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 - 20260271MN000000F4BC

क	फ़ाइल संख्या FILE NO.	S/49-154/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-877-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/55/2024-25 dated 05.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Tendu Tashi K-2097, Gound Floor, CR Park, New Delhi - 110019.

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 — 2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- **(क)** रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील **: -** अथवा **(ख)** अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Appeal has been filed by Shri Tendu Tashi, K-2097, Gound Floor, CR Park, New Delhi - 110019., (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/55/2024-25 dated 05.06.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner of Customs, Mundra 2024 (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that An intelligence received by the Directorate of Revenue Intelligence, Delhi Zonal Unit (DRI-DZU- in short) indicated that Red Sander Logs, an item prohibited for export under the Foreign Trade Policy, were being attempted to be smuggled out of India in the guise of "Tractor Parts and accessories" by the exporter M/s. H&S Industries [IEC: 0507033515], Plot No. 151, NSEZ, Noida, Uttar Pradesh-201305 to the consignee M/s. Crescent Connection SDN BHD, Block B-11-03 Plaza Mont Kiara No. 2, Jalan Kiara 50480 Kuala Lumpur, Malaysia under Shipping Bill No. 4006136 dated 24.02.2022 The intelligence further indicated that the said Red Sanders were stuffed in Container number TLHU2220698 which was railed out of ICD Palwal to Mundra port for onward export to Malaysia.

2.1 Acting on the aforesaid intelligence, the officers of DRI DZU requested the customs authorities at Mundra Port to exarnine the said container no. TLHU2220698. Accordingly, the said container was examined by SIIB Officers at the Mundra Port in the presence of the officers of DRI, Gandhidham regional unit under the Panchnama dated 16.03.2022. Upon examination it was found that the container was stuffed with brown coloured cartons at the side of the gate. The said cartons were either empty or filled with garbage stuffed under thermocol sheets. On further examination of the container, large numbers of red coloured wooden logs wrapped in white coloured PP Packing bags were found which were covered with tarpaulin. The said wooden logs were then got tested by the Mundra Forest Officer who then confirmed the said wooden logs to be of Red Sanders. In total 512 wooden logs of Red sanders were recovered from the said container

2.2 Red Sanders is listed in Appendix-II of Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES). The Appendix II CITES-listed species cannot be exported or imported without permit / license from the Directorate General of Foreign Trade (DGFT). Therefore, the subject Red Sanders logs/blocks which were attempted to be exported out of India under Shipping Bill No. 4006136 dated 24.02.2022 filed in the name of the exporter M/s H&S Industries [IEC:0507033515] and covered under Appendix-II of the 'Convention of International Trade in Endangered Species of Flora and Fauna' (CITES) wherein its export is prohibited/restricted under the Customs Act, 1962, appeared liable to confiscation under the Customs Act, 1962. Accordingly, the said 512 logs/Blocks of wood reported to be Red Sanders weighing 11.71 Mts and having market value of approx. Rs. 9.37 crore, were placed under seizure under Section 110 of the Customs Act, 1962 vide seizure memo dated 16.03.2022 on the reasonable belief that the same were being attempted to be exported illegally in violation of the provisions of CITES; that the export of Red Sanders being prohibited/ restricted under S.no. 188 and 188A of the Notification No. 56/2015-2020 dated 18.02.2019, issued by DGFT and that the said Red Sanders was attempted to be smuggled out of India in the guise of cast Tractor Parts and accessories and hence liable to confiscation under Section 113 of the Customs Act, 1962.

2.3 After completion of investigation, a Show Cause notice dated 08.09.2022 was issued to Shri Tenzi norbu Bhutia, Shri Tendu Tashi, Shri Vengalathur Dorairaj and Shri Anil Kumar Singh requiring them to show cause in writing to the Addl/Joint. Commissioner of Customs (Export), Custom House, Mundra as to why:-

i. The 512 Red Sanders logs/Blocks totally weighing 11.71 MTS and valued at R.s. 9.37 crore (approx.) (Rupees Nine Crores Thirty Seven Lakhs only) seized from the consignment/container which was attempted to be illegally exported out of India using Shipping Bill no. 4006136 dated 24.02.2022 in the name of M/s H&S Industries (IEC No.0507033515), Plot No. 151, NSEZ, Noida, UP-201305 should not be confiscated under Section 113(d), 113(f) and 113(h) of the Customs Act, 1962 read with Sections 50, 51 of the Act ibid read with SI.No. 188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under the provisions of Foreign Trade (Development & Regulation) Act, 1992,

ii. The seized cover goods viz., 30 corrugated boxes with no commercial value, used to conceal the Red Sanders logs, an item prohibited for export should not be confiscated under Section 118(b) and Section 119 of the Customs Act, 1962.

iii. Penalty should not be imposed on the Shri Tenzi Norbu Bhutia under section 114 and 114AA of the customs Act, 1962 on him for his acts and omission mentioned above.

iv Penalty should not be imposed on the Shri Tendu Tashi under section 114 and 114AA of the customs Act, 1962 on him for his acts and omission mentioned above.

v. Penalty should not be imposed on the Shri Vengalathur Dorairaj under section 114 and 114AA of the customs Act, 1962 on him for his acts and omission mentioned above.

vi. Penalty should not be imposed on the Shri Anil Kumar Singh under section 114 and 114AA of the customs Act, 1962 on him for his acts and omission mentioned above.

The Adjudicating Authority adjudicated the matter vide impugned order wherein she ordered as under :-

(i) She ordered for absolute confiscation of the 512 Red Sanders logs/Blocks totally weighing 11.71 MTS and valued at Rs. 9.37 crore (approx.) (Rupees Nine Crores Thirty Seven Lakhs consignment/container which was attempted to be illegally exported out of only) seized from the India using Shipping Bill no. 4006136 dated 24.02.2022 in the name of M/s H&S Industries (IEC No.0507033515), Plot No. 151, NSEZ, Noida, UP-201305 under Section 113(d), 113(f) and 113(h) of the Customs Act, 1962 read with Sections 50, 51 of the Act ibid read with SI.No.188 of Schedule 2 (Export Policy) of ITC (HS) Classification of Import and Export Items, issued under the provisions of Foreign Trade (Development & Regulation) Act, 1992;

ii. Also ordered for absolute confiscation of the seized cover goods viz., 30 corrugated boxes with no commercial value, used to conceal the Red Sanders logs, an item prohibited for export under Section 113(b) and Section 119 of the Customs Act, 1962.

iii. Imposed a penalty of Rs. 2,30,00,000/- (Rupees Two crore thirty lakh Only) on Shri Tenzi Norbu Bhutia under Section 114(i) of the Customs Act, 1962.

iv. Imposed a penalty of Rs. 1,15,00,000/- (Rupees One crore fifteen lakh Only) on Shri Tenzi Norbu Bhutia under Section 114AA of the Customs Act, 1962.

v. Imposed a penalty of Rs. 2,30,00,000/- (Rupees Two crore thirty lakh Only) on Shri Tendu Tashi under Section 114(i) of the Customs Act, 1962

vi. Imposed a penalty of Rs. 1,15,00,000/- (Rupees One crore fifteen lakh Only) on Shri Tendu Tashi under Section 114AA of the Customs Act, 1962

vii. Imposed a penalty of Rs. 2,30,00,000/- (Rupees Two crore thirty lakh Only) on Shri Vengalathur Dorairaj under Section 114(i) of the Customs Act, 1962.

viii. Imposed a penalty of Rs. 1,15,00,000/- (Rupees One crore fifteen lach Only) on Shri Vengalathur Dorairaj under Section 114AA of the Customs Act, 1962

ix. Imposed a penalty of Rs. 2,30,00,000/- (Rupees Two crore thirty lakh Only) on Shri Anil Kumar Singh under Section 114(i) of the Customs Act, 1962

x. Imposed a penalty of Rs. 1,15,00,000/- (Rupees One crore fifteen lakh Only) on Shri Anil Kumar Singh under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 impugned order is bad in law being contrary to the facts and circumstances of the case and attendant provisions of law and hence if permitted to stand, would result in miscarriage of justice.

3.2 The impugned Order has been passed without granting cross-examination of 03 persons namely Shri Tenzi Norbu Bhutia, Shri Ishwar Singh and Shri Gopal. Learned Respondent has passed the impugned Order without providing any justifiable reason for not granting cross-examination. Appellant further submits that cross examination is a justifiable right and denial of the same is contrary to the provisions of Section 138 B of the Customs Act as well as various judicial judgments delivered in a number of cases, some of which discussed here-as-under-

(i) M/s Laxman Exports Ltd. 2002 (143) ELT 21 (SC)

(ii) M/s Andaman Timber Industries vs. CCE, Kolkata-ll- 2015 (324) ELT 641 (SC)

(iii) M/s Him Logistics Ltd.- 2016 (336) ELT 15 (Del.)

(iv) M/s Basudev Garg -2017 (48) STR 427 (Del.)

(v) M/s Sampad Narain Mukerjee -2019 (366) ELT 280 (Cal.)

(vi) CCE, Lucknow vs. M/s Shyam Traders-2016 (333) ELT 389 (All)

(vii) M/s Hi Tech Abrasives Ltd. CCE, Raipur- 20018 (362) ELT 961 (Chhattisgarh).

3.3 The finding and the judgments relied by the learned Respondent for denying cross examination is patently wrong and mis-concieved Appellant submits that in the present case, DRI whole case qua the Appellant is based on the statement and therefore without cross examination of these persons, charges cannot be confirmed against him.

3.4 The impugned Order has been passed without appreciating that Appellant was not aware the purported illegal export of Red Sander logs and he neither indulged in any transaction related to export of Red Sander logs nor submitted or received any document relating to such export and therefore, the documents purportedly received on search from his residence in his absence, to the best of Appellant's belief, were planted and subsequently recovered by the officers of visiting team.

3.5 The learned Respondent has gravely erred in relying on the statements of owner of the godown Shri Ishwar Singh who in his statements, purportedly identified Appellant and his car along with Shri Tenzi is purportedly wrong. Appellant submits that he never visited the godown but it may happen sometime when Shri Tenzi took Appellant's car, might have gone there. Appellant submits that in the absence of cross-examination, his statement cannot be relied.

3.6 The learned Respondent has gravely erred in relying on the statement of Shri Gopal, property dealer, who provided the godown to Shri Tenzi on rent. Appellant submits that at no point of time he had ever visited with Shri Tenzi for any property purposes and in absence of his cross-examination, no reliance can be place on his statement

3.7 The learned Respondent has gravely erred in relying on the statement of Shri Tenzi Norbu Bhutia to implicated Appellant in the present case and considered him as his partner who deals with foreign suppliers. Appellant submits that he is an uneducated person and did not even read, write or speak English at all and the statement of Shri Tenzi Norbu Bhutia that he was dealing with a foreign supplier is patently wrong and cannot be considered as true and correct. Appellant submits that learned Respondent failed to appreciate that how an illiterate person deals with Foreign Supplier who even do not understand English and Hindi properly.

3.8 DRI in the present case tried to co-relate the link to this case with some past case wherein export of Red Sanders was effected by using the names of proxy firms such as Bholi Harware. Appellant submits that in the present neither the purported documents recovered from the Appellant 's premises relates to present case nor Appellant had any role in effecting export of the present goods. It clearly seen from the Show Cause Notice that when DRI could not get any evidence against the Appellant, they try to co-relate investigation conducted in the case of M/s. Bholi Hardwar to this present case. Your Honour may appreciate that each case has to be decided on the basis of documents and not on assumption and presumption and hence assumption of the DRI that Appellant was involved in the present case is patently wrong and misconceived.

3.9 vide the impugned Order, Department imposed penalty under Section 114 (i) and 114AA of the Customs Act, 1962. The Appellant most respectfully refers to the provisions of Section 114 (i) and 114AA of the Act, ibid which reads as under -

> *"Section 114- Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shall be liable,-*
>
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times of the value of the goods as declared by the exporter or the value as determined under this Act, whichever is greater,*
>
> *Section 114AA- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used any declaration, statement or documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act, shall be liable to a penalty not exceeding five times the value of the goods."*

The Appellant most respectfully submits that in the impugned export neither the shipping line person nor freight forwarder / CHA implicated Appellant as accomplice or having any role in illegal export of Red Sanders and therefore, none of his act or omission had rendered the goods liable for confiscation, making him liable for penal action under Section 114 (i) of the Customs Act, 1962, as confirmed in the impugned Order Moreover, in the entire Order, the answering Appellant is nowhere indulged for making any declaration, document, statement etc. related to any of the purported illegal export of Red Sanders rendering him liable for penal action under Section 114AA of the Act, ibid. Therefore, his indulgence as co-conspirator and master mind of smuggling syndicate of Red Sanders merely on the basis of purported recovery of copies of certain documents pertaining to 12 export consignments of Red Sanders from his residence is highly preposterous and vague statement of Mr. Tenzi is patently wrong and is liable to be dropped.

3.10 The Appellant most respectfully submits that mere recovery of any export document that too not of the present Container or Shipping Bill without revealing any specific role of Appellant in smuggling of Red Sanders is not in violation of statutory provision of Customs Act and Appellant is not liable for imposition of penalty in terms of Section 114 (i) and 114AA of the said Act.

3.11 Because qua the charge that the Appellant is a Habitual Offender and has been involved in the smuggling of Red Sanders for the past many years is patently wrong. Appellant submits that except for this case he was never been indicated in any other customs case as he do not deal in the business of import and export. It is further alleged that Appellant was not available at his residence during the search proceedings, it is submitted that DRI has not given any prior notice to the Appellant to be available at the time of search and therefore Appellant had gone for some urgent work and he cannot be expected to be at home all the time. Other contention of the Department is that despite multiple summons issued to him, he has never appeared before DRI and continues to be at large. He has been purposely avoiding the investigation and has neither replied to any of the summons nor appeared before the DRI, Appellant submits that non appearance in summon is not a ground to implicate anybody and propose penalty under Section 114 and 114AA of the Customs Act, 1962.

3.12 Without prejudice to the contention that Appellant had not role in alleged export of any of the container, it is submitted that no documents pertaining to the present Container was received from the premises of the Appellant and no evidence is in respect of the present export covered under Container No. TLHU2220698 Shipping Bill No. 4006136 dated 24.02.2022

3.13 It is respectfully submitted that Appellant not proved to be beneficiary in illegal export of goods, the proposed penalty in terms of Section 114(i) and 114AA, in absence of malafide intent is unsustainable and cannot be countenanced.

3.14 In Appellant 's most respectful submissions neither any of his act or omission rendered the goods liable for confiscation nor he dealt with impugned goods in any way, and therefore in absence of any contumacious conduct on his part no penalty can be imposed upon him and for this proposition the Appellant most respectfully relies, on the following decisions,

(1) Sij Electronics Comp. Tech. Pvt. Ltd. vs. Comm of Customs, Kochi reported in 2001 (129) ELT 528 (Tri-Bang.)
(2) Commissioner of Customs (Import) Mumbai vs. R.A. Spinning Mills Pvt. Ltd. reported in 2004 171 ELT 54 (Tri-Mumbai).
(3) Akbar Badruddin Jiwani vs. Collector of Customs reported in 1990 (47) ELT 161 (S.C.)

3.15 Even otherwise also penalty cannot be imposed for the sake of only imposing penalty. In this regard, the Appellant relies upon the case of Akbar Baddruddin Jiwani Vs. C.C. reported in 1990 (47) ELT 161 (SC), wherein the Hon'ble Supreme Court held that "the discretion to impose penalty must be exercised judiciously. A penalty will ordinarily be imposed in cases where party acts deliberately in defiance of law or guilty of contumacious or dishonest conduct or acted in conscious disregard of its application but not in cases where there is technical or venial breach of the provisions of the Act or where the breach flows from bona fide belief that he is not liable to act in the manner prescribed in the statute. In the case of Hindustan Steel Vis State of Orissa 1978 (2) ELT J 159 (SC), Hon'ble Supreme Court has held that an order imposing penalty for failure to carry out the statutory obligation is the result of quasi criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Similarly Hon'ble

Tribunal also in plethora of judgments inter alia including Summeet Industries Ltd. V/s Commissioner of C. Ex., Surat reported in 2004 (164) E.L.T 335 (Tri. Mumbai), has held that "penalty should not be ordinarily imposed unless there is a deliberate defiance of law or contumacious or dishonest conduct or as conscious disregard to an obligation is established in the facts of a case" In the case of Godrej Soaps Ltd. v/s Commissioner Of Central Excise, Mumbai reported as 2004 (170) ELT 102 (Tri. Mumbai), the Hon'ble CESTAT has observed that, "Penalty cannot be imposed just because it is provided for in the rules, there has to be a consideration of the conduct and the circumstances in which the violation took place cannot be ignored." In, Asian Paints (India) Ltd. v/s Commissioner Of C. EX., Hyderabad-I reported in 2004 (167) E.L.T. 224 (Tri. Mumbai), it has been observed by the Hon'ble Tribunal that, "Penalty imposition powers are not a crop given in the hands of the officers to crack at every opportunity Penalty is therefore not upheld in the facts of the case."

3.16 The impugned order is otherwise arbitrary, colonial, vague and perverse and therefore, deserves to be restrained as the entire case against the Appellant was framed on flimsy, baseless and unreliable evidence and the order is otherwise contrary to legal provisions.

3.17 Without prejudice to the contention that Appellant is not liable to pay any penalty, it is respectfully submitted that the penalty is highly exorbitant to the gravity of offence, if any

3.18 The learned Respondent has failed to appreciate that the proposed penalty is deterrent and not retribution.

PERSONAL HEARING:

4. It is pertinent to mention that the appellant had not submitted the challan for pre-deposit along with the appeal filed on 10.09.2024. Personal hearing was granted to the Appellant on 03.07.2025, following the principles of natural justice. Further vide letter dtd. 08.09.2025 the appellant was specifically informed about non payment of pre-deposit . However ,the appellant has neither paid the pre-deposit nor appeared for personal hearing. A copy of the appeal memorandum was also sent to the jurisdictional authority for comments. However, no response has been received . I therefore proceed to decide the case on the basis of available records.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The right to appeal is a creation of statute and must be exercised subject to the conditions laid down in the statute itself. The primary issue is the Appellant's failure to deposit the mandatory pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Section 129E(i) of the Customs Act, 1962, explicitly mandates:

> *"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,— (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs]".*

5.2 The right to appeal is a conditional statutory remedy. For an appeal filed against an Order-in-Original passed by an Additional Commissioner, the mandatory pre-deposit is 7.5% of the aggregate of the Duty, Fine, and Penalty in dispute. The facts on record demonstrate that the Appellant has failed to comply with this statutory requirement.

5.3 The appeal was filed without the necessary pre-deposit, which is a mandatory statutory requirement for the appeal to be 'entertained'. The core legal principle at hand is established in Section 129E(i) of the Customs Act, 1962, which explicitly states that the Commissioner (Appeals) "shall not entertain any appeal" unless the appellant has deposited the prescribed percentage of the duty or penalty in dispute. The word "shall not entertain" in Section 129E creates an absolute bar for the appellate authority to proceed with the merits of the case in the absence of the stipulated pre-deposit. The appellate authority has no discretionary power to waive the pre-deposit below the statutory percentage, which was explicitly removed by the 2014 amendment to Section 129E. In the instant case, despite having been notified and given an opportunity during the hearing, the Appellant failed to provide proof of the mandatory deposit before the final consideration of the appeal.

5.4 The records conclusively demonstrate that the mandatory deposit was not made at the time of filing the appeal, nor by the date of the Personal Hearing. The office of the Commissioner (Appeals) formally notified the Appellant on vide letter dtd. 08.09.2025 that the pre-deposit as prescribed under Section 129E was "not made" till that date. The Appellant was aware of the statutory defect but failed to rectify it before the final consideration of the appeal, confirming a clear and sustained non-compliance with the jurisdictional requirement of Section 129E. In line with the settled legal position, the appeal is not entertainable.

5.5 Since the appeal cannot be entertained due to the fatal procedural defect of non-payment of the mandatory pre-deposit, it is not necessary and indeed impermissible to proceed to discuss the merits of the appeal. The appeal is therefore rejected solely on the ground of non-compliance with the statutory pre-condition.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The appeal filed by Shri Tendu Tashi , is hereby rejected on the ground of non-compliance with the mandatory pre-deposit requirement under Section 129E(i) of the Customs Act, 1962, without going into the merits of the case.

आयुक्त (अपील) सीमा शुल्क अहमदाबाद

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

F. No. S/49-154/CUS/MUN/2024-25

Date:26.02.2026

By Speed post /E-Mail

To,
Shri Tendu Tashi
K-2097, Gound Floor, CR Park,
New Delhi - 110019.

Copy to:

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