



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),
अहमदाबाद, AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN – 20250471MN000000E10E

क	फ़ाइलसंख्या FILE NO.	S/49-75/CUS/MUN/23-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUS-000-APP-015-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.04.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/MK/189/2022-23, dated 23.03.2023 issued by Additional Commissioner of Customs, Customs House, Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	29.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s R.M. Quality and Lifestyle Corporation, A-102, Royal Palms, Kaproli, Panvel Raigad-410206.
1.	यंहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया 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, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै।
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेजकेरूपमेंआयातितकोईमाल।
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो।
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट, 1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए।
(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)	सम्बन्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु. 1000/- (रूपएएकहजारमात्र 1,जैसाभीमालाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर. 6 कीदोप्रतियां। यदिशुल्क,मांगागयाव्याज,लगायगयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ, निम्नलिखितसम्बन्धितआदेश/Order relating to :
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd 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)	अपीलसेसम्बन्धितमामलेमेजहांकिसीसीमाशुल्कअधिकारीद्वारामांगगायाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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)	अपीलसेसम्बन्धितमामलेमेजहांकिसीसीमाशुल्कअधिकारीद्वारामांगगायाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; 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)	अपीलसेसम्बन्धितमामलेमेजहांकिसीसीमाशुल्कअधिकारीद्वारामांगगायाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; 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	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेहैं, अपीलरखाजाएगा।	
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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 R.M. Quality and Lifestyle Corporation, A-102, Royal Palms, Kaproli, Panvel Raigad-410206 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-in-Original No. MCH/ADC/MK/189/2022-23, dated 23.03.2023 (hereinafter referred to as "the impugned order") issued by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had filed Bills of Entry in APSEZ with the details as under:

TABLE-A

Sr. No.	DTA Bill of Entry No. & Date	Description of Goods (as declared by the appellant)	Quantity in MTs	Value (Rs.)	Container No.
1.	2016328, 20.10.2022	Fresh Chile Kiwi Variety - Hayward	21.10	497091/-	ALLU9361850
		Fresh Orange (Origin South Africa)	2.90		
2	2016326, 20.10.2022	Fresh Greece Kiwi Variety - Hayward	21.50	496315/-	ABRU5083455
		Fresh Orange (Origin South Africa)	2.5		
3	2016331, 20.10.2022	Fresh Greece Kiwi Variety - Hayward	21.71	434345/-	ABRU4915946
		Fresh Grapes (Origin Egypt)	2.275		
Total			71.985	14,27,751/-	

2.1 Intelligence received by Special Intelligence and Investigation Branch of Custom House, Mundra (hereinafter referred to as "SIIB") that the appellant had attempted to import Iranian origin kiwi, from Nhava Sheva port, Mumbai (JNCH hereinafter) under concealment of some other fruit and that when these consignments were intercepted at JNCH, they had diverted these consignments to Mundra Port. Further, the import of Iranian origin kiwi had been suspended by the nodal body National Plant Protection Organization (NPPO) under Ministry of Agriculture vide Letter No. 18-23/2015.PP.II (e-16587), dated 07.12.2021. Therefore, the said consignments were put on hold for the detailed examination and also export documents No. 201-06405135-22, dated 25.09.2022, 201-06404032-22, dated 24.09.2022, & 201-06408916-22 dated 28.09.2022 had mention of "Oranges", "Fresh Oranges" & "Grapes", respectively but had no mention of Kiwi despite the fact that Kiwi was approx. 90% by weight in each container. Goods that carried 10% of the weight of whole container were declared in export documents. Further, container tracking in respect of all 03 containers was called for from the shipping line and it was found that the containers moved from Iran to UAE



and from UAE to India without substantial time gap between arrival at UAE and departure from there to India and the shipping line was also requested to provide tracking of all 3 containers for last six months. Summary of tracking provided is as under:

TABLE-B

Sr No	Container No	Loading from Iran (Date)	Discharge at Jabel Ali (Date)	Loading at Jabel Ali (Date)	Discharge at Mundra (Date)
1	ALLU9361850	17.09.2022	19.09.2022	28.09.2022	07.10.2022
2	ABRU5083455	18.09.2022	20.09.2022	28.09.2022	07.10.2022
3	ABRU4915946	18.09.2022	20.09.2022	01.10.2022	05.10.2022

2.2 Further, it appeared that subject consignments had originated in Iran and in order to circumvent the prohibition, bogus documents were produced before Customs Authorities and the Country of Origin was mis-declared and had made false and incorrect documents for attempting clearance of import consignments of the prohibited goods.

2.3 Thereafter, the appellant had submitted a letter dated 21.12.2022 during the investigation and requested to allow re-export of the consignments mentioned in Table-A for a reason that goods are perishable and their shelf life is going to expire. The appellant submitted that they don't require Personal Hearing and Show Cause Notice in the matter. Further, the adjudicating authority, following the principal of natural justice, had given 03 opportunities of personal hearing on 24.01.2023, 14.02.2023 and 14.03.2023, however nobody appeared for the personal hearing. Thereafter, the adjudicating authority allowed the re-export of the subject goods subject to redemption under section 125 of the Customs Act, 1962 and passed the following order:

i. He ordered for confiscation of the goods imported vide DTA Bills of Entry No. 2016328, 2016326 & 2016331 all dated 20.10.2022 having assessable value of Rs. 14,27,751/- under Section 111(d) & 111(m) of the Customs Act, 1962. However, he gave an option to the appellant to redeem the confiscated goods on payment of redemption fine of Rs. 1,00,000/- under Section 125 of the Customs Act, 1962 for re-export purpose only. However, if appellant don't submit any documents/willingness to send back/export the impugned goods within 30 days from the receipt of this order, the said impugned goods would be liable for destruction as per instructions and guidelines in CBIC Disposal Manual, 2019. The cost of destruction shall be borne by the appellant.

ii. He imposed a penalty of Rs. 1,50,000/- on the appellant under Section 112(a)(i) of the Customs Act, 1962.



- iii. He also imposed a penalty of Rs. 2,50,000/- on the appellant under Section 114AA of the Customs Act, 1962.
- iv. He also permitted to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

3. Being aggrieved with the impugned order, the appellant have filed the present appeal and mainly contended that;

- The Learned Adjudicating Authority claims to have granted three opportunities for personal hearing; however, none were effectively communicated to the Appellant, as the address recorded in the Order-in-Original and with the Adjudicating Authority was incorrect and incomplete, despite the correct address being available on the Bills of Entry and other documents filed by the Appellant. Furthermore, no documents relied upon by the investigating authorities or the Adjudicating Authority were ever furnished to the Appellant, depriving him of an effective opportunity to defend himself. The principles of natural justice are not a mere formality but must be adhered to in letter and spirit.
- The confiscation of the entire consignment was made without proving that the goods ("Oranges," "Fresh Oranges," and "Grapes") were *prohibited* under Customs law. The Adjudicating Authority acted mechanically without proper findings.
- Despite early request for re-export, the Authorities delayed action, causing the fruits to perish. The Customs Disposal Manual requiring immediate disposal was ignored, resulting in financial loss to both the Appellant and the revenue.
- The seizure was made merely on suspicion without reasonable belief or evidence. The burden of proof was wrongly shifted onto the Appellant, despite legal requirements that it remains with the Department.
- Authorities wrongly treated an internal advisory letter from NPPO as binding law to declare the goods prohibited, without proper evidence or public notification.
- No evidence was provided regarding pest infestation or Iranian origin of goods. Despite the lack of *mens rea*, heavy penalties were imposed, which are harsh and unjustified.



PERSONAL HEARING

4. Shri Ashwini Kumar, Advocate, appeared for personal hearing on 27.01.2025 on behalf of the Appellant. He reiterated the submission made in the appeal memorandum and also submitted that the address mentioned on the impugned order is wrongly written as "5th Floor, Office No. B-504, Sai San No. 85, Sector-15, C.B.D. Belapur, Mumbai, Maharashtra-400614", whereas the address of the Appellant is "5TH Floor, Office No. B-504, Sai Sangam, Plot No. 85, Sector-15, C.B.D. Belapur, Navi Mumbai, Maharashtra-400614", which might be reason for non-delivery of the impugned order and the Appellant came to know about the said impugned order when his Customs Broker gave him the photo copy, and thereafter the Appellant preferred appeal which is within the period of limitation. The Appellant also relied upon the decision of Margra Industries Ltd Vs Commissioner of Customs, New Delhi [2006 (202) ELT 244 (Tri-LB)] by the Larger Bench of Hon'ble CESTAT wherein it has been held that the computation of limitation has to start from the date of communication of order and not the date of service. The Appellant further submits that even in case of doubt of service, the benefit has to accrue to the Appellant and not the revenue.

4.1 Further, due to change in Appellate Authority, a fresh Personal Hearing was provided to which Shri Ashwini Kumar, Advocate attended the PH on 24.04.2025 held in virtual mode. He reiterated the submission made in the appeal memorandum.

DISCUSSION & FINDINGS

5. I have gone through the appeal memorandum filed by the Appellant, records of the case and submissions made during personal hearing. The issues to be decided in present appeal are whether the impugned order passed by the adjudicating authority for confiscation of imported goods under Section 111(d) and 111(m) of the Customs Act, 1962 and imposing penalty on the Appellant under Section 112(a)(i) and Section 114 AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant have filed the present appeal on 24.07.2023 whereas the impugned order was issued on 23.03.2023. Further, the appellant, vide CA-1 form, stated that they had received the impugned order on 25.05.2023. Since, there are 123 days between the date of issuance of impugned order and date of filing of appeal, therefore, the same had to be verified for which a forwarding letter dated 28.07.2023 of the appeal documents



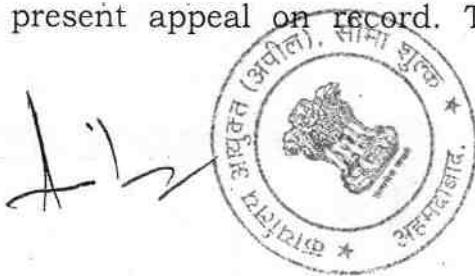
1/-

and a reminder dated 28.01.2025 were issued to the adjudicating authority for confirming the date of service of the impugned order. However, no reply has been received in this office till date. Therefore, I am left with no option but to consider the facts/dates as mentioned by the appellant in the CA-1 form. In view of the above, considering the date mentioned by the appellant, the appeal is considered to be filed in the prescribed time in terms of Section 128 of the Customs Act, 1962.

5.2 It is observed that the appellant have contended that 03 three opportunities of personal hearing granted by the adjudicating authority were never delivered to them, because the address on the records in the impugned order was wrong and incomplete, although correct details were available on the Bills of Entry and other details filed by the appellant. Further, no documents relied by the investigation and the adjudicating authority were ever forwarded to them. In this regard, I observe that since there was clerical error in the address of the appellant, therefore the letters and other relied documents were undelivered. Since the appellant could not present his case before the original adjudicating authority at the first instance, therefore following the principles of natural justice, the case is remanded back to the original adjudicating authority to pass fresh speaking order after following the principles of natural justice and taking into account the correct address of the appellant (A-102, Royal Palms, Kaproli, Panvel Raigad-410206).

5.3 In view of the above, I find that remitting the present appeal to adjudicating authority for passing fresh order for considering the submissions made by the appellant in the present appeal has on record, become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. 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 Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding 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. In view of the above discussion, I allow the appeal by way of remand to the adjudicating authority for passing fresh order after taking the submissions made by the appellant in the present appeal on record. The adjudicating



authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provision.


(AMIT GUPTA)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F.Nos. S/49-75/CUS/MUN/2023-24

Dated – 29.04.2025



By Registered Post A.D./Email

To,
M/s R.M. Quality and Lifestyle Corporation,
A-102, Royal Palms,
Kaproli, Panvel
Raigad-410206.
Email: rmqualitylifestyle@gmail.com

सत्यापिता/ATTTESTED

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

Copy to:

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

