सत्यमेव जयते

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 - 20260371MN000000AD37

क	फ़ाइल संख्या FILE NO.	S/49-427/CUS/MUN/2024-25
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-936-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024
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:	Shri Asif Sathi, Flat No. 4104, 41st Floor, B-Wing Orchid Enclave, Belasis Road, Mumbai Central Mumbai 400008

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 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

Appeal has been filed by Shri Asif Sathi, Flat No. 4104, 41st Floor, B-Wing,Orchid Enclave, Belasis Road, Mumbai Central, Mumbai 400008, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/ AKM/209/2024-25 dated 02.12.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority ').

2. Facts of the case, in brief, are that the present matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. J.H. Enterprises.

2.2 The specific focus of this proceeding pertains to a high-value consignment imported in the name of M/s. J.H. Enterprises (IEC: AQIPH7863E) via Container No. TGBU5160748 under Bill of Lading No. YMLUS226013593. The investigation into this specific container highlighted

the syndicate's agility in attempting to evade detection once an enforcement action was initiated. As the DRI began intercepting related shipments, the importers, in connivance with the overseas shipper (M/s. Yiwu Surui Imp and Exp Co. Ltd.) and the shipping line (M/s. Huan Ming/Yang Ming Line), attempted a desperate "Change of Destination" (COD) while the vessel was still in transit to Mundra. They sought to divert the container to Jebel Ali, UAE, by manipulating the manifest and preparing two parallel sets of Bills of Lading—one declaring "Floor Clean MOP" for Mundra and another declaring "Household Items" for Jebel Ali. This fraudulent maneuver was intended to erase the shipment's connection to the Indian port and escape the jurisdiction of Indian Customs. Despite these elaborate attempts to divert the cargo, the DRI successfully placed the container on hold, and it was examined at Mundra Port under Panchnama dated September 16/17, 2022.

2.3 The physical examination of Container No. TGBU5160748 yielded an inventory of highly offending and prohibited goods that vastly differed from the manifest. While the documents declared 754 cartons of "Floor Clean MOP," the search actually recovered 200,400 pieces of foreign-brand E-cigarettes and 80,000 pieces of silicon "pop-up" toys. Additionally, the consignment contained 14,000 LCD writing pads and 2,500 head massagers that were used as structural concealment. The E-cigarettes, falling under HS Code 8543, are strictly prohibited for import into India under DGFT Notification No. 20/2015-2020 dated September 26, 2019, and the Prohibition of Electronic Cigarettes Act, 2019. The 80,000 toys were also classified as offending goods due to a total lack of mandatory Bureau of Indian Standards (BIS) compliance as required under Policy Condition 2 of Chapter 95 of the Customs Tariff (specifically IS: 9873 parts 1, 2, 3, 4, 7, and 9). The syndicate's failure to provide safety certifications and the deliberate concealment behind "Floor Clean MOPs" underscored a clear intent to bypass public health regulations and safety standards, posing a significant risk to the domestic market.

2.4 The investigation into the culpability of the parties involved established Shri Mohammad Asif Sathi as the central mastermind and "beneficial owner" of the cartel. He orchestrated the racket by acquiring IECs from dummy firms; in this specific instance, he utilized the services of Shri Tahir Menn to create the firm M/s. J.H. Enterprises by fraudulently using the identity documents of Shri Juma Hamir Halepotra, a caretaker of Asif's bungalow in Bhuj who had no knowledge of the business. The cartel's modus operandi involved a professional division of labor: Shri Baldevsinh Vala of M/s.

Kalpana Exim managed the logistics of "crossing" containers—a process where cleared goods were moved between vehicles or containers at secret locations to evade e-way bill tracking and enforcement checkpoints between Mundra and Bhiwandi. Meanwhile, Shri Samir Sharma, a G-Card holder of a Customs Broker firm, was implicated in submitting manipulated documents to the authorities, often on the instructions of the forwarders rather than the actual IEC holders, whom he had never met.

2.5 Granular details of the coordination were recovered from the "Mm" WhatsApp group, where members discussed the "stuffing" of prohibited items in the containers. Chat logs showed Baldevsinh Vala advising other members to stack E-cigarettes away from the container doors to avoid detection during partial Customs examinations and suggesting that "crossing" was necessary to prevent the DRI from tracking the containers via electronic surveillance. Shri Asif Sathi admitted in his statement that he paid hefty sums—up to ₹17 Lakh per container—for the successful clearance of these prohibited consignments. The investigation also unearthed a financial circuit where cash was collected from domestic buyers like "Raju Bhai" or "Sohail Bhai" and deposited into the bank accounts of the dummy firms to facilitate formal remittances to the foreign suppliers in China, thereby giving the illicit trade a veneer of legitimate commerce.

2.6 The legal and financial implications of the seizure are substantial. Under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the transaction values declared in the documents were rejected due to gross mis-declaration and the absence of any credible price data. Consequently, the value was re-determined sequentially through Rules 4 to 9. Given the absence of identical or similar goods in the valuation database, the value was arrived at using Rule 9 (the residual method) based on a comprehensive market survey and a report from a Government-approved Chartered Engineer. The market price of the seized E-cigarettes alone was estimated at approximately ₹2,400 per piece, totaling ₹48,09,60,000. Combined with the mis-declared toys and electronics, the total value of the offending goods in this single container approached ₹50 Crore.

2.7 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:

- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.
- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.8 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.9 On the basis of the investigation, Show Cause Notice was issued to M/s. J.H. Enterprises and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. J.H. Enterprises and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The Adjudicating Authority passed the following order in respect of the appellant.

(A) In respect of offending goods i.e E-Cigarettes and toys :-

(I) He imposed penalty of Rs. 40,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.

(B) In respect of dutiable goods where bills of Entry not filed :-

(I) He imposed penalty of Rs. 5,000/- upon the appellant under Section 112(a)(ii) of the Customs Act, 1962.

(C) Imposition of penalty under Section 114(AA) of the Customs Act, 1962.

(II) He imposed penalty of Rs. 5,00,000/- upon the appellant under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, 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 argues that the denial of cross-examination of the Chartered Engineer constitutes a major violation of the principles of natural justice. The Respondent's refusal was based on the claim that the Appellant's presence during the Panchnama proceedings curtailed the need for further examination; however, the Appellant maintains that cross-examination is a legal right necessary to test the veracity of the valuation report. It is further asserted that the law provides no specific timeframe for seeking such an examination, making the Respondent's rejection on the grounds of procedural delays arbitrary and illegal.

3.2 The valuation report used to allege undervaluation is contested as being fundamentally flawed and deficient in technical parameters. The Appellant points out that the Chartered Engineer, who holds a degree in Mechanical Engineering, was not qualified to determine the market value of the specific consumer goods involved. Furthermore, the report allegedly failed to provide data on international trade prices, bulk discounts, or comparable contemporaneous imports, and did not account for post-import costs, rendering the re-determined value under Rule 9 of the Customs Valuation Rules unsustainable.

3.3 The Appellant contends that the transaction value declared in the Bills of Entry should have been accepted under Section 14 of the Customs Act and Rule 3 of the Valuation Rules. Evidence was submitted showing that

identical or similar goods were imported by other traders at comparable prices, yet the Department discarded these transaction values without demonstrating any flow-back of money or related-party influence. The Appellant emphasizes that the burden of proof lies with the Department to disprove the declared value with cogent evidence, which it has failed to do in this case.

3.4 Regarding the allegations of smuggling and mis-declaration, the Appellant attributes the presence of excess or undeclared goods like "Toys" to a supplier's mistake rather than intentional fraud. It is argued that the Appellant had no opportunity to physically inspect the containers before filing the Bill of Entry and immediately requested re-export upon learning of the discrepancies. Additionally, the Appellant maintains that lending or using a third-party Importer-Exporter Code (IEC) is not prohibited by law, and therefore, the lack of business activity at the declared premises of the IEC holder does not prove illegal conduct.

3.5 Finally, the Appellant challenges the imposition of penalties under Sections 112 and 114AA, asserting a total lack of mens rea or incriminating evidence. The appeal claims that the case is built solely on the statements of co-accused individuals, which are unreliable and were not corroborated by documentary evidence or independent investigation. Since there is no proof of a deliberate conspiracy or the use of knowingly false declarations, the Appellant argues that the goods are not liable for confiscation and the penalties should be quashed.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh , 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 Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The primary contraband in this case consists of Electronic Cigarettes. To understand the severity of the violation, it is essential to look at the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (PECA 2019). Section 4 of PECA 2019 states:

> *"No person shall, directly or indirectly, produce or manufacture or import or export or transport or sell or distribute or advertise e-cigarettes, whether as a complete product or any part thereof..."*

5.2 The term "import" is defined under Section 3(e) of the PECA 2019, with the same meaning as assigned to it in the Customs Act, 1962. Consequently, any attempt to bring E-cigarettes into the Indian territory is a violation of a specific central statute enacted for the protection of public health. Under Section 2(33) of the Customs Act, 1962, "prohibited goods" are defined as:

> *"any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."*

Since PECA 2019 provides an absolute prohibition on the import of E-cigarettes, these goods qualify as "Prohibited Goods" per se. They are not "restricted" goods that can be cleared upon payment of duty or fulfillment of conditions; they are goods that should not enter the commerce of the country at all.

5.3 Furthermore, the Director General of Foreign Trade (DGFT), vide Notification No. 34/2015-2020 dated 26.09.2019, amended the Import Policy to align with PECA 2019. The import of Electronic Cigarettes (including all forms of Heat Not Burn products, e-Hookah and the like devices) under HS Code 8543 was moved to the 'Prohibited' category. This notification, issued under the powers conferred by Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, read with the Foreign Trade Policy, makes it clear that the import is legally barred.

5.4 Regarding the Toys found in the consignment, the legal position is equally stringent. The Government of India, through the Ministry of Commerce and Industry, issued the Toys (Quality Control) Order, 2020, which mandates that all toys imported into India must conform to the relevant Indian Standards and bear the Standard Mark (ISI Mark) under a license from the Bureau of Indian

Standards (BIS). As per DGFT Notification No. 33/2015-2020 dated 02.12.2019, the import of toys is permitted only if accompanied by:

- A Certificate of Conformity from the manufacturer.
- A report from an independent NABL-accredited laboratory.
- Compliance with BIS standards (IS 9873 and IS 15644).

5.5 In the instant case, the 80,000 units of toys lacked any BIS marking, certification, or proof of testing. The Appellant failed to produce any documentation to show that these goods met the safety standards prescribed by the Indian Government. Goods imported in violation of such mandatory Quality Control Orders (QCOs) are treated as "Prohibited Goods" under the second part of Section 2(33) of the Customs Act, 1962, because the "conditions subject to which the goods are permitted to be imported" have been flagrantly violated.

5.6 In the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi (2003 (155) E.L.T. 423 (S.C.)), the Hon'ble Supreme Court clarified that if the conditions for import are not complied with, the goods would be 'prohibited goods'. The word 'prohibition' would include 'restriction'. Therefore, the Adjudicating Authority correctly held that the E-cigarettes and the non-compliant toys are liable for confiscation under Section 111(d) of the Customs Act, 1962, which covers goods brought from a place outside India contrary to any prohibition imposed by or under the Act or any other law.

5.7 The concealment of these prohibited goods inside a cargo declared as "Floor Clean Mops" further brings the goods under the ambit of Section 111(i) and Section 111(m). The act of smuggling is not just the illegal import but the calculated attempt to bypass the statutory barriers through deception. The legislative intent behind the absolute prohibition of E-cigarettes (PECA 2019) is to protect the youth and the general population from the harmful effects of nicotine addiction and the unknown health risks associated with vaping. When an importer deliberately attempts to flood the Indian market with such prohibited items, it is not merely a technical violation but an assault on the regulatory and health framework of the nation. The severity of the prohibition justifies the Absolute Confiscation without the option of redemption fine, as the goods themselves are deleterious and prohibited by law.

5.8 The Appellant, Shri Asif Sathi, contends that he is merely a trader and has no link to the smuggling act. However, a deep dive into the investigation

reveals that he is the "Beneficial Owner" as defined under Section 2(3A) of the Customs Act, 1962. This section defines a beneficial owner as:

> *"any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported."*

5.9 The investigation into M/s. J.H. Enterprises revealed it was a classic "front" firm. The proprietor, Shri Tahir Menn, admitted in his statement under Section 108 that he was a person of limited means and was approached by Asif Sathi to "lend" his IEC for a commission of Rs. 10,000 to Rs. 15,000 per container. Shri Tahir Menn had no knowledge of the goods, the suppliers, or the logistics. He merely signed documents as directed by the Appellant. The control of the firm's bank accounts and digital signatures remained with the Appellant or his close associates, thereby satisfying the "effective control" test under Section 2(3A).

5.10 The role of the Appellant is not based on a single statement but on a web of corroborative evidence:

- Shri Tahir Menn: Confirmed that Asif Sathi was the real importer who managed the entire transaction.
- Shri Baldevsinh Vala (Logistics Coordinator): His statement is crucial. He revealed that he was in constant touch with Asif Sathi regarding the clearance of various consignments at Mundra. He received the shipping documents, instructions for customs clearance, and payments for port charges directly from the Appellant.
- Shri Sarfaraj Kamani: Admitted that he worked under the directions of Asif Sathi to manage the movement of goods from the port to various godowns.

5.11 The most critical evidence is the data retrieved from the mobile phones of the Appellant and Shri Baldevsinh Vala. A WhatsApp group titled "Mm" was discovered, where the Appellant was the primary administrator. The chats contain specific instructions regarding the "stuffing" strategy. In one message, the Appellant instructed the overseas supplier to place the E-cigarette cartons at the back of the container and the floor mops at the front (near the door) to evade detection during "tailboard" examinations by Customs. There were detailed discussions regarding the "crossing" of containers once the group realized that the DRI was scrutinizing the imports of J.H. Enterprises. The Appellant shared screenshots of parallel/draft Bills of Lading and invoices for "Floor Mops" while

the actual packing lists in his "Saved" messages showed the E-cigarettes and Toys.

5.12 The financial investigation showed that while the nominal payments for "floor mops" were made through the bank account of M/s. J.H. Enterprises, the substantial "differential" payments to the Chinese supplier were handled by the Appellant through unauthorized channels. The Appellant was the one who decided which IEC was to be used for which consignment, rotating between various firms (like M/s. Royal Minerals, M/s. Exemplar Trading, etc.) to avoid raising red flags with the Risk Management System (RMS).

5.13 The evidence establishes that the Appellant was not a mere "trader" but the architect of the entire smuggling syndicate. He managed the overseas procurement, the local logistics, the dummy IECs, and the concealment strategy. His active participation in the WhatsApp group "Mm" proves mens rea beyond any reasonable doubt. Therefore, the Adjudicating Authority was correct in identifying him as the Beneficial Owner and imposing penalties commensurate with the gravity of the offence.

5.14 The Appellant's defense that the supplier "wrongly" sent 200,400 E-cigarettes (valued at nearly Rs. 48 Crores) instead of floor mops is commercially and logically absurd. The value of the declared goods (floor mops) is negligible compared to the smuggled E-cigarettes. No supplier would "mistakenly" send goods worth 48 crores in place of items worth a few lakhs. The DRI recovered two sets of Bills of Lading for the same container—one showing mops for Mundra and another showing "Household items" for Jebel Ali. This proves a deliberate attempt to divert the cargo once the syndicate realized the DRI was monitoring the port. This was not an isolated "mistake." The syndicate was involved in 18 similar consignments. The theory of "accidental stuffing" falls flat when applied to an organized cartel. In Commissioner of Customs vs. Phoenix International Ltd. (2007 (216) E.L.T. 503 (S.C.)), it was observed that when there is a deliberate mis-declaration of description and value, the intent to evade duty/prohibition is established, and the plea of "bona fide mistake" cannot be entertained.

5.15 The Appellant argues that the transaction value should be accepted. However, Section 14 of the Customs Act and Rule 12 of the Customs Valuation Rules, 2007 allow the proper officer to doubt the truth or accuracy of the declared value. When goods are concealed and prohibited, the transaction value mentioned in a fraudulent invoice for "floor mops" cannot be applied to the concealed "E-cigarettes." Since no contemporaneous data for "smuggled" and

"prohibited" brands like "Yuotto XXL" (sold in the grey market) is available through standard valuation databases, the Adjudicating Authority correctly relied on Rule 9 (Residual Method) using market inquiries and Chartered Engineer reports. The Chartered Engineer (CE) report provided a detailed analysis based on online market prices and physical inspection. The Appellant's challenge to the CE's qualification (B.Tech Mechanical) is irrelevant as the CE is a government-empanelled expert.

5.16 The Appellant heavily relies on the denial of cross-examination. I find this plea to be a dilatory tactic. While Section 138B provides for the examination of witnesses, the Hon'ble Supreme Court in Kanungo & Co. vs. Collector of Customs (1972 (2) SCC 23) held that the principles of natural justice do not require that the persons who gave information to the customs should be allowed to be cross-examined. The Appellant's own statement, recorded under Section 108, was voluntary and never retracted during the investigation. The findings are based on the physical recovery of goods, which is an undeniable fact. Cross-examination of the CE cannot change the physical fact that 200,400 E-cigarettes were found in a container declared as mops. In cases of clandestine operations, the "Preponderance of Probability" is the guiding principle. The documentary evidence is sufficient to establish guilt without the need for redundant cross-examination.

5.17 The Appellant sought re-export of the goods. I find that the Adjudicating Authority was correct in ordering Absolute Confiscation. Section 125 of the Customs Act states that the officer "may" give an option to pay a fine in lieu of confiscation. However, for prohibited goods, the officer has the discretion to order absolute confiscation. E-cigarettes are prohibited to protect public health. Allowing re-export would allow the smuggler to simply try again at another port or through another route.

5.18 Penalties under Sections 112(a) is for acts of omission or commission that render goods liable for confiscation. The Appellant, by managing the entire cartel, provided the means and intent for the illegal import. Section 114AA was specifically introduced to penalize the use of false and incorrect material. The Appellant used forged documents, dummy IECs, and parallel BLs. This is a fit case for the maximum penalty under Section 114AA. The argument regarding a lack of mens rea is dismissed. Smuggling, by its very nature, is a deliberate act. The concealment of 251 cartons of E-cigarettes requires physical effort and planning; it cannot happen without intent.

5.20 The investigation by DRI has been exhaustive. They have linked the money trail, the logistics, and the communication. The Appellant's role as the "Beneficial Owner" is established beyond any doubt. The goods are prohibited. The valuation is fair. The procedures followed by the Adjudicating Authority were robust.

6. In view of the detailed discussion and findings recorded above, I reject the appeal filed by Shri Asif Sathi.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-427/CUS/MUN/2024-25 Date:31.03.2026

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Copy to:
1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House ,Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.