



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), अहमदाबाद AHMEDABAD,  
 चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
 दूरभाषक्रमांक Tel. No. 079-26589281  
 DIN- 20250871MN000000800B

क	फाइलसंख्या FILE NO.	S/49-127/CUS/MUN/JUN/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128कके अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-159-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	08.08.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Decision vide Letter F.No. CUS/APR/ MISC/3047/2024- Gr 2 –O/o Pr Commr-Cus-Mundra dated 04.06.2025 bearing DIN -20250671MO0000111A17 issued by the Additional Commissioner of Customs, Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Indo Nippon Trading Company, 6562/9, 1 <sup>st</sup> Floor, Right Side Portion, Chamelian Road, Bara Hindu Rao, Central Delhi-110006
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.
	खेत 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.
(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
(ब)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 दोप्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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 कि सी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए या उससे कम हो तो एक हजार 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 कि सी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार 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 कि सी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार 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**

The present appeal has been filed by M/s. Indo Nippon Trading Company, 6562/9, 1<sup>st</sup> Floor, Right Side Portion, Chamelian Road, Bara Hindu Rao, Central Delhi - 110006, holding IEC - BLEPY9986K, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962 against the decision of the Additional Commissioner of Customs, Mundra (herein after referred to as the 'adjudicating authority') vide Letter F.No. CUS/APR/MISC/3047/2024-Gr 2 -O/o Pr Commr-Cus-Mundra dated 04.06.2025 bearing DIN - 20250671MO0000111A17 (herein after referred to as the 'impugned order').

2 Briefly stated, facts of the case are that the appellant has imported below mentioned consignment at Mundra Port :

Sr. No.	Bill of Entry & Date	Declared goods	Quantity	Declared value (Rs.)
1	9984272, dated 05.02.2024	Used tyre for ADV, Tractor, trolley and PCV size 8	2308	39,95,152/-
		Used tyre for ADV, Tractor, trolley and PCV size 10	41	
		Used tyre for ADV, Tractor, trolley and PCV size 12	1951	
		Used tyre for ADV, Tractor, trolley and PCV size 13	51	
		Used tyre for ADV, Tractor, trolley and PCV size 14	2736	
		Used tyre for ADV, Tractor, trolley and PCV size 15	3856	
		Used tyre for ADV, Tractor, trolley and PCV size 16	2756	
		Used tyre for ADV, Tractor, trolley and PCV size 17	1132	
		Used tyre for ADV, Tractor, trolley and PCV size 17.5	227	
		Used tyre for ADV, Tractor, trolley and PCV size 18	48	
		Used tyre for ADV, Tractor, trolley and PCV size 19	2	
2	9984304, dated 05.02.2024	Used tyre for ADV, Tractor, trolley and PCV size 25	2	15,02,873/-
		Used tyre for ADV, Tractor, trolley and PCV size 16	830	
		Used tyre for ADV, Tractor, trolley and PCV size 20	1846	

2.1 On the basis of letter dated 29.03.2024 received from Central Intelligence Unit, Customs House, Mundra, directions were issued to the Docks Examination, Custom House, Mundra for examination/re-examination of the goods imported under Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024. Further, a Customs empanelled Chartered Engineer, Shri Tushar Zankat was appointed by the competent authority to survey the goods imported under the said Bill of Entry and ascertain the actual value and description of goods. The Chartered Engineer vide his Survey Report dated 02.04.2024 concluded that the goods imported vide Bills of Entry No. 9984304, dated 05.02.2024 and 9984272, dated 05.02.2024 can not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. As per his report, the imported goods can be used in passenger car vehicles and Light Trucks and other. The Chartered Engineer has also valued the goods as per the current market details with respect to old and used tyres of various size and brands. He has also found that the importers have imported the goods by way of huge undervaluation. Further, in the Examination report it was also affirmed that the goods are old and used tyres.

2.2 In view of the report submitted by Docks Officer in the system and Chartered Engineer Survey Reports, it appeared that the appellant had imported the goods covered under the Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 by way of mis-declaration of description, mis-classification and under valuation of the goods and thus by doing so the appellant has contravened the provisions of Section 46 of the Customs Act, 1962 and Foreign Trade Policy condition prescribed by DGFT. In absence of DGFT license for import of restricted i.e. old and used tyres, goods become restricted/prohibited. Therefore, the said goods could not be allowed for home consumption and appeared liable for confiscation. The same were seized vide two Seizure Memos both dated 22.04.2024 covering the Bills of Entry No. 9984304, dated 05.02.2024 and 9984272, dated 05.02.2024 respectively under Section 110(1) of the Customs Act, 1962.

2.3 The appellant had filed Special Civil Application No. 3624 of 2024 before the Hon'ble High Court of Gujarat for a direction to the Customs authorities for immediate assessment of the Bills of Entry. The Hon'ble High Court vide order dated 04.03.2024 directed the appellant to make representation in the matter before the Commissioner of Customs as well as Deputy Commissioner of Customs Department.

2.4 The appellant vide letter dated 05.03.2024 submitted a representation before the Commissioner of Customs and Deputy Commissioner of Customs, requesting for assessment of the impugned Bills of Entry and clearance of goods for home consumption on payment of assessed duties. The appellant further submitted an application dated 15.06.2024 for provisional clearance and provisional assessment of the goods before the Commissioner of Customs and Deputy Commissioner of Customs. The Adjudicating authority vide impugned order rejected the appellant's application for provisional release.

2.5 In the meantime, two separate Show Cause Notices both dated 18.10.2024 were issued under Section 124 of the Customs Act, 1962 in respect of each Seizure Memos, both dated 22.04.2024 covering the Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 respectively.

2.6 The Hon'ble High Court has vide order dated 03.03.2025 in SCA No. 3624 of 2024 issued direction that the appellant may file an appeal against the order for rejection of application for provisional release within 2 weeks and the appeal may be decided by the Appellate authority within 4 weeks from submission of the appeal. Accordingly, the appellant had filed an appeal No. S/49-454/CUS/ MUN/ 2024-25-26 before the Commissioner (Appeals), Ahmedabad. The said appeal was decided vide Order-in-Appeal No. MUN-CUSTM-000-003-25-26 dated 08.04.2025, whereby the provisional release was approved with the following conditions:

- (1) *Furnishing a bond equivalent to the value of the goods as determined by the adjudicating authority.*
- (2) *Providing a Bank Guarantee equivalent to 15% of value of goods as determined by the adjudicating authority.*
- (3) *Payment of duty amount pertaining to seized goods before provisional release.*
- (4) *The appellants shall not clear any goods which are not reusable.*
- (5) *The responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused.*

2.7 Consequently, the appellant, vide letter dated 09.04.2025, followed by reminders dated 17.05.2025, 23.04.2025, 24.04.2025 and 30.04.2025, submitted an application before the Additional Commissioner of Customs, Customs House, Mundra, being the adjudicating authority, seeking re-examination of the goods. The Additional Commissioner of Customs, vide letter dated 04.06.2025, declined the appellant's request for re-examination of the goods.

### **SUBMISSIONS OF APPELLANT**

3. Being aggrieved by the aforesaid order dated 04.06.2025, the appellant has preferred the present appeal on the following grounds.

3.1 The rejection of the appellant's request for re-examination of the goods by IRMRA or any other NABL approved laboratory is *ex facie* unjustified, *prima facie* erroneous, and lacks legal propriety. The learned Adjudicating Authority has summarily dismissed the application without due consideration or proper application of mind to the grounds advanced by the appellant, thereby failing to discharge the duty to adjudicate the request in a fair and reasoned manner.

3.2 The rejection of the Chartered Engineer report dated 10.02.2024 issued by Shri Kunal A. Kumar is arbitrary, devoid of legal justification, and procedurally flawed. The sole reasons assigned by the adjudicating authority, as reproduced in the rejection letter dated 04.06.2025, are that (i) the said report was prepared prior to the training conducted by the department in association with the Automotive Tyre Manufacturers Association (ATMA), and (ii) the examination was not conducted in the presence of Customs officers. Both grounds are untenable in law and logic.

3.3 Firstly, the timing of the report in relation to the ATMA training does not, in any manner, render the Chartered Engineer incompetent or his report invalid. The presumption that any CE who had not undergone the said training lacks the requisite expertise to assess used tyres is manifestly unreasonable. If accepted, it would undermine the credibility of all CE reports issued and accepted by Customs prior to such training. It is pertinent to note that Shri Kunal A. Kumar is an empanelled Chartered Engineer and was engaged for the said examination with the knowledge and concurrence of the Customs authorities. His professional competence has not been questioned, nor has any factual error been specifically pointed out in his findings.

3.4 Secondly, the contention that the examination was not conducted in the presence of Customs officers appears factually questionable. Given that port premises and imported goods are under the exclusive control of Customs, it is highly improbable that a Chartered Engineer could have accessed, inspected, and reported on the goods without the permission and logistical coordination of the department. Furthermore, had such procedural impropriety occurred, it is incumbent upon the department to have rejected the report at the threshold or raised objections contemporaneously, which was not done.

3.5 More importantly, the rejection of Shri Kumar's report cannot be viewed in isolation from the nature of the technical dispute. The issue pertains to the construction type of used tyres (bias vs. radial) are inherently scientific and technical determinations. A mere visual or physical inspection, as admitted even in the later report by Shri Tushar Zankat, cannot conclusively establish compliance or non-compliance with BIS standards. It is precisely for this reason that the appellant requested re-examination by IRMRA, a specialised and government-recognised research body with laboratory capabilities and technical competence in rubber and tyre analysis. The department, instead of referring the matter to such a neutral and competent authority, chose to prefer the report of another CE engaged by itself, without any laboratory testing or scientific substantiation.

3.6 This approach reveals not only a lack of neutrality but also a procedural impropriety. If the department doubted the veracity or sufficiency of Shri Kumar's report, the appropriate course would have been to refer the matter to a NABL-accredited laboratory or an independent technical body like IRMRA. The mere substitution of one CE's opinion with another—both based on surface-level inspection—does not meet the standards of objectivity or fairness required in adjudication. Accordingly, the rejection of Shri Kunal A. Kumar's report and the unreasoned preference accorded to the report of Shri Tushar Zankat, without recourse to scientific validation or independent examination, constitutes a denial of procedural fairness and causes manifest prejudice to the appellant. The rejection is thus arbitrary, legally unsustainable, and deserves to be set aside.

3.7 The Show Cause Notice has been issued on the basis of Survey Report No. CE/TZ/MUN/TYRE-002/2024-25 dated 02.04.2024 pertaining to Bill of Entry No. 9984303 dated 05.02.2024 and Survey Report No. CE/TZ/MUN/TYRE-003/2024-25 dated 02.04.2024 pertaining to Bill of Entry No. 9984272 dated 05.02.2024, both prepared by Shri Tushar Zankat.

In support of the absolute reliance of the report of Shri Tushar Zankat, the Ld. Authority had relied upon the following points: (i) He has attended the training organized by the office (ii) Inspection has been done in the presence of Customs Officers (iii) "He is a well versed and experienced Chartered Engineer". It is also stated that his report is "detailed". However, his report is faulty and unreliable is apparent from the facts in the succeeding paragraphs.

3.8 It is submitted that the unloading and systematic stacking of the entire consignment at the time of import had necessitated the continuous labour of approximately forty workers over a span of seven days, thereby amounting to an estimated 280 man-days. In his report, Shri Tushar Zankat has claimed to have physically examined the entire consignment comprising approximately 17,786 used tyres. If such an extensive and thorough physical examination was in fact undertaken, it would have reasonably required a comparable degree of manpower and time, particularly for unstacking and handling the goods to enable detailed inspection. However, there is no record or indication that any such physical operation—on that scale—was ever conducted.

3.9 Furthermore, the inspection and valuation of all 17,786 tyres is stated to have been completed on a single day, i.e., 01.04.2024, with the report and valuation being furnished on the very next day. The valuation exercise, as per the report itself, appears to have been conducted primarily by referencing prices from various online sources, rather than through any structured market survey or expert valuation. These circumstances seriously undermine the credibility and reliability of the said report and raise grave doubts as to whether any genuine and comprehensive physical inspection or scientific assessment was undertaken in support of the conclusions recorded therein. Had there been a detailed examination of the goods covered under both the Bills of Entry, Shri Tushar Zankat would have discovered that the consignment comprised of approximately, 6,000 aircraft tyres, 2000 monorail tyres, 4,000 mud and snow tyres, 2000 tyres designed for large tractor trolleys, and 3,500 tyres intended for smaller tractor trolleys. The consignment contained no tyres corresponding to the specifications of passenger cars, light trucks, or heavy-duty road vehicles. His failure to discover the nature of the tyres creates serious doubts about the veracity of his report. The examination report prepared by Shri Tushar Zankat, is wholly unreliable and should be set-aside, as the report has inevitably failed to correctly identify the nature and intended application of the tyres, thereby rendering the classification contained in the report untenable. This failure raises serious doubts regarding the knowledge, expertise and competence of Shri Tushar Zankat in the domain of tyre evaluation.



3.10 The Ld. Authority has sought to justify reliance on the report of Shri Tushar Zankat on the premise that he had attended a training workshop organised by Mundra Customs in association with Automotive Tyre Manufacturers Association (ATMA). However, ATMA is not a statutory or technical authority, but a representative body of the six major tyre manufacturing companies in India, whose core function is to promote the business interests of its member organisations. Furthermore, ATMA itself is a member of IRMRA and does not possess independent or institutional infrastructure for the scientific tyre testing or training in mechanical or chemical evaluation of used tyres. In contradistinction, the Indian Rubber Materials Research Institute (IRMRI), is a premier autonomous institution functioning under the administrative control of the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Govt. of India. IRMRI is duly accredited, scientifically equipped, and authorised to conduct a full spectrum of technical, chemical and mechanical testing of rubber products, including used tyres, in accordance with both domestic and international standards. Merely attending a workshop conducted in association with a trade body such as ATMA does not vest the Chartered Engineer with the requisite expertise, technical acumen, or institutional authority to conduct a scientific and legally sustainable assessment of the tyres. ATMA being a lobbying and advocacy group for tyre manufacturers, is not an impartial or neutral entity and as such is inherently disqualified from imparting any certification of training that could substitute the institutional credibility of bodies such as IRMRI.



3.11 It is evident from the reports dated 02.04.2024 that Shri Tushar Zankat, by his own admission, has conducted only a “visual and physical inspection” of the goods. However, no distinction has been drawn or explained between these two modes of examination, and in the absence of such clarification, it must be presumed that both terms have been used interchangeably. Crucially, there is no indication that any substantive physical examination—such as sampling or laboratory testing of the tyres to evaluate their structural composition or compliance with the relevant standards—was undertaken. For a proper assessment of usability and classification of the tyres, suitable testing parameters for tyre evaluation must be ascertained and proper procedure satisfying the parameters must be followed. This procedure involves a complex process, combining visual inspection, chemical analysis, mechanical and instrumental testing, as well as radiological examination. In the absence of such comprehensive testing procedures, no credible or legally sustainable conclusion can be drawn as to whether the tyres are fit for use in passenger vehicles, light trucks, or heavy automobiles. On the contrary, nature, conditions, specifications of the tyres are such that they cannot, by any reasonable standard be

suitable for any other purposes other than use in animal-driven vehicles. Hence, the classification rendered By Shri Tushar Zankat, in his report, without proper adherence to the requisite technical and procedural standards, is completely erroneous and devoid of legal sanctity.

3.12 A proper evaluation of tyres involves, inter alia, the following tests, which include both indoor and field testing:

- A) Dimensions and uniformity test
- B) Endurance test
- C) Load and High-Speed Performance Test
- D) Rolling Resistance Test
- E) Plunger / Tyre Strength Test
- F) Bead Unseat Test
- G) Radial, Lateral, Tangential, Cornering, Stiffness Test
- H) Digital Foot Print with Pressure Distribution Test
- I) Tread Wear Test
- J) Dynamic Growth Test
- K) Tyre Shearography Test
- L) Tyre burst Test
- M) Noise test
- N) Wet grip test
- O) Tyre balancing test
- P) Static / dynamic loaded radius test
- Q) Impact test for wheel rim

These tests are required to be conducted apart from the chemical and other technical tests. Shri Tushar Zankat, Chartered Engineer, has not carried out any of the aforesaid tests. His office lacks the requisite infrastructure and wherewithal to perform the same. Furthermore, his laboratory is neither accredited by NABL nor BIS and is not recognised by any institution under the aegis of the Ministry of Commerce, Government of India.

3.13 Tyres bear the load and provide surface grip on a moving vehicle. Their properties must conform to specific parameter values, including density, material composition, and dimensions. Factors such as the framework, inner liner, tyre tread, metal rim, and metal-clad breaker treads must be taken into consideration and must meet certain basic standards before the tyre can be deemed fit for use as a part of a moving vehicle. A pictorial representation is given below:



None of the above parameters have been considered in the report by the Chartered Engineer. This report is also unreliable because tyres must be examined by an NABL-accredited laboratory to determine their roadworthiness before concluding that they can be used for the same purpose for which they were designed and manufactured. The office of Shri Tushar Zankat, is not accredited by NABL or BIS, for proper and credible determination of tyre condition, testing laboratories must possess such accreditations. IRMRI being an independent tyre testing organization is well qualified to remove any ambiguity regarding the nature, classification, and usability of the tyres. A list of few other independent tyre testing agencies is annexed hereto.

3.14 A sample technical report by IRMRA is also annexed at **Annexure O** for your perusal. A valid technical report undertaken with the proper means should include essential details such as testing methodology, specified value and observed value. However, the report prepared by Shri Tushar Zankat, lacks all the necessary details and merely cites unverified websites as the source of his comparative data.

3.15 BIS standards for animal-driven vehicles are voluntary, not mandatory. There is no legal basis to assert that animal-driven vehicles require a minimum rim size of 19 inches, as tyres with a rim size smaller than 19 inches can fit rims specifically manufactured for that purpose. Moreover, no statutory regulation prescribes a specific rim size for animal-driven vehicles in rural areas. Therefore, BIS regulations are not relevant to this case.

2.3.1 The Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in *Al-Noor Exports & Imports v. Commissioner of Customs, Chennai, 2017 (358) E.L.T. 1235 (Tri. -Mad)* [dated 07-06-2017], held that Bureau of Indian Standards (BIS) certification requirements are inapplicable to old and re-usable tyres. The Hon'ble Tribunal observed as follows:

*"5.3 The authorities have held that the goods have been imported in violation of condition that tyres must have a BIS certification except for tyres imported by Original Equipment Manufacturer (OEM). We, however, find that this requirement is restricted only to newly manufactured tyres and are not applicable to used tyres. We also take note of the reply under RTI Act, 2005 given by the Ministry of Commerce & Industry dated 30-1-2013, submitted in Page 123 of Vol-II of the appeal book, which reiterates this aspect, and also categorically certifies that provisions of Quality (Control) Order, 2009 for Pneumatic Tyres and Tubes for Automotive vehicles are not applicable to used tyres. The Tribunal in their decision in the case of Universal Trading Co. (supra), has also held likewise. The relevant portion of that order is reproduced below:*

*"5.4 In Para 53(iii) of the OIO dated 10-1-2013, the Adjudicating authority had raised the issue whether imported tyres fall under restricted category as per Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009 and require import license. It was held by the adjudicating authority that old and used imported tyres are not allowed to be imported for direct use. It may be true that a commodity imported by appellants could be prohibited under any law for the time being in force but that does not make the imported goods absolutely prohibited under the import policy. As per the import policy import of old and used tyres or retreading tyres is only restricted commodity. The Quality Control order of 2009 for Pneumatic Tyres and Tubes has been issued under Sec. 14 of the Bureau of Indian Standard Act, 1986. If any provision of this Act and/or Quality Control Order, 2009 has been violated then penal provisions under that Act could be enforced. It is not brought out by investigation whether all the persons doing retreading of old and used tyres in India are also following BIS standards. In the absence of the above, it has been held that the Pneumatic Tyres and Tubes for Automotive Vehicle (Quality Control) Order, 2009 is only applicable to the new tyres manufactured in India or imported into India. In any case, any violation of a prohibition under any other enactment does*



*not make old and used tyres, capable of being used as such or retreading, liable to absolute confiscation under Sec. 111(d) of the Customs Act, 1962."*

*Viewed in this light, we find that part of the impugned order holding that the imported goods are liable for confiscation and penalty on the grounds of not having BIS certification cannot be sustained and is therefore set aside."*

Moreover, Chartered Engineer is no authority to decide the applicability of BIS standards as it is outside his mandate.

3.16 As submitted in the fore-going paras, the Show Cause Notice has been issued based on the reports of Shri Tushar Zankat, which form the second set of reports, the first set being prepared by Shri Kunal A. Kumar. It is respectfully submitted that the two Chartered Engineer reports are materially contradictory in nature. The department has placed reliance on the report of Shri Tushar Zankat primarily on the ground that it was prepared subsequent to his participation in a training programme conducted by the Customs Department in association with the Automotive Tyre Manufacturers Association (ATMA). However, it is a matter of serious concern that Shri Zankat failed to identify the nature of tyres or make any reference to the "M+S" (Mud and Snow) markings present on a substantial portion of the imported tyres—approximately 4,000 in number under the two Bills of Entry combined. The presence of such markings is indicative of tyres specifically designed for use in adverse weather conditions and not for general-purpose or ordinary vehicle usage. The omission of such a crucial and visually apparent classification raises grave doubt regarding the diligence, thoroughness, and technical accuracy of the examination purportedly conducted by Shri Zankat and significantly undermines the evidentiary value of his report. In the prevailing circumstances, reference to a neutral, independent, and technically competent authority such as IRMRA, an autonomous body functioning under the aegis of the Ministry of India, is not only prudent but also essential in the interest of justice. IRMRA is far more equipped and in a better position to conduct detailed chemical, mechanical and technical testing on the tyres to gauge its residual life and its usage.

3.17 It is further submitted that permitting such re-examination BY IRMRA or any other similarly qualified and independent tyre testing agency would in no manner prejudice the Customs Department. On the contrary, allowing the re-examination would help gain clarity and allow the adjudication to be carried out on a clean slate.

The appellant hereby submit that, re-examination of goods by IRMRA or any other independent tyre testing agency as mentioned above would only act as a third opinion to clear out the ambiguity created by the two contrasting reports, and it is imperative to obtain a third-opinion in order to ensure there is no violation of principles of natural justice.

3.18 Examination by IRMRA or other notified laboratories will not cause any prejudice to the department as the reports should be scientific and acceptable and assisted by laboratory. However, by not referring it to an approved laboratory, the case of the appellant stands prejudiced. In view of the foregoing, it is most respectfully prayed that the Hon'ble Authority may be pleased to direct a re-examination of the imported tyres through IRMRA or any other similarly placed, government-recognised, and technically competent agency, so as to resolve the material discrepancies between the two Chartered Engineer reports and to ensure a fair, impartial, and scientifically sound determination in the interest of justice.

#### PERSONAL HEARING

\* Personal hearing in the matter was held on 25.06.2025. Shri Gervasis Thomas, Advocate, appeared for personal hearing on behalf of the appellant. He reiterated the submissions made at the time of filing appeal.

#### DISCUSSION AND FINDINGS

5. I have carefully considered the Memorandum of Appeal, the arguments advanced during the course of personal hearing and the materials available on record. The issue before me for determination is whether the impugned order rejecting the application of the appellant for re-examination of goods covered under Bills of Entry No. 9984304, dated 05.02.2024 and No. 9984272, dated 05.02.2024 respectively, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1. It is observed that the appellant has placed reliance on the report dtd. 10.02.2024 of Chartered Engineer Shri Kunal A Kumar of M/s. Suvikaa Associates which was engaged by them. The said report concluded that the cargo consists of old and used tyres. As per the said report, the condition of the crown, bead, walls, rim are all in reusable condition for ADV purpose. The said report further states that the tyres are suitable for slow moving vehicles and have a life of 50% to 60% (approximately), without Re-treading .Thereafter, a Customs

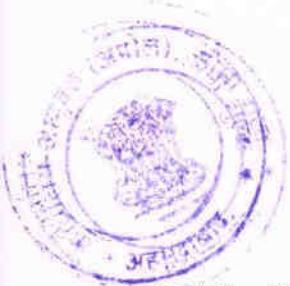


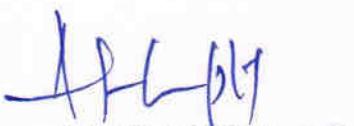
empanelled Chartered Engineer, Shri Tushar Zankat was appointed by the competent authority to survey the goods imported under the said Bills of Entry and ascertain the actual value and description of goods. The Chartered Engineer Shri Tushar Zankat vide his Survey Report dated 02.04.2024 concluded that the goods imported vide Bills of Entry No. 9984304, dated 05.02.2024 and 9984272, dated 05.02.2024 can not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. As per his report, the imported goods can be used in passenger car vehicles and Light Trucks and other. It is observed that the adjudicating authority has not considered the report dtd. 10.02.2024 of Chartered Engineer Shri Kunal A Kumar on the ground that the said report has been issued before training was provided by the department in association with ATMA ( Automotive Tyre Manufacturers Association) and which was attended by IRMRA ( Indian Rubber Manufacturers Research Association ). The adjudicating authority has also observed that the Chartered Engineer Shri Kunal A Kumar had not examined the goods in presence of Customs officers.

5.2 It is further observed that, the reports dtd. 02.04.2024 issued by the Chartered Engineer Shri Tushar Zankat have not been accepted by the appellant as they have contested the same as discussed in their grounds of appeal. However, the adjudicating authority has rejected the request for re-examination by the appellant by justifying the reports of Chartered Engineer Shri Tushar Zankat. I find that the adjudicating authority while rejecting the request of the appellant for re-examination has only mentioned that the said reports are as per the training provided by ATMA and that Shri Tushar Zankat is well versed and experienced, appointed by the department and that the reports are detailed. The adjudicating authority has not given detailed reasoning on the points raised by the appellant on the reports of Shri Tushar Zankat before rejecting their request for re-examination. Thus, I am of the considered view that the points raised by the appellant in their request for re-examination need to be addressed by the adjudicating authority. Copy of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the adjudicating authority for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority by following the principles of natural justice. While passing the speaking order, the adjudicating authority shall also consider the submissions made in present appeal on merits. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of

Prem Steels P. Ltd. [ 2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. The appeal filed by the appellant is allowed by way of remand.



  
(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

Date: 08.08.2025

F.No. S/49-127/CUS/MUN/JUN/2025-26

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2. The Principal Commissioner of Customs, Customs House, Mundra.
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