



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN - 20251171MN000000B95F

क	फ़ाइल संख्या FILE NO.	S/49-174/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-395-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.11.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/JC/GPM/215/2016-17 dated 28.02.2017
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Mahek Impex Om Apartment, Shop No. 96, M.J.Phule Market, Palton Road, Mumbai-400001 Maharashtra



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 (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 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।
(ब)	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/- (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 :	
	<p>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</p>	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	<p>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>	
5.	<p>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-</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> <p>(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 हजार रुपए.</p> <p>(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;</p> <p>(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; पाँच हजार रुपए</p> <p>(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 ;</p> <p>(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 हजार रुपए.</p> <p>(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</p> <p>(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 ।</p> <p>(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.</p>	
6.	<p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>	



ORDER-IN-APPEAL

The present appeal has been filed by M/s Mahek Impex, Om Apartment, Shop No. 96, M.J.Phule Market, Palton Road, Mumbai-400001, Maharashtra, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/JC/GPM/215/2016-17 dated 28.02.2017 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Customs House, AP & SEZ, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that specific Intelligence was received that a Container bearing No. EGSU 9107130, containing undervalued Imported food stuffs, would reach Gala No. A/11, H. No. 18/3, Choudhary Compound, Purna Village, Bhiwandi on 9.7.2015, inasmuch as modus operandi also adopted that Importer was mis-declaring RSP of the imported packaged food stuffs as well as non affixing of RSP resulting in short payment of Customs duty. Based on such intelligence, officers of Marine & Preventive Wing, Customs (Preventive), Mumbai visited Gala No. A/11, H. No. 18/3, Choudhary Compound, Purna Village, Bhiwandi on 9.7.2015 and the said container was subjected to examination under Panchanama dated 9.7.2015 and it was noticed that the said goods Imported under the cover of Bill of Entry No. 9761979 dated 1.7.2015 (hereinafter referred to as 'the said Bill of Entry) and were assorted food stuff of foreign origin (USA Make) packed in bottles/packets of different sizes., viz., flavoured baby foods, snacks, salted nuts, fruit jams etc. The details are tabulated under Para 3 of the Show cause Notice issued in this case and from F.No. MPIU-III/XI-09/M&P/2015-16 dated 5.1.2016 (hereinafter referred to as 'the said SCN' for sake of brevity).

2.1 It was seen that out of the total 56 items stated to have been declared in the said Bill of Entry, 50 items were declared to have been covered under the Notification No. 49/2008-CE (NT) dated 24.12.2008 and the examination of the goods revealed that neither the MRP/RSP was affixed on the packages of the said goods. The same appeared to have been done with an intent to evade the Customs duties by undervaluing them and hence the entire consignment under the said Bill of Entry was seized under Panchanama dated 9.7.2015, subsequently handed over for safe custody to Shri Mohan Sharma, licensee of Gala No. A/11, H. No. 18/3, Choudhary Compound, Purna Village, Bhiwandi



and proprietor of M/s Nirma Transport Agency, under Supratnama dated 9.7.2015.

2.2 The said Bill of Entry was found to have been assessed at re-determined value of Rs. 14,05,201/- rather than at the declared value of Rs. 9,90,985/- by the Mundra Customs. The said goods had undergone the scrutiny of FSSAI, as the same was mandatory for the purpose of certification to the extent that the food stuff was fit for human consumption and as such the importer had produced PHO Certification No. CHM/4396 to 4451/2015 dated 6.7.2015, which also mentioned that the valid shelf life of the cargo is not less than 66% at the time of import.

2.3 Statement of Shri Lalit Roopchand Madhrani, proprietor of the importer was recorded under Section 108 of the Customs Act, 1962 on 13.7.2015, wherein he interalia deposed that he had Imported the entire consignment under the said Bill of Entry for the first time; that Invoice value was declared at USD 15,352 or Rs. 9,90,985/- under the Commercial Invoice No. TU-15057 dated 30.4.2015 of overseas supplier, M/s Trans USA Corporation, USA; that the name of the Importer and MRP/RSP is not mentioned on the bottle/packets of the goods imported as required under DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 (hereinafter referred to as 'the said Notification' for sake of brevity); that the said Bill of Entry had been assessed on a higher rate much more than that declared under the Invoice; that he intended to put the details of the importer and the MRP/RSP on every package before the sale; that he has not taken registration from the Legal Metrology Department, albeit that was mandatory in case of import of packaged goods for sale in India.

2.4 Since, neither the MRP/RSP nor the importer's details were found to have been affixed on the goods, a market survey to ascertain the same of the identical products was conducted by the investigations in presence of the proprietor of the importer and on having done so, he had put his dated signatures on each page of the Market Survey Report in token of his agreement to the said MRP/RSP's so ascertained during the Market survey, according to which the total Market value of the consignment was worked out at Rs. 42,94,724 (marked at Annexure A to the said SCN). On the basis of the Market value so ascertained the total Customs duty payable (inclusive of CVD and SAD) by the importer turned out to be Rs. 10,01,427/- and since the Customs duty to the tune of Rs. 7,26,878/- was already paid by the importer under the said Bill of Entry, the differential Customs



duty worked out to be Rs. 2,74,549/- (as detailed under Annexure B to the SCN).

2.5 Shri Jatin Bharan Palan, proprietor of M/s New Link Overseas and Customs Broker in the instant case, under his statement dated 21.12.2015, interalia deposed that the name of the Importer and the MRP/RSP was not mentioned on the packages covered under the said Bill of Entry as required under the said Notification; that the RSP is mentioned on the said Bill of Entry which is assessed on the higher rate than declared in the Invoice issued by the overseas exporters; that the importer had informed them that the said consignment was meant for "Institutional/Wholesale" purpose and therefore they (CB) were under the misconception that the said consignment was taken for delivery without affixing the importer's details and RSP declaration as required under the Act/ Rules.

2.6 The Importer vide letter dated 13.7.2015 requested for release of the seized good, being perishable in nature and not storable in hot weather and also vide their letter dated 17.7.2015. The said request was forwarded to the jurisdictional authorities, Mundra, communicating the differential duty of Rs. 2,74,549/- worked out on the basis of the market Survey. Additional Commissioner of Customs (Import Assessment), MP & SEZ, Mundra, vide letter F.No.VIII/48-387/Misc/Grp.1/2015-16 dated 4.8.2015 informed that provisional release of the seized goods had been granted and the Bond backed by the Bank Guarantee, of the aforementioned amount, had been taken and accepted and accordingly the appointed custodian, Shri Mohan Sharma was accordingly directed to hand over the said consignment to the Importer

2.7 Based on the investigations it appeared that the Importer had deliberately and wilfully mis-declared low RSP values for each assorted food stuff, in the said Bill of Entry; that Importer had deliberately not declared/affixed the RSP value & their details on any of the bottles or packages inspite of the same were already mandated under the said Notification read with Notification No. 49/2008-CE INT) dated 24.12.2008; that the RSP declared by the importer in the said Bill of Entry was much less than the actual PMV found during the Market survey; that the same was done with an intent to evade the payment of appropriate Customs duty; that provisions of Section 28(4) were invokable in this case for demanding differential Customs duty to the tune of Rs. 2,74,549/-; that non compliance of the said Notification rendered the goods liable as "prohibited goods" and thereby making them liable for confiscation under Section 111(d) of




the Customs Act, 1962; that since the value of the goods, as declared for assessment under the said Bill of Entry did not correspond with the actual value, thereby rendering the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

2.8 Accordingly, a Showcause Notice, answerable to the Additional Commissioner of Customs, Marine & Preventive Wing, Customs (Preventive), Mumbai was issued under SCN File No. MPIU/III/XI-09/M & P/2015-16 DATED 5.1.2016 (hereinafter referred to as the SCN for sake of brevity), to the Importer which is a proprietorship firm of Shri Lalit Roopchand Madrani asking them as to why-

- a. The RSP of assorted food stuffs original declared in the said Bill of Entry should not have been re-determined by considering the rates ascertained by the Market Survey Report dated 23.7.2015 and the total value of the goods should not have been determined accordingly.
- b. Differential Customs duty of Rs. 2,74,549/- should not have been demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962.
- c. The imported goods viz., assorted food stuffs, totally valued at Rs. 42,94,724/- stuffed in the said Container and seized under the Panchanama dated 9.7.2015 at Gala No. A/11, H. No. 18/3, Choudhary Compound, Purna Village, Bhiwandi, should not have been held.
- d. The redemption fine should not have been Imposed on the importer in lieu of confiscation under Section 125 of the Customs Act, 1962, since the seized goods as specified at "c" above have already been released to the importer provisionally.
- e. Interest should not have been demanded under the provisions of Section 28AA of the Customs Act, 1962.
- f. Penalties should not have been imposed under the provisions of Section 114A and/or 114AA and/or 112(a) of the Customs Act, 1962.



2.9 Besides the above, M/s New Link Overseas, CHA (11/1726) proprietorship firm of Shri Jatin Bharat Palan was also called upon to Showcause to the Additional Commissioner as to why the penalty under Section 112(a) of the Customs Act, 1962, should not have been invoked upon them.

2.10 Consequently, the Adjudicating Authority passed the following order: -

- a. The Retail Sales Price (RSP) of assorted food stuffs imported under the cover of Bill of Entry No. 9761979 dated 1.7.2015 IS re-determined to Rs. 42,94,724/- as per the Market Survey report dated 23.7.2015 and thereby assumes the total value of the imports, thereof.
- b. He ordered to recover the Differential Customs duty of Rs. 2,19,941/- (as re-determined under Para 24 above) under the provisions of Section 28(4) of the Customs Act, 1962 alongwith Interest under the provisions of Section 28AA of the Customs Act, 1962
- c. He ordered for confiscation of the imported goods viz., assorted food stuffs, totally valued at Rs. 42,94,724/- stuffed in EGSU 9107130 and seized under the Panchanama datd 9.7.2015 at Gala No. A/11, H. No. 18/3, Choudhary Compound, Purna Village, Bhiwandi, under Section 111(d) and 111(m) of the Customs Act, 1962. As the goods in question are not available for confiscation since they have been provisionally released, he thereby ordered for redemption fine of Rs. 4,00,000/- (Rupees Four lakh only).
- d. He imposed a penalty of Rs. 2,19,941/ (Rupees Two Lakhs Nineteen Thousands Nine Hundred and Forty One only) on M/s Mahek Impex, Mumbai, under Section 114A of the Customs Act, 1962. However, if the Customs duty and interest confirmed as discussed above alongwith penalty under this Section is paid by the importer within 30 days from the date of communication of this order, the amount of penalty stands reduced to 25% in terms of provisions of Section 114A of Customs Act, 1962.
- e. He ordered to enforce the Bond and Bank Guarantee, executed by M/s Mahek Impex, Mumbai, during the provisional release of the seized goods and to appropriate the same to recover the demand of duties, Interest and




Penalties, as ordered above.

f. He dropped the proceedings proposed against M/s New Link Overseas, Mumbai, CHA (11/1726) proprietorship firm of Shri Jatin Bharat Palan, proposed under Showcause

SUBMISSIONS OF THE APPELLANT:

3 Being aggrieved with the impugned order, the Appellant had earlier filed appeal with the Commissioner (Appeals). The then Appellate Authority, vide OIA No. MUN-CUSTM-000-APP-247-17-18 dtd. 06.11.2017 had rejected their appeal as non maintainable as they appellant had not submitted the statements of facts and grounds of appeal as per CA-1 form.

3.1 Being aggrieved with the above OIA No. MUN-CUSTM-000-APP-247-17-18 dtd. 06.11.2017 , the appellant filed appeal with Hon'ble CESTAT, Ahmedabad. Hon'ble CESTAT, Ahmedabad vide its Final Order No. A/10249/2024 dtd. 24.01.2024, remanded the matter back to the Appellate Authority with following direction:-

“ 6. We find that the appellant has acted irresponsibly and has not given due attention to the correspondence received from Commissioner (Appeals) nor has followed the prescribed procedure in law. However in the facts of the case ideally an opportunity of personal hearing should have been granted which the Commissioner (Appeals) has failed to do so. In these circumstances, in the interest of justice, we remand the matter back to Commissioner (Appeals) to give opportunity to the appellant to file the statement of facts and reliefs claimed etc. and pass fresh order after giving personal hearing to the appellant. The appeal is allowed by way of remand.”

PERSONAL HEARING:

4. In pursuance of directions issued by the Hon'ble CESTAT, Ahmedabad vide above order dtd. 24.01.2024, personal hearing was granted to the Appellant on 12.12.2024, following the principles of natural justice wherein Shri A. M. Sachwani, Advocate appeared for the hearing and he re-iterated the



submission made at the time of filing the appeal. He also submitted that in the present case, the goods were imported at Mundra and while transporting the goods by truck, the officers of Marine & Preventive Wing, Customs, Mumbai has seized the goods which were released on Bond and bank Guarantee and thereafter the SCN was issued by Marine & Preventive Wing, Customs, Mumbai. The said SCN was adjudicated vide impugned order against which the present appeal is filed with a request to set aside the said adjudication order.

Due to change in the appellate authority, another personal hearing was held on 12.06.2025 wherein Shri A. M. Sachwani, Advocate appeared for the hearing and he re-iterated the submission made at the time of filing the appeal. He also submitted the statement of facts and grounds of appeal. As per the grounds of appeal, the appellant has contended as under :-

- The Adjudicating Authority has not seen and appreciated the points which were raised in the reply to SCN .
- The Adjudicating Authority has not appreciated the fact that the statements given by the Appellant and his partner are exculpatory. Further the statements of the other noticees are contradictory, which goes to show that there is no cogent /corroborative evidence against the Appellant so as to attract the penal provisions.
- The Adjudicating Authority has not appreciated the fact that the Appellant in illegal and undervalued import of mobile accessories so as to attract the provisions of Section 112(a) of the Customs Act 1962. Further there is no malafide and/or any mens rea on part of the Appellant who have acted bonafide in assisting the importer in clearance of the goods.
- The Adjudicating Authority has not appreciated the fact that though the goods were taken charge by the officers of marine preventive , no samples were removed by them.
- The Ld. Adjudicating Authority has not appreciated the fact that the goods imported by the importer are goods that are imported regularly by innumerable importers all over the country.




- The Ld. Adjudicating Authority has not appreciated the fact that no market enquiry of the goods was done by the department, in the presence of appellant .
- The Adjudicating Authority ought to have seen the adjudication order wherein the goods which were cleared through Mundra Port , were assessed by the customs official and officers of Marine preventive has no authority enhance the value and the officers of Marine preventive is not the Appellate Authority .
- The Adjudicating Authority has not appreciated the fact that the department has failed to follow Rule 14 of the Customs Act and Customs Valuation Rules before determining the valuation of goods. The department has not made any enquiries with regard to any contemporaneous imports of similar goods, which are being regularly done in the Bombay Customs House or other ports all over India. If the valuation is being enhanced by the Customs authorities without undertaking the above-mentioned exercise, it is not necessary that the value declared by the importer amounts to mis-declaration. Since the valuation is sought to be enhanced by the department not on the basis of any evidence of illegal remittance or of any evidence of transaction over and above the invoice price, the same obviously cannot be accepted. If the transaction value is not acceptable to the department for levy of duty and a different higher value is determined, ipso facto it is not a case of mis-declaration or intent to evade or avoid customs duty and this will not constitute any liability for confiscation under Section 111(m) of the Customs Act.
- The Adjudicating Authority has not appreciated the fact that in a number of judgments it has been held that in case the value which has been declared by the importer in the bill of entry is thereafter loaded by the department, the same does not amount to mis-declaration of value of goods. In the instant case too, the charge of mis-declaration cannot therefore be sustained. The department has loaded the value of goods as declared in the bill of entry and the goods have been rendered liable to confiscation under section 111(m) of the Customs Act 1962.



- The Adjudicating Authority ought to have called for and seen the material of NIDB data on the point of valuation and bills of entry details etc. The Adjudicating Authority ought to have followed valuation rules as per section 14 of the Customs Act before confirming the duty liability as per the SCN.
- The Adjudicating Authority has not appreciated the fact that valuation rules have not been properly followed even though the same is the subject matter of the case.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order , Final Order No. A/10249/2024 dtd. 24.01.2024 passed by the Hon'ble CESTAT, Ahmedabad in the matter as well as the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal which are as follows:

- (i) Whether the Retail Sales Price (RSP) of assorted food stuffs imported under the cover of Bill of Entry No. 9761979 dated 1.7.2015 re-determined to Rs. 42,94,724/- as per the Market Survey report dated 23.7.2015 is legal and proper or otherwise.
- (ii) Whether order to recover the Differential Customs duty of Rs. 2,19,941/- (as re-determined above) under the provisions of Section 28(4) of the Customs Act, 1962 alongwith Interest under the provisions of Section 28AA of the Customs Act, 1962 is legal and proper or otherwise.
- (iii) Whether the order for confiscation of the imported goods viz., assorted food stuffs, totally valued at Rs. 42,94,724/- stuffed in EGSU 9107130 and seized under the Panchanama dtd 9.7.2015 at Gala No. A/11, H. No. 18/3, Choudhary Compound, Purna Village, Bhiwandi, under Section 111(d) and 111(m) of the Customs Act, 1962 order for redemption fine of Rs. 4,00,000/- is legal and proper or




otherwise.

- (iv) Whether imposition of penalty of Rs. 2,19,941/ (Rupees Two Lakhs Nineteen Thousands Nine Hundred and Forty One only) on M/s Mahek Impex, Mumbai, under Section 114A of the Customs Act, 1962 is legal and proper or otherwise.
- (v) Whether the adjudicating authority's order to enforce the Bond and Bank Guarantee, executed by M/s. Mahek Impex, Mumbai, during the provisional release of the seized goods and to appropriate the same to recover the demand of duties, Interest and Penalties is legal and proper or otherwise.

5.2 It is observed that on the basis of Intelligence, the consignment of packaged food stuffs imported by the appellant was subjected to examination under Panchnama dated 9.7.2015 and it was noticed that the said goods Imported under the cover of Bill of Entry No. 9761979 dated 1.7.2015 were assorted food stuff of foreign origin (USA Make) packed in bottles/packets of different sizes., viz., flavoured baby foods, snacks, salted nuts, fruit jams etc. It was observed that out of the total 56 items stated to have been declared in the said Bill of Entry, 50 items were declared to have been covered under the Notification No. 49/2008-CE (NT) dated 24.12.2008 and the examination of the goods revealed that neither the MRP/RSP was affixed on the packages of the said goods. The same appeared to have been done with an intent to evade the Customs duties by undervaluing them and hence the entire consignment under the said Bill of Entry was seized under Panchanama dated 9.7.2015.

5.3 The investigation revealed that the appellant had failed to adhere to the said Notification in entirety inasmuch as the RSP values on which the Customs duties had been assessed are comparatively lower than the Values found during the Market survey conducted during the course of investigations. In his statement, the appellant agreed with the findings under investigations that the goods in question were neither affixed with Name of the Importer nor the MRP/RSP, as required under the said Notification, inasmuch as they intended to affix details of the importer and MRP/RSP on every package before the sale. The investigation also revealed that the appellant had not registered themselves with Legal Metrology Department as prescribed for import of packaged goods for sale in India.



5.4 It is not in dispute that the MRP was not affixed/declared, on the imported food stuffs as laid down under DGFT Notification No. 44(RE2000)/1997-2002 dated 24.11.2000. Such non compliance of the DGFT Notification dated 24.11.2000 rendered the goods as "prohibited" goods, thereby, making them liable for confiscation under Section 111(d) of the Customs Act, 1962. This section applies to goods imported "contrary to any prohibition imposed by or under this Act or any other law for the time being in force." The Adjudicating Authority has correctly found that the imported goods do not comply with the requirements of above notification by DGFT and hence the impugned goods are correctly confiscated under Section 111(d) of the Customs Act, 1962 by the adjudicating authority.

5.5 It is also established during investigation that the RSP declared in the Bill of Entry No. 9761979 dated 01.07.2015 was much less than the MRPs ascertained in the market survey conducted. Thus the value of the goods, as declared for assessment in the said Bill of Entry, does not correspond with the actual value. Accordingly the goods were liable for confiscation under Section 111(m) of the Customs Act, 1962. This section applies to goods that "do not correspond in respect of value or any other particular with the entry made under this Act." The Appellant's contention that there was no mis-declaration of value is unsustainable, as it has been established that the declared value was not the true transaction value and was intentionally kept low to evade duty. Therefore, the goods did not correspond to the value declared in the Bill of Entry, and accordingly the same were rightly held liable for confiscation by the adjudicating authority under Section 111(m) of the Customs Act, 1962.

5.6 Section 114 A of the Customs Act, 1962 provides that in cases of duty evaded by willful mis-statement or suppression of facts, penalty equal to duty is leviable on the person who is liable to pay the duty. The Importer in this case has evaded the Customs duty by non affixing RSP on the bottles/packages as well as by deliberate mis-declaration of RSP in the Bill of Entry. The Importer, therefore, appears liable for penalty under the said Section 114 A of the Customs Act, 1962. Section 114A mandates a penalty equal to the duty determined under Section 28 if the short-levy is due to collusion, willful misstatement, or suppression of facts. As discussed above, the invocation of Section 28(4) is justified due to the deliberate suppression of the true value. The Hon'ble Supreme Court in *Union of India v. Dharamendra Textile Processors (2008)* 13




SCC 369 has clarified that penalties for certain offenses are mandatory once the ingredients of the offense are met. Therefore, the imposition of a penalty under Section 114A is mandatory and justified.

5.7 In light of the comprehensive analysis of the facts, the legal provisions, the contentions of the Appellant, and the findings of the Adjudicating Authority, it is evident that the Appellant's transaction value was correctly rejected, the extended period of limitation was rightly invoked, and the goods were liable for confiscation and penalties. The Appellant's arguments are not supported by the facts on record and are rebutted by the evidence from the investigation.

6. In view of the foregoing, the impugned Order-in-Original is upheld and the appeal filed by the appellant is rejected.



सत्यापित/ATTESTED

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

F. No. S/49-174/CUS/MUN/2024-25
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 (AMIT GUPTA)
 Commissioner (Appeals),
 Customs, Ahmedabad

Date: 07.11.2025

By Speed post /E-Mail

To,

M/s Mahek Impex
 Om Apartment, Shop No. 96,
 M.J.Phule Market, Palton Road,
 Mumbai-400001
 Maharashtra.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House , Mundra.
3. The Additional Commissioner/Joint Commissioner of Customs, Custom House, Mundra.
4. Guard File.