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 - 20260371MN0000222D28

क	फ़ाइल संख्या FILE NO.	S/49-425/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-931-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/205/2024-25 dated 27.11.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Sarfaraz Kamani, 502, 5th Floor, Fatima Apartment, 109 Morland, Mumbai Central, Mumbai

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 Sarfaraz Kamani, 502, 5th Floor, Fatima Apartment, 109 Morland, Mumbai Central, Mumbai, (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/205/2024-25 dated 27.11.2024 (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. Nikhat Enterprises.

2.2 The specific focus of the impugned OIO involves the activities surrounding a consignment imported by M/s. Nikhat Enterprises (IEC: ANDPB0477C) via Container No. NYKU0844232. In a calculated and professional attempt to bypass automated risk management systems (RMS)

and standard regulatory scrutiny, the goods were initially declared in the Import General Manifest (IGM) as "Floor Clean Mop (Misc Item Non-popular Brand)" under HS Code 96039000. This specific HS code was selected by the syndicate for its low duty profile and the physical volume of the product, which provided ample "void space" for the concealment of high-value contraband.

2.3 When filing the Warehouse Bill of Entry (No. 1011448 dated August 25, 2022), the syndicate slightly adjusted the declaration to include "Back Cover, Exercise Book, and Tempered Glass," creating a "mixed-merchandise" profile. This profile was designed to deter customs officers from conducting a full de-stuffing, as mixed consignments are often perceived as standard low-risk consumer imports. The container was processed through the Mundra SEZ warehouse unit M/s. Empezar Logistics Pvt. Ltd., which, rather than serving its intended statutory purpose for value-addition, manufacturing, or legitimate storage, acted as a high-speed transit point or "revolving door." This facility was utilized to rapidly facilitate the diversion of goods into the Domestic Tariff Area (DTA) under DTA Bill of Entry No. 2012900 dated August 26, 2022, after which the cargo was immediately dispatched to a decentralized distribution hub in Bhiwandi, Maharashtra.

2.4 The investigative trail, supported by GPS tracking and statement analysis, led DRI officers to the Madhvi Compound godowns in Village Rahanal, Bhiwandi. This location was strategically chosen by the cartel for its proximity to major transportation routes serving the Mumbai Metropolitan Region, allowing for rapid "last-mile" distribution to retailers. During the course of investigation, the driver of the transport vehicle (Registration No. GJ-12 BT-4667), Shri Poona, provided a comprehensive voluntary statement under Section 108 of the Customs Act, 1962. His testimony provided an insider's view of the operation, detailing how he received real-time location coordinates and voice instructions via WhatsApp, directing him to offload the cargo from Container No. NYKU0844232 at these specific premises under the cover of night on August 31, 2022.

2.5 During search conducted on September 2, 2022, at Gala Nos. 5, 6, and 7 warehouses managed by the associate Shri Parwej Alam , officers recovered 12 leftover cartons containing 9,600 pieces of "Yuoto" brand e-cigarettes (specifically the XXL 2500 Puffs Disposable Vape model). These items were found hidden behind voluminous stacks of "cover goods," including mops, exercise books, and plastic chocolate moulds. The recovery of these goods

highlighted a severe and intentional breach of the Prohibition of Electronic Cigarettes Act, 2019. Consequently, the recovered 9,600 pieces were placed under absolute seizure as prohibited contraband.

2.6 The investigation unearthed a structured syndicate masterminded by Shri Asif Sathi, a Mumbai-based operative who exercised absolute control over the network's financial, logistical, and communicative architecture. Shri Sathi's modus operandi relied on the systematic exploitation of economically vulnerable individuals to serve as "dummy" proprietors for front entities. Mrs. Nikhat Baig, the declared proprietor of M/s. Nikhat Enterprises, admitted in her statement that she was merely an "on-paper" owner with no knowledge of the firm's actual imports, suppliers, or bank accounts. She had been induced by an intermediary named Shri Kishore to provide her KYC documents, PAN, and Aadhaar, and to sign multiple blank forms in exchange for a nominal fee, which was presented to her as a facilitation fee for a bank loan. This tactic created a legal shielding Shri Sathi from direct culpability and allowing the cartel to burn through IECs once they were compromised. The mastermind coordinated these imports with key associates, including Shri Sarfaraz Kamani and Shri Mohammed Tahir Menn. Together, they managed an "end-to-end" chain that originated with suppliers in China—often managed through shadow entities like M/s. AH International Trading Co. Limited and M/s. HK Longcheng Trade Co. Limited—and concluded with a network of domestic buyers such as Sohail Bhai and Raju Bhai, who specialized in the distribution of contraband into the grey market.

2.7 A critical component of this scheme was the role played by Shri Baldevsinh Vala of M/s. Kalpana Exim, who functioned as the syndicate's primary forwarder, logistics manager, and "fixer" at Mundra Port. Forensic analysis of messages of WhatsApp group "Mm" revealed that Shri Vala was instrumental in the fabrication and manipulation of shipping documents. He would routinely receive original invoices from Chinese suppliers and then alter them to ensure they matched the false, low-value declarations intended for the Bills of Entry. Furthermore, the syndicate employed a tactical "crossing" of containers—a sophisticated counter-surveillance maneuver where goods were de-stuffed and re-loaded into different domestic vehicles immediately after customs clearance but before leaving the port vicinity. This was designed to generate fresh e-way bills with new vehicle numbers, effectively "cleaning" the cargo of its import history. By doing so, the syndicate effectively broke the

digital audit trail, making it nearly impossible for enforcement agencies to link the original import container at Mundra to the final delivery point in Bhiwandi.

2.8 Shri Samir Sharma, a G-Card holder of M/s. Al Cargo Services, filed the false Bills of Entry. He conspicuously and willfully neglected the mandatory due diligence on IEC holders required under the Customs Broker Licensing Regulations (CBLR). Rather than acting as a gatekeeper of the law, he served as a professional enabler, receiving payments ranging from ₹2.5 lakh to ₹3 lakh per consignment for his cooperation.

2.9 Finally, the DRI noted a failure in the regulatory oversight provided by the Customs Preventive Officer, Shri Vipin Sharma. Despite receiving explicit, system-generated examination orders to "examine as per SEZ norms and check description and packages with respect to invoice and packing list," the officer submitted a cursory and misleading report claiming the cargo matched the declarations. This "casual approach" was not merely a procedural lapse; it was the final, critical gap in the safety net that allowed prohibited contraband to flow into the domestic market. The implications of such failures are profound, as they compromise the integrity of the entire SEZ framework, which relies heavily on the trust and diligence of its officers to prevent the leak of goods into the DTA.

2.10 Regarding the valuation of the seized goods, the total absence of a legal market meant that traditional valuation methods were inapplicable. Consequently, the DRI utilized internet-based pricing from the official "Yuoto" brand website (www.yuoto.in), which listed the product at a retail price of ₹2,499 per unit. This valuation brought the total market value of the seized 9,600 pieces to a staggering ₹2,39,90,400. The department has alleged that these goods are liable for absolute confiscation under multiple sub-sections of Section 111 of the Customs Act, 1962, including 111(d) for the violation of absolute prohibitions, 111(f) for non-mention in manifest, and 111(m) for the deliberate and mala-fide mis-declaration of quantity, value, and description.

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 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.

2.13 On the basis of the investigation, Show Cause Notice was issued to M/s. Nikhat Enterprise 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. Nikhat Enterprise 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.

(I) He imposed penalty of Rs. 10,00,000/- upon 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 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 Respondent failed to appreciate the factual matrix and legal provisions, resulting in an order that is bad in law and should be quashed. A primary argument is that the Appellant's business

activities at the Bhiwandi godown, including managing WhatsApp groups like "Sk Bhiwandi new godown" and "Bhiwandi warehouse act," were legitimate operations involving stock management and payment collection rather than a smuggling conspiracy. Furthermore, regarding a group video call with an overseas supplier, the Appellant maintains he could not specify the consignment details and directed investigators to the mastermind, Shri Asif Sathi, who was actually responsible for dealing with overseas suppliers for e-cigarette imports.

3.2 The Appellant argues there is no evidence to show he played any role in placing orders, negotiating with suppliers, remitting payments, or filing Bills of Entry for the alleged illegal imports. Statements from the mastermind, Mr. Asif Sathi, explicitly stated that the Appellant was not involved in the e-cigarette imports and that their visit to Dubai was for a cricket match and to explore the legal business of importing dry dates. Additionally, the department failed to prove the Appellant received any financial consideration or benefit from the alleged mis-declarations, which is essential to establish involvement in such an offence.

3.3 A significant procedural challenge is raised regarding the denial of cross-examination for Shri Tahir Memn, whose statement was heavily relied upon to link the Appellant to the smuggling cartel. The Appellant argues that Tahir Memn provided no concrete evidence and that his assumptions about the Appellant's involvement based on the company name "M/s. ASH" were baseless. Legal precedents and Section 138B of the Customs Act are cited to emphasize that an adjudicating authority must examine witnesses and allow cross-examination before relying on their statements as evidence; otherwise, the proceedings are considered ex parte and legally flawed.

3.4 Regarding the allegations of Intellectual Property Rights (IPR) infringement, the Appellant asserts the charges are unsustainable because the department did not follow Rule 8 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Specifically, the authorities failed to allow the actual right holders to examine and test the goods to determine if they were truly counterfeit or pirated. Without this mandatory compliance and verification by a "right holder" as defined by law, the claim that the imported mobile accessories infringed on IPR is baseless.

3.5 Finally, the Appellant maintains that penalties under Section 112(a)(i) cannot be imposed because there is no proof of "abetment" or mens rea

(guilty mind). The Appellant argues he had no knowledge of the concealed contents of the containers and did not act or omit to do any act that would render the goods liable for confiscation. Since the department failed to produce incriminating evidence of intentional aid or conspiracy, the legal ingredients for imposing such a penalty are not met.

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 Appellant has vehemently argued that the Adjudicating Authority erred in denying the request for cross-examination of Shri Tahir Menn and other co-noticees, claiming this violates the principles of natural justice and Section 138B of the Customs Act, 1962. I have scrutinized this contention in light of established legal principles governing quasi-judicial proceedings. It is a fundamental principle that the right to cross-examination is not an absolute or unconditioned right in administrative or quasi-judicial proceedings. The Hon'ble Supreme Court in **K.L. Tripathi v. State Bank of India (AIR 1984 SC 273)** held that the basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis... right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action.

5.2 In the present case, the "lis" or the dispute is not based solely on the oral testimony of Shri Tahir Menn. Rather, the evidence against the Appellant is built upon a robust foundation of documentary and digital evidence that exists independently of the oral statements. The Adjudicating Authority correctly identified that the Appellant's presence in video call recordings—where specific

cartons bearing the mark "DK123 XXL", i.e the same mark found on the seized e-cigarettes, were being stuffed into a container—is an objective fact that does not require cross-examination to be established.

5.3 Furthermore, the Hon'ble Supreme Court in **Collector of Customs, Madras and Ors v. D. Bhoormull (1983 (13) ELT 1546 SC)** observed that the Department is not required to prove its case with mathematical precision. In cases involving smuggling cartels, which operate in deep secrecy, the standard of proof is the "preponderance of probability." When the Appellant is confronted with his own participation in the "Mm" WhatsApp group, where the "crossing" of containers to avoid enforcement interception was discussed, the burden of proof shifts to the Appellant under Section 123 of the Act or general principles of evidence.

5.4 Regarding Section 138B of the Customs Act, 1962, the phrase "so far as may be" indicates that the adjudicating authority has the discretion to allow cross-examination only when it is relevant and necessary. If the findings are supported by independent evidence, the absence of cross-examination does not constitute a violation of natural justice. This view is supported by Apex Court in case of **Kanungo & Co. v. Collector of Customs (1972 SC 2136)** wherein the Apex Court held that the principles of natural justice do not require that the person whose statement is used should be produced for cross-examination in every case.

5.5 I find that the request for cross-examination in this case was largely a dilatory tactic. The Appellant did not specify any particular aspect of Shri Tahir Menn's statement that was factually incorrect or required clarification through cross-examination, especially given the presence of video evidence involving the Appellant himself. Therefore, the denial of cross-examination by the Adjudicating Authority was legally sound and did not prejudice the Appellant's defense. The findings regarding the Appellant's involvement are based on a "preponderance of probability" established through a chain of circumstantial and direct digital evidence that remains unshaken.

5.6 The Appellant has challenged the reliance on statements recorded under Section 108 of the Customs Act, 1962, alleging they were obtained under duress and are exculpatory in nature. I have carefully reviewed the legal standing of such statements and their specific application to this case. Section 108 of the Customs Act, 1962, empowers a Gazetted Officer of Customs to summon any person to give evidence or produce a document. It is well-established by the

Hon'ble Supreme Court in **Surjeet Singh Chhabra v. Union of India (1997 (84) ELT 646 SC)** that Customs Officers are not police officers, the statement made before them, though retracted within six days, is an admission and binding.

5.7 In the current proceedings, the Appellant's own statement recorded on 25.11.2022 admits to the creation of WhatsApp groups like 'Sk Bhiwandi new godown' and 'Bhiwandi warehouse act'. While the Appellant claims these were for "legal business activities," the contextual evidence found in these groups—including discussions about "crossing" containers and tracking the very vehicle (GJ12BT 4667) that carried the seized contraband—converts these "neutral" admissions into incriminating evidence.

5.8 The Appellant further relies on the statement of the mastermind, Shri Asif Sathi, to claim innocence. However, a holistic reading of all statements is required. The statement of Shri Tahir Menn explicitly names the Appellant as a partner in the Dubai-based entity "M/s ASH" (Asif-Sarfaraz-Hanif) formed to explore "business opportunities" which investigation revealed to be the smuggling of e-cigarettes. Under the doctrine established in **Naresh J. Sukhwani v. Union of India (1996 (83) ELT 258 SC),** the statement of a co-accused is a material piece of evidence that can be used to inculpate others if corroborated. The digital evidence of the group video call, where the Appellant is a participant discussing the loading of specific cartons (DK123), provides the "independent corroboration" required to make these statements binding.

5.9 Consequently, I find that the statements recorded during the investigation are not "in air" but are substantive pieces of evidence. They interlock with the digital forensics of the mobile phones seized and the physical recovery of goods at the Bhiwandi godown. The Appellant's role as an active associate, and not just a "namesake" partner, is clearly established through these records. The challenge to the evidentiary value of Section 108 statements is therefore dismissed as legally untenable.

5.10 A central pillar of the Appellant's defense is that he is neither the "importer" nor the "proprietor" of M/s Nikhat Enterprises, and thus cannot be held liable for the mis-declaration or smuggling. I find this argument to be a gross simplification of Customs Law and an attempt to misuse the "corporate veil" for illicit activities. Section 2(3A) of the Customs Act, 1962 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.

5.11 The investigation conducted by DRI has clearly unmasked M/s Nikhat Enterprises as a "dummy" or "front" firm, whose IEC was obtained by utilizing the identity of Mrs. Nikhat Baig, a person with no actual involvement or financial capacity to undertake such large-scale imports. In such scenarios, the law permits—and indeed mandates—the "lifting of the corporate veil" to identify the true masterminds.

5.12 The "ASH" syndicate (Asif-Sarfaraz-Hanif) represents a sophisticated structure where the Appellant (Sarfaraz) held effective control. The evidence of "effective control" is manifold:

- The Appellant was the administrator of the "Sk Bhiwandi new godown" WhatsApp group, which was used to manage the offloading of the very contraband that was mis-declared in the bills of entry of M/s Nikhat Enterprises.
- The video call recordings provided by the Chinese supplier, Mrs. Shelly, show the Appellant actively inspecting and discussing the "stuffing" of the e-cigarette cartons. In the eyes of Customs Law, the person who negotiates with the foreign supplier and supervises the loading of goods is the "de facto" importer.
- The statement of the logistics manager, Shri Parvej Alam, confirms that he received instructions directly from the Appellant regarding the storage and concealment of the "DK123" marked cartons.

5.13 The Appellant's reliance on the absence of his signature on the import documents is legally irrelevant for the purpose of Section 112. Section 112(a) uses the term "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 same.

5.14 The doctrine of "Lifting the Veil" is specifically designed to prevent individuals from hiding behind a legal facade to import prohibited items like e-cigarettes, which carry an absolute prohibition under the Prohibition of Electronic Cigarettes Act, 2019. The Appellant's effective control over the "ASH" group's operations in Dubai and his direct link to the Bhiwandi godown where the goods were eventually found, establish him as a beneficial owner and a mastermind. His role as an "abetter" is proven beyond reasonable doubt through the digital trail he left in various smuggling-centric WhatsApp groups. Therefore, I hold that the Adjudicating Authority was correct in treating the Appellant as a key associate and beneficial owner. The mask of M/s Nikhat Enterprises cannot

protect the Appellant from the consequences of his actions. The "Mastermind" status is not just a label but a factual finding supported by a mountain of evidence, and the penalty imposed is a direct consequence of this role.

5.15 The Appellant cited **Dawa Palzar v. CC (2000 (123) ELT 776),** arguing that mere association with a bad character does not amount to abetment. However, in Dawa Palzar, the appellant was a student who happened to be with a friend. In the instant case, the Appellant is a seasoned trader who formed a partnership (ASH) in Dubai and was involved in video calls regarding the specific marks (DK123) found on the seized cartons. This is not "mere association" but "active participation." Similarly, the citation of **Mahadeo Baburao Darekar v. CC (2001 (135) ELT 365)** is misplaced. That case dealt with the granting of shore passes which had no nexus to smuggling. In the present case, the Appellant was involved in the actual logistics and distribution of prohibited e-cigarettes. The nexus is direct and substantiated by digital footprints.

5.16 Section 114AA was introduced to penalize the use of "false and incorrect material" in transactions. The Appellant's involvement in creating dummy firms and providing forged documents to the Custom Broker (through Shri Baldevsinh Vala) falls squarely within the ambit of this section. The use of IECs of unsuspecting or dummy proprietors like Mrs. Nikhat Baig to import banned substances is a grave offense against the economic security of the country.

5.17 The investigation by DRI Gandhidham has meticulously dismantled a sophisticated smuggling syndicate. The Appellant was not a peripheral figure but a core member of the "cartel." The recovery of 9,600 e-cigarettes from a godown managed by the Appellant's associate, linked to a container he monitored, coupled with his presence in "stuffing" video calls, provides an unbreakable chain of evidence. The prohibition of E-Cigarettes under the Prohibition of Electronic Cigarettes Act, 2019, and DGFT Notification No. 20/2015-2020 is absolute. Dealing in such goods is not just a revenue offense but a violation of public health policy. The Appellant's attempts to hide behind the corporate veil of dummy firms must be rejected. I find that the adjudicating authority has been lenient in imposing a penalty, given the massive scale of the syndicate. There is no ground for any reduction in the penalty.

6. In view of the detailed discussion and findings above, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I reject the Appeal filed by Shri Sarfaraz Kamani.

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

F. No. S/49-425/CUS/MUN/2024-25 966 to 967 Date: 30.03.2026

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3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.