



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
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DIN-20260371MN000000A7A5

क	फ़ाइल संख्या FILE NO.	S/49-92/CUS/MUN/MAY/2025-26
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-937-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/839/ARK/DC/Gr.V/2024-25 dated 13.03.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Balkrishna Industries Limited, B-66 Waluj MIDC, Waluj Industrial Area, Waluj, Aurangabad, Maharashtra, 431136



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)	वैगेज़ 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 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 :
	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 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.



2.5 The Chartered Engineer assessed the FOB value of the impugned goods at EUR 5218.79 and CIF value at EUR 6341.15, which, at the applicable exchange rate of ₹90 per Euro, worked out to ₹5,70,704/-. Based on the said report, it appeared that the appellant had mis-declared the description, including the year of manufacture, as well as the assessable value of the goods.

2.6 In respect of the remaining 13 containers, which had already been cleared and transported to the appellant's premises, the department conducted on-site inspection on 17.01.2025. The physical verification, along with the Chartered Engineer, revealed that the machinery and accessories were new, unused, and in conformity with the declared description. This position was also confirmed in the subsequent Chartered Engineer's report dated 20.01.2025.

2.7 Notwithstanding the above, it appeared to the department that the presence of old and used goods in one container rendered the import in violation of Para 5.01 of FTP 2023, thereby making the goods "prohibited goods" within the meaning of Section 2(33) of the Customs Act, 1962 and rendering them liable for confiscation under Sections 111(d) and 111(m) of the Act.

2.8 Accordingly, a Show Cause Notice was issued proposing confiscation of the impugned goods valued at ₹5,70,704/- under Sections 111(d) and 111(m) of the Customs Act, 1962 and imposition of penalties under Sections 112 and 114AA of the Act.

2.9 The adjudicating authority, vide the impugned order, ordered confiscation of the impugned goods valued at ₹5,70,704/- under Sections 111(d) and 111(m) of the Act, with an option to redeem the same on payment of redemption fine of ₹70,000/- under Section 125 of the Customs Act, 1962. Further, a penalty of ₹2,00,000/- was imposed upon the appellant under Section 112(a)(i) of the Act and an additional penalty of ₹1,00,000/- was imposed under Section 114AA of the Act.



SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Deputy Commissioner, Group 5, Customs House, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well

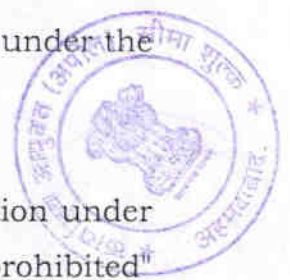
Respondent. However, the same have been examined and the brief is as under:

3.1 The Appellant contends that the imported Body Ply Cutter Cutting Machine is a completely new and unused machine, as verified by a Chartered Engineer's reports dated 07.01.2025 and 20.01.2025. They argue that the machine does not constitute "prohibited" second-hand capital goods under the EPCG Scheme of the Foreign Trade Policy. While some used raw materials (bobbins and spools) were found in one container, these were merely items previously exported for testing and trials at the supplier's facility in Germany and do not qualify as capital goods or parts of the machinery.

3.2 The Appellant submits there was no intentional suppression or willful misdeclaration regarding the used raw materials. The foreign supplier inadvertently included these items in a shipment and failed to list them on the commercial invoice or packing list because they were not part of the original Purchase Order or Letter of Credit. The Appellant relied on these supplier-provided documents in good faith when filing the Bill of Entry. Furthermore, because the used materials belonged to the Appellant and were eligible for duty-free re-import, there was no motive for evasion or material advantage gained by the non-declaration.

3.3 The appeal highlights that the used raw materials are eligible for duty exemption under Notification No. 45/2017-Cus, which governs the re-import of goods previously exported from India. The Appellant argues that had these items been imported separately with the correct documentation, they would have been cleared without duty. Consequently, they request that the impugned order be modified to allow the clearance of these goods for home consumption under the benefit of this notification rather than requiring their re-export.

3.4 The Appellant argues that the goods are not liable for confiscation under Section 111(d) or 111(m) of the Customs Act because they are not "prohibited" and there was no fraudulent misdeclaration of value or description. Consequently, they maintain that redemption fines under Section 125 and penalties under Section 112(a) are unsustainable. They further contend that penalty under Section 114AA is inapplicable, as legal precedents suggest this section was intended to curb fraudulent export transactions ("paper exports") rather than import cases involving bona fide errors.



PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 26.02.2026 following the principles of natural justice wherein Shri Suyog Bhave, Advocate, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Deputy Commissioner, Group 5, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The primary contention of the Adjudicating Authority is that the presence of "old and used" items in the consignment violates the Export Promotion Capital Goods (EPCG) Scheme, which prohibits the import of second-hand capital goods. However, a detailed analysis of the nature of these items and the legal definitions provided in the Foreign Trade Policy (FTP) reveals a significant misinterpretation by the lower authority. The items identified as "old and used" include Empty Shells, GUM Strip Rolls, Body Ply Inserts, Bobbins, and Poly Rolls. According to the Chartered Engineer's report dated 07.01.2025, these specific items were found in used condition, but importantly, the report also notes that "remaining items present in the inspected container... were found in new condition without any usage marks." This confirms that the primary "Body Ply Cutter Cutting Line," which is the core capital good imported under the EPCG authorization, is indeed a new and unused machine.

5.2 To determine if the EPCG scheme's prohibition applies, we must look at the definition of "Capital Goods." As per Para 9.08 of the FTP 2023, "Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services. Appendix 5F of the FTP specifically lists "All second hand Capital Goods" as NOT permitted under the EPCG scheme. In the instant case, the "used" items found are bobbins, shells, and strips. These are fundamentally process materials or consumables used to hold and handle cords during production trials. The Chartered Engineer himself noted that these items are "not standard part or accessories of the main machinery." By definition, if an item is not a "standard part or accessory" of the machinery and is used as a carrier or consumable in a trial run, it cannot be classified as "Capital Goods" for the purpose of the EPCG negative list in Appendix 5F.



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5.3 The Appellant has established that these materials were exported from India to the supplier in Germany solely for the purpose of conducting factory acceptance tests (FAT) of the new machine. Their re-importation, even if packed in the same container as the new machine, does not change the character of the primary machine from "new" to "second-hand." The EPCG Scheme's policy objective is to prevent the misuse of duty exemptions for outdated, second-hand production technology. Importing a brand-new, cutting-edge machine along with the very materials used to test it does not violate this policy.

5.4 Furthermore, the distinction between a "Machine" and its "Packaging/Process Carriers" is well-recognized in customs law. The bobbins and shells are essentially reusable transport or process equipment. Categorizing a brand-new ₹5 Crore+ machine as "prohibited second-hand goods" simply because it contained a few used bobbins worth less than ₹6 Lakhs is a disproportionate and legally unsound conclusion. Therefore, we hold that the Appellant has complied with the EPCG scheme as the actual capital goods imported are new.

5.5 The Adjudicating Authority has proceeded on the assumption that the non-declaration of the old and used raw materials in the Bill of Entry constitutes a "wilful misdeclaration" with an intent to suppress facts. However, for an allegation of wilful misdeclaration or suppression to survive, the Department must prove mens rea—a guilty mind or an intentional act to evade duty. In the present case, the circumstances clearly point toward a bona fide clerical oversight rather than a deliberate attempt to defraud the exchequer. The Appellant has produced a categorical confirmation from the foreign supplier, M/s Karl Eugen Fischer GMBH, via their letter dated 06.01.2025. The supplier admitted that they shipped the trial materials (empty bobbins/spools) along with the new machine as a matter of operational convenience post-completion of trials. They explicitly stated that the failure to declare these in the commercial invoice was an inadvertent oversight because the shipment was strictly governed by a Letter of Credit (LC) which only listed the new machinery. To remain compliant with banking and LC stipulations, the invoice was prepared to match the LC exactly, leading to the omission of the "free-of-charge" used materials.

5.6 It is a settled position of law that penalty is not imposable for a mere technical or venial breach of the law that flows from a bona fide belief or a mistake without any contumacious conduct. In the instant case, the Appellant relied on the documents provided by a world-renowned German supplier. The

Appellant had no reason to suspect that the supplier would include undeclared trial materials in the container.

5.7 Crucially, the doctrine of Revenue Neutrality applies here. There was absolutely no incentive for the Appellant to suppress the declaration of these used materials. Had they been declared, they would have qualified for duty-free re-importation under Notification No. 45/2017-Cus, as they were the Appellant's own materials exported for trials. There is no duty evasion because the duty liability on these items, even if declared separately, would have been nil. The Hon'ble Tribunal and various High Courts have repeatedly held that where there is no revenue implication or duty to be evaded, the charge of intentional suppression or misdeclaration cannot be sustained.

5.8 Furthermore, the Appellant correctly declared the main machine, which accounts for more than 99% of the consignment's value. It is illogical to suggest that an importer would risk the confiscation of a multi-crore machinery by intentionally hiding used bobbins worth a few thousand Euros. The lack of any "material advantage" gained by the Appellant further reinforces the conclusion that the non-declaration was an inadvertent error at the supplier's end. Consequently, we find that the essential ingredients for invoking Section 111(m) or imposing penalties under Section 112 and 114AA—namely, "knowledge" and "intent"—are entirely missing.

5.9 The Appellant has consistently maintained that the "old and used" materials found in the container were originally exported from India to Germany for the specific purpose of conducting operational trials and factory acceptance tests (FAT) of the new machine at the manufacturer's site. This is a standard industrial practice to ensure machine calibration before shipment.

5.10 Notification No. 45/2017-Cus provides an exemption from the whole of the Basic customs duty (BCD) and integrated tax (IGST) on goods when they are re-imported into India, provided that certain conditions are met. These include: (a) the goods being re-imported are the same as those which were exported; (b) the re-importation occurs within the prescribed time limits (generally 5 years for standard goods); and (c) the Assistant/Deputy Commissioner is satisfied as to the identity of the goods. In the present case, the items found (empty shells, bobbins, etc.) are the very same items that left the Appellant's plant in India for Germany.



5.11 The Adjudicating Authority significantly erred by failing to recognize the legal right of the Appellant to re-import these goods under the said notification. The Impugned Order proceeded on the narrow basis that because the items were not declared in the Bill of Entry (BE) alongside the EPCG machine, they must be treated as "prohibited" imports. This logic is flawed. A failure in documentation (non-declaration) does not change the inherent nature of the goods or their eligibility for a statutory exemption. If the goods are legally eligible for duty-free re-import, their presence in the container cannot be termed "smuggling" or "prohibited" in the sense used in Section 2(33) of the Customs Act.

5.12 Furthermore, the Impugned Order's direction to allow redemption only for re-export is particularly harsh and legally untenable. If the goods belong to the Indian Appellant and were only sent abroad for a temporary purpose, forcing them to be re-exported out of India essentially deprives the owner of their own property for a mere clerical omission. The proper course of action for the Adjudicating Authority, upon discovering the used materials, should have been to allow the Appellant to amend the Bill of Entry or file a supplementary declaration to claim the benefit of Notification No. 45/2017-Cus, rather than resorting to confiscation.

5.13 Judicial precedents support the view that the benefit of an exemption notification cannot be denied merely on procedural grounds if the substantive conditions are met. In the case of Balkrishna Industries itself, the intent was always to bring these materials back. The inadvertent mixing of these re-imported items with the new EPCG machine in one container was a matter of logistics, not a violation of the "prohibition" clause of the EPCG scheme. Therefore, we hold that the used materials are eligible for clearance for home consumption under the beneficial provisions of Notification No. 45/2017-Cus.

5.14 The Appellant submitted that the used items were originally exported from India for trials. Under Notification No. 45/2017-Cus, goods exported and subsequently re-imported are exempt from duty, provided they are the same goods and the re-import occurs within the prescribed time. The Adjudicating Authority failed to consider that the Appellant's request to clear these for home consumption was based on a valid legal right to re-import their own used material. Denying this benefit and ordering "re-export only" is a disproportionate remedy for a clerical documentation error.

5.15 The Adjudicating Authority imposed a penalty of ₹1,00,000 under Section 114AA. This section was introduced to curb "fraudulent exports" and "paper

transactions" where benefits are claimed without actual movement of goods. Section 114AA is generally not applicable to bona fide import transactions where the goods physically exist and the error is one of inadvertent non-declaration rather than a fabricated document intended to defraud the exchequer.

5.16 Section 111(d) applies to "prohibited goods." Since used bobbins are not "prohibited" under any law, this section does not apply. Section 111(m) applies to goods that do not correspond with the entry. While there was a non-declaration, the Bill of Entry was filed based on the supplier's invoice. Given the lack of intent, absolute confiscation or high redemption fines are not warranted for what is essentially a "technical" infraction.

5.17 The evidence confirms that the Cutting Line machine is new. The presence of used bobbins/raw materials used for testing does not change the nature of the capital goods under the EPCG scheme. The non-declaration was a documented error by the supplier. There is no revenue loss as the goods are eligible for re-import exemption. In view of the above, I find the Impugned Order to be legally flawed. The findings of wilful suppression and the imposition of penalties are hereby set aside.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- a. The Order-in-Original No. MCH/839/ARK/DC/Gr.V/2024-25 dated 13.03.2025 is hereby set aside. The appeal filed by M/s. Balkrishna Industries Ltd. is allowed with consequential relief, if any, as per law.



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

F. No. S/49-92/CUS/MUN/MAY/2025-26

Date:31.03.2026

By Speed post A.D/E-Mail

To,
M/s. Balkrishna Industries Limited,
B-66 Waluj MIDC, Waluj Industrial Area,
Waluj, Aurangabad, Maharashtra, 431136

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Deputy Commissioner of Customs, Import, Gr-V, Custom House, Mundra.
4. Guard File.

