



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,अहमदाबाद

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

चौथीमंजिल 4th Floor, हडकोभवनHUDCO Bhawan, ईश्वरभुवनरोड़Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260171MN00006126EE

क	फ़ाइलसंख्या FILE NO.	S/49-317/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-645-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	21.01.2026
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/AKM/205/2024-25 dated 28.11.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	21.01.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Vipin Sharma , (the then Preventive Officer at Mundra Customs House) Presently posted at CGST & CE Commissionerate, Surat



1	यह प्रतिउसव्यक्तिके निजीउपयोगके लिए मुफ्तमें दी जाती है जिनके नामयह 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 डीडी (1) (यथासंशोधित) 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 सकता 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)	बैंगलूर के रूप में आयातित कोई माल। (a) any goods exported
(ख)	भारत में आयात करने हेतु कि सीवाहन में लादा गया लेकिन भारत में उन के गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो। 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 नियम आवली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए : The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए। (a) 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो (b) 4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां (c) 4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 उस से 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.	<p>मदसं. 2</p> <p>केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p> <p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p>
	<p>सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p> <p>दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>
5.	<p>सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p>
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहज़ाररुपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहैं,अपीलरखाजाएगा।
(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.	<p>उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क)</p> <p>रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख)</p> <p>अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p>
	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

Shri Vipin Sharma, the then Preventive Officer, Mundra Customs House, currently posted at CGST, Central Excise, Surat Commissionerate, Surat (hereinafter referred to as "the appellant"), has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-In-Original No. MCH/ADC/AKM/205/2024-25 dated 28.11.2024 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner of Customs, Customs House, Mundra, Kutch (hereinafter referred to as "the adjudicating authority").

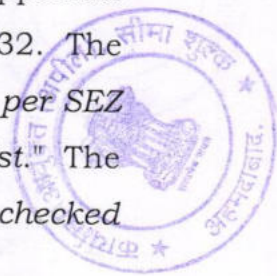
2. Briefly stated, the facts of the case in brief are as follows:

2.1 Intelligence gathered by the DRI, Gandhidham, indicated that a smuggling cartel was involved in the importation of mis-declared and prohibited goods, including e-cigarettes and toys requiring BIS compliance, by concealing them in consignments declared as permissible items. The investigation identified various importers involved in this racket, including M/s. Nikhat Enterprises (IEC No. ANDPB0477C).

2.2 Based on this intelligence, one import consignment belonging to M/s. M/s. Nikhat Enterprises was investigated. One consignment, imported in Container No. NYKU0844232, was covered by Bill of Entry No. 2012900 dated 26.08.2022. The goods were declared as "Floor Clean Mop (Misc item Non popular brand) HS code 96039000.

2.3 The Appellant, Shri Vipin Sharma, was posted as a Preventive Officer at Mundra SEZ at the material time. It is a matter of record that the Appellant had examined the said consignment in Container No. NYKU0844232. The examination order given by the Appraising Officer was to " *examine as per SEZ norms, check description and packages w.r.t. invoice and packing list.*" The Appellant submitted an examination report stating: " *Inspected the lot, checked description and quantity w.r.t. Invoice .*"

2.4 Subsequently, the DRI conducted a re-examination/detailed examination of the goods. It was found that apart from the declared goods, the container concealed undeclared/mis-declared items, including 12 cartons containing 9600 pieces of "E-Cigarettes " which were not declared in the Bill of Entry.



2.5 A Show Cause Notice dated 30.08.2023 was issued to the importer and various persons, including the Appellant. The allegation against the Appellant was that he failed to examine the goods properly despite directions, which led to the clearance/attempted clearance of mis-declared and prohibited goods. It was alleged that his negligence rendered the goods liable for confiscation and himself liable for penalty under Section 112(a) of the Customs Act, 1962.

2.6 The Adjudicating Authority adjudicated the case vide the impugned order wherein he observed that while the investigation agency DRI "failed to bring forth the outright connivance of Shri Vipin Sharma," the Appellant had submitted the examination report without verifying the actual details/description of the goods which shows his negligence towards his duty. Consequently, he ordered as under:

- (i) He imposed a penalty of Rs. 20,000/- on the Appellant under Section 112(a)(i) of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT

3. Being aggrieved with the impugned order, the appellant has filed the present appeal contending, inter alia, as under:

3.1 The Appellant contends that the imposition of penalty under Section 112(a) is legally unsustainable as there is no evidence of mens rea, connivance, or deliberate abatement on his part. He relies on the Adjudicating Authority's own finding in Para 30.13(ii) of the impugned order, which explicitly states that the DRI "failed to bring forth the outright connivance" of the Appellant. The Appellant argues that without knowledge or intent to smuggle, penal provisions for abatement cannot be invoked against a customs officer performing statutory duties.

3.2 The Appellant contends that he strictly followed the examination norms prescribed for Special Economic Zones. He relies on Rule 75 of the SEZ Rules, 2006, which stipulates that inward/outward movement shall be based on self-declaration and that "no routine examination" shall be made unless specific orders are obtained from the Development Commissioner or Specified Officer.

3.3 It is further contended that the examination order issued to him was general in nature ("examine as per Check the goods, Inspect the lot. Check description, Qty., w.r.t. Invoice and P/L") and did not contain specific instructions for 100% examination or opening of all packages. He argues that he was not aware about any specific intelligence regarding the concealment of toys or mis-declaration in the said consignment. He cites CBIC Circular No. 92/2000-Cus dated 20.11.2000, which prohibits routine examination of SEZ cargo at the gateway port in absence of specific intelligence or specific orders from the AC/DC.

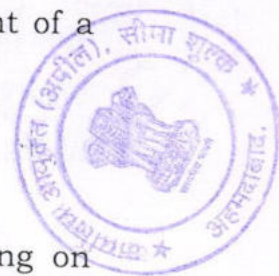
3.4 The Appellant asserts that assessing/examining 35-40 containers a day makes 100% examination of every package impossible and contrary to the facilitation measures inherent in the SEZ scheme. Therefore, conducting examination "as per SEZ norms" was the correct procedure, and holding him liable for goods concealed inside other packages is unjust and in violation of the Rule 75 of SEZ Rules 2017 and Board's directions under Circular 92/2000-Cus.

3.5 The Appellant also claims protection under Section 155 of the Customs Act, 1962, arguing that his actions were performed in good faith in the discharge of his official duty, and therefore, no legal proceeding (including penalty) should lie against him.

3.6 The appellant, in support of his contentions, has relied on several judicial precedents, including: Amritlakshmi Machine Works vs. Commissioner of Customs (Import), Mumbai [2016 (335) E.L.T. 225 (Bom.)] regarding the necessity of *mens rea* for invoking Section 112(a); Amit Ghosh vs. Commissioner of Customs (Preventive), Kolkata [Customs Appeal No. 75232 of 2022] regarding the protection under Section 155 of the Customs Act; and Minkart India Pvt. Ltd. [HC-2019 (BOM)-VAT] regarding the requirement of a speaking order.

PERSONAL HEARING:

4. Shri Ashok Israni, Consultant, appeared for the personal hearing on 18.12.2025, on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and emphasized the finding of the Adjudicating Authority regarding the absence of connivance.



DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case available on record, the grounds of appeal, submissions made by the appellant at the time of filing the appeal and during the personal hearing, and the impugned order passed by the adjudicating authority. The primary issue to be decided in the present appeal is whether the imposition of penalty under Section 112(a)(i) of the Customs Act, 1962 on the Appellant, a Customs Officer, is sustainable in law, particularly in light of the finding by adjudicating authority that the DRI "failed to bring forth the outright connivance" of the Appellant.

5.1 The primary contention raised by the appellant is that the imposition of penalty under Section 112(a) of the Customs Act, 1962, is legally untenable because the adjudicating authority itself recorded a finding that there was no "outright connivance" on his part. The appellant argues that Section 112(a) requires mens rea (guilty mind) or active abetment, neither of which was established.

5.1.1 I find considerable merit in this contention. A plain reading of Section 112(a) indicates that it penalizes a person who does or omits to do an act which renders goods liable to confiscation, or abets such an act. In the context of a Customs Officer discharging statutory duties, penal liability under this section generally necessitates a finding of conscious knowledge or active facilitation of the offence (abetment). In the impugned order, at Para 30.13 (ii), the adjudicating authority explicitly observed: "**I find that the investigation agency DRI failed to bring forth the outright connivance of Shri Vipin Sharma in relation to impugned goods.**" Despite this categorical finding exonerating the appellant of connivance, the authority proceeded to impose penalties based on a finding of negligence. It is a settled legal principle, as held by the Hon'ble Bombay High Court in *Amritlakshmi Machine Works vs. Commissioner of Customs*, that while the first part of Section 112(a) may impose strict liability on the importer, its application to other persons (such as officers or facilitators) requires the establishment of *mens rea* or knowledge. Furthermore, the Hon'ble CESTAT (West Zonal Bench, Ahmedabad), vide Final Order No. 13094-13108/2024 dated 05.12.2024, has categorically held that a penalty under Section 112(a) of the Customs Act, 1962 is not sustainable in the absence of evidence establishing "knowledge" or "reason to believe" that the



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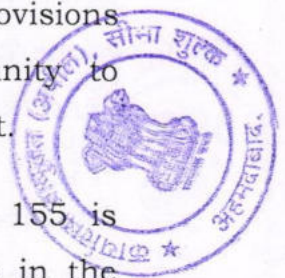
goods were liable to confiscation. Since the adjudicating authority has acknowledged the absence of connivance, the essential ingredient for imposing a penalty under Section 112(a) is missing.

5.2 The appellant has further argued that he performed the examination in accordance with Rule 75 of the SEZ Rules, 2006 and CBIC Circular No. 92/2000-Cus dated 20.11.2000. He submits that in the absence of specific intelligence and specific orders from the Development Commissioner or Specified Officer or Assistant/Deputy Commissioner, a 100% examination of SEZ cargo is not mandated, and clearances are primarily based on self-declaration.

5.2.1 Upon perusal of the relevant rules and circulars, I find that Rule 75 of the SEZ Rules indeed emphasizes that the movement of goods is based on self-declaration and routine examination is not to be conducted unless specific orders are obtained. The examination order issued to the appellant was general in nature i.e. " *examine as per SEZ norms, check description and packages w.r.t. invoice and packing list* " and did not contain any specific direction to open every package or conduct a 100% examination. The appellant submitted a report stating, " *Inspected the Lot. checked description and quantity w.r.t. Invoice* ". In the absence of any specific alert or intelligence shared with the officer at that time, limiting the examination to a representative lot "as per SEZ norms" cannot be construed as an act of abetment to smuggling or negligence of duty. Penalizing an officer for not conducting a 100% examination, when the governing circulars and rules expressly discourage routine detailed examination to facilitate trade, would be contradictory to the established legal framework.

5.3 The appellant has also claimed statutory protection under the provisions of Section 155 of the Customs Act, 1962, which grants immunity to Government officers for acts done in "good faith" in pursuance of the Act.

5.3.1 Upon perusal of the relevant provision, I find that Section 155 is designed to protect officers from legal proceedings for actions taken in the honest discharge of their duties. Given the adjudicating authority's own finding that there was no connivance, it follows that the appellant's actions, even if arguably negligent, were not malicious and fall within the ambit of "good faith".

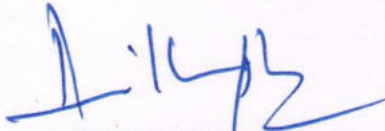


5.4 In view of the above, I find that the imposition of penalty on the appellant is legally unsustainable. The findings of the adjudicating authority suffer from a contradiction where the appellant is exonerated of connivance yet penalized for abetment. The appellant acted within the framework of the SEZ Rules and is entitled to the protection of Section 155 of the Customs Act, 1962.

6. In light of the aforesaid findings and observations, the impugned Order-In-Original No. MCH/ADC/AKM/205/2024-25 dated 28.11.2024, passed by the Additional Commissioner of Customs, Customs House, Mundra, is set aside insofar as it relates to the imposition of penalty on the appellant, Shri Vipin Sharma.

7. The appeal filed by the Appellant, Shri Vipin Sharma, is allowed with consequential relief, if any, in accordance with law.




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

F. No. S/49-317/CUS/MUN/2024-25

Date: 21.01.2026

By Speed post /E-Mail

To,

- (1) Shri Vipin Sharma ,
(the then Preventive Officer at Mundra Customs House)
CGST & CE Commissionerate, Surat.
(Email:-vipin.g20130@gmail.com)
- (2) Sai Tax Law, 4th Floor,
4D Square Mall, Visat Gandhinagar Road,
Nr Visat Circle, Motera,
Ahmedabad-380005
(Email-sitaxconsultant.org@gmail.com)

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.