matter is being adjudicated ex parte on the basis of the available records and documents on file.

7. I have carefully gone through the impugned Order, appeal filed by the appellant department and the relevant documents in the present case. The issue to be decided in the present appeal is whether:

I. Redemption fine imposed by the adjudicating authority under Section 125 of the Customs Act, 1962 in lieu of confiscation of goods is correct or otherwise.

II. Penalty imposed by the adjudicating authority on the respondent under Section 112 (a) (i) and Section 117 of the Customs Act, 1962 is correct or otherwise.

7.1. It is observed that the case originated from specific intelligence developed by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, alleging that the respondent had imported goods through Kandla Special Economic Zone by mis-declaring Automotive Diesel Fuel as "Base Oil" with the intent to circumvent restrictions under the Foreign Trade Policy. Pursuant to the intelligence, Bill of Entry No. 2008042 dated 12.08.2021, covering 185.41 MTs of goods valued at ₹1,01,09,035.27, was filed by M/s. A.B. Warehousing, KASEZ, for clearance of the goods from SEZ to the Domestic Tariff Area by declaring the goods as "Base Oil". On interception of the chemical tankers carrying the goods and subsequent searches at the premises of the respondent, warehouse operators and other connected entities, the entire consignment was detained and seized. Samples drawn under panchnama were tested by the Central Excise & Customs Laboratory, Vadodara, which confirmed that the goods conformed to Automotive Diesel Fuel as per IS:1460-2017 and were other than Base Oil. Based on the test results, the department concluded that the goods were deliberately mis-declared in description and classification, correctly classifiable as Automotive Diesel Fuel, which is subject to import restrictions and permitted only to authorized entities under the Import Policy. Accordingly, the goods were treated as restricted/prohibited goods, rendered liable for confiscation under Sections 111(d), 111(f) and 111(m) of the Customs Act, 1962, and the conveyances used for transportation were held liable for confiscation under Section 115 ibid.

Statements recorded under Section 108 and documentary evidence were relied upon to allege conscious and knowing involvement of the noticees. A request for re-export made by the respondent was examined and permitted subject to conditions. A Show Cause Notice dated 29.04.2024 was issued proposing confiscation of the goods and conveyances, imposition of redemption fine under Section 125 and penalties under the relevant provisions, which was adjudicated by confirming the allegations of mis-declaration and policy violation and by ordering confiscation, redemption fine and penalties as detailed in the impugned order.

7.2 Now, as regards to redemption fine imposed by the adjudicating authority under Section 125 of the Customs Act, 1962 in lieu of confiscation of goods, it is the contention of the appellant department that the adjudicating authority imposed redemption fine of only ₹5,00,000, which is less than 10% of the value of goods, without any justification. Such abysmally low redemption fine and penalties are neither proper nor legal, considering the scale of mis-declaration, undervaluation and attempted illegal importation of 185.41 MT of Automotive Diesel Fuel.

7.3 I have carefully perused Section 125(1) of the Customs Act, 1962 and the same is reproduced as under:

Section 125. Option to pay fine in lieu of confiscation. –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation ***such fine as the said officer thinks fit****:*

I find that Section 125(1) of the Customs Act, 1962 clearly stipulates that the adjudicating authority is fully empowered to exercise its discretion while deciding the quantum of redemption fine imposable. The wordings "***such fine as the said officer thinks fit"*** gives full liberty to the adjudicating authority while deciding the quantum of the redemption fine under Section 125(1) of the Customs Act, 1962 and there is no binding upon the adjudicating authority. It is crucial to understand the intent behind the discretion provided in such provisions, as it allows for flexibility in addressing cases where technical or procedural violations occur, such as mis-declarations or documentation errors. The discretion ensures that the authorities can apply a fair and balanced approach, considering the circumstances of each case.

7.4 In the present case, it is an admitted and undisputed fact on record that the impugned goods were permitted to be re-exported by the competent authority, subject to fulfillment of the prescribed conditions. The very grant of such permission for re-export demonstrates that the Department adopted a fair, reasonable, and balanced approach in dealing with the matter, after due consideration of the facts and circumstances of the case. It is further well settled that the object of imposing redemption fine is not punitive but is intended to neutralize or eliminate any undue economic advantage or profit that may have accrued to the importer on account of improper importation. However, in the present case, the goods in question were re-exported, thereby completely extinguishing any possibility of the importer deriving any commercial benefit or profit from the said goods. Since the redemption fine imposed by the adjudicating authority in this case is in full compliance with the provisions of Section 125(1) of the Customs Act, 1962, I find no grounds to interfere with the adjudicating authority's discretion. The authority has exercised its discretion within the framework of the law, ensuring that the redemption fine is appropriate to the circumstances of the case. Therefore, the decision rendered appears to be in accordance with legal provisions, and there is no reason to question or alter it.

7.5 Further, with regard to the penalty imposed by the Adjudicating Authority on the respondent under Section 112 of the Customs Act, 1962, the appellant department contends that the goods should have been treated as prohibited goods, attracting penalty under Section 112(a)(i) rather than under Section 112(a)(ii). In support, the department relies on the decisions of the Hon'ble Supreme Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta [1970 (2) SCC 728 = 1983 (13) ELT 1439 (SC)], wherein it was held that the expression "any prohibition" includes restrictions, and that restriction is a form of prohibition, and in Union of India v. Raj Grow Impex LLP [2021 (377) ELT 145 (SC)]. The department further contends that, considering the assessable value of ₹1,01,09,035.27, a penalty of up to the said amount could have been imposed, and that the imposition of a nominal penalty of merely ₹5,000 each under Section 112(a) is therefore legally unsustainable.

7.6 I have carefully examined the judgments of the Hon'ble Supreme Court in Sheikh Mohd. Omer and Raj Grow Impex LLP. In the latter, after an elaborate discussion, the Hon'ble Supreme Court has clearly emphasized that the intrinsic nature of the imported goods and the policy restrictions governing their import are determinative in deciding whether such goods fall within the category of "prohibited goods."

Significantly, the Hon'ble Supreme Court has not laid down any proposition of law stating that all restricted goods automatically assume the character of prohibited goods merely because the prescribed conditions for import have not been fulfilled. On the contrary, the judgments underscore that such determination must be made on a case-by-case basis, having regard to the statutory scheme, policy intent, and surrounding factual circumstances.

7.7 Accordingly, it is incumbent upon the Adjudicating Authority to apply its independent mind to the facts and circumstances of each case and arrive at a reasoned conclusion, rather than mechanically treating all restricted goods as prohibited upon breach of conditions. In the instant case, the Adjudicating Authority, after considering the facts and circumstances, held the goods to be restricted goods and imposed penalty under Section 112(a)(ii) of the Customs Act, 1962. I am in agreement with the decision of the Adjudicating Authority and find no reason to interfere with the imposition of penalty under Section 112(a)(ii) ibid.

7.8 Further, with regard to the penalty imposed by the Adjudicating Authority on the respondent under Section 114AA and 117 of the Customs Act, 1962, the appellant department contends that Penalties of ₹75,000 each were imposed on Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi under Section 114AA, aggregating to ₹3,00,000, despite Section 114AA permitting penalty up to five times the value of goods. The penalty imposed is negligible compared to the assessable value of ₹1,01,09,035.27 and does not reflect the seriousness of the offence.

7.9 I have carefully perused Section 114 (AA) and Section 117 of the Customs Act, 1962 and the same are reproduced as under:

> **SECTION 114 (AA). Penalty for use of false and incorrect material.**
>
> *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable for penalty not exceeding five times the value of goods;*
>
> ***[Section 117. Penalty for contravention, etc., not expressly mentioned.***
>
> *Any person who contravens any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty*

is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding [four lakh rupees].

A plain reading of Section 114(AA) and Section 117 of the Customs Act, 1962 makes it evident that both provisions prescribe only the maximum permissible penalty, without stipulating any statutory minimum. The legislative scheme therefore confers wide discretion upon the adjudicating authority to determine the quantum of penalty, provided it remains within the upper limit prescribed under the Act. This discretion is to be exercised judiciously, having regard to the facts and circumstances of the case. In the present matter, I find that the penalties imposed by the Adjudicating Authority under Sections 114(AA) and 117 are well within the statutory framework and have been levied after due consideration of the material on record. Accordingly, there is no justification to interfere with, question, or modify the penalty imposed under these provisions.

8. In view of the aforementioned findings, the appeal filed by the appellant department is hereby rejected.

सत्यापित/ATTESTED

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

(Amit Gupta)
Commissioner of Customs(Appeals)
Ahmedabad

Date: **21.01.2026**
F.No. S/49-07/CA-2/CUS/KDL/2024-25
By Registered Post A.D. 5858

To,

1. The Deputy Commissioner (Adjudication),
   Office of the Commissioner of Customs, New Custom House, Near Balaji Temple, Kandla, Gujarat.
2. M/s. Shivay Enterprise, situated at Ward 9/B, Plot No. 2, Zala Joravarsinh, Bharat Nagar, Gandhidham, Gujarat

Copy to: -

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