



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हड्कोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-  
26589281  
DIN – 20250671MN000000A4E3

क	फाइलसंख्या FILE NO.	S/49-06/CA-2/CUS/KDL/24-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128कक्षेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-012-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.06.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. KDL/ADC/DPB/02/24-25 dated 21.05.2024 passed by the Additional Commissioner of Customs, Customs House, Kandla.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	16.06.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT AND RESPONDENT :	<p>a. APPELLANT: The Deputy Commissioner, Adjudication, Custom House, Kandla</p> <p>b. RESPONDENT: M/s. Verma Corporation, Office No. 115, Plot No. 93, Sector-8, Rishab Corner, Gandhidham, Gujarat-370201</p>

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते 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.
	<b>निम्नलिखित सम्बन्धित आदेश/Order relating to :</b>
(क)	बैगेज के रूपमें आया तितकोई माल.
(a)	any goods imported on baggage.
(ख)	भारतमें आया तितकरने हेतु किसी वाहनमें लादागयालेकिन भारतमें उनके गन्तव्यस्थान पर उतारे न गए मालयाउसगन्तव्यस्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर याउसगन्तव्यस्थान पर उतारे एमाल 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 बना एगएनियमों 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 उसके 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 मद्दसं. 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 हो ना 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 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) यारु. 1,000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी आर. 6 की दो प्रतियां। यदि शुल्क, मांग गया व्याज, लगाया गया दंड की राशि और रूपए एकलाख याउस से कम होतो ऐसे फीस के रूप में रु. 200/- और यदि एकलाख से अधिक होतो फीस के रूप में रु. 1,000/-
(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.	मद्दसं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि दिकोई 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 सेवाकर 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 सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो;पांचहजाररुपए	
(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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.	
(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	
(ग)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।	
	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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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.	



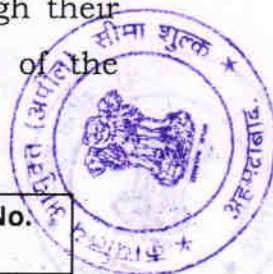
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## ORDER-IN-APPEAL

The Deputy Commissioner, Adjudication, Custom House, Kandla (hereinafter referred to as 'the appellant department') have filed the present appeal in terms of Section 129D (4) of the Customs Act, 1962 on the basis of Review Cum Authorization Order No. 06/OIO/2024-25, dated 29.07.2024, issued by the Commissioner Customs, Kandla under Section 129D (2) of the Customs Act, 1962 challenging the Order - In - Original No. KDL/ADC/DPB/02/2024-25, dated 21.05.2024 (hereinafter referred to as "the impugned order") passed in case of M/s. Verma Corporation having registered office at Office No. 115, Plot No. 93, Sector-8, Rishab Corner, Gandhidham, Gujarat-370201 (hereinafter referred to as "the respondent") by the Additional Commissioner, Customs, Custom House, Kandla (hereinafter referred to as "adjudicating authority").

2. Facts of the case, in brief, are that the Respondent, had filed Shipping Bill No. 9318091, dated 22.04.2024 and No. 9318417, dated 22.04.2024 for export of "Indian Origin Fresh Potatoes" under CTH 07019000 through their CHA M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. The details of the Shipping Bills are as under:

S.No.	Shipping Bill No. & Date	Declared Goods	Qty.	Container No.
1.	9318091/22.04.2024	INDIAN ORIGIN FRESH POTATOES	82300	TRIU8437052 TRIU8193790 TTNU8019504
2.	9318417/22.04.2024	INDIAN ORIGIN FRESH POTATOES	81000	TRIU8032711 TCLU1214643 TRIU8422108



2.1 Further, as per the intelligence developed by the SIIB, Custom House, Kandla, the said Shipping Bills were put on hold and the goods were taken up for 100% examination by the SIIB in KICT Terminal, Kandla Port on 27.04.2024 wherein it was found that all the six containers as above were fully packed with "**Red Onions**" packed in sacks of around 20 Kg capacity each instead of the declared goods of description "**Indian Origin Fresh Potato**".

Details of the onion bags found in each container are as follows: -

S.No.	SB No. & Date	Container No.	No. of Bags	Total weight (in Kgs.)
1		TRIU8437052	1380	27600
2	9318091 dated 22.04.2024	TRIU8193790	1380	27600
3		TTNU8019504	1380	27600

4	9318417 dated 22.04.2024	TRIU8032711	1350	27000
5		TCLU1214643	1350	27000
6		TRIU8422108	1350	27000

2.2 Further, it was observed that the DGFT vide Notification No. 49/2023, dated 07.12.2023 prohibited the export of Onion under CTH 07031019 till 31.03.2024 and further extended the prohibition for indefinite time till further orders vide Notification No. 81/2023, dated 22.03.2024. Further, upon acceptance of mis-declaration of the goods by the Partner of the respondent, the said goods had become liable for confiscation under section 113(d), 113(h) and 113(i) of the Customs Act, 1962. Therefore, the above said goods viz. Red Onions were seized under Seizure Memo dated 29.04.2024 having DIN 20240471ML0000000F42 and was handed over to the Custodian i.e. M/s. KICT, Kandla. The respondent for their above acts of omission and commission made themselves liable for penal action under Section 114(i) as they tried to export prohibited goods. Further, as the respondent had intentionally mis-declared and filed false and incorrect information with the customs authorities, thereby making thereby liable to penal action under 114AA and Section 117 of the Customs Act, 1962.

Further, the respondent vide letter dated 29.04.2024 requested for waiver of SCN and Personal hearing and requested for Back to Town permission as their goods being perishable and also agreed to pay the penalty and fine on the spot with submission to not to contest or file any appeal against the Order.

3. Further, the adjudicating authority vide the impugned order passed the orders as follows:

- I. Ordered to to confiscate the consignment of 163.800 MTs covered under Shipping Bills No. 9318091, dated 22.04.2024 and 9318417, dated 22.04.2024 under the provisions of section 113(d), 113 (h) and 113(i) of the Customs Act, 1962. Since, the goods are physically available for confiscation, in lieu of confiscation, he gave the respondent an option to redeem the goods on payment of Rs.2,00,000/- under Section 125 of the Customs Act, 1962. On exercising the option to pay Redemption Fine, the goods are allowed for Back to Town (BTT).
- II. Imposed the penalty of Rs.6,00,000/- under Section 114(i) of the Customs Act, 1962.

III. Imposed the penalty of Rs.2,00,000/- under Section 114AA of the Customs Act, 1962 on Shri Pradeep Prembhai Nainvaya, Partner of respondent.

IV. Imposed the penalty of Rs.1,00,000/- under Section 117 of the Customs Act, 1962.

4. Being aggrieved with the impugned order, the appellant department has filed the present appeal that the quantum of Redemption Fine and Penalty imposed by the adjudicating authority must be proportionate to the gravity of the offence and serve as a deterrent against violations of the Customs Act, 1962. In the present case, the Redemption Fine and Penalty imposed are on the lower side, without any cogent reasoning or justification provided in the impugned order. Such leniency not only undermines the object and spirit of the penal provisions under the Act but may also inadvertently encourage repeated non-compliance by importers/exporters and stated that that the impugned order, to the extent of imposing disproportionately low Redemption Fine and Penalty, may be set aside and revised appropriately in light of the seriousness of the violation and in the interest of justice.

#### **PERSONAL HEARING**

5. Personal hearing in the matter was held on 10.06.2025. Shri Pradeep Prem Nainvaya, Partner of the respondent appeared for hearing and has submitted a submission via email dated 16.06.2025 wherein the Appellant department has stated the following:

- That in determining the quantum of Penalty or Redemption Fine, the primary consideration should not merely be the value of the goods, but the gravity and nature of the offence committed, if any. In the present case, it appears that the department has disproportionately focused on the high value of the goods, without adequately examining whether the respondent has committed any deliberate act resulting in loss of revenue to the Government or any fraudulent intent. Mere procedural lapses or technical infractions, in the absence of mens rea or revenue implication, should not attract punitive fines. Hence, the penalty and fine must be adjudicated based on the actual culpability and factual circumstances of the case.
- That the Revenue authority has assessed the value of the goods—specifically red onions—at USD 800 per metric ton (with the exchange rate of USD 1 = INR 82.07). However, the authority failed to consider that the market value of red onions and potatoes is



generally comparable and substantially lower. In fact, the actual prevailing value is approximately USD 200 per metric ton, which is just one-fourth of the value adopted by the department. As a result, the penalty imposed, being based on an inflated and incorrect valuation, is disproportionately high and does not reflect the true value of the goods involved. It is therefore prayed that the penalty may be suitably reduced to one-fourth of the amount imposed, in line with the actual assessable value of the goods.

- That the goods confiscated by the revenue authority were perishable in nature and by the time they are released the goods are deteriorated condition and hence, the respondent while selling the deteriorated goods face heavy losses in the market.

The respondent has relied upon M/s KIRTI SALES CORPN VS. COMM.R. OF CUS., FARIDABAD reported at 2008 (232) E.L.T. 151 (Tri. - Del.).



### **DISCUSSION & FINDINGS**

6. I have gone through the appeal memorandum filed by the appellant department, records of the case and submissions made during personal hearing. The main contention in the appeal is that the redemption fine of Rs.2,00,000/- and penalty imposed of Rs.9,00,000/- by the adjudicating authority is very low and not justifiable as compared to the value of goods attempted to be exported. However, the respondent has stated that the redemption fine and penalty imposed upon them is not proportionate and may be reduced. Therefore, the main issue to be decided in the present case is that whether redemption fine and penalties imposed upon respondent vide impugned order in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-2 Form of the appellant department, the present appeal has been filed on 09.08.2024 against the Review Cum Authorization Order dated 29.07.2024, which is within the statutory time limit of 30 days prescribed under Section 129D (4) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.2 As regards to redemption fine imposed by the adjudicating authority under Section 125 of the Customs Act, 1962 in lieu of confiscation of goods, it is the contention of the appellant department that the redemption fine imposed by the adjudicating authority is very low and not justifiable. The appellant

department asserted that the value of mis-declared goods was Rs. 1,08,37,008/-, however the adjudicating authority imposed redemption fine of Rs. 2,00,000/- which is very low as compared to the value of goods and is not justifiable. It is further contended that the adjudicating authority has erred by taking too lenient view and did not impose redemption fine reasonably as prescribed under Section 125 of Customs Act, 1962 as the same has been imposed as less than 2% percent of declared value. Moreover, as per settled law the quantum of redemption fine should be such so as to wipe out the element of profit of the imported goods. Thus, the imposition of such low redemption fine by adjudicating authority is not justifiable.

6.3 I have carefully perused Section 125(1) of the Customs Act, 1962 and the same is reproduced as under:

**Section 125. Option to pay fine in lieu of confiscation. –**

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation **such fine as the said officer thinks fit:**

I find that Section 125(1) of the Customs Act, 1962 clearly stipulates that the adjudicating authority is fully empowered to exercise its discretion while deciding the quantum of redemption fine imposable. The wordings "**such fine as the said officer thinks fit**" gives full liberty to the adjudicating authority while deciding the quantum of the redemption fine under Section 125(1) of the Customs Act, 1962 and there is no binding upon the adjudicating authority. It is crucial to understand the intent behind the discretion provided in such provisions, as it allows for flexibility in addressing cases where technical or procedural violations occur, such as mis-declarations of origin or documentation errors. The discretion ensures that the authorities can apply a fair and balanced approach, considering the circumstances of each case. Since the redemption fine imposed by the adjudicating authority in this case is in full compliance with the provisions of Section 125(1) of the Customs Act, 1962, I find no grounds to interfere with the adjudicating authority's discretion. The authority has exercised its discretion within the framework of the law, ensuring that the redemption fine is appropriate to the circumstances of the case. Therefore, the decision made appears to be in accordance with legal provisions, and there is no reason to question or alter it.

6.4 Now, as regards to penalties imposed by the adjudicating authority on the respondent under Section 114(i), Section 114AA and Section 117 of the Customs Act, 1962, it is the contention of the appellant department that penalty of Rs.6,00,000/- imposed under Section 114(i), penalty of Rs.2,00,000/- imposed under Section 114AA and penalty of Rs.1,00,000/- under Section 117 of the Customs Act, 1962, by the adjudicating authority, is very low and does not appear to be justifiable.

19. I have carefully perused Section 114(i) Section 114AA and Section 117 of the Customs Act, 1962 and the same are reproduced as under:

***114. Penalty for attempt to export goods improperly, etc.***

*- 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,-*

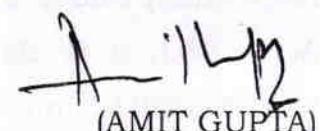
*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act] " not exceeding the value of the goods or five thousand rupees", whichever is the greater;*

***[Section 114AA. Penalty for use of false and incorrect material. -***

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

I find that Section 114(i), Section 114AA and Section 117 of the Customs Act, 1962, provide the framework for imposing penalties, where only the upper limit is prescribed, and no lower limit is specified. This structure allows the adjudicating authority significant discretion in determining the penalty amount, as long as it falls within the prescribed upper limit. Therefore, the adjudicating authority is fully empowered to exercise its discretion in imposing a penalty, taking into account the specifics of the case, while staying within the boundaries set by these provisions. I further find that the penalties imposed by the adjudicating authority under Section 114(i), Section 114AA and Section 117 of the Customs Act, 1962, are in line with the legal provisions, and there is no reason to question or modify the authority's decision in this regard.

7. In view of the aforementioned findings, the appeal filed by the appellant department is hereby rejected.



(AMIT GUPTA)

COMMISSIONER (APPEALS)

CUSTOMS, AHMEDABAD.

F.Nos. S/49-06/CA2/CUS/KDL/24-25  
1435

Dated : 16.06.2025

By Registered Post A.D.

To,

- I. The Deputy Commissioner, Adjudication, Custom House, Kandla
- II. M/s. Verma Corporation,  
Office No. 115, Plot No. 93,  
Sector-8, Rishab Corner,  
Gandhidham, Gujarat-370201



**Copy to:**

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

सत्यापित/ATTESTED



सत्यापित/SUPERINTENDENT  
सीमा चुल्क (अपील्स), अहमदाबाद  
CUSTOMS (APPEALS), AHMEDABAD