



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
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DIN - 20260171MN0000922563

क	फ़ाइल संख्या FILE NO.	S/49-222/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-654 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	23.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/AK/129/ 2024-25 dated 28.08.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	23.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Hanif Kapadia, 2704, A-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 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)	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 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 हज़ार 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 हज़ार 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 हज़ार 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.



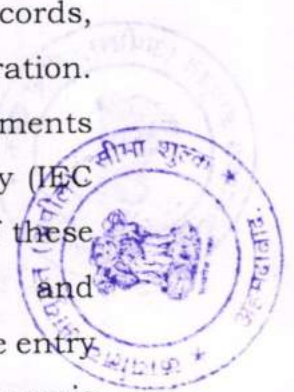
ORDER-IN-APPEAL

Appeal has been filed by Shri Hanif Kapadia, 2704, A-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 nos. MCH/ADC/AK/129/ 2024-25 dated 28.08.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra.

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. The syndicate had successfully imported at least 18 different consignments across eight separate importers, including M/s. Aditi Trading Company (IEC No. AZHPR0377B). The current proceedings specifically focus on two of these import consignments involving Container Nos. TEMU6643503 and BMOU6923481, which were purportedly used to facilitate the clandestine entry of mis-declared and prohibited goods through the Mundra Special Economic Zone (SEZ) under the guise of miscellaneous low-value items.

2.2 Detailed physical examinations of the subject containers were conducted under various panchnamas in September 2022, unearthing systemic and gross mis-declarations regarding the nature, quantity, and assessable value of the imported merchandise. The methodology employed by



the cartel involved "stuffing" the rear of the containers with high-value or prohibited contraband while placing low-value "cover goods" near the container doors to mislead preventive officers during routine checks.

2.3 For Container No. TEMU6643503, the importer had filed Bill of Entry No. 2013050 dated August 30, 2022, declaring items such as "Vegetable Slicers," "Foot Pumps," and "Mobile Holders." However, actual physical examination revealed that these goods were merely a facade for 30,000 pieces of undeclared toys, including the "Dancing Cactus" and "Card Early Education" devices. These items are strictly regulated and require mandatory Bureau of Indian Standards (BIS) compliance under Policy Condition 2 of Chapter 95 of the Customs Tariff (specifically IS: 9873). The failure to provide these certificates posed significant consumer safety risks, as the quality and toxicity levels of the plastic and electronic components were unverified.

2.4 For Container No. BMOU6923481, the importer refrained from filing a Bill of Entry entirely. Investigators interpreted this as a tactical move to avoid interception once the DRI began seizing other containers linked to the cartel. Examination of this "orphaned" container revealed further concealed quantities of 17,258 toys, including robot cars and folding quadcopters, alongside mis-declared items like egg poachers and study books. The concealment was so thorough that even the quantity of the cover goods did not match the packing lists provided in the initial Import General Manifest (IGM).

2.5 Collectively, the goods were found to be grossly undervalued. For example, while thousands of pieces were recovered, the declared invoices reflected only a fraction of the actual quantity, and the unit prices were significantly lower than the fair market value. To bridge this gap, a Government-approved Chartered Engineer, Shri Kunal Ajay Kumar, was engaged to provide an independent valuation report, which ultimately served as the basis for re-calculating the evaded duty.

2.6 The investigation exposed a sophisticated conspiracy characterized by the use of "paper firms" and dummy Import Export Codes (IECs). Shri Asif Sathi was identified as the mastermind behind the entire racket, orchestrating the illegal imports from behind the scenes to maintain plausible deniability. He orchestrated the illegal imports by arranging IECs from various individuals—such as Shri Narayan Gourayya Rajkar (Proprietor of M/s. Aditi Trading Company)—in exchange for fixed monetary benefits ranging from ₹15,000 to ₹50,000 per consignment. Sathi managed the logistical



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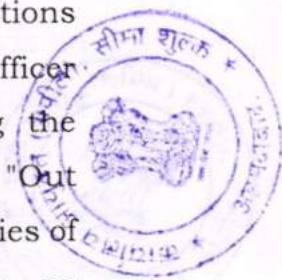
movement of these goods to specialized warehouses in Bhiwandi, Maharashtra, and coordinated with a network of associates to offload the contraband to domestic buyers like "Raju Bhai" and "Sohail Bhai."

2.7 The cartel utilized a WhatsApp group named "Mm" to share incriminating documents, coordinate the loading of "copy" or counterfeit goods, and discuss strategies to avoid tracking by enforcement agencies. Shri Baldevsinh Vala of M/s. Kalpana Exim played a critical role by forging and manipulating shipping documents (Invoices, Packing Lists, and Bills of Lading) provided by foreign suppliers. These manipulated documents were then used by the Customs Broker to file false declarations. To fund these operations, Sathi would deposit cash collected from domestic sales into the bank accounts of these dummy firms, which were then used to remit payments to overseas suppliers, thereby laundering the proceeds of the smuggling operation through seemingly legitimate banking channels.

2.8 The scheme was further aided by the failure of critical regulatory safeguards and the active or passive cooperation of certain professionals. Shri Samir Sharma, the G-Card holder for the Customs Broker firm M/s. Al Cargo Services, failed to perform mandatory due diligence or verify the genuineness of the IEC holders. Despite being a licensed professional, he never met the proprietors in person and relied solely on documents provided by the "forwarder," Shri Baldevsinh Vala. Sharma further assisted the cartel by submitting E-way bills containing names of unrelated parties to facilitate the "crossing" of containers and avoid detection by state tax authorities.

2.9 Furthermore, the investigation highlighted the negligence of the then Preventive Officer, Shri Vipin Sharma. Despite specific system directions to "check goods, inspect the lot, and check description/quantity," the officer submitted a generic examination report without actually de-stuffing the container or verifying the contents. This dereliction of duty facilitated the "Out of Charge" (OOC) status for consignments that contained massive quantities of concealed, restricted toys. The lack of a thorough 100% examination, as required for suspicious cargo, allowed the cartel to move prohibited goods into the Domestic Tariff Area (DTA) with official clearance.

2.10 Reports submitted by the Chartered Engineer confirmed that the declared transaction values were not at arm's length and did not reflect the true transaction value under Section 14 of the Customs Act, 1962. The investigation found that the declared values were suppressed by as much as



70-80% of the actual market rate. Consequently, the declared values were rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, on the grounds of significant mis-declaration of parameters such as description, quality, and quantity. The assessable values were re-determined under Rule 9 (Residual Method) using reasonable means consistent with the principles of the valuation rules.

2.11 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 (such as the BIS mandate for toys) 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.

2.12 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.

On the basis of the investigation, Show Cause Notice was issued to M/s. Aditi Trading Company 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. Aditi Trading Company 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. Vide impugned order, following penalties were imposed on the appellant

(A) IN RESPECT OF DUTIABLE GOODS WHERE BILLS OF ENTRY FILED FOR DTA CLEARANCE:



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- (i) He imposed penalty of Rs. 1,00,000/- on the appellant under section 112(a)(ii) of the Customs Act, 1962.

(B) IN RESPECT OF DUTIABLE GOODS WHERE BILL OF ENTRY NOT FILED FOR DTA CLEARANCE:

- (i) He imposed penalty of Rs. 5,000/- on the appellant under section 112(a)(ii) of the Customs Act, 1962.

(C) IN RESPECT OF OFFENDING GOODS I.E. TOYS, IMPORTED WITHOUT MANDATORY BIS:

- (i) He imposed penalty of Rs. 2,00,000/- on the appellant under section 112(a)(i) of the Customs Act, 1962.

(D) IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:

- (i) He imposed penalty of Rs. 1,00,000/- upon appellant under Section 114(AA) 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 contends that the impugned order was passed in clear violation of the principles of natural justice because a proper opportunity for a personal hearing was denied. Despite multiple written and telephonic requests to schedule a common hearing for five related Show Cause Notices involving identical issues, the Respondent proceeded to adjudicate the matter without granting the requested hearing. The Appellant argues that procedural fairness and the right to be heard ("audi alteram partem") are mandatory, and failure to provide this opportunity renders the order liable to be quashed.

3.2 The Appellant asserts that the Department failed to produce any

cogent evidence linking him to the alleged mis-declaration or undervaluation of goods. In his recorded statement, the Appellant clarified that his only association with Mr. Asif Sathi was through a domestic online shopping company, M/s. Astrum Trading Pvt. Ltd., which never engaged in imports or exports. He categorically denied owning, financing, or managing any of the foreign entities (such as AH International or HK Longcheng) or dummy companies used for the disputed imports. Furthermore, the Appellant pointed out that the Department failed to verify the ownership of these foreign firms through China or Hong Kong authorities as he had suggested.

3.3 The grounds emphasize that the Department did not establish that the Appellant played any active role in placing orders, negotiating with suppliers, remitting payments, or filing Bills of Entry. There is no evidence that the Appellant was aware of the actual contents of the containers or received any consideration or benefit from the alleged smuggling activities. Statements from co-appellants, including Mr. Asif Sathi, did not implicate the Appellant in the offense, merely noting his presence on a business tour to Dubai intended for exploring the dry dates trade.

3.4 The Appellant challenges the Department's reliance on the statement of Mr. Tahir Menn, arguing that the allegations were based on mere assumptions regarding company initials (e.g., assuming "H" stands for Hanif) without concrete proof. The Appellant argues that the Respondent erred by not allowing the cross-examination of Mr. Menn, which is a settled legal requirement when a statement is used as incriminating evidence. Without such examination, the statement cannot be legally admitted or relied upon to prove the truth of its contents.

3.5 Finally, the Appellant argues that penalties under Sections 112(a), 112(b), and 114AA of the Customs Act are not applicable. He contends that because he was neither an importer nor an abettor, and lacked the "mens-rea" (guilty mind) or knowledge that the goods were liable for confiscation, he cannot be penalized. Specifically regarding Section 114AA, the Appellant maintains he never signed or used any false documents or declarations in the transaction, which is a prerequisite for such a penalty.



[Handwritten signature]

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 07.11.2025 following the principles of natural justice wherein Shri Hardik Modh , Advocate, appeared for the hearing on behalf of the appellant 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 Appellant's primary defense is the lack of a formal, documented link to M/s Aditi Trading Company. However, in modern customs jurisprudence, especially concerning organized smuggling syndicates, the "corporate veil" or the "front" created by using IECs (Importer Exporter Codes) of dummy entities does not shield the actual controllers of the goods. Under Section 2(3A) of the Customs Act, 1962, a "beneficial owner" is defined as any person on whose behalf the goods are being imported or exported or who exercises ultimate effective control over the goods. The investigation by DRI Gandhidham has unequivocally established that the IEC of M/s Aditi Trading was merely a "mask." The real control over the procurement, shipment, and subsequent disposal of these goods rested with the duo of Shri Mohammad Asif Sathi and the Appellant, Shri Hanif Kapadia.

5.2 The Appellant is charged under Section 112(a), which pertains to any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. Abetment in Customs law follows the definition provided in the Indian Penal Code (IPC). It involves instigating, engaging in a conspiracy, or intentionally aiding an act. The Appellant's role in China, through M/s AH International Trading Co. Limited and M/s HK Longcheng Trade Co. Limited, was the "intentional aiding" required for the smuggling to occur. By sourcing non-BIS compliant toys and facilitating their concealment in legitimate-looking shipments, the Appellant performed the critical pre-importation steps that made the entire fraud possible.

5.3 The Appellant argues that he was merely a business partner in a non-importing firm. This is contradicted by:

- Shared Financial Interests: The naming of Chinese entities after the partners indicates a deep-seated joint venture.
- The "Mm" WhatsApp Group: Digital forensics revealed the Appellant's active participation in a group where the logistics of these very containers were discussed, including the undervaluation strategies.
- Statements of Mastermind: Shri Mohammad Asif Sathi, in his statement, admitted that the Appellant was his main partner in China who managed the suppliers and ensured that "concealment" was handled effectively at the loading point.

5.4 In **Naresh Kumar Sukhwani vs Union of India [1996 (83) ELT 285 (SC)]**, the Hon'ble Supreme Court held that "the statement of the co-accused can be used as substantive evidence connecting the appellant with the contravention." When such a statement is backed by the existence of joint business entities and shared travel history to the source country (China), the plea of "no connection" becomes legally untenable. The Appellant, by managing the supply-side of the fraud, acted as the "beneficial owner" of the illegal cargo concealed within the declared goods.

5.5 The Appellant contends that the statements recorded during the investigation were coerced or later retracted and therefore lose their evidentiary value. However, a detailed legal and factual analysis proves otherwise. It is a well-settled legal principle that a statement recorded by a Gazetted Officer of Customs under Section 108 of the Customs Act, 1962, is distinct from a statement made to a police officer. Since Customs Officers are not "Police Officers" within the meaning of Section 25 of the Evidence Act, confessions made before them are admissible in evidence. Furthermore, Section 108(4) explicitly states that every such inquiry shall be deemed to be a "judicial proceeding" within the meaning of Sections 193 and 228 of the Indian Penal Code. Consequently, the Appellant was under a legal obligation to state the truth. The statements recorded are not mere "interrogations" but are formal records of evidence.

5.6 The Appellant's attempt to retract his statement or dismiss the statements of co-accused must be viewed through the lens of the **K.I. Pavunny vs Assistant Collector (HQ), Central Excise, Collectorate, Cochin 1997 (90) E.L.T. 241 (S.C.)** judgment. The Apex Court held that while a retracted



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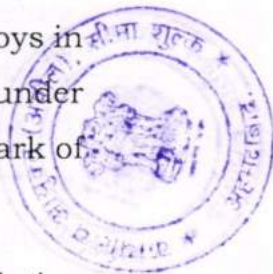
confession can be the basis of a conviction, the court must look for "general corroboration." In the instant case, the "general corroboration" is overwhelming:

- **Consistency across Statements:** The statements of Shri Mohammad Asif Sathi (mastermind), Shri Tahir Menn (logistics coordinator), and the Appellant himself during the initial stages of the inquiry were consistent regarding the operational structure of the "Asif-Hanif" partnership.
- **Digital Evidence:** The WhatsApp communications found on the seized mobile phones were not "coerced." They serve as contemporaneous evidence of the conspiracy. The chats explicitly mention "Hanif Bhai" in the context of sourcing goods from China and managing the under-invoiced documents.
- **Physical Presence:** The travel documents and visas show the Appellant and Shri Asif Sathi traveling to China in tandem, which corroborates the claim that they were managing the supply side of the smuggling operation together.

5.7 Under Section 123 of the Customs Act, 1962, when goods are seized in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized or the person who claims to be the owner thereof. While the toys were seized from containers, the "beneficial ownership" linked to the Appellant via Section 108 statements shifts the onus onto him to prove that his involvement in the Chinese firms (AH International and HK Longcheng) was for legitimate trade unrelated to these specific containers. The Appellant has failed to provide any such evidence, offering only "bare denials."

5.8 The Appellant's argument that he only looked after "online sales" is a classic attempt to compartmentalize his role to escape liability. However, the chain of smuggling is an integrated process. By procuring non-compliant toys in China and facilitating their loading into containers destined for India under "mask" IECs, the Appellant provided the "intentional aid" that is the hallmark of abetment.

5.9 The Appellant has raised a serious challenge regarding the violation of natural justice, specifically focusing on the denial of cross-examination of co-noticees and the fact that a common personal hearing was held for five different Show Cause Notices (SCNs). I find these arguments to be legally flawed. The right to cross-examination is not an absolute or mathematical right in quasi-judicial proceedings. In the present case, the Adjudicating Authority (AA) denied the



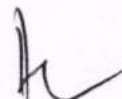
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request for cross-examination because the evidence against the Appellant was not based solely on the "oral testimony" of co-noticees, but was heavily supported by contemporaneous documentary and digital evidence. The WhatsApp chats recovered from the seized mobile phones and the business registration documents of AH International in China are "mute witnesses" that cannot be shaken by cross-examination of individuals. As held in **Telestar Travels Pvt. Ltd. vs Enforcement Directorate [2013 (289) E.L.T. 3 (S.C.)]**, when the evidence is documentary in nature, the denial of cross-examination does not amount to a violation of natural justice.

5.10 In **Collector of Customs, Madras vs D. Bhoormull 1983 (13) ELT 1546 (SC)**, the Apex Court observed that the Customs Department is not required to prove its case with the same degree of certainty as required in a criminal trial. In matters involving organized smuggling syndicates, the department needs to establish a "preponderance of probability." Given the consistent nature of the statements (before retraction) and the corroborative digital evidence, the "probability" of the Appellant's involvement is so high that the absence of cross-examination does not cause any prejudice to the Appellant's defense.

5.11 The Appellant objects to the common hearing held for 5 SCNs involving different importers (M/s Aditi Trading, M/s Kalpna Exim, etc.). This objection is unsustainable. The investigation by DRI Gandhidham revealed that these importers were not independent entities but were part of a single, integrated smuggling cartel operated by the same set of individuals, including the Appellant and Shri Asif Sathi. The use of different IECs was merely a tactic to distribute the risk of detection. Since the "beneficial owners," the "modus operandi," and the "supply chain" were identical across these SCNs, a common hearing was not only efficient but also necessary to understand the holistic nature of the fraud. There is no provision in the Customs Act that prohibits the Adjudicating Authority from holding a common hearing for related cases. In fact, separate hearings might have led to fragmented findings, which would have been detrimental to the ends of justice. The Appellant was given a full opportunity to present his case specifically regarding M/s Aditi Trading during that common hearing; therefore, no "prejudice" has been demonstrated.

5.12 The investigation found 47,258 toys in containers linked to the cartel. These toys were imported without mandatory BIS certification required under Policy Condition 2 of Chapter 95. Furthermore, the goods were



undervalued using Rule 9 of the Customs Valuation Rules, 2007. The Appellant, by managing the supplier end in China, "caused to be made" the false declarations in the Bills of Entry. This directly attracts Section 114AA, which penalizes the use of "false and incorrect material" in the transaction of business. Even if the Appellant did not sign the BE personally, his role in generating the "false invoices" in China that were used for filing the BE in India makes him liable.

5.13 The findings of the Adjudicating Authority are well-reasoned and supported by a mountain of evidence. The Appellant was part of a "smuggling cartel" that systematically evaded customs duty and bypassed safety standards (BIS). Such acts not only cause revenue loss but also endanger public safety by flooding the market with non-compliant products. The penalty under Section 114AA is justified as the Appellant was instrumental in creating the fraudulent documents used to deceive the Customs Department.

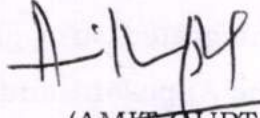
6. In view of the detailed discussion and findings, I find no merit in the appeal filed by Shri Hanif Kapadia. The findings of the Adjudicating Authority in Order-in-Original No. MCH/ADC/AK/129/2024-25 dated 28.08.2024 are legal, proper, and based on sound evidence.

7. The appeal filed by Shri Hanif Kapadia is hereby rejected.



सत्यापित/ATTESTED

 अधीक्षक/SUPERINTENDENT
 सीमा शुल्क (अपील्स), अहमदाबाद.
 CUSTOMS (APPEALS), AHMEDABAD


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

F. No. S/49-222/CUS/MUN/2024-25

Date: 23.01.2026

By Speed post/E-Mail

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Copy to:

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

