



## सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250971MN000091439B

क	फ़ाइल संख्या FILE NO.	S/49-29/CA-2/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-213-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	02.09.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 32/AC/ACC/OIO/Gaurav/2024-25, dated 08.08.2024 passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT/RESPONDENT:	<b>Appellant:</b> The Assistant Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad.  <b>Respondent:</b> Mr. Gaurav Chaudhary, House No. 1425, Sector 16 - 17, City Hisar, Haryana - 125001.
1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.



	निम्नलिखित सम्बन्धित आदेश/Order relating to :				
(क)	बैगेज के रूप में आयातित कोई माल.				
(a)	any goods 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.	<p>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 :</p> <p>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 :</p> <p>(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.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order - In - Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 दोप्रतियां। 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/-</p> <p>(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/-.</p>				
4.	<p>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</p> <p>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>				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				



	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार 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 हजार रुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	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 गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



**ORDER-IN-APPEAL**

1. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, has filed the present application/appeal under Section 129D(4) of the Customs Act, 1962, on the basis of Authorization dated 08.11.2024 issued by the Principal Commissioner of Customs, Ahmedabad, to file appeal against the Order-In-Original No. 32/AC/ACC/OIO/Gaurav/2024-25 dated 08.08.2024 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as the 'appellant' as well as 'adjudicating authority'). The appeal has been filed on the premise that the adjudicating authority has erred in not ordering the confiscation of goods under Section 111(m) of the Customs Act, 1962.

2. Facts involved in the appeal, in brief, are that Mr. Gaurav Chaudhary, House No. 1425, Sector 16 - 17, City Hisar, Haryana - 125001 (hereinafter referred to as the 'respondent' or 'importer') had imported 33 pair of Shoes (footwear) through Air Cargo Complex, Ahmedabad, for which he has filed 18 Courier Bills of Entry ('CBE') during the calendar year 2021. The respondent had classified the goods under Customs Tariff Item ('CTI') 98049000 and paid Customs duties @42.08% (BCD 10%, SWS 10% and IGST 28%) by availing benefit of Sr. No. 608 of Notification No. 50/2017-Cus dated 30.06.2017. The said benefit was available for goods falling under CTH 9804 and imported for personal use and exempted from any prohibition

3. During the analysis of import data of the consignments cleared through Courier mode, it was noticed that the respondent had filed total 284 Courier Bills of Entry at various International Courier Terminals during the calendar years 2020 to 2023. It appeared that import in such large quantity cannot be termed as import for 'personal use' and therefore, the impugned goods cannot be classified under CTI 98049000, but appropriately classifiable under CTI 64041990, which covers Footwear, Causal Shoes, Sports Shoes etc. Customs duties for the CTI 64041990 has been leviable @64.43% (BCD 35%, SWS 10% and IGST 18%).

4. Therefore, a Show Cause Notice ('SCN') dated 07.12.2023 was issued to the respondent. The said SCN has been adjudicated vide the impugned order dated 08.08.2024, by which the adjudicating authority has rejected the declared classification under CTI 98040000 and ordered to re-classify the goods under CTI 64041990 with applicable duties i.e. BCD 35%, SWS 10% and IGST 18%; confirmed the entire demand of duties of Rs.13,604/-



with applicable interest under the provisions of Section 28(4) and 28AA of the Customs Act, 1962; and imposed a penalty of Rs.13,604/- under Section 114A ibid.

**5. Being aggrieved, to the extent the adjudicating authority has not ordered for confiscation of goods under Section 111(m), the Customs Department has filed the present appeal.**

**Gist of Grounds of Appeal**

6.1 In the Grounds of Appeal, it has been inter alia contended that the importer has wilfully suppressed the facts and wrongly classified the subject goods for availing duty benefit at lower rate. In terms of Section 46(4) of the Customs Act, 1962, the importer was required make a declaration regarding truth of contents of the Bill of Entry, which he has contravened. Therefore, the goods valued at Rs.63,698/- are liable for confiscation under Section 111(m) on account of mis-declaration. Further, the aforementioned goods are not physically available for confiscation and in such cases, redemption fine is imposable in light of the following judgments:

- Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai – 2018 (9) GSTL 142 (Mad)
- Synergy Fertichem Ltd. Vs. Union of India – 2020 (33) GSTL 513 (Guj.)

6.2 In view of the above, it has been contended that the adjudicating authority has erred in not ordering the confiscation under Section 111(m) of the Customs Act, 1964; and the impugned order is legally flawed only to the extent not ordering confiscation of goods in case where the goods are not physically available in light of the above judgments.

**Response from the Respondent**

7. The respondent Mr. Gaurav Chaudhary has not filed any appeal against the impugned order. One set of the appeal memorandum has been sent to the respondent for his comments on the appeal filed by Customs Department, vide this office letter F.No. S/49-29/ CA-2/CUS/AHD/2024-25/4323 dated 03.01.2025. But, the respondent has neither filed any reply nor sought personal hearing in this matter.

**Findings:**

8. I have carefully gone through the impugned order and written submissions made by the appellant i.e. Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, in the Appeal Memorandum submitted with Form No. C.A.-2. I find that the appeal can be decided

on the basis of the documents available on record. The issue to be decided in the present appeal is whether any order towards confiscation of goods under Section 111(m) can be passed with option to pay redemption fine under Section 125 in the facts and circumstances of the present case.

9. I find that Para 8 of the Show Cause Notice F.No. VIII/48-68/ACC/AR-35/2023-24 dated 07.12.2023 proposes following:

- (a) Rejection of classification of goods under CTH 9804 9000 and re-classification under CTH 6404 1990.
- (b) Demand of differential duty of Rs.13,604/- under Section 28(4) with interest under Section 28AA.
- (c) Imposition of penalty under Section 114A / 112(a) of the Customs Act, 1962.

From the above proposals, it can be seen that there is no proposal in the SCN itself either for confiscation of goods or for holding the imported goods liable for confiscation.

10. While adjudicating the SCN, the adjudicating authority, vide impugned O.I.O. No. 32/AC/ACC/OIO/Gaurav/2024-25 dated 08.08.2024, has ordered as under:

- (a) Rejected of classification of goods under CTH 9804 9000 and ordered to re-classify them under CTH 6404 1990 with applicable duties i.e. BCD 35%, SWS 10% and IGST 18%.
- (b) Confirmed the demand of differential duty of Rs.13,604/- under Section 28(4) with interest under Section 28AA.
- (c) Imposed a penalty of Rs.13,604/- under Section 114A of the Customs Act, 1962.

Thus, I find that the adjudicating authority has confirmed all the proposals of the Show Cause Notice. When there is no proposal in the SCN for confiscation of goods or imposing redemption fine, the adjudicating authority cannot go beyond the proposals made in the SCN and thus cannot order for confiscation of goods and impose redemption fine.

11. In this regard, I rely upon the Judgment of Hon'ble Supreme Court in the case of COMMISSIONER OF C. EX., BANGALORE Versus BRINDAVAN BEVERAGES (P) LTD. reported as 2007 (213) E.L.T. 487 (S.C.) [15-06-2007], wherein, it has been observed and held, "***The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague,***



***lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."***

12. I also rely upon the Judgment of Hon'ble Supreme Court in the case of COMMISSIONER OF C. EX., NAGPUR Versus BALLARPUR INDUSTRIES LTD. 2007 (215) E.L.T. 489 (S.C.) [30-08-2007], wherein it has been observed and held, ***"It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule."***

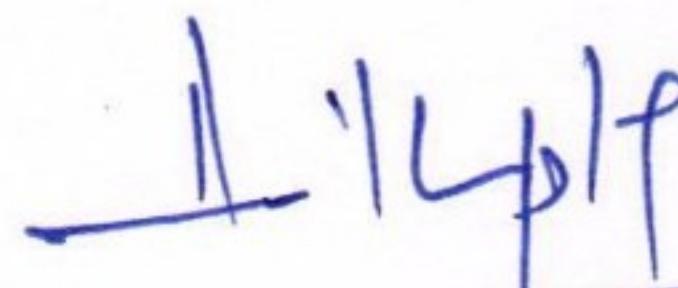
13. In view of the above legal position, it is very much clear that in absence of any proposal for confiscation of goods or holding the goods liable for confiscation in the Show Cause Notice, no Order towards confiscation can be passed or no redemption fine can be imposed. Therefore, I find no fault in the impugned order. Thus, the appeal filed by the Customs Department is liable to be rejected.

14. As the appeal filed by Customs Department is not sustainable on merit, there is no requirement to grant opportunity of personal hearing to the respondent importer, who has not filed appeal against the impugned order, not sought personal hearing and he will not be aggrieved against rejection of the present appeal filed by Customs Department.

**Order:**

15. In view of the above discussion and findings, I reject the appeal filed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, against the Order-In-Original No. 32/AC/ACC/OIO/Gaurav/2024-25 dated 08.08.2024 in respect of imports made by Shri. Gaurav Chaudhary.



  
(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

Date: 02.09.2025

**By Speed Post / e-mail** [As per Section 153(1) (b)&(c) of the Customs Act, 1962]

To

The Deputy/Assistant Commissioner of Customs,  
Air Cargo Complex, Old Airport, Ahmedabad - 380003.  
(By email: [aircargo-amd@gov.in](mailto:aircargo-amd@gov.in) [accusacc@gmail.com](mailto:accusacc@gmail.com))



Mr. Gaurav Chaudhary,  
House No. 1425, Sector 16 - 17,  
City Hisar, Haryana - 125001.  
(By Speed Post)

**Copy to:**

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad. ( email: [ccoaahm-guj@nic.in](mailto:ccoaahm-guj@nic.in) )
2. The Pr. Commissioner of Customs, Ahmedabad.  
( email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in) )
3. Guard File.

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