


सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN - 20250571MN00004404C5

क	फ़ाइल संख्या FILE NO.	S/49-11/CUS/JMN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128 के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTM-000-APP-016-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	19/Additional Commissioner/2022-23 dated 31.03.2023
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:	(1) Shri Vinay Singh Katoch 402, Prashant Residency, B-wing, Mumbai-Pune Highway, Near IDBI Bank, Chinchwad Station, Pune - 411 019



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 जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्रा)या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



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



ORDER-IN-APPEAL

The present appeal has been filed by Shri Vinay Singh Katoch, 402, Prashant Residency, B-wing, Mumbai-Pune Highway, Near IDBI Bank, Chinchwad Station, Pune – 411 019 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. 19/Additional Commissioner/2022-23 dated 31.03.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Vessel MV PISC (IMO-8710857) was declared due for arrival at SBY, Alang for breaking up by their shipping agent i.e. M/s. Sahajanand Shipping Services. M/s. Sahajanand Shipping Services also filed the prior Import General Manifest (hereinafter referred to as the 'IGM') No. 2314944 on 23.06.2022 at SBY, Alang. The importer of the vessel i.e. M/s. M.K. Shipping & Allied Industries Pvt. Ltd., Plot No.121, Ship Recycling Yard, Sosiya P.O. Manar, District-Bhavnagar (hereinafter referred to as the 'Importer') has also filed prior Bill of Entry (hereinafter referred to as "BE") No. 9272909 dated 25.06.2022 for seeking the clearance of the vessel. The BE was provisionally assessed on 22.07.2022.

2.1 The shipping agent of the subject Vessel MV PISC (hereinafter referred to as the 'Vessel') intimated about the arrival of the vessel at Bhavnagar anchorage on 03.07.2022. The Officers of the Customs Division, Bhavnagar and Ship Breaking Yard, Alang boarded the vessel for boarding and rummaging on 04.07.2022. During the rummaging, the Customs Officers observed that some goods i.e. Electronic Nicotine Dispensing Devices having label "Traveller Exclusive IQOS" & also having description as "Tobacco Heating System 20 Single Moments" along with their refills having label "Marlboro designed for use with IQOS" were lying on board of the Vessel. On being asked, Shri Vinay Singh Katoch, Master of the Vessel (hereinafter referred to as the 'appellant'), stated that he had failed to declare these items in the Import Manifest through oversight and he also stated that due to not having sufficient man power and time for inventorying all the items, he could not put the details in the Import Manifest.

2.2 On physical counting of the stock of the above mentioned goods, it was found that there were 360 Units of Electronic Nicotine dispensing devices



along with 24,000 Packets of refills were lying on the Vessel.

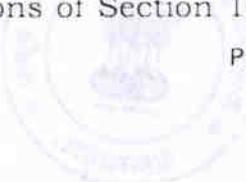
As per the Circular No. 35/2019-Customs dated 1st October, 2019 read with the Government of India's "The Prohibition of Electronic Cigarettes (production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Ordinance, 2019, the Production, Manufacture, Import, Export, Transport, Sale, Distribution, storage and Advertisement of E-cigarettes including all forms of Electronic Nicotine Delivery System, Heat not Burn Products, e-hookah and the like device is prohibited in the interest of public health to protect the people from harm and for matter connected therewith or incidental thereto. The relevant portion of the Circular No. 35/2019 supra is reproduced as follows for ready reference:

2. Considering the adverse health impact of e-Cigarettes/ENDS and in order to prevent the initiation of nicotine through e-Cigarettes by non-smokers and youth, with special attention to vulnerable groups, the Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce & Industry has issued the aforesaid Notifications to ensure that Import and Export of Cigarettes or any parts of components thereof such as refill pods, atomisers, cartridges etc. including all forms of Electronic Nicotine Delivery Systems (ENDS), Heat not burn products, e-hookah and the like devices, by whatever name and shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940 under ITC HS Code: 8543 is prohibited in accordance with the Prohibition of Electronic Cigarettes (Prohibition), Manufacturer, Import, Export, Transport, Sale Distribution, Storage and Advertisement Ordinance, 2019.

2.3 Therefore, in view of the Circular No.35/2019-Customs dated 01.10.2019 read with the Government of India's "The Prohibition of Electronic Cigarettes (production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Ordinance, 2019, the said devices i.e. total 360 Unit & Refill i.e. 24000 Packets were put under detention under the provisions of the Customs Act, 1962, vide Panchnama dated 04.07.2022 for further investigation in the matter. The detained goods i.e. 360 Units of Electronic Nicotine dispensing devices along with 24,000 Packets of refills were transferred to the Bond Store and the same were sealed in presence of Panchas.

2.4 Statement of the appellant Shri Vinay Singh Katoch, Master of the Vessel was recorded on 07.07.2022 under the provisions of Section 108 of the

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Act, 1962 wherein he, inter alia, accepted that they have failed to declare these items i.e. 360 Units of Electronic Nicotine dispensing devices along with 24,000 Packets of refills in the IGM. The appellant stated that he took over the charge of the Vessel from the regular Master at Penang Port (Malaysia) on 13.05.2022; that the previous crew were present on vessel at the time of his joining; that during his captaincy, no trading activity was carried out; that he was deputed to this Vessel as Demolition Crew and he was instructed by his Company to search out Trim & Stability Book, GA Plan, Capacity Plan, Shell Inspection, Bunker sounding, to search all cabins, lockers and to prepare list to bond items kept in Bond Store; that when he joined the Vessel, no proper handing over of the Vessel was done; that previous captain did not even inform about his disembarkation from the Vessel; that they remained busy in collecting the documents from previous crew; that after joining of all crew, they prepared a rough inventory of the Bond items lying in Bond store; that on 29.05.2022, they received the instructions to sail out towards Port Kalang for receiving Bunker; that on 02.06.2022, they were instructed to proceed towards Alang (India) for vessel scrapping purpose; that during the voyage from Kalang Port to Alang (India), they have received Bunker supply at Colombo Port (OPL); that during the voyage from Colombo Port (OPL) to Alang, they had anchored at Cochin (OPL) on 21.06.2022 for receiving Bunker supply but due to bad weather, they could not get it and had to sail out towards Mormugao Port(Goa) for Bunker supply on 24.06.2022 and anchored at Mormugao Port (GO) on 26.06.2022 before heading towards Alang; that after receiving bunker, they sailed towards Alang Port and arrived at Bhavnagar anchorage on 03.07.2022; that during voyage from Port Kalang to Alang, they had prepared the port papers for Colom Port/Mormugao Port/Alang Port; that during the said voyage, they faced rough weather with Rolling-Pitching; that the type of Vessel was Passenger Vessel and there were more than 1000 cabins and more than 33 stores on the Vessel, proper verification/inventorying all the stores was not feasible with only 18 Crew; that some inventory could not be prepared due to time limitation and rough weather during the sailing; that through oversight, he could not prepared the inventories of the goods lying inside store located next to Bond Store of the Star Board Side of Deck No. 2; that after his joining of the MV PISC, he had not received any supply except Provision/Bunker; that all above items were on Board the Vessel before his joining; that he had inquired about the price of the detained goods from his foreign based contacts and told that the value of each Device was around 50-75 Dollars; that value of each Refill packets of 20 Heat coils was around 1.50 to 2.00 Dollars.



2.5 Further, a statement of Shri Ashit Pramodrai Parikh, Authorized Signatory of the Shipping Agent was recorded on 07.07.2022 under the provisions of Section 108 of the Act, 1962 wherein he inter alia stated that they had no idea about presence of such items in the Vessel nor they were aware that import of E-cigarettes is prohibited in India; that they came to know about it only after detention of the same by the Customs Officers; that they have gone through the Circular No. 35/2019-Customs dated 01.10.2019 and they agreed that detained goods were prohibited in India as per the said Circular; that it was the case of ignorance on the part of vessel owner and the Captain of the said Vessel.

2.6 Consequently, the detained items i.e. 360 Units of Electronic Nicotine dispensing devices along with 24000 Packets of refills which were not declared in the IGM as described in the table as follows, having approx. value of Rs.60 Lakhs, were placed under seizure vide Memorandum of Seizure dated 08.07.2022, on a reasonable belief that the same are liable for confiscation under Section 111(d) and 111(f) of the Act, 1962:

Sl.	Description	No. of box	Qty/box	Total	Value/box (Rs.)	Total value (Rs)
1.	IQOS (Electronic cigarette device)	360	01	360	6000	2160000
2.	Marlboro Cigarette (Heat Sticks)	2400	10 packets with 20 sticks each	24000	160	3840000
Total						6000000

2.7 Further, statement of Shri Krupal K. Bhavsar, Director of the Importer was recorded on 07.10.2022 under the provisions of Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that they had purchased the Vessel "MV PISC vide MOA dated 30.05.2022 made between M/s Last Voyage DMCC, Unit No. 3201A-1, SABA-1 Tower, Plot No. JLT-PH1-E3A, Jumeirah Lakes Towers, Dubai, UAE, PO Box No. 391228 and the importer, without inspection and 'As is Where is" basis; that they have no idea about presence of 360 Units of Electronic Nicotine dispensing devices having label along with 24,000 Packets of refills available on board; that it was the responsibility of the Shipping Agent to declare before Customs in respect of such type of prohibited goods; that they came to know about the same only after detention of the same by the Customs officer; that they had gone through the Circular No. 35/2019-Customs dated 01.10.2019 and they have agreed and understood that the

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detained goods were prohibited as per the said circular; that they have never seen E-cigarettes and they do not know anything that the said goods were liable for confiscation under Section 111(d) and 111(f) of the Act, 1962.

2.8 The investigation in the matter culminated into issuance of Show Cause Notice No. ADC-07/2022-23 dated 21.12.2022 from F. No. Gen/MISC/366/2022-Adjn issued by the Additional Commissioner, Customs (Preventive), Jamnagar wherein M/s Sahajanand Shipping Services, Bhavnagar and the Master of the Vessel MV PISC were called upon as to why:

- (i) 360 Units of Electronic Nicotine dispensing devices having label "Traveller Exclusive IQOS and also having description as Tobacco Heating System 20 Single Moments" along with 24000 Packets of refills having label "Marlboro designed for use with IQOS" valued for Rs.60,00,000/- (Rupees Sixty Lakhs Only) should not be confiscated under Section 111(d) and 111(f) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the appellant i.e M/s. Sahajanand Shipping Services, Bhavnagar (India), 364002, Shipping Agent of the vessel MV PISC under Section, 112 of the Customs Act, 1962.
- (iii) Penalty should not be imposed upon Master of the Vessel MV PISC under Section 112 of the Customs Act, 1962.

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

- i. He ordered for absolute confiscation of 360 Units of Electronic Nicotine dispensing devices having label "Traveller Exclusive IQOS and also having description as Tobacco Heating System 20 Single Moments" along with 24000 Packets of refills having label "Marlboro designed for use with IQOS" valued for Rs.60,00,000/- (Rupees Sixty Lakhs Only) under Section 111(d) and 111(f) of the Customs Act, 1962
- ii. He imposed penalty of Rs.40,00,000/- (Rupees Forty Lakhs Only) under Section 112(b) of the Customs Act, 1962 upon the appellant i.e M/s. Sahajanand Shipping Services, Bhavnagar (India), 364002, Shipping Agent of the vessel MV PISC.



iii. He imposed penalty of Rs.3,00,000/- (Rupees Three Lakhs Only) under Section 112(b) of the Customs Act, 1962 upon Shri Vinay Singh Katoch Master of the Vessel MV PISC.

3. SUBMISSIONS OF THE APPELLANT:

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

3.1 The appellant has submitted that he was the master of vessel MV PISC that had arrived at Alang anchorage on 03.07.2022 for breaking from port Penang in Malaysia via Marmagoa and that on 04.07.2022, the officers of Customs carried out boarding and rummaging of the vessel. During the course of rummaging, the officers found following goods in packed condition lying in a store room located next to bond store of the star board side of Deck No. 2 of the vessel:

Sl.	Description	No. of box	Qty/box	Total	Value/box (Rs.)	Total value (Rs)
1.	IQOS (Electronic cigarette device)	360	01	360	6000	2160000
2.	Marlboro Cigarette (Heat Sticks)	2400	10 packets with 20 sticks each	24000	160	3840000
						6000000

3.2 The appellant being the master of the vessel clarified that he was not having sufficient manpower and time to prepare a proper inventory of items on board vessel. The impugned order is passed in violation of the principles of natural justice inasmuch as the appellant was never put to notice about invocation of sub-section (b) of Section 112 of Customs Act, 1962. Section 112 (b) of Customs Act, 1962 is reproduced below for the ease of ready reference:

"Any person, -

(a)

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods



[Handwritten signature]

which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

..

3.3 The prime requirement of Section 112 (b) is that the concerned person must have knowledge or reason to believe that goods are liable to confiscation under section 111. However, the Adjudicating Authority has not cited an iota of evidence to show that the appellant had any knowledge about presence of the goods on board at the time of taking over the vessel at port Penang or at any point prior to entry into India. In his statement dated 07.07.2022, the appellant has repeatedly explained to the Custom officers about the circumstances in which he took over the vessel, owing to which, they could prepare only part-inventory and that inventory of the particular store from which incriminating goods were found could not be prepared due to minimum manpower and paucity of time. These facts have not been challenged and rebutted in the Show Cause Notice as well as impugned order.

3.4 The Adjudicating Authority has erred in failing to appreciate that there is no rebuttal in the Show Cause Notice to the facts and circumstances explained by the master owing to which they could not complete the inventory before entry of vessel into India. On the other hand, there is no positive evidence to show that the appellant, who was only shipping agent who was acting on the basis of information received from master, had prior knowledge about presence of such goods in one of the stores and despite such knowledge, the appellant went ahead and filed an incomplete prior Import General Manifest. Unless knowledge is alleged and established, the requirement of Section 112 (b) of Customs Act, 1962 is not satisfied.

3.5 The Adjudicating Authority has imposed penalty on appellant under section 112 (b) by citing failure to declare the prohibited goods in the Import General Manifest. In this regard, the appellant has submitted that failure per se is not covered under the provisions of Section 112 (b). The appellant has submitted that the Adjudicating Authority has relied on the decision of Hon'ble High Court of Madras in the case of Caravel Logistics P. Ltd., 2016 (338) ELT 266 (Mad.) is misplaced inasmuch as the same does not deal with Section 112 (b) of Customs Act, 1962.

3.6 The appellant has submitted that Section 112 (b) of Customs Act, 1962 does not deal with inability to complete the inventory for the purpose



of filing Import General Manifest. It is also submitted that there is no evidence to show that appellant had deliberately brought the incriminating goods into India with an intention to contravention the provisions of Customs Act, 1962 and to make monetary gain.

3.7 The appellant has submitted that in the absence of any positive evidence against appellant, the Adjudicating Authority ought to have followed the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v/s State of Orissa, 1978 (2) ELT (J159)(S.C.) by not imposing penalty under Section 112.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 08.01.2025 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 and also relied upon Shahi Containers 2003 (158) ELT 51 (Tri-Mumbai) to support quashing of penalty. Due to change in Appellate Authority, fresh Personal hearing was held on 20.05.2025 in virtual mode. Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs (Preventive), Jamnagar and the defense put forth by the Appellant in their appeal.

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



(i) Whether the imposition of penalty on Shri Vinay Singh Katoch, Master of the Vessel (Appellant) under Section 112(b) of the Customs Act, 1962, is legal and proper in the facts and circumstances of the case, particularly in light of the requirement of mens rea and the role of the Shipping Agent.

5.2 The core of this case revolves around the responsibility of the Master of a vessel for goods carried on board, especially those that are prohibited and

unmanifested. Section 2(31) of the Customs Act, 1962, unequivocally defines the "person in charge" of a vessel as its master. Section 30 mandates the filing of a true and complete import manifest. The Master, as the person in charge, bears the ultimate responsibility for the proper conduct of the vessel and its contents, including ensuring that no prohibited or undeclared goods are carried.

5.3 The goods in question, Electronic Nicotine Dispensing Devices (E-Cigarettes) and their refills, are absolutely prohibited for import into India under "The Prohibition of Electronic Cigarettes (production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Ordinance, 2019," subsequently enacted as an Act. This prohibition is a matter of public policy and health.

5.4 The Appellant's defense hinges on "oversight," "lack of manpower/time," and "improper handover." While these circumstances might present practical difficulties, they cannot absolve the Master of his statutory obligations, especially concerning prohibited goods. The Master, upon taking charge of a vessel, is expected to exercise a high degree of diligence and conduct a thorough inventory, particularly before entering the territorial waters of a country where specific import prohibitions may exist. The very act of taking over a vessel without a complete, verified inventory, especially one with numerous cabins and stores, amounts to a significant lapse in due diligence.

5.5 Section 112(b) of the Customs Act, 1962, imposes a penalty on any person who "acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111." The crucial phrase here is "reason to believe." It does not require absolute knowledge, but rather circumstances that would lead a reasonable person, in the position of the Master, to suspect the presence of such goods. The failure to conduct a proper inventory, despite the challenges, indicates a lack of due diligence which translates into having "reason to believe" that undeclared or prohibited items might be present.

5.6 The argument that Section 112(b) does not deal with the inability to complete inventory is a misinterpretation. The inability to complete inventory, if it leads to the presence of unmanifested and prohibited goods, directly relates to "carrying" or "keeping" such goods without proper declaration, which falls squarely within the ambit of Section 112(b) if the Master had "reason to believe."



5.7 The Appellant's reliance on *Hindustan Steel Ltd. v/s State of Orissa* [1978 (2) ELT (J159) (S.C.)] for the absence of mens rea is misplaced in the context of the present case. The Supreme Court in *Hindustan Steel* held that penalty would not ordinarily be imposed for "technical or venial breach" or where the breach flows from a bona fide belief. However, the import of absolutely prohibited goods like E-cigarettes is not a "technical or venial breach" but a serious contravention with significant public health implications. The Master's duty is not merely procedural; it involves ensuring compliance with all laws governing the entry of goods into the country. The failure to declare prohibited goods, whether through "oversight" or "lack of manpower," is a substantial lapse, not a minor technicality. The adjudicating authority correctly observed that the Master "cannot shift his responsibility on the one or the other ground to the other."

5.8 Furthermore, the Appellant's own cited judgment, *Shahi Containers v/s Commissioner of Customs (Import), Mumbai*, 2003 (158) ELT 51 (Tri. - Mumbai), while setting aside penalties on the steamer agent/slot charterer, explicitly states that "the responsibility for filing full and correct manifest lies upon the master of the vessel." This judgment, therefore, indirectly supports the adjudicating authority's decision to penalize the Master, as it clearly places the primary burden of correct manifestation on him.

5.9 The argument regarding natural justice, claiming that Section 112(b) was not explicitly invoked in the notice, is also not strong. The Show Cause Notice clearly proposed penalty under Section 112 of the Customs Act, 1962, and detailed the facts of unmanifested and prohibited goods. The Appellant had ample opportunity to present his defense against the charges, which he did. The specific sub-section (b) is a legal conclusion drawn from the facts presented, and the Appellant was fully aware of the factual basis for the penalty.

5.10 The adjudicating authority's finding that the Master was not "unaware" of the prohibited goods, even if not explicitly detailing the "reason," can be inferred from the Master's position and the expected standard of due diligence. A Master taking charge of a vessel, especially one destined for breaking, is expected to conduct a thorough check of all areas, particularly those that could conceal goods, and to ensure proper documentation. The failure to do so, leading to the discovery of a significant quantity of prohibited items, points



to a clear failure in the discharge of his duties, rendering him liable under Section 112(b).

5.11 Based on the foregoing detailed discussion and findings, I find no infirmity in the impugned order passed by the Additional Commissioner. The Master of the Vessel, Shri Vinay Singh Katoch, as the person in charge, had the paramount responsibility to ensure that no prohibited goods were on board and that the manifest was accurate. His arguments of oversight, lack of manpower, and improper handover do not absolve him of this fundamental duty, especially given the absolute prohibition on the imported E-cigarettes. The presence of such a large quantity of unmanifested, prohibited goods on the vessel under his charge clearly indicates a failure to exercise due diligence, establishing the "reason to believe" required under Section 112(b) of the Customs Act, 1962. The penalty imposed is commensurate with the gravity of the contravention.

6. In view of the above findings, I hold that the Master of the Vessel, Shri Vinay Singh Katoch, failed to discharge his statutory obligations under the Customs Act, 1962, by allowing prohibited goods to be on board and unmanifested. Consequently, the penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) imposed on Shri Vinay Singh Katoch under Section 112(b) of the Customs Act, 1962, vide Order-in-Original No. 19/Additional Commissioner/2022-23 dated 31.03.2023, is hereby upheld.

The appeal filed by Shri Vinay Singh Katoch is hereby rejected.

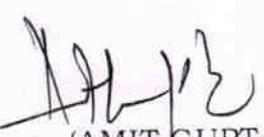


सत्यापित्/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

F. No. S/49-11/CUS/JMN/2023-24

1015

By Registered Post A.D/E-Mail


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

Date: 30.05.2025

To,

✓ Shri Vinay Singh Katoch,
402, Prashant Residency, B-wing,
Mumbai-Pune Highway, Near IDBI Bank,
Chinchwad Station, Pune – 411 019,

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs, Custom (Preventive), Jamnagar.
4. Guard File.



