सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250671MN0000116934

क	फ़ाइल संख्या FILE NO.	S/49-442/CUS/AHD/23-24
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)	AHM-CUSTM-000-APP-69-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 04/AR/ADC/TUMB/2023-24, dated 23.12.2023 passed by the Additional Commissioner of Customs, i/c ICD-Tumb.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Phoenix Industries Limited Plot no. 16, Survey no. 328/1/1/2, Masat Industrial Area, Silvassa, Dadra Nagar Haveli.

★	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.

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

4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, 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)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (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

M/s Phoenix Industries Limited, Plot no. 16, Survey no. 328/1/1/2, Masat Industrial Area, Silvassa, (hereinafter referred to as the 'Appellant') has filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 04/AR/ADC/TUMB/2023-24, dated 23.12.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, I/c ICD Tumb, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed Bill of Entry No. 8938253 dated 25.11.2023 (hereinafter referred to as the said 'Bill of Entry') under Section 46 of the Customs Act, 1962 for importing Aluminium Scrap from M/s. Schnitzer Steel Industries, INC, Oregon, USA vide Bill of Lading No. NAM9404848. The details of quantity declared in the import documents and actual quantity received in the ICD, Tumb as per the weighment is as follows:

Sr. No.	Container No.	Declared Quantity as per import documents (in MTS)	Actual Quantity received as per weighment slip (in MTS)	Excess quantity (in MTS)
1	TCNU 3479783	3.11 + 11.302 + 4.615 =19.027	19.16	0.133
2	TLUU 873358	8.799	19.28	10.481
	Total	27.826	38.44	10.614

2.1 It appeared that the appellant had mis-declared the quantity of the imported goods in order to evade the payment of Customs duty leviable on actual quantity of import goods. Thus, it appeared that the appellant had contravened the provisions of sub-section (4) of Section 46 of the Customs Act,1962, inasmuch as they had mis-declared the imported goods quantity in the Bill of Entry.

2.2 Since the quantity of the imported goods found during the course of examination were not as per declaration in the imported documents i.e. Bill of Entry, Bill of Lading, Commercial Invoice, it appeared that the appellant by way of mis-declared the imported goods quantity and thereby wrongly self assessed the said Bill of entry, and contravened the provisions of Custom Act, 1962. Thereby it appeared that the said goods were liable to confiscation under Section 111(l) & Section 111(m) of the Customs Act,1962. The goods imported vide Bill of Entry

No. 8938253 dt. 25.11.2023 having total declared value of Rs. 37,33,744/- (value of undeclared quantity not included) were placed under seizure vide seizure memo dated 14.12.2023 under reasonable belief that the same were liable to be confiscated under Section 111(l) & Section 111 (m) of the Customs Act, 1962.

2.3 Shri Amit Sangai, Director of M/s Phoenix Industries Ltd and Shri H K Hirani, Consultant appeared before the adjudicating authority for hearing and they requested to amend the subject Bill of Entry under section 149 of the Customs Act 1962. They further submitted that they were willing to pay payment of amendment fee & nominal penalty. It was submitted that this was not the mistake of importer and that the importer is an AEO client, a lenient view may be taken. It was further submitted that Shri H K Hirani, Consultant, was well aware of the Customs Law & provisions and they have requested for waiver of SCN.

2.4 The adjudicating authority vide the impugned order as ordered as under:

(i) He ordered to reject the declared quantity of 27.826 MTS of the imported goods and re-assess the BE as per actual quantity of the imported goods as 38.44 MTS. Accordingly, he ordered to confirm the demand of duty BCD amounting to Rs. 1,29,049/-, SWS Rs. 12,904/- & IGST Rs. 9,54,705/- on the actual quantity on the imported goods. Further, he appropriated the payment as BCD of Rs. 93,344/-, SWS Rs. 9,334/- & IGST Rs. 6,90,556/- made by the importer vide challan no. 2046802859 dated 28.11.2023 and ordered to recover the differential BCD Rs. 35,705/-, SWS Rs. 3,571/- & IGST Rs. 2,64,149/- short paid by the appellant on the actual quantity of the imported goods.

(ii) He ordered to recover interest on duty confirmed under Section 28AA of the Customs Act, 1962, as applicable.

(iii) He ordered for confiscation of the 38.44 MTS of the imported goods having an assessable value of Rs. 51,61,964/- (Rupees Fifty-One Lakh Sixty-One Thousand Nine Hundred Sixty-Four Only), under Section 111(l) & 111(m) of the Customs Act, 1962. However, he gave an option to the appellant to redeem the imported goods on payment of redemption fine of Rs.5,16,196/- (Rupees Five Lakh Sixteen Thousand One Hundred Ninety-Six Only) under Section 125 ibid.

(iv) He imposed penalty of Rs. 10,96,659/- (Rupees Ten Lakh Ninety-Six Thousand Six Hundred Fifty-Nine Only) upon the appellant under Section 114A of the Customs Act, 1962. Further, where subject determined duty and interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty so determined, Provided further that the benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso.

(v) He imposed penalty of Rs 10,96,659/- (Rupees Ten Lakh Ninety-Six Thousand Six Hundred Fifty-Nine Only) upon the appellant under Section 114AA of the Customs Act, 1962.

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 the Order-in-Original dated 23.12.2023 passed by the adjudicating authority is ex-facie arbitrary to the extent that it seeks to confiscate the goods under Section 111(1) and (m) of the Act and imposes fine in lieu of confiscation and impose penalty under Section 114A and 114AA of the Act. The Appellant has submitted that in the present appeal challenge is only to the confiscation of the goods, fine imposed in lieu of confiscation and penalties imposed on the Appellant. The Appellant has accepted and paid the differential duty and interest as assessed by the adjudicating authority and is not challenging the same.

3.2 The Appellant has submitted that the Appellant regularly imports goods through various ports across India, ICD Tumb, and till date has never been involved in any irregularities. It is submitted that the Appellant is registered as an AEO and the said registration is granted only after thorough verification of records and credentials of the Appellant. It is submitted that the Bill of Entry dated 25.11.2023 was filed by the Appellant on the basis of invoice and bill of lading provided by the foreign supplier, prior to the arrival of the goods. It is submitted that the Appellant was under a bonafide belief that the quantity mentioned by the

foreign supplier in commercial invoice and bill of lading was correct and duly verified by the customs department of exporting country. It is submitted that the actual weight of the imported goods was made known to the Appellant only after the arrival of the shipment in ICD. It is submitted that until the imported goods physically arrive at the ICD and the same is re-weighed by the custodian, the Appellant cannot be expected to be aware about such errors. It is submitted that it was the foreign supplier who wrongly stated the quantity of the imported goods in its invoice and not the Appellant who deliberately stated lower quantity in the Bill of Entry to evade duty. It is submitted that the Adjudicating Authority has erred in holding that there was no document on record from the supplier's end regarding the misdeclaration of quantity being the mistake of the supplier.

3.3 It is submitted that the Appellant had declared the quantity of goods based on the invoice and bill of lading provided by the supplier and the same were produced at the time of presentation of the bill of entry dated 25.11.2023 and were also brought on record at the time of hearing afforded to the Appellant. The Appellant accepted the differential quantity of the imported goods and voluntarily agreed to pay the differential duty on the said excess quantity. Further the Appellant had also applied for amendment of the Bill of Entry to rectify the quantity of the imported goods and also requested the Adjudicating Authority to recall and reassess the Bill of Entry dated 25.11.2023.

3.4 It is submitted that the Adjudicating Authority has erred in holding that the misdeclaration of weight in the marine containers is a serious issue in light of the International Convention for Safety of Life at Sea (SOLAS) wherein the declared weight of the containers is an essential criterion for stacking of vessel. It is submitted that the misdeclaration of quantity in the Bill of Entry has no relation to the International Convention for Safety of Life at Sea and the stacking of containers in the vessel. The Appellant specifically requested the Adjudicating Authority to take lenient view in the present matter considering the track record of the Appellant as well as the bonafide of the Appellant.

3.5 It is submitted that the Adjudicating Authority, instead of agreeing to above submissions of the Appellant, has passed the impugned Order holding that the Appellant intentionally mis declared the quantity of the imported goods with an intention to evade payment of duty and arbitrarily and illegally imposed hefty

penalties and redemption fine on the Appellant. It is submitted that the Adjudicating Authority has erred in holding that with the contravention of the provisions of the Act on record, the penal provisions of Act are attracted in subject matter. Further the Adjudicating Authority has erred in holding that unequal treatment before the statutory provisions of Act cannot be accorded to the Appellant and the same is not envisaged in the law.

3.6 It is submitted that the Adjudicating Authority has erred in holding the goods were liable for confiscation under Section 111(1) and 111(m) of the Act, on the ground that the Appellant has contravened the provisions of Section 46(4) of the Act by mis-declaring the quantity of goods imported and thereby mis-declaring the true value of the goods. It is submitted that, at the time of filing the Bill of Entry dated 25.11.2023, the Appellant had submitted the commercial invoice, Bill of Lading, PreShipment Certificate and Certificate of Origin provided by the supplier. It is submitted that the declarations in the said Bill of Entry was made basis the aforesaid documents provided by the supplier and the Appellant bonafidely believed the same to be correct. It is submitted that the Appellant was completely unaware about the error made by the supplier in declaring the quantity of the imported goods in aforesaid documents and the same was known only when the goods were weighed upon its arrival at ICD.

3.7 It is submitted that in the present case the Appellant had made true and correct declaration basis the documents received by them from the foreign supplier and had submitted the said documents before the proper officer at the time of presenting the Bill of Entry. It is submitted that difference in the quantity of the imported goods was made known to the Appellant only when the actual weighment was done at ICD and the said differential weight was accepted by the Appellant without any protest. It is submitted that it is not the case of deliberate stating lower quantity of imported goods that too of 10.611 MTS, the basic duty value on which is Rs. 35,705 only. In view of the above, it is submitted that the Appellant has not contravened the provisions of Section 46(4) of the Act and has not wilfully mis-declared the quantity and value of goods.

3.8 In terms of Section 111(1) goods are liable for confiscation only when the said goods are not included or are in excess of those included in the entry made under this Act. It is submitted that in the present case there is no wilful

misdeclaration of the imported goods resulting in short payment of duty and the declaration of short quantity of imported goods was due to inadvertence and the wrong mentioning of the said quantity on the import documents as provided by the supplier. As submitted above, the Appellant had voluntarily accepted to pay the differential duty on the said differential quantity and the same has been accepted by the department. Thus, it is submitted that the imported goods are not liable for confiscation under Section 111(1) of the Act.

3.9 In any event and without prejudice to the above, Section 111(1) provides for confiscation of only the excess quantity of the imported goods and not the whole consignment. It is submitted that Section 111(1) very categorical provides that it applies to goods found in excess of what have been declared and thus the excess goods are liable for confiscation and not the entire consignment imported by the Appellant. Reliance in this regard is placed on the judgment in case of Bikash Saha vs Principal Commr. Of Customs (Preventive), Kolkata, 2020 (372) E.L.T. 884 (Tri. - Kolkata). Thus, it is submitted that the confiscation of the remaining goods properly declared in the Bill of Entry is not supported by law and accordingly needs to be set aside.

3.10 In the present case the Bill of Entry was filed basis the document provided by the foreign supplier and the Appellant was unaware about the short quantity mentioned in the import documents by the said supplier. It is not the case of the department that the description or the value of the goods do not correspond with respect to the particulars entered in the Bill of Entry filed by the Appellant. The only error was that of the quantity of the goods stated in the Bill of Entry. As submitted above, the Appellant voluntarily agreed to the excess quantity of the imported goods and agreed to pay the differential duty on the same. The Appellant also applied for amendment of the Bill of Entry to correct quantity of imported goods. It is not the case that the Appellant knowingly mis declared the quantity of the imported goods inspite of knowing that the same shall be liable for confiscation under Section 111. Thus, in view of the above, the goods are not liable for confiscation under Section 111(m) of the Act.

3.11 The Adjudicating Authority has erred in holding that the issue of misdeclaration of weight in the marine containers a serious issue in light of the International Convention for Safety of Life at Sea (SOLAS), wherein inter alia, the declared weight of the containers is an essential criteria for stacking the

containers in the vessel which has bearing on the safety of navigation. The Adjudicating Authority has erred in holding that there are no documents on record from the supplier's end regarding the error of mis declared quantity was on account of their mistake nor any Customs Document of the exporting country substantiating the defence of the Appellant that it was the supplier's mistake. There are no revised Export Country Customs documents and invoices raised by supplier in this regard.

3.12 The Adjudicating Authority has erred in holding that with the contravention of the provisions of Section 46(4) of the Act, the mis-declaration of quantity and thereby the mis-declaration of true value for customs assessment purpose and in light of the SOLAS, 1974 Safety of life at sea convention and with no supporting documents from suppliers Customs Department substantiating any mistake of the supplier in this case, the goods are liable to confiscation under Section 111(1), (m) of the Act.

3.13 It is submitted that Section 125 of the Act provides for redemption of confiscated goods upon payment of fine of such amount as the proper office may think fit. In the present case, since the imported goods are not liable for confiscation, no redemption fine can be imposed on the Appellant. The Adjudicating Authority has erred in holding that the goods imported by the Appellant may be redeemed on payment of redemption fine. The judgement relied upon by the Adjudicating Authority in the impugned is inapplicable to the present case. In view of the above, the Adjudicating Authority is not justified in holding the goods liable for confiscation under Section 111(1) and 111(m) of the Act and imposing redemption fine in lieu of confiscation of said goods. The same is liable to be set aside.

3.14 It is submitted that the Adjudicating Authority has erred in imposing a penalty of ₹ 10,96,659 under Section 114A of the Act for the short payment of duty on account of the purported misstatement and suppression of fact regarding the quantity of goods. Penalty under Section 114A of the Act can be imposed only in cases where duty has not been paid or short paid by the tax payer by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of provisions with an intention to evade duty. As submitted above, in the present there was genuine error in the documents provided by the supplier to the Appellant basis which the Bill of Entry was filed by the Appellant. There was no

misdeclaration or misrepresentation on part of the Appellant. Further, the bonafide of the Appellant is proved from the fact that the Appellant applied for amendment of the Bill of Entry to declare correct weight of the imported goods and voluntarily offered to pay the differential duty on the said additional quantity of the imported goods.

3.15 It is a well-settled principle of law that where there is no demand of duty, penalty cannot be imposed - Coolade Beverages Limited reported in (2004) 172 ELT 451 (All). It is a settled principle of law that mere allegation is not enough and that the onus on the department is not discharged until malafide intention is demonstrated. In the present case, there is no event which has been brought up to indicate that there was any malafide intention on the part of the Appellant. Therefore, it is submitted that it would be untenable and unjustifiable for the Department to purport to levy penalty on the Appellant on the ground of intent to evade the payment of duty. It is therefore submitted that, no penalty ought to be levied in the present case under Section 114A and the penalty proceedings need to be dropped. Thus, in the present case there can be no malafide intention with any intention to evade payment duty, more so when the amount of basic customs duty is ₹ 35,705.

3.16 In Hindustan Steel Ltd. v State of Orissa reported at 1969 (2) SSC 627 the Hon'ble Apex Court has observed as under:

> "..... Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose penalty where there is a technical or venial breach of the provisions of the act or where the breach flows from the bona fide belief that the offender is not liable to act in manner prescribed in the statute".

3.17 It is submitted that the Adjudicating Authority has erred in imposing a penalty of Rs. 10,96,659/- under Section 114AA of the Act for the purported misdeclaration of quantity. The Adjudicating Authority has erred in holding that as the Appellant has submitted subject Bill of entry with incorrect material

particulars and thereby using such documents and declaring incorrect material particulars in the transaction of subject business for the purposes of Act, has rendered the themselves liable to penalty under Section 114AA Custom Act. It is submitted that the Section 114AA of the Act mandates imposition of penalty where any person who in relation to any goods knowingly or intentionally makes, signs or uses, or causes to be made or used, any declaration, statement or document which is false or incorrect in any material particular. It is submitted that the provisions of Section 114AA are applicable only on the individual person and not to artificial person who are incapable of doing any acts stated therein to render themselves to penal action.

3.18 It is submitted that the Appellant lacks mind and body and thus as an artificial person cannot think, act or perform of its own for the purpose of undertaking the practical business activities. It is submitted that the Appellant is run by Board of Directors and other key management personnels, who are natural living person, and they run the business of the Appellant by taking appropriate decision. Reliance is place on the judgment in the case of Axiom Cordages Ltd. vs Commissioner of Customs, Nhava Sheva-II, (2023) 4 Centax 120 (Tri.Bom). Thus, on this ground alone penalty under Section 114AA ought to be set aside.

3.19 It is submitted in order to confirm the penalty under Section 114AA of the Act, sufficient evidence shall be brought on record to prove that the concerned person had the knowledge and intention to make an incorrect or false declaration. Reliance is place on M/s Kamal Sehgal Vs. The Commissioner Customs (Appeals) 2020 (2) TMI 1009 - CESTAT NEW DELHI. It is submitted that, in the present matter, no evidence is apparent from the record and no finding has been given by the Adjudicating Authority to prove that the Appellant had intentionally mis declared the quantity of goods with an ulterior motive of evasion of duty. Therefore, in view of the above, no penalty under Section 114AA of the Act can be imposed upon the Appellant.

3.20 It is submitted that vide letter dated 02.12.2023 and 11.12.2023, requested the Deputy Commissioner to permit the amendment of the Bill of Entry in respect of the quantity declared. Section 149 of the Act provides for the amendment of the Bill of Entry presented at the customs subject to existence of the documents as prevailing on the date of import. In the present case since the

goods were not cleared for home consumption and the documents as on the date of import were available with the department, the Appellant could have been permitted to amend the Bill of Entry. It is submitted that the Appellant during the course of personal also requested the Adjudicating Authority to recall the Bill of Entry and permit them to amend the same and post the said amendment reassess the Bill of Entry under Section 17(4) of the Act. The Adjudicating Authority has erred in holding that no substantiating document is on record reflecting the true quantity of the imported goods have been submitted by the Appellant and accordingly the amendment cannot be permitted. It is submitted that had the Adjudicating Authority permitted the Appellant to amend the Bill of Entry the entire proceedings would have ended and the Appellant would have paid the entire duty based on the amended, reassessed Bill of Entry.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 13.05.2025 following the principles of natural justice wherein Shri S J Vyas, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made at the time of filing the appeal and also submitted letter dated 13.05.2025, wherein he submitted that the duty is adv. and is therefore payable on transaction value. Here, in the facts present case, the issue pertains to differences in quantity of scarp imported and there is no allegation /evidence / finding that the difference in quantity has resulted in different amount payable to foreign supplier. Therefore, the amount payable, that is, duty on the transaction value, has remained unchanged. It is this value which is basis for ascertainment of custom duty. Since there is no change in the transaction value, the duty liability cannot undergo any change. Therefore, the appellant is not liable to pay the differential duty. Since the same is not challenged, the appellant would not claim refund of the same. However, the duty liability has material impact on the penalty and interest liability and therefore is relevant. Since the duty is not payable, question of interest or penalty under section 114A would not arise.

4.1 It is submitted that entire quantity imported is ordered to be confiscated under the order. It is submitted that the confiscation should be restricted to the excess quantity found, that is 10.614 MT, valued at Rs. 14,28,220/-. Hence, the order of confiscation and redemption fine requires modification. RF of 10%, on the entire value is incorrect. It is submitted that the

redemption fine should be proportionate to the possible benefit due or accrued on account of accidental declaration of short quantity. The only difference in duty would be that of customs duty (Rs. 39,305/-) excluding IGST (Rs 2,64,150) (Since the credit of IGST was otherwise eligible and available to the appellant) the quantum of RF requires substantial reduction.

4.2 It is submitted that this penalty would not be imposable since there is no difference duty payable as per detailed submissions made above regarding the duty liability. Furthermore, differential custom duty also includes the IGST portion. It is submitted that in respect of the IGST portion, neither the penalty nor interest is payable. In this connection appellant referred to and relied upon the Tribunal decision in the case of Chiripal Poly films Limited reported in 2024 (9) TMI 940 and MAHINDRA & MAHINDRA LTD. – 2022 (10) TMI 212 - BOMBAY HIGH COURT.

4.3 As regards penalty under section 114AA and 114A, it is submitted that the section applies only where there is intention to evade tax. There must be, knowingly or intentionally, false declaration made or incorrect particulars are furnished. In the facts of present case, the error is only on the part of foreign supplier. Appellant had made declaration based upon the invoice and other documents such as bill of lading, et cetera. These documents clearly show the weight that was shown by the appellant in the bill of entry. The foreign supplier had shipped excess quantity resulting into the present proceedings. Since appellant had no role to play and none is alleged or found in the order, penalty under section 114AA would never arise.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, I/c ICD Tumb, Ahmedabad Customs 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 required to be decided in the present appeals which are as follows:

(i) Whether differential duty is payable on the excess quantity of imported goods.

(ii) Whether the confiscation of the entire consignment and the redemption

fine imposed are justified and proportionate.

(iii) Whether the penalties imposed under Section 114A and Section 114AA of the Customs Act, 1962, are sustainable, especially concerning the IGST component and the presence of mens rea.

5.2 The Appellant's contention that no differential duty is payable because the transaction value remained unchanged is not entirely correct. While customs duty is indeed levied on the transaction value, the transaction value itself is defined under Section 14 of the Customs Act, 1962, as the price actually paid or payable for the goods when sold for export to India. If the quantity of goods imported is more than declared, it implies that the "price actually paid or payable" should correspond to the actual quantity received. Even if the invoice value remains the same, the per unit value would change, or the total value for the actual quantity received would be higher, leading to a higher assessable value and thus higher duty. The Customs Act levies duty on the goods imported, and if more goods are imported than declared, duty is leviable on the actual quantity. The adjudicating authority was correct in re-assessing the Bill of Entry based on the actual quantity found and demanding differential duty. The Appellant has also paid this differential duty, albeit under protest, which indicates their acceptance of the duty liability on the actual quantity.

5.3 Section 111(l) of the Customs Act, 1962, provides for confiscation of "any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act." Section 111(m) provides for confiscation of "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act." In this case, there was an excess quantity of dutiable goods (Aluminium Scrap) found, which falls squarely under Section 111(l). Therefore, the goods are liable for confiscation.

5.4 However, the question arises whether the entire consignment should be confiscated or only the excess quantity. When only a part of the consignment is found to be in contravention (i.e., excess quantity), and the remaining part is in order, the confiscation should ideally be limited to the offending portion. The adjudicating authority has ordered confiscation of the entire 38.44 MTS. While the entire consignment might be considered "related" to the contravention, in cases of excess quantity, the confiscation of the entire lot, including the legitimately declared portion, can be disproportionate.

5.5 Regarding the redemption fine, Section 125 of the Customs Act, 1962, allows for an option to pay a fine in lieu of confiscation, not exceeding the market price of the goods. The Appellant has argued that the redemption fine should be reduced, especially considering the IGST component is revenue neutral due to ITC availability. The Hon'ble Bombay High Court in MAHINDRA & MAHINDRA LTD. - 2022 (10) TMI 212 - BOMBAY HIGH COURT, while dealing with penalties and interest, observed that where there was no organized racketeering leading to evasion of duty but undervaluation, penalties were waived or reduced. While the context was different (settlement commission), the principle of proportionality and the absence of mala fide intent can be considered. The CESTAT Ahmedabad in Chiripal Poly Films Limited, 2024 (9) TMI 940 - CESTAT AHMEDABAD, specifically held that "the orders for recovery of interest, fine and Penalty on late payment of the IGST leviable under Section 3 (7) or under Section 3 (12) of Customs Tariff Act 1975" are not sustainable in the absence of specific charging provisions for interest, fine, and penalty under those sections. The Tribunal noted that the situation was revenue neutral for the appellant due to ITC availability. This judgment, while primarily dealing with IGST, reinforces the idea that where the revenue impact is neutralized, the severity of fine and penalty might be mitigated.

5.6 Considering that the excess quantity was due to a supplier's mistake, and the Appellant promptly sought to rectify it and pay the differential duty, and further, given the revenue-neutral aspect of the IGST portion for the Appellant (who is a manufacturer and can avail ITC), the redemption fine imposed on the entire consignment appears excessive and disproportionate. A more lenient view, focusing on the actual revenue loss (BCD only) and the absence of mens rea, is warranted.

5.7 Section 114A applies when duty has not been levied or has been short-levied "by reason of collusion or any wilful mis-statement or suppression of facts." The penalty is equal to the duty or interest so determined. The Appellant has argued that there was no mens rea (intention to evade duty) and the error was of the supplier.

5.8 The Chiripal Poly Films Limited (supra) judgment is highly relevant here. The CESTAT clearly stated that "for recovery of IGST on import of goods,

provisions are made under section 3 (7) of Customs Tariff Act 1975. However, no specific provision is made for recovery or charging of Interest, Fine and Penalty u/s 3 (7) or 3 (12) of Customs Tariff Act 1975... Therefore, the orders for recovery of interest, fine and Penalty on late payment of the IGST... are not sustainable." This implies that penalty under Section 114A, which is linked to duty, might not be leviable on the IGST component of the differential duty.

5.9 IGST is leviable under Section 3(7) of the Customs Tariff Act, 1975, unlike Basic Customs duty, which is leviable under Section 12 of the Customs Act, 1962. The issue, whether there existed a provision for charging interest and imposing penalties on levies like IGST under Section 3 of the Customs Tariff Act is no longer *res integra*. The Hon'ble Bombay High Court, in the case of ***Mahindra & Mahindra Ltd.***, reported at (2023) 3 Centax 261 (Bom), categorically held that the imposition of penalty and charge of interest under the then Section 3 (6) of the Customs Tariff Act (now renumbered as Section 3(12)) is not sustainable in respect of duties levied under Section 3. This ruling was affirmed by the Hon'ble Supreme Court vide order dated 28.07.2023 in Special Leave Petition (Civil) Diary No. 18824/2023. Furthermore, the department's review petition against the said order was also dismissed by the Hon'ble Supreme Court on 09.01.2024 in SLP (C) No. 16214/2023.

5.10 It is pertinent to mention that the Hon'ble Bombay High Court reaffirmed the above legal position in the case of ***A R Sulphonates Pvt. Ltd.***, reported at (2025) 29 Centax 212 (Bom). In that case, which involved similar facts concerning the chargeability of interest and imposition of penalty for delayed payment of IGST, the Court categorically held that neither interest can be levied nor penalty can be imposed in respect of such IGST demands. The relevant Para of the said Judgment are reproduced below:

> *"66. Further, as far as the applicability of Section 3 (12), after its amendment by Finance (No. 2) Act, 2024, dated 16th August,2024, is concerned, it would be appropriate to first refer to the provisions of the amended Section 3 (12) of the Tariff Act. Amended Section 3 (12) of the Tariff Act reads as under:-*
>
> *"12:- The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to*

those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."

67. In our view, the amended Section 3 (12) of the Tariff Act is prospective in nature and would apply only with effect from 16th August, 2024."

... ...

76. For all the aforesaid reasons, we pass the following orders: -

(i) It is declared that Circular No.16 of 2023-Customs dated 7th June, 2023, to the extent that it purports to levy interest upon the IGST payment, is beyond the provisions of the Customs Tariff Act, 1975 and is bad in law;

(ii) The impugned Order dated 1st August, 2024, to the extent that it seeks to recover interest, confiscate goods, impose redemption fine and impose penalty, is quashed and set aside;

(iii) It is declared that the amendment to the provisions of Section 3 (12) of the Customs Tariff Act, 1975 by Finance (No.2) Act, 2024 dated 16th August, 2024 is prospective in nature and is applicable only from 16th August, 2024 onwards;

... ..."

In view of the above factual as well as legal position, I agree with the contention of the appellant to the effect that interest, penalties and redemption fine are not leviable for short-payment of IGST for the period prior to 16.08.2024. However, with effect from 16.08.2024, the provisions of Section 3 of the Customs Tariff Act, 1975 have been amended. As per the amended Section 3(12) of the Customs Tariff Act, 1975, the provisions of charging interest under the Customs Act, 1962 are made applicable for the IGST leviable under the Customs Tariff Act, 1975. Further, the said amended of Section 3(12) is prospective in nature and applicable from 16.08.2024, as held by Hon'ble Bombay High Court in the case of ***M/s A R Sulphonates Pvt. Ltd.*** (supra).

5.11 In view of the above, I hold that Interest on short payment of IGST amounting to Rs.2,64,149/- is not leviable for the period upto 16.08.2024. However, I hold that interest under Section 28AA of the Customs Act, 1962 read with the amended Section 3(12) of the Customs Tariff Act, 1975, is chargeable from 16.08.2024 on the said amount of IGST short-paid.

5.12 Furthermore, for a penalty under Section 114A, the element of mens rea (collusion, wilful mis-statement, or suppression of facts) is essential. The Appellant's prompt action to inform customs and seek amendment, coupled with the submission that the error was on the supplier's part, suggests a lack of mala fide intent. While the adjudicating authority might argue that the importer is responsible for the accuracy of their declarations, the degree of culpability for penalty purposes needs careful consideration.

5.13 Section 114AA imposes a penalty on a person who "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." This section explicitly requires "knowingly or intentionally" false or incorrect information. The Appellant's consistent stand is that the excess quantity was due to the supplier's mistake, and they acted promptly upon discovering it. There is no evidence on record to suggest that the Appellant knowingly or intentionally made a false declaration. The initial declaration was based on the documents provided by the supplier. In the absence of concrete evidence proving mens rea on the part of the Appellant, the imposition of penalty under Section 114AA is not sustainable.

5.14 The impugned order cites Chen Gao Sheng Vs Commissioner of Customs (Prev) Kolkata, 2017(348) ELT 35(Tri-Kolkata) to support the imposition of redemption fine and penalty. This case involved outright smuggling of prohibited goods (Red Sanders wood), where the Tribunal upheld confiscation and penalty due to clear mens rea and violation of prohibition. The facts of the present case are vastly different; it involves an excess quantity of dutiable goods, with no evidence of mala fide intent or prohibition. Therefore, the ratio of Chen Gao Sheng is not directly applicable to the present facts, where the Appellant has shown willingness to pay duty and rectify the error.

5.15 While the goods are liable for confiscation due to the excess quantity, the quantum of redemption fine and penalties should be proportionate to the gravity of the contravention and the mens rea involved. In the absence of proven mala fide intent and considering the revenue-neutral aspect of IGST, a reduction in both the redemption fine and penalties is justified. The objective of penalties is not merely to punish but also to deter, and excessive penalties in cases lacking mens rea can be counterproductive to ease of doing business.

6. Based on the detailed discussions and findings, I conclude that while the differential duty on the excess quantity is payable and the goods are liable for confiscation under Section 111(l) of the Customs Act, 1962, the quantum of redemption fine and penalties imposed is disproportionate and not fully justified by the facts and legal precedents. There is no clear evidence of mens rea on the part of the Appellant to evade duty or make a false declaration. Furthermore, the revenue-neutral aspect of the IGST component, as highlighted by the CESTAT in Chiripal Poly Films Limited, should be considered for reduction of financial liabilities.

7. In view of the above findings, I hereby order as under:

(i) I uphold the impugned order to the extent it orders to re-assess Bill of Entry No. 8938253 dated 25.11.2023 as per the actual quantity of 38.44 MTS of imported goods. The undisputed BCD of Rs.1,29,049/-, SWS of Rs.12,904/- and IGST of Rs.9,54,705/- already assessed and paid by the importer before clearance of goods need not to be confirmed under Section 28 of the Customs Act, 1962. However, I uphold confirmation of demand of the short paid of duty of Rs. 3,03,425/- (BCD Rs. 35,705/-, SWS Rs. 3,571/-, and IGST Rs. 2,64,149/-) under the provisions of Section 28 of the Customs Act, 1962. Charging of the interest, on short payment of BCD and SWS under Section 28AA of the Customs Act, 1962, is also upheld. However, on short-payment of IGST, interest is payable under Section 28AA of the Customs Act, 1962 read with the amended Section 3(12) of the Customs Tariff Act, 1975, with effect from 16.08.2024.

(ii) I hold that the declared cargo of 27.826 MT need not to be confiscated. However, I uphold the confiscation of the excess quantity of 10.614 MTS of imported goods under Section 111(l) of the Customs Act, 1962. After

considering the value of confiscated cargo Rs.14,28,220/- and absence of mens rea and the revenue-neutral aspect in respect of IGST, I reduce the redemption fine imposed under Section 125 of the Customs Act, 1962, from Rs. 5,16,196/- to Rs. 1,40,000/- (Rupees One Lakh Forty Thousand Only).

(iii) I reduce the penalty imposed under Section 114A from Rs. 10,96,659/- to Rs. 3,03,425/- (Rupees Three Lakh Three Thousand Four Hundred and Twenty-Five Only), which is equal to amount of duty confirmed under Section 28 of the Customs Act, 1962. However, penalty payable under Section 114A shall be reduced to 25% of duty (25% of 3,03,425/-, i.e. Rs.75,856/-) if the duty, interest and the reduced penalty, as determined hereinabove, is paid within 30 days, as prescribed under Section 114A of the Customs Act, 1962.

(iv) I set aside the penalty of Rs. 10,96,659/- imposed under Section 114AA of the Customs Act, 1962. It is set aside as there is no evidence to suggest that the Appellant knowingly or intentionally made a false or incorrect declaration. The error was on the part of the foreign supplier, and the Appellant acted promptly to rectify it, indicating a lack of mens rea.

The appeal filed by M/s. Phoenix Industries Limited is partly allowed in above terms, with consequential relief, if any, in accordance with law.

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

F.No. S/49-442/CUS/AHD/23-24 Date: 10.06.2025

By E-Mail (As per Section 153(1)(c) of the Customs Act, 1962)

To,
M/s. Phoenix Industries Limited
Plot No. 16, Survey No. 328/1/1/2, Masat Industrial Area, Silvassa - 396 230
Dadra Nagar Haveli. [Email: admin@phoenixalloys.in]

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. [email: ccoahm-guj@nic.in]
2. The Principal Commissioner of Customs, Ahmedabad. [email: cus-ahmd-guj@nic.in , rra-customsahd@gov.in]
3. The Additional Commissioner of Customs, ICD-Tumb. [email: cusicd-tumb@gov.in]
4. The Deputy/Assistant Commissioner, ICD-Tumb. [email: cusicd-tumb@gov.in]
5. Shri. S. J. Vyas, Advocate, Ahmedabad [email: sridevvyas@yahoo.co.in]
6. Guard File.

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