



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 रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250571MN0000888D99

क	फ़ाइल संख्या FILE NO.	S/49-79/CUS/MUN/2023-24
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-49-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/MK/56/2023-24 dated 30.05.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Viral Corporation, G-206, Lodhika GIDC, Kalawad Road, Metoda, Rajkot-360021



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी प्रतियाँ 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 प्रतियाँ, 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 प्रतियाँ, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियाँ
(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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियाँ. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				



ORDER-IN-APPEAL

Appeal has been filed by M/s. Viral Corporation G-206, Lodhika GIDC, Kalawad Road, Metoda, Rajkot-360021 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/56/2023-24 dated 30.05.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed two Warehouse Bill of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 through their Custom Broker M/s Luvkush Shipping Services (CINPS7215LCH002) for clearance of total weight 21.5 MTs of goods declared as "Guatemalan Cardamom Whole" under CTH 09083190 having total assessable value of Rs. 83,15,000/-. The details of both Bills of Entry are as under:-

Table-A

Sr. No.	BE No. & Date	Qty (MTs)	Ex. Rate	Unit Price Declared	Declared Assessable Value	Declared Duty	CIF value
1	5615320 / 21.04.2023	10.75	83.15	5 USD/KGS	41,57,500/-	35,69,214/-	415.75
2	5737671 / 29.04.2023	10.75	83.15	5 USD/KGS	41,57,500/-	35,69,214/-	415.75
Total		21.5			83,15,000/-		

2.1 The BE mentioned at SI No. 1 of above table was assigned to Kolkata Sea Port (INCCU1) and BE mentioned at SI. No. 2 was assigned to Tuticorin Sea Port (INTU1) for assessment in FAG. Both Bills of Entry were pushed to PAG i.e. Mundra Sea Port (INMUN1) on the grounds that "The goods appear to be prohibited as CIF declared price i.e. Rs. 415.75 per KG is less than MIP of Rs. 500/-KG as per DGFT Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015. The query reply in this regard appeared unsatisfactory in as much as there is no condition in the DGFT Notification which exempts goods filed for deposit in warehouse and later on to be re-exported.

2.2 The appellant vide letter dated 17.05.2023 submitted that they have received an export order for 50 MTS of Cardamom Green from their overseas buyer M/s Montaz Uddin & Brothers, Bangladesh under purchase order No. SC/VC/41/22-23 dated 10.12.2022. For completing this export order, they had imported Cardamom Green vide two warehouse Bill of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023. They submitted that the goods are meant to be re-exported to their overseas buyer of Bangladesh. The goods are not meant for clearance for home consumption, hence

minimum Import price [MIP] is not applicable on the goods. Further, they had also filed Warehouse Bill of Entry so that the goods can be directly re-exported from bonded warehouse.

2.3 Further, they gave reference of Para No. 3(2F) of Foreign Trade (Exemption from application of Rules in certain case) Amendment Order, 2018 dated 25.07.2017 issued by DGFT which is reproduced below:-

"Any good imported and bonded on arrival in India for re-export to any country outside India, except Nepal and Bhutan:"

2.4 They submitted that when goods are imported for re-export purpose and put into bonded warehouse on arrival, the goods are exempted for MIP criteria as imposed vide Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 by the DGFT.

2.5 The DGFT vide their Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 had imposed MIP under CTH 090831. As per aforesaid DGFT Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015, import of Cardamoms is permitted freely subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006. In the present case, the importer has imported Cardamom having CIF value of Rs. 415.75 per Kilogram, which is below the minimum floor price fixed of Rs. 500 per Kilogram.

In view of the above notification of DGFT, it was observed that the CIF value of the said goods as per import documents is Rs. 415.75/- per kg which is below the prescribed rate of Rs. 500/- per kg in terms of above said DGFT Notification. Therefore, the imported goods appeared to be liable for confiscation under Section 111 (d) & 111(m) of the Customs Act, 1962 and thereby rendering the appellant liable for penalty under Section 112(a) of the Customs Act, 1962.

2.7 Further, the appellant's submission as mentioned was not sustainable as there is no such condition in the DGFT Notification which exempts the goods (filed for deposit in warehouse and later on to be re-export directly from warehouse) from MIP imposed vide Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 by the DGFT.

2.8 The appellant, vide their letter dated 17.05.2023, requested to allow re-export the goods imported vide warehouse Bills of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 to a third country. Further, the appellant vide letter dated 23.05.2023 submitted that they do not want any Show Cause Notice or Personal Hearing

in this matter.

2.9 Consequently the adjudicating authority passed a impugned order wherein the adjudicating authority ordered as under :-

i. He ordered for confiscation of the goods imported vide Bills of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 having total assessable value of Rs. 83,15,000/- (Rupees Eighty-Three Lakh Fifteen Thousand Only) under Section 111 (d) & 111 (m) of the Customs Act, 1962. However, he gave an option to the appellant to redeem the confiscated goods on payment of redemption fine of Rs. 4,00,000/- (Rupees Four Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

ii. He imposed a penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) on the importer under Section 112(a)(i) of the Customs Act, 1962.

iii. He permitted to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

1. 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 The appellant has clarified that goods were meant for re-export to Bangladesh pursuant to Letter of Credit No. 011323010019 dated 04.04.2023 issued by Standard Chartered Bank on application by Momtazuddin and Brothers, Chittagong, Bangladesh. The appellant invited attention of the officers to Para 3 (2)(f) of Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 ("1993 Order"), wherein, it is stipulated that when goods are imported for re-export purpose and put into bonded warehouse on arrival, the same are exempted from the requirement of Minimum Import Price fixed by DGFT.

3.2 The appellant has submitted that the Adjudicating Authority has erred in failing to appreciate that goods are not liable for confiscation under Section 111 (m) of Customs Act, 1962 inasmuch as there is no mis-declaration of any material particular. Hence, order for confiscation of goods under Section 111 (m) of Customs Act, 1962 is not sustainable in the eyes of law. The appellant has submitted that the Adjudicating Authority has erred in failing to appreciate that the goods are not liable for confiscation under

Section 111 (d) in light of provisions of Para 3(2)(f) of 1993 Order, which provide for exemption from restriction against import to goods which are imported and bonded on arrival in India for re-export to any country outside India, except Nepal and Bhutan. Inasmuch as there is no dispute over the fact that goods were imported, bonded and re-exported to Bangladesh and not Nepal and Bhutan, orders for confiscation under Section 111 (d) of Customs Act, 1962, the Minimum Import Price prescribed in Notification No. 109/(RE-2013)/2019-2014 dated 06.02.2015 issued by DGFT would not apply to such goods and hence, the goods under consideration are not liable for confiscation under Section 111 (d) of Customs Act, 1962.

3.3 The appellant has submitted that as per the settled legal position, no fine is imposable on goods meant for re-export. In any case, fine is also pegged to margin of profit, which, in this case, has not been computed. Therefore, on this ground also, the impugned order imposing fine in lieu of confiscation is not tenable in the eyes of law. The appellant has submitted that they were under a bona fide belief that their case is covered by exemption in terms of Para 3 (2)(f) of the 1993 Order and as such they had no intention to import any goods in contravention of the restriction in terms of Minimum Import Price fixed by DGFT. On this basis, it is submitted that appellant is not liable to penalty under Section 112 (a) of Customs Act, 1962.



PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 27.12.2024 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal. Due to change in Appellate Authority, fresh Personal hearing was held on 20.05.2025. Shri Vikas Mehta, Consultant, appeared for hearing representing the Appellant. He had reiterated the submissions made in the appeal memorandum. He has also filed additional submissions vide Email dated 17.02.2025 as under :-

- It is held by Hon'ble Tribunal in the case of Opus Asia Technologies Pvt. Ltd. v/s Commissioner of Cus. (Sea), Chennai, 2004 (168) ELT 72 (Tri.-Chennai) that if the margin of profit is wiped out, then the question of imposing redemption fine may not arise in the matter.
- The matter of re-export of goods has come up for deliberation before various appellate forums as detailed below:

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- (1) M/s. Selvam Industries Ltd. v/s Commissioner of Customs, Tuticorin, 2021 (377) ELT 458 (Tri-Chennai).
- (2) M/s SDS Ramcides Crop Science Pvt. Ltd. v/s Commr. of Customs, Chennai-II. 2018 (359) ELT 239 (Tri.-Chennai)
- (3) M/s. Kenda Farben India Pvt. Ltd. vis Commissioner of Customs, Noida, 2019 (369) ELT 1225 (Tri.-AIL)

In the decisions cited above, the appellate forums have taken a view that imposition of redemption fine is not justified while permitting re-export of the goods.

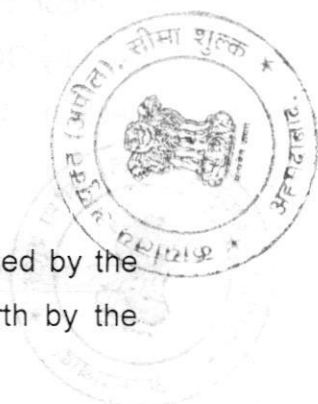
- Further, it is prayed that penalty may be fixed commensurate to the offence, if any, after taking into consideration the extenuating circumstances, as duly held by Hon'ble Tribunal in the matter of Opus Asia Technologies Pvt. Ltd. supra. In this case, interpretation of the Exemption Order is involved. There is no mala fide on the part of appellant and hence, the appellant is not liable to penalty

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Custom House, Mundra and the defense put forth by the Appellants in their appeal.

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

- (i) Whether the goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, in light of Para 3(2)(f) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993.
- (ii) Whether the imposition of redemption fine under Section 125 of the Customs Act, 1962, is justified when re-export is permitted.
- (iii) Whether the imposition of penalty under Section 112(a)(i) of the Customs Act, 1962, is justified in the facts and circumstances of the case, particularly in the absence of mala fide.



5.2 Firstly, I take up the issue whether the goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, in light of Para 3(2)(f) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993. The adjudicating authority held the goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, primarily because their CIF value was below the prescribed MIP. Section 111(d) deals with goods imported contrary to any prohibition, and Section 111(m) deals with goods that do not correspond in value or any other particular with the entry made.

5.3 The Appellant's primary contention is that the MIP notification does not apply to goods imported for re-export and warehoused on arrival, citing Para 3(2)(f) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993. This provision states: "Any good imported and bonded on arrival in India for re-export to any country outside India, except Nepal and Bhutan.". This provision clearly provides an exemption from the application of "Rules" (which include Import Trade Regulations and thus, notifications imposing restrictions like MIP) for goods that are imported, bonded on arrival, and meant for re-export to countries other than Nepal and Bhutan. It is an undisputed fact that the goods were imported, warehoused, and intended for re-export to Bangladesh, which is not Nepal or Bhutan.



5.4 The adjudicating authority, in the impugned order, merely stated that the Appellant's submission regarding Para 3.2 (which refers to Para 3(2)(f) of the 1993 Order) is not sustainable as there is no such condition in the DGFT Notification which exempts the goods (filed for deposit in warehouse and later on to be re-export directly from warehouse) from MIP imposed vide Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 by the DGFT." This reasoning is flawed. The exemption is provided by the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993, which is a separate statutory instrument issued under the Foreign Trade (Development and Regulation) Act, 1992. It is not necessary for the DGFT Notification itself to contain the exemption, as the exemption flows from the superior Order. The adjudicating authority has failed to properly interpret and apply the provisions of the 1993 Order.

5.5 Since the goods squarely fall within the exemption provided by Para 3(2)(f) of the 1993 Order, the restriction of MIP does not apply to them. Consequently, the goods cannot be considered "prohibited" for import under Section 111(d) due to non-adherence to MIP. Furthermore, if the MIP is not applicable, there is no question of mis-declaration of value under Section 111(m) on this ground. Therefore, the confiscation of goods under Section 111(d) and 111(m) of the Customs Act, 1962, is not sustainable.

5.6 Now, I take up the issue regarding imposition of redemption fine. The adjudicating authority imposed a redemption fine of Rs. 4,00,000/- under Section 125 of the Customs Act, 1962, allowing re-export. Section 125 allows for redemption fine in lieu of confiscation. However, a consistent view has been taken by various appellate forums that when re-export is permitted, especially for goods that were always intended for re-export, the imposition of a redemption fine may not be justified or should be nominal.

5.7 The Appellant has rightly cited several judgments in support of this contention:

- Opus Asia Technologies Pvt. Ltd. v/s Commissioner of Cus. (Sea), Chennai, 2004 (168) ELT 72 (Tri.-Chennai), which held that if the margin of profit is wiped out, the question of imposing redemption fine may not arise. In this case, the goods are being re-exported, implying no domestic sale and thus no profit from the alleged undervaluation for domestic consumption.
- The judgments in M/s. Selvam Industries Ltd., M/s. SDS Ramcides Crop Science Pvt. Ltd., and M/s. Kenda Farben India Pvt. Ltd. consistently support the view that redemption fine is not justified when re-export is permitted.

5.8 Given that the goods are not liable for confiscation in the first place due to the applicability of the 1993 Order's exemption, the question of imposing a redemption fine does not arise. Even if, arguendo, they were liable for confiscation, the intent for re-export and the judicial precedents would strongly influence against the imposition of a substantial redemption fine.

5.9 Now, I take up the issue regarding imposition of Penalty under Section 112(a)(i). The adjudicating authority imposed a penalty of Rs. 3,00,000/- on the Appellant under Section 112(a)(i) of the Customs Act, 1962. Section 112(a) applies to any person who "does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act." Section 112(a)(i) specifies the penalty for goods in respect of which any prohibition is in force.

5.10 For a penalty to be imposed under Section 112(a), there must be an act or omission that renders the goods liable to confiscation. As established in above, the goods are not liable for confiscation because the MIP restriction does not apply to them due to the exemption in the 1993 Order. Therefore, the very premise for imposing a penalty under Section 112(a) collapses.

5.11 Furthermore, the Appellant has consistently argued that they acted under a bona fide belief that their case was covered by the exemption. There is no evidence of mala fide intent or deliberate contravention on their part. The Hon'ble Supreme Court in Hindustan Steel Ltd. v/s State of Orissa [1978 (2) ELT (J159) (S.C.)] held that "penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so." In the present case, the dispute is one of interpretation of law, and there is no indication of dishonest or contumacious conduct by the Appellant. Therefore, the imposition of penalty on M/s. Viral Corporation under Section 112(a)(i) of the Customs Act, 1962, is not sustainable.

6. In view of the detailed discussions and findings above, I pass the following order:

- (i) I set aside the order of confiscation of the goods, namely, "Guatemalan Cardamom - Whole," under Section 111(d) and 111(m) of the Customs Act, 1962.
- (ii) Consequently, the redemption fine of Rs. 4,00,000/- imposed under Section 125 of the Customs Act, 1962, is also set aside.
- (iii) I set aside the penalty of Rs. 3,00,000/- imposed on M/s. Viral Corporation under Section 112(a)(i) of the Customs Act, 1962.

7. The appeal filed by M/s. Viral Corporation is hereby allowed.



[Handwritten Signature]

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

F. No. S/49-79/CUS/MUN/2023-24 **1131**

Date: 30.05.2025

By Registered post A.D/E-Mail

To,
M/s. Viral Corporation,
G-206, Lodhika GIDC,
Kalawad Road,
Metoda, Rajkot-360021

सत्यापित/ATTESTED
[Handwritten Signature]
अधीक्षक/SUPREINTENDENT
सीमा शुल्क (अपील), अहमदाबाद
CUSTOMS (APPEALS), AHMEDABAD

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.

