



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

**OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,**

चौथी मंजिल 4th Floor, हडको भवन **HUDCO Bhawan**, ईश्वर भुवन रोड **Ishwar Bhuvan Road**  
नवरांगपुरा **Navrangpura**, अहमदाबाद **Ahmedabad - 380 009**  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN00004984B3

क	फाइल संख्या FILE NO.	(1) S/49-237/CUS/MUN/2023-24 (2) S/49-86/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-104 to 105-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	(1) Decision communicated vide letter dtd. 19.02.2024 issued by Assistant Commissioner of Customs, Mundra. (2) Order - In Original No. MCH/ADC/AK/21/2024-25 dated 22.04.2024 issued by the Additional Commissioner of Customs, Mundra
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Parth Electronics, 146, Royal Complex, Bhutkhana Chowk, Dhebar Road, Rajkot



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	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/- (रूपए दो सौ मात्र)या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की 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 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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;"><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2<sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां 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 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 हजार रुपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में हैं, 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- <ul style="list-style-type: none"> <li>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</li> <li>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</li> </ul>				



**ORDER-IN-APPEAL**

Two appeals have been filed by M/s. Parth Electronics, 146, Royal Complex, Bhutkhana Chowk, Dhebar Road, Rajkot (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the decision and Order - In - Original (hereinafter referred to as 'the impugned orders') issued by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority'). The details of the Appeals and impugned orders are under :-

Sr No.	Appeal No.	Decision /OIO No & date
1	S/49-237/CUS/MUN/2023-24	Decision communicated vide letter dtd. 19.02.2024 issued by Assistant Commissioner of Customs, Mundra
2	S/49-286/CUS/MUN/2024-25	Order - In - Original No. MCH/ADC/AK/21/2024-25 dated 22.04.2024

2. Since the issued involved in the above mentioned appeals are related to each other, both the appeals are taken up together for disposal. Facts of the case, in brief, are that the appellant had filed Bill of Entry (hereinafter referred to as 'BE') with the help of M/s. Unnati Cargo (hereinafter referred as 'CB'). The goods were described as Torch Spare Parts reflector set size: 97mm & 110mm and Torch Spare Parts LED under the CTH 85139000 in their Bill of Entry.

2.1 On Intelligence in respect of the said BE, filed with the help of CB and on perusal of the said BE data available on system, it was observed that BE No. 2499245 dated 19.09.2022 was filed for clearance of goods viz. "Torch Spare parts reflector set" under CTH 85139000 and the quantity is approximately 1.60 Lakhs in numbers. There was a reasonable doubt that mixed spare parts may be available in the cargo mis-declared as Torch Spare parts reflector set.

2.2 On the basis of intelligence, inquiry was initiated. A letter dated 22.09.2022 was sent to the Deputy Commissioner (Docks Examination), requesting to put the consignments which were covered under BE No. 2499245 dated 19.09.2022 on hold for Special Intelligence & Investigations Branch (SIIB) examination. Examination of goods was carried out on 23.09.2022, in the presence of Shri Dilipsinh A. Chavda, Authorised Representative of CB. On opening of the Container, it appeared that the goods were 'Torch Spare parts



Reflector Set' and 'Torch Spare parts LED' as declared in the said BE. Three representative samples (01 each type, as per the description of goods under BE) were drawn from the consignment. The description of goods is shown hereunder In Table-I below:-

**Table-I**

Sr.No.	Description of goods	Ctn	Pcs/Ctn	Total Psc	Value declared (Rounded in Rs.)
1	Torch Spare parts reflector Set (97-45mm)	162	504	81648	331917
2	Torch Spare parts reflector Set (110-60mm)	373	208	77584	410015
3	Torch Spare parts LED	40	100	4000	182122
		575	812	163232	924054

2.3 However, on examination, the said imported goods i.e. 'Torch Spare Parts Reflector Set' which were classified under CTH-85139000 as 'Torch Part' (which attracts BCD @ 7.5% + IGST @ 18%), appeared to be "LED Module with Reflector" which were classifiable under CTH-85395100 (which attracts BCD @20% + IGST @12%). Thus, an inquiry was extended against the Importer in respect of mis-declaration of the said imported goods. Test Memos dated 04.10.2022 alongwith samples were sent to The Joint Director, MSME Testing Centre, Mumbai for the following query:

*"Whether the representative sample is Torch Spare part reflector set or it is a LED module or LED Lamp or Bulb for torch or if something else."*

2.4 Importer vide its letter dated 06.10.2022 requested for provisional assessment for BE No. 2499245 dated 19.09.2022 and also requested cancellation of out of charge of the documents and clearing it provisionally with test bond. The goods were allowed to release provisionally on the request of the importer under provisional assessment.

2.5 During the investigation, Importer filed another BE No. 3022321 dated 25.10.2022 with the help of CB for clearance of the similar goods. Goods were examined in presence of Shri Dilipsinh Chavda, G-card holder of CB which appeared to be same as per the earlier BE No. 2499245 dated 19.09.2022. Further, the Assessment Group was requested to assess the said BE



provisionally vide this office letter dated 09.11.2022 on request of the Importer.

2.6 The Assistant Director, MSME Testing Centre Mumbai submitted their Report No. CSC/EL/166-168/12/2022-23 dated 30.12.2022. The result of the test report reproduced hereunder in Table-II as under :

**Table-II**

<b>Sr. No.</b>	<b>Test conducted</b>	<b>Sample Description</b>	<b>Test Results</b>
1	Visual Examination	Torch Spare Part Reflector Set (110-60 mm)	Samples found Torch spare part reflector set with LED module
2	Visual Examination	Torch Spare Part Reflector Set (97-45 mm)	Samples found Torch spare part reflector set with LED module
3	Visual Examination	Torch Spare Part LED	Samples found LED itself, may be used as Torch spare part.

2.7 On the basis of test results, it appeared that the appellant declared their imported goods as "Torch Spare Parts Reflector Set" and classified the same under CTH 85139000. Whereas, the said goods found to be "Torch Spare Parts Reflector Set with LED Module". It therefore appeared that the said goods were required to be classified in that CTH only. Thus, it appeared that the appellant failed to declare the subject goods properly and also failed to classify the same correctly. Further, it is settled position of law that the classification of goods is required to be done on the part which has the essential and principal characteristic.

2.8 On the basis of above, it appeared that the appellant had mis-declared and mis-classified the said imported goods. Therefore, a summons dated 31.01.2023 was issued to the appellant for recording a Statement. However, they did not appear. Hence, a Summons was issued again to the appellant on 22.02.2023. In response to Summons, appellant vide its letter dated 23.02.2023 requested to extend the appearance date till 22.03.2023 due to medical emergency. A Summons was issued again to the appellant on 15.05.2023 for recording a Statement. Meanwhile the appellant filed various other Bills of Entries for clearance of the same goods, the details of such BEs are shown hereunder in Table-III below:



**Table III**

Sr. No.	Bill of Entry No. & Date	Goods Declared	Total A. Value (in Rs.)
1	2499245 Dated 19.09.2022	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 110mm, Torch Spare Parts LED	924055
2	3022321 Dated 25.10.2022	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 75mm, Torch Spare Parts LED	1292919
3	3319833 Dated 16.11.2022	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 75mm	1348672
4	3571063 Dated 02.12.2022	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, LED Strip, Decoration Light (Big and Small)	1020444
5	3927035 Dated 27.12.2022	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 75mm, LED Modules	750290
6	4461759 Dated 02.02.2023	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 68mm, Torch Spare Parts Reflector Set Size 75mm, LED Module	517602
7	5695367 Dated 27.04.2023	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 75mm, Rechargeable Torch Small	1569640
8	5866773 Dated 09.05.2023	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 68mm,	1600955
9	6092699 Dated 24.05.2023	Rechargeable Torch Big, LED Light Rechargeable Torch, Torch Spare Parts Reflector Set Size 97mm	1445745
10	6228059 Dated 02.06.2023	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 75mm, Torch Spare Parts Reflector Set Size 68mm,	1690847
11	6349238 Dated 10.06.2023	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 68mm, Torch Spare Parts Reflector Set Size 75mm, Rechargeable Torch Big, Led Modules	1523579
12	6569786 Dated 24.06.2023	Torch Spare Parts Reflector Set Size 97mm, Torch Spare Parts Reflector Set Size 110mm, Torch Spare Parts Reflector Set Size 55mm, Torch Spare Parts Reflector Set Size 75mm, Rechargeable Torch Big	1569012

2.9 The misdeclaration and mis-classification of imported goods under CTH 85139000 instead of correct CTH 85395100 resulted in short payment /evasion of duty of Rs. 17,52,149/- details of which are as per Table-IV below:-



Table-IV

Sr. No.	B.E. No. and Date	Assessable Value (in Rs.)	Declared Duty in B.E.			Total	Due			Actual Due	Difference in Duty	Assmt.
			BCD (10%)	SWS (10%)	IGST (18%)		BCD (20%)	SWS	IGST (12%)			
1	2499245 dated 19.09.2022	741933	55645	5565	144566	205776	148387	14839	162929	326155	120379	Provisional
2	3022321 dated 25.10.2022	1278663	95900	9590	249148	354638	255733	25573	280795	562101	207463	Provisional
3	3319833 dated 16.11.2022	1348672	101150	10115	262789	374054	269734	26973	295168	592875	218821	Provisional
4	3571063 dated 02.12.2022	210457	15784	1578	41007	58369	42091	4209	46216	92516	34147	Final
5	3927035 dated 27.12.2022	712047	53404	5340	138742	197486	142469	14241	156365	313015	115529	Final
6	4461759 dated 02.02.2023	1531672	114875	11488	298446	424809	306334	30633	330365	673322	248513	Final
7	5695367 dated 27.04.2023	1065127	79885	7989	207540	295414	213025	21303	233902	468230	172816	Final
8	5866773 dated 09.05.2023	1600955	120072	12007	311946	444025	320191	32019	351570	703780	259755	Provisional
9	6092699 dated 24.05.2023	295066	22130	2213	57494	81837	59013	5901	64796	129710	47873	Provisional
10	6228059 dated 24.05.2023	1690847	126814	12681	329462	468957	338169	33817	371310	743296	274339	Provisional
11	6349238 dated 10.06.2023	323657	24274	2427	63064	89765	64731	6473	71075	142279	52314	Provisional
12	6569786 dated 24.06.2023	155941	311988	31199	342563	685750	311983	31199	342563	685750	0	Final
<b>Total</b>		<b>10955039</b>	<b>785659</b>	<b>78566</b>	<b>2041140</b>	<b>2905368</b>	<b>2093086</b>	<b>209508</b>	<b>2300406</b>	<b>4605000</b>	<b>1752149</b>	

2.10 A Summons dated 24.07.2023 was issued again to the appellant to appear on 01.08.2023. However, appellant submitted a letter dated 25.07.2023 as a reply to summons and requested to grant some more time of 15-20 days approx. and again vide letter dated 08.08.2023 submitted their clarification. In their reply, they requested to consider the goods as parts of torch, classified under CTH 85139000 and not agreed with the test report dated 30.12.2022 of the MSME Testing Centre Mumbai (classifiable under 85395100).

2.11 On completion of investigation, a Show Cause Notice was issued vide F.No. GEN/ADJ/ADC/2051/2023-Adjn., dated 30.10.2023 whereby the appellant was called upon to Show Cause Notice as to why:



- (i) the declared classification under CTH 85139000 for the goods 'Torch Spare Parts Reflector Set' should not be rejected and re-classified under CTH 85395100 as 'Led Module with Torch Reflector Set';
- (ii) the imported goods should not be confiscated under Section 111(m) of the Customs Act, 1962 as the same were not declared and classified properly and has not been assessed for the duty correctly as they were declared as 'Torch Spare Parts Reflector Set' and were classified under CTH 85139000, which found to be 'Led Module with Torch Reflector Set' where led module have specific CTH 85395100 with different duty and tax rate;
- (iii) the total duty and taxes of Rs.17,52,149/- (Rs.11,81,144/- under Section 18 in respect of BEs shown at Sr. No.1, 2, 3 and 8, 9, 10 and 11 and Rs.5,71,005 under Section 28 of the Customs Act, 1962 in respect of BEs shown at Srl. No.4, 5, 6, 7 and 12 of the Annexure-I attached to the SCN) should not be demanded and recovered under Section 18 and Section 28 of the Customs Act, 1962 and interest should not be charged under Section 28AA of the Customs Act, 1962;
- (iv) penalty should not be imposed upon them under Section 112 of the Customs Act, 1962 for contravention of the provisions of law as discussed above;
- (v) penalty should not be imposed upon them under Section 117 of the Customs Act, 1962;
- (vi) the protest of the Importer for payment of duty should not be vacated and the duty paid by them should not be treated as regular payment.

2.12 Following the principles of natural justice, opportunities of personal hearing in the subject case were granted on 24.01.2024, 12.02.2024 and 09.04.2024 by the adjudicating authority. Shri Vikas Mehta, Consultant on behalf of the appellant vide letter and email dated 12.02.2024 requested for cross examination of Assistant Director, MSME Testing Centre, Mumbai. However, vide letter dtd. 19.02.2024, the Assistant Commissioner of Customs Mundra informed the decision of the Additional Commissioner wherein their request for cross examination was rejected. Being aggrieved with the said decision of the



Additional Commissioner of Customs, the appellant has filed the appeal mentioned at Sr. No. 1 of Table-I above.

2.13 Further, on 09.04.2024, appellant submitted a letter stating that they have filed an appeal before Commissioner (Appeal) against the decision to deny cross examination of Assistant Director, MSME Testing Centre, Mumbai and further requested to keep the adjudication in abeyance. However, no other defence submission or reply regarding show cause notice has been made by either respondent or their authorized representative in all 03 PH given to him.

2.14 Consequently the adjudicating authority adjudicated the above show cause notice vide the impugned order as under :-

- (i) He rejected the description of goods declared as 'Torch Spare Parts Reflector Set' and ordered to declare it as 'Led Module with Torch Reflector Set' and further ordered to classify all the goods covered under impugned BE's mentioned in Table-IV under CTH 85395100;
- (ii) He ordered to re-assess BEs shown at St. No.1, 2, 3 and 8, 9, 10 and 11 of Table-IV under CTH 85395100 and ordered to pay the differential Customs duty accordingly along with applicable interest at appropriate rate under Section 28AA ibid; He confirmed the demand of differential Customs duty amounting to Rs. 5,71,005/- in respect of BEs shown at Sr. No.4, 5, 6, 7 and 12 of the Table-IV and order the same to be recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA ibid;
- (iii) He ordered that the impugned BE mentioned in Table-IV having a total assessable value of Rs.1,09,55,039/- (Rupees One crore Nine Lakh Fifty Five Thousand Thirty Nine Only), are liable for confiscation under Section 111(m) of the Customs Act 1962. However, he gave an option to re-deem the confiscated goods imported vide B/E No. mentioned at Sr. No. 1, 2, 3 and 8, 9, 10 and 11 having total assessable of Rs. 72,79,795/- (Rs. Seventy Two Lacs Seventy Nine Thousand Seven Hundred Ninety Five) to the importer in lieu of confiscation under provision of Section 125 of Customs Act, 1962 on payment of Redemption Fine of Rs. 11,00,000/- (Rs. eleven Lakh



Only). He refrained from imposing redemption fine in respect of B/E mentioned at Sr. 4, 5, 6, 7 and 12 having total assessable value of Rs. 36,75,244/- (Thirty Six Lacs Seventy Five Thousand Two Hundred Forty Four) as goods were not physically available for confiscation.

- (iv) He imposed a penalty of Rs. 1,00,000/- (Rs. One Lac Only) on the appellant under Section 112(a)(ii) of the Customs Act, 1962;
- (v) He imposed a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on appellant under Section 117 of the Customs Act, 1962;
- (vi) He ordered for vacation of the protest of the appellant for payment of duty and the duty paid by them shall be treated as regular payment.

### **3. SUBMISSIONS OF THE APPELLANT:**

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

3.1 The appellant has submitted that after issuance of the SCN, the appellant under letter dated 12.02.2024 made a request to the Adjudicating Authority to permit cross-examination of the Assistant Director, MSME Testing Centre, Mumbai since his report was at variance with the understanding and description of appellant. However, the Adjudicating Authority has taken a decision not to permit cross-examination on the ground that it was sought without indicating specific reason and the same will not bring out any new facts. In other words, the Adjudicating Authority who is himself not a technical expert has pre-judged the outcome of cross-examination without appreciating that there is an underlying technical dispute regarding description of item as duly acknowledged in para 3.10 of the SCN.

3.2 The appellant has submitted that that denial of cross-examination tantamount to violation of the principles of natural justice, particularly, when the entire case of department is based on the test reports issued by the said expert. The Adjudicating Authority has failed to appreciate that the issue involved is of technical nature inasmuch as the test report does not bring out any reason for treating Torch Spare Parts and Reflector Set as LED module or inclusive of LED module. Denial of cross-examination of the person who has opined the parts as LED has denied the opportunity for the appellant to bring



out the difference between the two and to establish the correctness of description and classification declared in the bills of entry filed by them. Therefore, in this case, cross-examination is imperative to meet the ends of justice.

3.3 The appellant has submitted that the Adjudicating Authority has erred in prejudging cross-examination of an expert by asserting that nothing new will emerge out of the same notwithstanding the fact that entire case is based on opinion of the said expert and by denying the cross-examination of the expert, the Adjudicating Authority has already manifested his bias and prejudice against the appellant. On this ground also, the impugned decision is not tenable in the eyes of law and the same is liable to be quashed and set aside.

#### **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 records, impugned orders issued by the Additional Commissioner, Customs House, Mundra and the defense put forth by the appellant in their appeals. The Appellant has filed the appeal as per the details shown below

Sr No.	Appeal No.	Date of communication of order appealed against	Date of filing of appeal	Delay if any
1	S/49-237/CUS/MUN/2023-24	22.02.2024	08.03.2024	No delay
2	S/49-86/CUS/MUN/2024-25	30.04.2024	01.07.2024	2 days delay

It is observed that appeal at Sr. No. 2 above has been filed after a delay of 2 days beyond the normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. In their application for condonation of delay, the appellant has submitted that the delay has occurred as there was some delay in forwarding



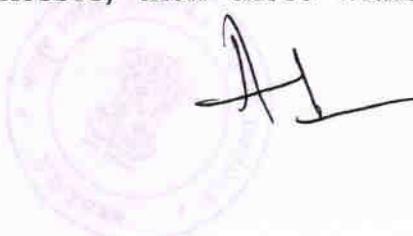
the papers required for drafting the appeal by the counsel. It is further submitted that it was purely unintentional and has requested to condone the delay of 2 days. The delay upto 30 days in filing of appeal beyond the time limit of 60 days is condonable as stipulated under Section 128(1) of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the appeal filed by the Appellant as admitted by condoning the delay of 2 days in filing appeal under the proviso to the Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the challan No. 2110 dtd towards payment of applicable pre-deposit of Rs. 42,826/- As the appeal has been filed with the mandatory pre-deposit as per Section 129E of the said Act, it 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 appeals:

- (i) Whether the denial of cross-examination of the expert whose report formed the sole basis of the SCN and impugned order constitutes a violation of the principles of natural justice.
- (ii) Whether the impugned order, passed despite a pending appeal on the denial of cross-examination, is legally sustainable.
- (iii) Whether the re-classification, demand of duty, confiscation, and penalties are justified in the absence of a fair opportunity for the Appellant to rebut the expert's opinion.

5.2 The entire case of the department for re-classification, demand of duty, confiscation, and penalties hinges upon the test report issued by the Assistant Director, MSME Testing Centre, Mumbai. It is a well-settled principle of natural justice that if any document or statement is relied upon by the adjudicating authority to the detriment of a party, the maker of that document or statement must be offered for cross-examination. This right is crucial to test the veracity, accuracy, and completeness of the evidence.

5.3 The Hon'ble Supreme Court in the landmark case of Andaman Timber Industries Ltd. vs. Commissioner of C.Ex., Kolkata-II, 2015 (324) E.L.T. 641 (S.C.), unequivocally held that if the Revenue wants to rely upon the statements of witnesses, then those witnesses must be offered for cross-



examination. Although this case specifically dealt with statements, the principle extends to expert reports which are relied upon as evidence. The denial of cross-examination of an expert, especially when the dispute is of a technical nature and the expert's opinion is central to the allegations, directly violates the principles of *audi alteram partem* (hear the other side).

5.4 The adjudicating authority's reasoning for denying cross-examination, i.e., that it was sought "without indicating specific reason" and that "the same will not bring out any new facts," is untenable. The Appellant clearly stated that the test report was "at variance with the understanding and description of appellant" and that the "issue is of technical nature and cross-examination is necessary to bring out the justification, if any, on the part of expert in identifying the part of torch as LED module." This constitutes a specific reason. Moreover, an adjudicating authority, who is not a technical expert, cannot pre-judge the outcome of a cross-examination. The purpose of cross-examination is precisely to clarify technical ambiguities, expose potential flaws in the expert's reasoning, or bring out facts that may not be apparent from the report alone. By pre-judging, the adjudicating authority has effectively denied the Appellant a fair opportunity to defend their case on merits. This amounts to a manifest bias and prejudice against the Appellant, as argued.

5.5 It is also noted that the adjudicating authority proceeded to pass the impugned Order-in-Original even when the Appellant had filed an appeal before this very appellate authority against the denial of cross-examination. While Section 28(9)(a) of the Customs Act, 1962, allows for keeping a case in abeyance if an appeal in a similar matter is pending before the Appellate Tribunal, High Court, or Supreme Court, the spirit of natural justice dictates that a crucial procedural aspect like cross-examination should be settled before final adjudication, especially when it is the sole basis of the case. Passing the order without awaiting the outcome of the appeal on cross-examination is a procedural lapse that further compounds the violation of natural justice.

5.6 The adjudicating authority's contention that "Hon'ble Tribunal in various cases has also upheld order for rejection of cross examination passed by the adjudicating authority in such circumstances" is a general statement without specific citations. Without concrete case law, this contention cannot be sustained, especially when contrasted with the numerous judgments



emphasizing the fundamental right to cross-examination where evidence is relied upon. The circumstances of each case are crucial, and in a technical classification dispute relying solely on an expert's opinion, the right to cross-examine that expert is paramount.

5.7 Given the fundamental violation of the principles of natural justice due to the denial of cross-examination of the expert whose report is the sole basis for the re-classification and consequential demands, the impugned order cannot be sustained. The matter requires a fresh adjudication after providing the Appellant a full and fair opportunity to cross-examine the expert. This will ensure that the final decision is based on a thorough and tested examination of the technical aspects of the goods.

6. In view of the detailed discussions and findings above, I hold that the impugned Order-in-Original is vitiated by the denial of the Appellant's fundamental right to cross-examination of the expert whose report was relied upon. This constitutes a clear violation of the principles of natural justice. Therefore, the impugned order cannot be sustained and must be set aside, and the matter remanded for de novo adjudication with specific directions as above. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [ 2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

7. In view of the above findings and in exercise of the powers conferred under Section 128A of the Customs Act, 1962,

(i) I hereby set aside the Order-in-Original No. MCH/ADC/AK/21/2024-25 dated 22.04.2024.



(ii) I remand the matter to the adjudicating authority for de novo adjudication with the specific direction to allow the Appellant to cross-examine the Assistant Director, MSME Testing Centre, Mumbai, whose test report has been relied upon in the Show Cause

Notice.

(iii) The adjudicating authority shall thereafter pass a fresh speaking order after considering all submissions, including those arising from the cross-examination, in accordance with law and principles of natural justice.

(iv) The appeal filed by the appellant against the order of rejection of request for cross examination is clubbed with the appeal against the impugned OIO and disposed together as above.

8. Both the appeals filed by the appellant viz. M/s. Parth Electronics are disposed of in above terms.



सत्यापित/ATTTESTED  
  
 अधीक्षक/SUPERINTENDENT  
 सीमा आल्क (अपील्स), अहमदाबाद  
 CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-237/CUS/MUN/2023-24

Date: 26.06.2025

F. No. S/49-86/CUS/MUN/2024-25

1669

By Registered post A.D / E-Mail

To,  
 M/s. Parth Electronics  
 146, Royal Complex,  
 Bhutkhana Chowk,  
 Dhebar Road, Rajkot- 360 002.

Copy to:

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