



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 - 20250671MN0000222CBB

क	फ़ाइल संख्या FILE NO.	S/49-53/CUS/MUN/2023-24
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-061-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	10.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/MK/196/2022-23 dated 30.03.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Saanch Logistics Custom Broker, 206, Golden Heights, 2nd Floor, Plot no.12, Sector 8 Near BIVI Petrol Pump, Gandhidham-370201



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended) in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods 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 दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

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



ORDER-IN-APPEAL

M/s Saanch Logistics, Custom Broker, 206, Golden Heights, 2nd Floor, Plot no.12, Sector 8, Near BIVI Petrol Pump, Gandhidham-370201 (hereinafter referred to as the 'Appellant') has filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/196/2022-23 dated 30.03.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that M/s Delhi Sons, 04, Ground Floor, AngooriBagh, Red Fort, New Delhi, Delhi 110006 holding IEC NO: CZAPS6537H (hereinafter referred to as 'the Importer'), had filed a warehouse Bill of Entry No. 2669131 dated 08.02.2021 through their Customs Broker to Appellant at Mundra port for import of goods viz. iron chain, buttons, weighing scales, badminton rackets, Chess Games, Cosmetic goods etc.

2.1 Intelligence was received by the Special Investigation and Intelligence Branch (SIIB) Wing of Customs, Mundra, that goods of Warehouse Bill of Entry No. 2669131 dated 08.02.2021 which were declared as cosmetics with the words "for re-export" in the Bill of Entry have been uploaded in the EDI systems and produced before Customs without any Certificate or ADC approval which is mandatory as per Drugs and Cosmetics Act- 1940 and Rules made thereunder.

2.2 Further, as per Circular No. 08/2010 Customs Duty F. No. 450/182/2009-Cus.IV, dated 26.03.2010, import of cosmetics at point of entry/places other than those specified under Rule 43A not be permitted as per the provisions of the Drugs & Cosmetics Rules 1945 and the same is also alerted in RMS instruction of the said Bill of Entry. Hence the container was put on hold for further investigation. Accordingly, the container No. HMMU6202457 (40') was de-stuffed and laid out in the Warehouse and the same were examined by the SIIB officers under Panchnama dated 16.02.2021. The goods were found to be as declared.

2.3 It appeared that Cosmetic Goods which are covered under Drugs and Cosmetics Rules, 19.15 are not permitted to be imported at ports other than those mentioned in the above referred Circular and Mundra Customs Port is not mentioned in the said list. Further, in the Bill of Entry the cosmetic goods have been imported by declaring them as "for export". The goods which are imported for the purpose of re-export must be in terms of Para 2.46 b(ii) of the FTP 2015-2020, with the condition that such goods may be exported in same or substantially the same form without an Authorisation provided that item to be imported or exported is not in the category of restricted goods for import or export in ITC (HS)

2.4 On the basis of the above facts, investigation was conducted by the SIIB Wing of the Custom House, Mundra and Statement of Shri Baldev Singh Proprietor of M/s Delhi Sons dated 24.11.2021 was recorded under section 108 of the Customs Act- 1962, wherein he inter-alia stated that:

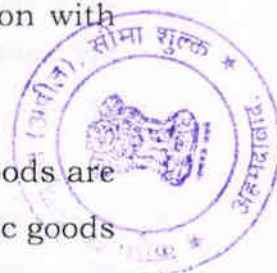
- M/s Delhi Sons is a sole proprietorship concern. He is the proprietor. The firm is mainly involved in importing Sports Goods, Weighing Scale, Iron chain and other items like garment accessories, buttons, badminton rackets, badminton grip, other indoor games etc. and such other items for trading purpose. He began his business by doing trading in local market. Thereafter, they have been importing these items since last 3 years mainly from China.
- He does not have any other office address, his godown and residence are also in the same premises.
- The firm has been importing from Mundra Port since last two to three years.
- At Mundra Port the services of Customs Broker more efficient which helps in faster and economical movement of cargo hence he opted to clear the goods from Mundra instead of any port near Delhi.
- The Order given by them to the China Shipper was not enough to completely fill the container. There was some empty space still left, therefore looking at the demand of Cosmetics in international market, he thought of importing the cosmetics goods for re-export purpose by utilizing



12

excess available space in the container. He was not aware that Mundra Port is not a designated/authorized port for import of cosmetic items otherwise he would not have imported the cosmetic items at Mundra Customs Port.

- The Bill of lading No. HDMUNXB0616936 dated 30.11.2020 dated 30.11.2020 gated in the CFS Mundra on 26.12.2020 and was pending long for clearance. Thereafter, Bill of Entry No 2669131 covering the goods was filed on 08.02.2021. On being asked the reason for the goods lying unclaimed/unattended at CFS for approx. six weeks i.e one and half months, he stated that the delay in attending to the cargo/shipment was due to his marriage on 20.12.2020, because of which he was very much busy in his family and social engagements. Moreover, he also came to know that they are not authorized to import cosmetic goods at Mundra Port due to Customs restrictions. Therefore, after due consultation with Customs Broker he filed Bill of Entry under first check.
- On being asked he stated that, when he realized that Cosmetic goods are restricted to be imported at Mundra Port and the imported cosmetic goods will create some problems and complications in Customs Clearance therefore to avoid Demurrage and Detention Charges and also for ease of payment of Customs Duty because of the expected complications and delay in clearance, he was advised by his Customs Broker to file In-Bond Bill of Entry.
- On being asked regarding the mode of payment he stated that it is through T.T. generally, however in the case of the present import, the payment is yet to be made via bank transfer. As a specimen he submitted the payment particulars of the previous Bill of Entry from Mundra along with bank payment proof of the same.
- On being shown all the 27 items of the present Bill of Entry he stated that all cosmetic items have been imported by him for the very first time.
- On seeing the statement dated 29.06.2021 of Ahir Viral Dineshbhai G Card Holder of M/s Saanch Logistics i.e Appellant ,he agreed with the contents of the same and put his dated signature on his statement as a token of having seen the same.



- He submitted that he did not want any show cause notice, and personal hearing. He further requested that the case may be decided at the earliest as he was incurring heavy losses and his capital was also blocked and business turnover had stopped. He requested to please allow him to re-export the cosmetic goods after fulfilling the customs formalities and release the cargo other than cosmetics for domestic market. They agreed to pay the fine and penalties as per Indian Customs Law.

2.5 Statement of Shri Ahir Viral Dineshbhai, holder of G Card No. CHM/G.004/2021, of Customs Broker M/s Saanch Logistics i.e Appellant dated 29.06.2021 was recorded under section 108 of the Customs Act- 1962, wherein he inter-alia stated that:

- They had collected KYC of M/s Delhi Sons from e-mail - impex.fareast@mail.com at their e-mail id-import@saanchlogistics.com as well as from Courier and verified the KYC documents online and got confirmation about the address from Sh, Rahul Kumar Mob No. 9899629274) & Sanjay Kumar (Mob-8800108844) who looks after all the work of M/s Delhi Sons as well as from Sh. Baldev Singh(Mob No. 9711129444), Proprietor of M/s Delhi Sons.
- He submitted the copies of Aadhar Card, PAN Card of Shri Baldev Singh. IEC Certificate, GST Registration Certificate, letter issued by Bank for AD Code. electricity Bill, Authorization letter and appointment letter, duly filed KYC Firm. As a proof, he submitted the printout of e-mail vide which he had received KYC documents.
- Shri Baldev Singh informed that Shri Sanjay Kumar is his consultant and looks after all the import documentation work of M/s Delhi Sons. Address of Sh. Sanjay Kumar is F. 267, Greater Kailash-02, New Delhi-110048. Sh. Rahul Kumar also works with Shri. Sanjay Kumar and having office at same address.
- Sh. Jitendra employee of M/s Saanch Logistics prepared the checklist on the basis of the documents received from the E-mail id-delhisons@yahoo.com on 27.01.2021. They had sent draft checklist to e-mail id -impex.fareast@gmail.com and at rahulfareast@yahoo.com on 27.01.2021 for approval from importer side. However, Sh. Sanjay Kumar



[Handwritten signature]

telephonically approved the draft checklist and accordingly, after checking the details, they have digitally signed the checklist and other documents and uploaded the same in E-Saanchit and filed the BE No.2669131 dated 08.02.2021.

- That neither they had booked the container nor prepared/ approved draft Bill of Lading number HDMUNXB0616936 dated 30.11.2020. They had received final Bill of Lading via e-mail along other document on 27.01.2021 at the time of filing of Bill of Entry from importer.
- Sh. Rahul Kumar visited their office and met Sh. Kunal Ayer. He did not inform about the delay at that time. However, at the time of receiving of documents, they had asked Sh. Sanjay Kumar about the delay. He informed that he received the documents late from the shipper due to some problem in China.
- That they demanded ADC NOC/License for cosmetics items. However, Sh. Sanjay Kumar informed them at the time of filing of Bill of Entry that imported goods are for reexport purpose and he will get the Out of scope/NOC certificate from concerned department. He submitted a print out of NOC Copy generated from ICEGATE for the items in which ICES system have showed/required ADC NOC. He stated that it appeared that Concerned PAG had granted NOC/Out of scope for the cosmetics items due to the reason for re-export of goods and same can be checked from NOC status section of BE No. 2669131 dated 08.02.2021.
- That the Goods i.e Cosmetic Products found during examination appeared to be prohibited/restricted which are imported for export purposes in terms of Para 2.46 b(ii) of the FTP and thereby, the said imported goods have been imported in contravention of the provisions of Foreign Trade Policy and provisions of Customs Act, 1962, on being asked about this, he stated that, as per their knowledge ADC NOC/License is required for the imported Cosmetic goods if cleared in home consumption and also require ADC NOC/License for exported goods if manufactured in India.
- They have declared various cosmetic goods i.e Shampoo, conditioner of Brand i.e Argan De Luxe, however goods found during examination are of Capillo Brand regarding this they stated that they have filed the Bill of Entry on the basis of the documents provided by the Importer.



- That they agreed to the responsibilities entrusted upon the Customs Brokers by the Customs Department. That they have taken and verified various KYC documents of the importer viz. IEC, PAN, AD code bank letter, IGST certificate, KYC Letter, Aadhaar of Proprietor of M/s Delhi Sons.

2.6 On the request of SIIB, the IEC verification of the premises was conducted on 10.12.2021 by Office of the Additional Commissioner, Customs (Prev.) New Customs House. Near IGI Airport & Air Cargo Complex, New Delhi -110037 and the same was found existing at the said premises.

2.7 Shri Baldev Singh, Proprietor of M/s Delhi Sons during the recording of his statement dated 24.11.2021 under Section 108 of the Customs Act, 1962 had stated that they do not want any Show Cause Notice or Personal Hearing in the matter. Accordingly, no show cause notice was issued to them. A Show Cause Notice No.S/43-20/Inv-Delhi Sons/SIIB-C/CHM/20-21 dated 1.11.2022 was issued to M/s Saanch Logistics, Gandhidham asking them as to why penalty should not be imposed upon them under the provisions of Sections 112(a) of the Customs Act, 1962 and; penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

2.8 Consequently the adjudicating authority passed the impugned order wherein the adjudicating authority ordered as under :-



She ordered for absolute confiscation of imported goods i.e Cosmetics Goods imported vide BE no. 2669131 dated 08.02.2021 valued at Rs.14,88,288 (Rupees Fourteen Lakhs Eighty Eight Thousand Two Hundred Eighty Eight only) under Section 111 (d) & (m) of the Customs Act 1962. However, she gave an option to importer to re-export the goods on payment of redemption fine of Rs 1,50,000 (Rupees One Lakh Fifty Thousand only) in terms of Section 125 of Customs Act 1962. She further ordered that if the importer don't submit any documents/ willingness to send / re-export the goods i.e. Cosmetic Goods within 30 days from the receipt of the order, the said goods would be liable for destruction as per the instructions and guidelines contained in CBIC Disposal Manual 2019. The cost of destruction shall be borne by the importer.

(ii) She imposed a penalty of Rs 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) on M/s Delhi Sons, 04, Ground Floor, Angoori Bagh, Red

Fort, New Delhi 110006, under Section 112 (a) (i) of the Customs Act 1962.

iii. She also imposed a penalty of Rs 2,00,000/- (Rupees Two Lakh only) on the Appellant i.e M/s Saanch Logistics, Customs Broker, 206, Golden Heights, 2 nd Floor, Plot No 12, Sector - 8, Nr BM Petrol Pump, under Section 117 of the Customs Act 1962.

3. SUBMISSIONS OF THE APPELLANT:

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

3.1 The Appellant has submitted that the Adjudicating Authority has erred in failing to appreciate that in light of Notification dated 13.09.2019 from F. No X.11014/5/2019-DR by Department of Health and family Welfare, Ministry of Health and Family Welfare that was issued for inserting Mundra Port in Rule 43A of the Drugs and Cosmetics Rules, 1945, there is no merit in the sole allegation leveled against the Appellant for imposing penalty under Section 117 of Customs Act, 1962.

3.2 The Appellant has submitted that the Adjudicating Authority has erred in observing that the Appellant failed to act as per Regulation 10 (d) & (m) of Custom Broker Regulations Act, 2018 in as much as Mundra is already notified for import of cosmetics and therefore, there was no lacking on the part of Appellant in imparting proper advise to the importer so as to result in breach of Regulation 10(d). Moreover, there is no evidence gathered from importer to suggest that there was any delay on the part of Appellant in the capacity of Custom Broker amounting to breach of Regulation 10(m). Hence, without prejudice to the jurisdiction of the Adjudicating Authority with regard to dealing with CBLR, 2018, it is submitted that the Appellant have not violated Regulation 10(d) and (m) of CBLR, 2018.

3.3 The Appellant is not liable to penalty under Section 117 of Customs Act, 1962 in light of the decisions of Hon'ble Tribunal in the case of DHL Express (India) Pvt. Ltd., 2016 (332) ELT 169 (Tri.-Mumbai), Syndicate Shipping Services Pvt. Ltd., 2003 (154) ELT 756 (Tri.-Chennai) and Central Warehousing Corporation, 2015 (38) S.T.R. 572 (Tri.-Mumbai).

3.4 The Appellant filed further submissions dtd. 14.02.2025 wherein it is submitted that

- the Adjudicating Authority has erred in holding that the goods detailed in the table given in para 19 of impugned order are restricted. As per the information available with appellant (BDP's Customs Tariff), all these items are "free" for import into India.
- Further, it is observed in para 31 of the impugned order that the importer had not produced any licence, certificate or approval of ADC. However, it is submitted that Ld. Additional Commissioner had given NOC for re-export of the same. A copy of the ICEGATE release order status showing the same is also submitted for ready reference.
- Without prejudice to above, all the goods were covered by a warehouse Bill of Entry and not Bill of Entry for home consumption. Hence, it is a matter of record that the goods were never intended for clearance into India.
- In view of above, it is submitted that no fault lies with the appellant, being a Custom Broker, so as to render them liable to penalty under Section 117 or any other action under Customs Act, 1962 read with rules framed thereunder.



PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 20.05.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case record, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 07.06.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 30.03.2023 as 10.04.2023. Hence, the appeal has been filed within normal period of 60 days, as stipulated

47

under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the challan No.348 dtd 17.04.2023 towards payment of 15,000/- i.e. 7.5% of Rs. 2,00,000/- penalty imposed on them. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

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

- (i) Whether the Appellant, as a Customs Broker, violated Regulation 10(d) and (m) of the CBLR, 2018.
- (ii) Whether the imposition of penalty under Section 117 of the Customs Act, 1962, is legally sustainable.

5.2 The central plank of the adjudicating authority's argument for imposing a penalty is that Mundra Port was not a notified port for the import of cosmetics as per Circular No. 08/2010-Customs dated 26.03.2010. However, the Appellant has correctly pointed out a crucial subsequent development: Notification F. No. X.11014/5/2019-DR dated 13.09.2019, issued by the Ministry of Health and Family Welfare, which inserted Mundra Port in Rule 43A of the Drugs and Cosmetics Rules, 1945.

5.3 The aforesaid notification, being a statutory instrument, supersedes the earlier circular in this regard. As of 13.09.2019, Mundra Port became a legally recognized point of entry for cosmetics. The Bill of Entry in question was filed on 08.02.2021, well after this notification came into effect. Therefore, the very premise of the alleged contravention — that cosmetics were imported at a non-notified port — is factually incorrect and legally unsustainable. The adjudicating authority's failure to consider this crucial notification renders its finding on this point erroneous.

5.4 Regulation 10(d) of the CBLR, 2018, requires a Customs Broker to *"advise his client to comply with the provisions of the Act and the rules and regulations made thereunder, and in case of non-compliance, to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be."* Regulation 10(m) requires them to *"exercise due*

AH

diligence to ascertain the correctness of any information which he presents to the proper officer."

5.5 The adjudicating authority concluded that the Appellant *"played a vital role in advising the importer and filed the Bill of Entry without proper thought. They failed to act as per Customs Brokers Licensing Regulation Act 2018."* This finding is directly linked to the erroneous belief that Mundra was not a notified port. Since Mundra was a notified port at the time of import, the advice given by the Customs Broker regarding the port of import cannot be deemed incorrect or a failure of due diligence under Regulation 10(d).

5.6 Furthermore, the goods were imported under a warehouse Bill of Entry. This is a significant fact. Goods imported under a warehouse Bill of Entry are not cleared for home consumption immediately; they are stored in a bonded warehouse. The intention to re-export, as declared by the importer and supported by the ADC's NOC for re-export (as evidenced by the screenshot provided by the Appellant), further demonstrates that the goods were not intended to enter the domestic market without proper clearances. The adjudicating authority's observation that the Customs Broker *"filed the Bill of Entry without proper thought"* is a generalized statement without specific evidence to show a breach of Regulation 10(m) in the context of a warehouse Bill of Entry for re-export. The Customs Broker's primary duty in such a scenario is to ensure proper documentation for warehousing and, subsequently, for re-export, which appears to have been done.

5.7 Section 117 of the Customs Act, 1962, is a residuary penal provision that states: *"Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."*

5.8 The CBLR, 2018, is a specific set of regulations governing the conduct of Customs Brokers. Regulation 14 of the CBLR, 2018, provides for penalties specific to Customs Brokers for contraventions of the regulations. When a special law (CBLR, 2018) provides for a specific penalty for a particular contravention, the general penal provision (Section 117 of the Customs Act, 1962) should not ordinarily be invoked.

A-7

5.9 The Hon'ble Tribunal has consistently held this view. In DHL Express (India) Pvt. Ltd. vs. Commissioner of Customs (Imports), Mumbai, 2016 (332) ELT 169 (Tri.-Mumbai), it was held that "when there is a specific provision for penalty under the Customs Broker Licensing Regulations, then Section 117 of the Customs Act, 1962, which is a general provision, cannot be invoked." Similarly, in Syndicate Shipping Services Pvt. Ltd. vs. Commissioner of Customs, Chennai, 2003 (154) ELT 756 (Tri.-Chennai), and Central Warehousing Corporation vs. Commissioner of Customs (Import), Mumbai, 2015 (38) S.T.R. 572 (Tri.-Mumbai), the principle was reiterated that Section 117 should not be invoked when specific penal provisions exist.

5.10 Given that the alleged contraventions pertain to the duties and responsibilities of a Customs Broker under the CBLR, 2018, any penalty, if at all warranted, should have been considered under the specific provisions of the CBLR, 2018, and not under the general Section 117 of the Customs Act, 1962. Furthermore, as discussed in above paras, the very basis of the alleged contraventions (non-notified port, failure of due diligence) is flawed.

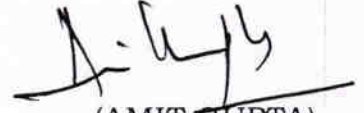
5.11 In view of the detailed discussions and findings above, particularly the fact that Mundra Port was a notified port for the import of cosmetics at the relevant time, and the goods were imported under a warehouse Bill of Entry for re-export with ADC's NOC, the allegations of contravention against the Appellant are not sustainable. Furthermore, the invocation of Section 117 of the Customs Act, 1962, for alleged breaches of CBLR, 2018, is legally incorrect as specific provisions exist under the CBLR itself. The adjudicating authority's contentions are rebutted by the factual and legal position.

6. In view of the above findings, I hereby set aside the penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) imposed on the Appellant, M/s. Saanch Logistics, under Section 117 of the Customs Act, 1962, vide Order-in-Original No. MCH/ADC/MK/196/2022-23 dated 30.03.2023.

At

7. The appeal filed by M/s. Saanch Logistics is hereby allowed.




(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad


F. No. S/49-53/CUS/MUN/2023-24

1381

Date: 10.06.2025

By Registered post A.D/E-Mail

To,
M/s. Saanch Logistics
Office No. 2, Second Floor,
Krishna Avenue 1, Plot No. 249,
DC 6, Adipur (Kutch)

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

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.