



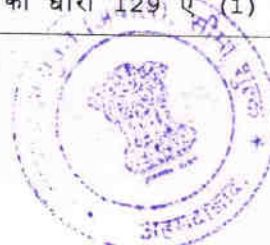
सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250871MN000000CFCF

क	फ़ाइल संख्या FILE NO.	S/49-321/CUS/AHD/24-25
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) :	AHD-CUSTM-000-APP-161-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 05/AC/ICD/IMP/ADJ/2025, dated 24.01.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s PVD Enterprise, 403, Upnishad Complex, Nr. Shreyas Railway Crossing, Ambawadi, Ahmedabad – 380 015



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)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(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 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए 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 :
	<div>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</div> <div>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</div>
	<div>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</div> <div>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</div>
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 ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील :- अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER IN APPEAL

M/s PVD Enterprise, a Proprietorship concern with Shri Parthiv Dave, as its sole Proprietor / Owner situated at 403, Upnishad Complex, Nr. Shreyas Railway Crossing, Ambawadi, Ahmedabad – 380 015 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order – In – Original No. 05/AC/ICD/IMP/ADJ/2025, dated 24.01.2025 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs, ICD – Khodiyar, Gandhinagar (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed Bills of Entry No. 9046027, dated 02.12.2023 and No. 9046058, dated 02.12.2023 to import Highly Specialized Equipment Used Digital Multifunctional Print & Copying Machine Brand and Model: CANON IRadv65 and XEROX Colour C respectively,

2.1 During the course of physical examination of the goods covered under Bills of Entry No. 9046027, dated 02.12.2023 and No. 9046058, dated 02.12.2023, it was noticed that 01 machine Old and Used Digital Multifunctional Print & Copying Machine Brand & Model: CANON IRadv65 (BE No. 9046027, dated 02.12.2023) and 01 Old & Used Digital Multifunctional Print & Copying Machine Brand & Model: XEROX Colour C (BE No. 9046058, dated 02.12.2023), which were declared as "Highly Specialized Equipment Used Digital Multifunctional Print & Copying Machine".

2.2 Further, to ascertain the physical condition of the goods, opinion of the Chartered Engineer Shri D. P. Jani (Reg. No. F-108975-3) was sought. The Chartered Engineer inspected the said consignment covered under Bill of Entry 9046027, dated 02.12.2023 and vide report Ref. No. DPJ 2023-24/620 dated 14.12.2023 observed that:

- The items are old and used highly specialized equipment digital multifunctional print & copying machine;
- It is complete set of machine without additional accessories;
- It is not reconditioned;
- Year of Manufacture – Jan – 2012,
- Made in China Name of manufacturer – Canon
- Model no. matches with invoice details;
- Residual life of the machine is approx. 10 years;
- No extra parts / accessories found;
- The value of the machines is revalued at 1100 USD from 650 USD;

2.2 Further, the Chartered Engineer also inspected the goods mentioned in Bill covered under Entry 9046058, dated 02.12.2023 and vide report Ref. No. DPJ/2023-24/619 dated 14.12.2023 opined that:




- The items are old and used highly specialized equipment digital multifunctional print & copying machine;
- It is complete set of machine without additional accessories;
- It is not reconditioned;
- Year of Manufacture – Not known (appears approx. 4 years old machine);
- Made in China Name of manufacturer – Xerox;
- Model no. matches with invoice details;
- Residual life of the machine is approx. 10 years;
- No extra parts / accessories found;
- The value of the machines is revalued at 1800 USD from 850 USD;

2.3 The above said goods covered under Bills of Entry No. 9046027, dated 02.12.2023 and No. 9046058, dated 02.12.2023 filed to import 02 Nos. of old and used Highly Specialized Machines (as ascertained by the Government Empanelled Chartered Engineer). Further, following observations were made in case of second hand electronics and IT Goods notified under the Electronics and IT goods

- (i) As per para 1. 1(b) of para 2.31 of Foreign Trade Policy (FTP), 2023, all second hand electronic and IT Goods notified under the Electronics and IT goods (Requirement of Compulsory Registration) Order, 2012/CRO, 2012, as amended, are "restricted" goods. As per condition (i) of [1. 1(b)] of para 2.31 of the FTP they are importable against an authorization subject to the conditions laid down under Electronics and IT goods (Requirement of Compulsory Registration) Order, 2012, as amended, from time to time.
- (ii) Further, as per condition (ii) of [1. 1(b)] of para 2.31 FTP, Import of unregistered nor compliant notified products as in CRO. 2012 as amended from time to time is "Prohibited"
- (iii) The import or manufacturing of Highly Specialized Equipments (HSE)/ Multifunction Devices (Scanners/photocopiers, etc) require compulsory Registration as in CRO 2012. However, as per Order S.O.2844 (E) dtd. 01.07.2021 of Ministry of Electronics and Information Technology, HSE as per Criteria given below shall stand exempted from the application of CRO provided they are manufactured/imported in less than 100 units per model per year:
 - (a) Equipment Powered by three phase power supply or
 - (b) Equipment Powered by single phase power supply with current rating exceeding 16 Ampere or
 - (c) Equipment with dimensions exceeding 1.5 m x 0.8 m or
 - (d) Equipment with weight exceeding 80 Kg.
- (iv) However, import of Second Hand Highly Specialized Equipments (HSE)/Multifunction Devices Scanners photocopiers, etc.) continued to be restricted goods as per para 1. 1(b) of para 2.31 of FTP, 2023, and the same are importable against an authorization from the DGFT. The same is also clarified in the Office Memorandum F. No. W-47/21/2022-IPHW dtd 05.09.2023 of Ministry of Electronics and Information Technology (IPHW Division) (refer para 2(i)) authorization from DGFT is required for imports of Second Hand Highly Specialized Equipment (HSE).



2.4 In this regard, the said Appellant failed to submit required authorization from DGFT for imports of said goods viz. Second Hand Highly Specialized Equipment (HSE). Therefore, the goods appeared to be liable for confiscation under Section 111(d) & 111(o) of the Customs Act, 1962. In view of this, the goods covered under Bills of Entry No. 9046027, dated 02.12.2023 and No. 9046058, dated 02.12.2023 were examined under Panchnama dated 27.12.2023 and subsequently seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 27.12.2023 as there were reasons to believe that the goods were liable for confiscation under Section 111 of the Customs Act, 1962.

2.5 The Appellant vide their letter (inward dated 02.01.2024) had alleged the seizure of the said goods as illegal claiming the said imports as legal within the parameters of the Customs Law. They, vide their letter (inward dated 03.01.2024) sought personal hearing in the matter. Further, they, vide their letter dated 05.01.2024 (inward dated 03.01.2024) sought transfer of the case to another officer claiming the seizing officer as biased against them. Accordingly, the case was further pursued by another officer who did not find anything contrary to the investigation already carried out till then. Later on, the Appellant vide their letter dated 12.01.2024 (inward dated 12.01.2024) submitted another letter and 1 Bill of Entry of another importer claiming that the same was containing the goods Second Hand Highly Specialized Equipment (HSE) / Multifunction Devices (Scanners/photocopiers, etc.) same as goods covered in the instant case and were cleared at Nhava Sheva port.

2.6 Subsequently, clarification was sought from the DGFT vide letter dated 16.01.2024 as to whether authorization from DGFT is required for import of Highly Specialized Equipment or otherwise and if the authorization was required then whether the said Appellant M/s PVD Enterprise (IEC-0803002301) was authorized by DGFT. In this regard, the DGFT vide O. M. dated 13.05.2024 clarified that as per para 2.31, all second hand electronic and IT Goods notified under the Electronics and IT goods (Requirement of Compulsory Registration) Order, 2012 are "restricted" for import and require authorization from DGFI. The DGFT further clarified that import of unregistered / non-compliant second-hand notified products was prohibited for imports. The DGFT vide above mentioned OM informed that the said Appellant, i.e., M/s PV D Enterprise (IEC-0803002301) had not applied to DGFT for authorization for import of above-mentioned items

2.7 Legal provisions:-

2.7.1 The import of Second Hand/Old & Used Highly Specialized Equipment's (HSE) / Multifunction Devices (Scanners/photocopiers, etc.) is governed by Sr. No [1. I(b)] of para 2.31 of the Foreign Trade Policy, 2023 issued by the DGFT wherein as per condition (i) of [1. 1(b)] of para 2.31 of the FTP, 2023 the import of the said goods requires an Authorization from the DGFT




2.7.2 In absence of the requisite authorization from the DGFT, the said goods falls under the ambit of "Prohibited Goods" as per condition (ii) of [1. 1(b)] of para 2.31 of the FTP, 2023 read with Section 2 (33) of the Customs Act, 1962. Also, the goods so imported are to be treated as 'smuggled goods as defined under Section 2(39) of the Customs Act, 1962.

2.7.3 In view of the above the said goods were liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962. Further, for the said act of commission and omission on the part of the Appellant for attempted the import of said "prohibited goods" rendered them liable for penalty under Section 112(a)(i) / 112(b)(i) of the Customs Act, 1962.

2.7.4 The Appellant never declared before the Customs that the said were restricted within the preview as per condition (ii) of [1. 1(b)] of para 2.31 of the FTP, 2023 read with Section 2 (33) of the Customs Act, 1962. Contrarily, they claimed otherwise and tried to import the same rendering the said goods to be treated as 'smuggled goods' as defined under Section 2 (39) of the Customs Act, 1962. The Appellant, in another similar case of fraudulent import of the said/similar goods booked by Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad and Show Cause Notice No. AZU/GI/Enq-06 (Int-09)/2018, dated 18.02.2019 issued by Pr. Additional Director General,, AZU, was arrested by the Directorate of Revenue Intelligence for his active connivance as Custom House Agent. Thus, the Appellant, knowingly and intentionally filed the said documents for importigng the said "Prohibited goods" rendering himself liable for Penalty under Section 114AA of the Customs Act, 1962.

2.8 Therefore, a Show Cause Notice from F. No. VIII/48-104/ICD/PVD/2023, dated 29.05.2024 was issued to Shri Parthiv Dave S/o Vijaykumar Dave, Proprietor of the Appellant, proposing, as to why:

- i. The seized 01 machine Old and Used Digital Multifunctional Print & Copying Machine Brand & Model: CANON IRadv65 (BE No. 9046027, dated 02.12.2023) and 01 Old & Used Digital Multifunctional Print & Copying Machine Brand & Model: XEROX Colour C (BE 9046058, dated 02.12.2023), valued at Rs. 55,280/- and Rs. 72,289/- respectively placed under seizure vide Seizure Memo 27.12.2024 should not be confiscated under the provisions of Section 111 (d) and Section 111(o) of the Customs Act, 1962;
- ii. Penalty should be imposed upon him under Section 112 (a) (i) /112 (b) (i) / 114A of the Customs Act, 1962;
- iii. Penalty should not be imposed upon him under Section 114(AA) of the Customs Act, 1962.

2.9 The adjudicating authority vide the impugned has passed the order as



detailed below:-

- i. He has ordered the confiscation of 01 machine Old and Used Digital Multifunctional Print & Copying Machine Brand & Model: CANON IRadv65 (BE No. 9046027, dated 02.12.2023) and 01 Old & Used Digital Multifunctional Print & Copying Machine Brand & Model: XEROX Colour C (BE 9046058, dated 02.12.2023), valued at Rs. 55,280/- and Rs. 72,289/-, having re-assessed valued at Rs. 93,551/- and Rs. 1,53,086/- respectively, totally amounting to Rs. 2,46,634/- under the provisions of Section 111 (d) and Section 111(o) of the Customs Act, 1962.
- ii. He gave an option to the Appellant to redeem the aforesaid goods on payment of redemption fine of Rs. 25,000/- under Section 125 of the Customs Act, 1962;
- iii. He has imposed a penalty of Rs. 10,000/- on the Appellant under Section 112 (b) (i) of the Customs Act 1962;
- iv. He has imposed a penalty of Rs. 10,000/- on the Appellant under Section 114 (AA) of the Customs Act 1962;

3. Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant have filed present appeal. The Appellant have, *inter-alia*, submitted detailed submissions on following points in support of their contentions:

- That the order in original passed by the adjudicating authority is not correct, proper, legal ignoring the SO issued by the MEITY binding in nature on the authority and also beyond the scope need to be quash and set aside in the interest of justice and equity;
- In view of the aforesaid cited MEITY communication, the imported cargo bound to governed thereunder and requirement of authorization does not call for. It is therefore humbly submitted that the order impugned passed by the adjudicating authority ignoring the vital fact and law is bad precedent and need to be vacated by allowing the ground as explained above in the interest of justice and equity;
- That the valuation arrived at by the empaneled Chartered Engineer is in clear violation of the Circular No. 25/2015 and arrived at the value exorbitantly on a higher side without following the directives given in the circular supra;
- Without prejudice to the grounds and contention agitated above the present order impugned is hit by limitation provided in guidelines / directives that order by the original authority has to be issued within 30 days from the date of the personal hearing. For ease of reference, chronological order is as below :
 - (a) Date of personal hearing held on **27.09.2024**
 - (b) O-I-O appealed against dated **25.01.2025**
- On a simple reading of the above, it transpires that the adjudicating authority abnormally took long time to issue a final order;
- In this regard, the Appellant refer to **para 12.3** of the order impugned that the Appellant has **never ever** filed any submission on 10.01.2025 as claimed by the authority. This is the clear case of prejudice causing undue harassment;



- The appeal on hand is a classic example wherein how the adjudicating authority become crazy and cause untold misery and his order becomes a predicament and made the poor assessee to move from pillar to post to execrate from the unjust order;
- In view of the above submission given in para supra, the appellant most respectfully prays and request the Hon'ble appellate authority to dismiss the order by issuing strictures against the erring officer in the interest of justice and equity. Further without prejudice to the above, the identical issues moved to the Supreme Court wherein the apex court consistently held in favour of the trade;
- Without considering facts, grounds etc. the adjudicating Authority inclined and overlooked the facts and merits, and in a cryptic manner, decided the fate of the issue, upheld the allegations contained in the notice, and passed the order to confiscate the imported goods and also imposed penalty under various provisions of Customs Act, hence this appeal;
- The Appellant submits and request the Hon'ble appellate authority to dismiss the SCN as the seizure was conducted on 27/12/2023 whereas the SCN issued on 29/05/2024 received by the assessee on 02/06/2024 which is beyond the statutory period as provided in Section 110 (2) of the CA, thus hit by limitation need to be quashed and set aside in the interest of justice;
- In any view of the matter the order impugned need to be quashed and set aside on merits, limitation etc. with further request to grant any other and further consequential relief deem fit in the facts, law and circumstances be also ordered.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 18.06.2025. Shri Parthiv V. Dave, Proprietor of the Appellant, appeared for hearing on behalf of the Appellant. He had reiterated the submissions made at the time of filing of appeal. He further submitted the claim of waiver of demurrage quantified and demanded and raised by the Custodian / CFS in the interest of justice and equity.

DISCUSSION & FINDINGS:-

5. I have carefully gone through the appeal memorandum as well as records of the case and the submissions made on behalf of the Appellant during the course of hearing. The issues to be decided in the present appeal are whether:

- i. The goods imported by the Appellant can be imported without the authorization from the DGFT, in the facts and circumstances of the case.
- ii. The SCN issued beyond the period of 06 months as provided in Section 110 (2) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;



- iii. The valuation arrived by the Govt. empanelled Chartered Engineer in the facts and circumstances of the case, is legal and proper or otherwise;

5.1 The Appellant has filed the present appeal on 17.03.2025. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 12.02.2025 has been shown as 21.02.2025. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted copy of E-Payment Transaction Status Report bearing No. 7671281152, dated 25.05.2025 for Rs. 1500/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of penalty of Rs. 20,000/- under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. It has been contended by the Appellant that in view of the SO issued by the Ministry of Electronics and Information Technology (MEITY), to import use second hand Highly Specialized Equipment Digital Multifunctional Print and Copying Machine, the requirement of authorization does not call for. In this regard, on perusal of the said Order published in the Gazette of India, vide S.O. 1248 (E), dated 18th March, 2021, it is observed that the SO was issued with respect to conformity of Bureau of Indian Standards (BIS). Further, in the above SO dated 18th March, 2021, certain amendments by way of inserting para 6, 7, and 8 were made vide S.O. 2844 (E), dated 1st July, 2021. The relevant para of the S.O. dated 1st July, 2021, is reproduced below for ease of reference:-

"8. Exemption for Highly Specialized Equipment (HSE) : HSE as per criteria given below shall stand exempted from the application of this Order provided they are manufactured / imported in less than 100 units per model per year:

- Equipment Powered by three power supply or
- Equipment Powered by single phase power supply with current rating exceeding 16 Ampere or
- Equipment with dimensions exceeding 1.5 m x 0.8 m or
- Equipment with weight exceeding 80 Kg."

6.1 On perusal of the above, it is observed that the SO does not specify that it relates to second hand machinery. In other words, the SO does not prescribe that the goods in question, i.e., Second Hand Highly Specialized Equipment do not require DGFT authorization for importation. Hence, the contentions of the Appellant are legally not sustainable and accordingly rejected.

6.2 On perusal of the impugned order, it is observed that the adjudicating authority has held that:



"13.5. Subsequently, vide letter dated 16.01.2024 a clarification was sought from the DGFT i.e. whether authorization from DGFT is required for import of Highly Specialized Equipment or otherwise and if the authorization is required then whether the said importer i.e. M/s P V D Enterprise (IEC- 0803002301) is authorized by DGFT.

13.6. In this regard, DGFT vide O. M. dated 13.05.2024 clarified that as per para 2.31, all second hand electronic and IT Goods notified under the Electronics and IT goods (Requirement of Compulsory Registration) Order, 2012 are "restricted" for import and require authorization from DGFT. DGFT further clarified that import of unregistered/ non-compliant second-hand notified products is prohibited for imports. DGFT vide above mentioned OM informed that the said importer M/s P V D Enterprise (IEC- 0803002301) has not applied to DGFT for authorization for import of impugned goods."

6.3 It is not disputed that the impugned goods imported by the Appellant are Second Hand (Old and Used) goods. Considering the facts of the case, I am of the considered view that the Second Hand (Old and Used) goods imported by the Appellant are restricted in nature and importable against an authorization from the DGFT in view of Para 1.1(b) of Para 2.31 of Foreign Trade Policy (FTP), 2023. It is also observed that the Appellant have failed to submit the authorization from the DGFT. Hence, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings in the impugned order passed by the adjudicating authority.

7. It has been contended that the SCN have been issued beyond the period of 06 months as provided in Section 110 (2) of the Customs Act, 1962. I do not agree with this contention of the appellant. On perusal of the documents placed on record, I find that the goods covered under Bills of Entry No. 9046027, dated 02.12.2023 and No. 9046058, dated 02.12.2023 were examined under Panchnama dated 27.12.2023 and subsequently seized under Section 110 of the Customs Act, 1962 vide Seizure Memo on 27.12.2023. It is further observed the Show Cause Notice have been issued on 29.05.2024, i.e., within the stipulated time as envisaged under Section 110 (2) of the Customs Act, 1962. Hence, this contention of the Appellant is legally not sustainable and accordingly rejected.

8. It has been contended that the valuation arrived by the empaneled Chartered Engineer was exorbitantly on a higher side and without following the directives given in the Circular No. 25/2015. In this regard, it is observed that the Appellant in their appeal memorandum have not submitted any cogent evidence contrary to the valuation arrived by the Chartered Engineer by way of submitting any technical literature related to the correct value of the imported goods. Therefore, merely contending without any documentary evidence cannot be considered as evidence to establish that that the value arrived by the Chartered Engineer was exorbitantly on a higher side inasmuch as no evidences, whatsoever it may be, have been placed on record in support of the contention. Hence, I reject the contention of the Appellant.



9. On perusal of the impugned order, it is observed that the adjudicating authority has ordered for confiscation of the imported goods under Section 111 (d) and 111 (o) of the Customs Act, 1962 and also imposed penalties under Section 112 (b) (i) and Section 114 AA of the Customs Act, 1962. However, it is observed that the Appellant in their appeal memorandum have not made any submissions in respect of the confiscation of the goods and penalties imposed upon them. Therefore, I uphold the order of the adjudicating authority confiscating the import goods under Section 111 (d) and 111 (o) of the Customs Act, 1962. Consequently, the imposition of redemption fine with respect to the confiscated goods under Section 125 (1) of the Customs Act, 1962 is required to be upheld. Further, the penalties imposed under Section 112 (b) (i) and Section 114 (AA) of the Customs Act, 1962 are also upheld.

10. It is observed that the Appellant in addition to the above grounds have also requested to grant waiver of demurrage charges and demanded by the Custodian / CFS, in the interest of justice and equity. However, it is observed that this issue of waiver of demurrage charges is not a part of the impugned order. Therefore, I am not required to record any findings on the issue of waiver of demurrage charges.

11. In view of the above discussions and finding, the impugned order passed by the adjudicating authority is required to be upheld.

12. Accordingly, the appeal filed by the Appellant is rejected.



(Signature)

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-321/CUS/AHD/24-25

By Registered post A.D

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

Date: 07.08.2025

To,

M/s PVD Enterprise,
403, Upnishad Complex,
Nr. Shreyas Railway Crossing,
Ambawadi,
Ahmedabad – 380 015,

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Assistant Commissioner, Customs, ICD – Khodiyar, Gandhinagar.
4. Guard File.