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 – **20251271MN00001101B0**

क	फ़ाइल संख्या FILE NO.	S/49-180/CUS/AHD/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) :	AHD-CUSTM-000-APP-490-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	24.12.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	DBK/DC-OPB/01/19-20 dated 06.03.2020 passed by the Deputy Commissioner, Customs, ICD-Valvada, Dist.-Valsad, Gujarat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	24.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Naitik Enterprises, F/35, 36 & 37, Ravi Estate, Tavdipura, Dhobighat, Ahmedabad

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

1	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.**
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.

	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए** (1) **के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, 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. Naitik Enterprises, F/35, 36 & 37, Ravi Estate, Tavdipura, Dhobighat, Ahmedabad (hereinafter referred to as "the Appellant") have filed the present appeal against the DBK/DC-OPB/01/19-20 dated 06.03.2020 (herein after referred to as "the impugned order") passed by the Deputy Commissioner, Customs, ICD-Valvada, Dist.-Valsad, Gujarat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had filed drawback Claim vide Drawback Shipping Bill No. 4552606 dated 30.05.2019 for Rs. 64,16,133/- under Section 74 of the Customs Act, 1962 read with Re-Export of imported goods (Drawback of Customs Duties) Rules, 1995. The Adjudicating Authority rejected the appellant's drawback claim on the ground that the appellant had attempted to import goods with the intent to evade customs duty through mis-declaration and mis-classification. Upon failure of these attempts and the correct identification of the goods by the Customs authorities, the appellant re-exported the goods solely to reclaim the duties paid under the drawback mechanism.

2.1 Further facts of the case reveals that the appellants filed Bill of Entry No.: 5574760 dated 14.03.2018 at ICD, Valvada, Dist-Valsad, Gujarat declaring the imported goods as "Positive Offset Plates (Pre-Sensitized positive offset Aluminium plates) procured from the UAE. The goods were classified under CTH 3701 3000 and Country of Origin was China. Examination of the goods carried out and it was found that some stickers were affixed on some boxes in the pallets of the imported cargo. The stickers contained details of Bill of Entry No. 8948204 dated 18-03-2017 and Shipping Bill No. 2360404 dated 22-01-2018, issued in the name of M/s S.K. Enterprise, Surendranagar.

2.2 On verification of the above details on ICEGATE, it was revealed that the same cargo had earlier been imported vide Bill of Entry No. 8948204 dated 18-03-2017 filed by M/s S. K. Enterprises, Surendranagar at Nhava Sheva Port. The said cargo was subsequently re-exported vide Shipping Bill No. 2360404 dated 22-01-2018 to Jebel Ali, UAE after obtaining 'NOC' from SIIB (I), Nhava Sheva, Mumbai.

2.3 The Deputy Commissioner, SIIB (I), Mumbai, vide letter F. No. SG/Misc/261/2016-17/SIIB(I) JNCH dated 06-04-2018, informed that the cargo covered under Bill of Entry No. 8948204 dated 18-03-2017 was imported by M/s S. K. Enterprises, Surendranagar, Gujarat, declaring the goods as "Aluminium P.S. Plates" of thickness 0.28 mm under HSN 76069290 . He further informed that, as per their records, the goods were actually "Computer to Conventional Plates (CICP)", classifiable under HSN 37013000, attracting Anti-Dumping Duty at the rate of USD 4.87 per square meter in terms of Notification No. 51/2012-ADD dated 03-12-2012.

2.4 The samples of the goods drawn by Customs at JNPT, Mumbai were sent by SIIB (I), JNCH, Mumbai to three laboratories, all of which confirmed the goods as "CtCP (Computer to Conventional Plates)", classifiable under HSN 37013000 and liable to Anti-Dumping Duty of USD 4.87 per sqm under Notification No. 51/2012-ADD dated 03-12-2012.

2.5 The importer filed writ petition 12964/2017 before Hon'ble High Court of Mumbai, for re-export of the imported goods who allowed the same subject to payment of fine and penalty. The goods were re-exported vide Shipping Bill no.: 2360404 dated 22.01.2018. The documents, records and the statements recorded of Shri Siddharth K. Shah, Proprietor of M/s S. K. Enterprise, revealed that Shri Mukesh R. Sheth, Proprietor of M/s Naitik Enterprise, is his father-in-law and that Shri Mukesh Sheth was handling the import-related documents of M/s S. K. Enterprise. This clearly establishes that Shri Mukesh R. Sheth was fully aware of the earlier import of the same goods by M/s S. K. Enterprise at JNCH, Nhava Sheva, Mumbai. Despite such knowledge, the same cargo was subsequently re-routed and imported in the name of his proprietorship concern, M/s Naitik Enterprise, vide Bill of Entry No. 5574760 dated 14-03-2018.

2.6 Shri Mukesh Ravichandra Sheth, Proprietor of M/s Naitik Enterprise, Ahmedabad, in his statement dt. 12.04.2018 admitted that the goods imported by his firm were the same as those earlier imported at JNCH, Nhava Sheva, Mumbai, vide Bill of Entry No. 8948204 dated 18-03-2017 by M/s S. K. Enterprise, Surendranagar, owned by his son-in-law. He also admitted that he was fully aware of the earlier import and deposed that he had acted as the Authorised Signatory of M/s S. K. Enterprise during that import.

2.7 From the above facts, it is established that the cargo imported by M/s Naitik Enterprise, Ahmedabad, vide Bill of Entry No. 5574760 dated 14-03-2018 at ICD-Valvada, declared as "Positive Offset Plates (Pre-sensitized Positive Offset Aluminium Plates)", was the same cargo earlier imported by M/s S. K. Enterprise, Surendranagar, vide Bill of Entry No. 8948204 dated 18-03-2017 at JNCH, Mumbai.The original importer, M/s S. K. Enterprise, had declared the goods as "Aluminium P.S. Plates" of 0.28 mm thickness under Chapter Sub-heading 76069290, showing Anti-Dumping Duty (ADD) @ USD 0.22 per kg as per Notification No. 25/2014-ADD dated 09-06-2014. However, the goods were actually "Computer to Conventional Plates (CICP)", attracting ADD @ USD 4.87 per square meter under Notification No. 51/2012-ADD dated 03-12-2012.

2.8 Further, M/s Naitik Enterprise, Ahmedabad, imported the same cargo at ICD-Valvada vide Bill of Entry No. 5574760 dated 14-03-2018, declaring it as "Positive Offset Plates" under Chapter 37013000 and showing ADD @ USD 0.22 per kg. However, the test result confirmed the goods were "Computer to Conventional Plates" liable to ADD @ USD 4.87 per sqm under Notification No. 51/2012-ADD. By submitting incorrect details, M/s Naitik Enterprise misled Customs and attempted to evade the proper duty. The Bill of Entry was provisionally assessed pending sample testing.

2.9 The goods imported by M/s Naitik Enterprise, Ahmedabad, at ICD-Valvada vide Bill of Entry No. 5574760 dated 14-03-2018 were seized under Panchnama dated 12-04-2018, drawn at ICD-Valvada. The seized goods were provisionally released by the Principal Commissioner of Customs, Ahmedabad, vide letter F. No. VI.II/10-52/ICD-Khod/O&A/2018 dated 01-06-2018, upon the request of M/s Naitik Enterprise. The importer furnished a bond of Rs. 44,22,023/-, a bank guarantee of Rs. 16,00,000/-, and paid Basic Customs Duty of Rs. 4,42,202.40/-, IGST of Rs. 9,42,314/-, Social Welfare Surcharge of Rs. 44,220.40, and Anti-Dumping Duty of Rs. 49,87,396/-.

2.10 The sample of the goods imported under Bill of Entry No. 5574760 dated 14-03-2018 was sent to the Principal, PVG College of Engineering & Technology, 44, Vidhya Nagri, Parvati, Pune – 411009, vide letter dated 19-12-2018. The College, through their letter No. PVG/COWIPTG/595/2018-19 dated 26-12-2018, confirmed that the tested sample was "Computer to Conventional Plates" (CICP). The test results clearly establish that the cargo imported by M/s Naitik Enterprise, Ahmedabad, at ICD-Valvada is "Computer to Conventional Plates" (CtCP). Therefore, the goods imported under Bill of Entry No. 5574760 dated 14-03-2018 fall under Chapter Sub-heading 37013000 and attract Anti-Dumping Duty (ADD) @ USD 4.87 per square meter as per Notification No. 51/2012-ADD dated 03-12-2012. Additionally, three earlier tests of the same cargo imported at Nhava Sheva, Mumbai, also confirmed that the plates were CtCP.

2.11 The appellant, vide letter dated 04-06-2018, sought permission from the Principal Commissioner of Customs, Ahmedabad, to re-export the goods however, the same was rejected vide letter dt. 08-06-2018, on the ground that the goods imported under the Bill of Entry No. 5574760 dated 14-03-2018 were under seizure and investigation for alleged mis-declaration is going on. The imported goods were already been released provisionally. Despite this rejection, the petitioner filed Shipping Bill No. 8962904 dated 17-11-2018 at ICD-Valvada for re-export and requested assessment thereof vide letter dated 24-11-2018. The Assistant Commissioner of Customs, ICD-Valvada, vide letter dated 29-11-2018, reiterated that the request for re-export stood rejected as per the aforesaid order letter dt. 08.06.2018 of the Principal Commissioner.

2.12 Thereafter, the appellant filed Special Civil Application No. 833/2019 before the Hon'ble High Court of Gujarat seeking permission to re-export of the imported goods. The Hon'ble High Court vide order dt. 02.05.2019 directed the respondents to process the said Shipping Bill filed at ICD-Valvada for export of goods in question. In compliance with the order dated 02-05-2019 of the Hon'ble High Court of Gujarat, the DC , Customs Valvada processed the Shipping Bill No. 4552606 dated 30.05.2019 under Section 51 of the Customs Act, 1962 on 20-06-2019 and allowed the export of the goods.

2.13 Thereafter, the appellant filed a drawback claim under Section 74 of the Customs Act, 1962, in respect of the exported goods, vide letter dated 16-08-2019. The adjudicating authority after affording personal hearing and taken all facts, figures and evidences on records, rejected the drawback claim of Rs. 62,87,810/- in respect of the re-export of goods covered under Shipping Bill No. 4552606 dated 30.05.2019.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. They have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims :

- *The appellant contends that the adjudicating authority's findings are without merit and jurisdiction. Neither Section 74 of the Customs Act nor the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 provides for denial of drawback on the grounds cited in the impugned order. Section 74 allows drawback of 98% of duty paid on re-export of imported goods, subject only to two conditions: (i) the goods are identified to the satisfaction of the Assistant/Deputy Commissioner as the same goods imported, and (ii) the goods are exported within two years from the date of payment of import duty. The appellant submits that both conditions under Section 74 of the Customs Act were duly satisfied and full duty was paid at the time of import. Therefore, the adjudicating authority had no jurisdiction to deny drawback on re-export of the imported goods.*
- *The appellant submits that under the provisions of Section 74 read with Drawback Rules, 1995, no drawback and re-export of the goods can be denied to the assessee on the ground that there was any mis-declaration and misclassification of the imported goods.*
- *The appellant submits that although import duty was paid, the goods were never removed from ICD-Valvada and were re-exported from the same customs station without being used or consumed in India. Under Section 74 of the Customs Act, such re-export entitles the importer to a drawback of 98% of the duty paid. Since the goods imported under the Bill of Entry dated 14.03.2018 were re-exported under Shipping Bill dated 30.05.2019 without violation of any conditions of Section 74, the adjudicating authority was legally bound to grant the drawback. Hence, denial of drawback is without jurisdiction, devoid of merit, and the impugned order deserves to be set aside.*
- *The adjudicating authority erred in denying drawback under Section 74 by alleging willful mis-declaration by the appellant. Reliance on Order-in-Original dated*

14.01.2020 is misplaced, as the appellant had declared the goods as positive offset plates, and the allegation that they were CtCP plates remains disputed. The said order has been challenged before the Hon'ble CESTAT and is pending adjudication; hence, no conclusive finding of mis-declaration exists. Therefore, reliance on a disputed and non-final order amounts to non-application of mind, and drawback could not have been denied on such grounds.

- *The appellant submits that there was no fraud or intent to evade ADD, as the goods were Aluminium P.S. Plates classifiable under CTH 37013000 and chargeable to ADD at USD 0.22 per kg. A Government agency test report certified the goods as Aluminium P.S. Plates, which formed part of the adjudication record (Annexure "G"). However, the Principal Commissioner ignored this report, and therefore the appellant has challenged the Order-in-Original dated 14.01.2020 before the Hon'ble Tribunal, where the appeal is pending.*
- *The appellant submits that retention of Rs. 62,87,810/- by the department violates Article 265 of the Constitution, as duty cannot be retained without authority of law. Since Section 74 mandates refund of duty on re-export, refusal to grant drawback is ex facie illegal and without jurisdiction. The goods were never cleared for home consumption and were re-exported from ICD Valvada due to classification disputes. Therefore, the revenue was bound to refund the duty paid, and the impugned order, having ignored these facts, deserves to be set aside.*
- *The appellant submits that only three objections were raised by the Assistant Commissioner vide letter dated 14.11.2019, all of which were duly complied with and subsequently dropped in the impugned order. Under Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the appellant rectified the deficiencies within the prescribed time, and the drawback claim was neither returned nor rejected at that stage, thereby amounting to its acceptance. Once the claim was accepted, the adjudicating authority had no jurisdiction to deny drawback, especially in the absence of any statutory provision authorizing such rejection. As no legal basis has been cited for denial, the impugned order is devoid of merit and deserves to be set aside.*
- *The appellant submits that since the claim for drawback of Rs. 62,87,810/- was legitimately payable under Section 74 of the Customs Act, denial of the amount also triggers liability to pay interest under Section 75A of the Customs Act. Section 75A provides that if drawback payable under Section 74 is not paid within one month from the date of filing the claim, the claimant is entitled to interest at the rate fixed under Section 27A from the date after expiry of that one-month period until payment of the drawback. Therefore, the appellant is entitled not only to the principal drawback amount but also to the interest payable under Section 75A, and the adjudicating authority's failure to grant the same is contrary to law and deserves to be set aside.*

PESONAL HEARING:-

4. Personal hearing in the matter was held on 11.09.2025, wherein Shri Anil Gidwani, advocate attended personal hearing on behalf of the Appellant in physical mode and he reiterated the submissions made in appeal memorandum.

DISCUSSION & FINDINGS:-

5. The appellant filed the present appeal on 07.10.2024 against the impugned order dated 06.03.2020, communicated on 14.03.2020, resulting in a delay of 1668 days. Related to delay, attention is respectfully drawn to the order dated 26.09.2024 passed by the Hon'ble High Court of Gujarat in SCA No. 7842/2020, where the High Court, without going into the merits of the dispute, vide order dt. 26.09.2024 disposed of the writ petition and directed the appellant to file the statutory appeal before the Appellate Authority against the impugned order dated 06.03.2020. The High Court also permitted the appellant to file the appeal within three weeks from the date of the High Court order. In compliance with the High Court's directions, the appellant filed the appeal on 07.10.2024, well within the time permitted by the High Court's order dated 26.09.2024. Accordingly, the present appeal is not barred by limitation and deserves to be entertained on merits having been filed in terms of the High Court's directions. The appeal has been filed against drawback claim on re-export of imported goods, so pre-deposit under the provisions of Section 129E is not required. As the appeal have been filed within time frame as per the directions of the High Court of Gujarat, the said appeal have been admitted and being taken up for disposal on merits.

6. In the matter, one set of the Appeal Memorandum dated 04.10.2024, submitted by the appellant, was forwarded to the Deputy Commissioner (Customs), ICD Valvada, District Valsad, vide official letter dated 11.11.2024, for information and for furnishing written comments with respect to the grounds of appeal raised by the appellant in his favour and support thereof. The Deputy Commissioner (Customs), ICD Valvada, District Valsad, vide letter dated 26.12.2024 and 18.12.2025 submitted various submission and statements of facts in support of impugned order, same are mentioned below :

6.1 M/s. Naitik Enterprise, F-35, 36 & 37, Ravi Estate, Near Shani Dev Mandir Road, Dhobhighat, Tavdipura, Ahmedabad filed a Bill of Entry No. 5574760 dated 14.03.2018 at ICD – Valvada, mentioning the description of goods as 'Positive Offset Plates (Pre-sensitized positive offset Aluminum Plates) stuffed in 20' Container bearing No. BCXU – 2240605 containing 12 Pallets of above goods, having Gross weight 24000 Kg. and Net Weight 22461.38 kgs, having total length *of 30547.48 Sq. mtrs and declared to have procured from Real Ventures General Trading (LLC) UAE under Invoice No. RVGT0019541/2018 dated 25-02-2018. The classification was claimed under CTH 37013000 and the Country of Origin of the said goods was China.*

6.2 During the examination of the goods imported under the above-mentioned bill of entry No. 5574760 dated 14-03-2018, carried out on 27-03-2018, the goods were de-stuffed in ICD Valvada and two vouchers were found pasted on the two pallets of the import cargo were mentioned, showing the details of a Bill of Entry No. 8948204 dated 18-03-2017 and Shipping Bill No. 2360404 dated 22-01-2018 by one M/s S. K. Enterprise, Surendranagar. On verification of the above details in ICEGATE, it was revealed that same cargo was earlier imported vide Bill of Entry No. 8948204 dtd. 18-03-2017 and warehoused at Best Roadways Ltd., Mumbai and that the said cargo was re-exported back vide Shipping Bill No. 2360404 dated 22-01-2018 to Jabel Ali, UAE. It was also found that the cargo in question was related to the cargo imported at Nhava Sheva Port, having Port Code INSAI1 vide the above referred Bill of entry by M/s S. K. Enterprises, Surendranagar and the same was re-exported back to JABEL ALI, UAE under the above Shipping Bill after getting 'NOC' from SIIB (I), Nhava Sheva, Mumbai.

6.3 However, on being asked by the Customs Authorities at ICD-Valvada, in his statement dated 03-04-2018, Shri Mukesh Ravichandra Sheth the Proprietor of M/s Naitik Enterprise, Ahmedabad, deposed his unawareness regarding antecedents of the old Import Cargo and also showed his ignorance about the firm M/s S. K. Enterprises, Surendranagar or any relations with the owners of it.

6.4 For ascertaining the details about the past import of the above consignment at Nhava Sheva, Mumbai, documents like the copy of the Bill of Entry No. 8948204 dated 18-03-2017, Invoice, packing list, Statement recorded under section 108 of the Customs Act, 1962, by Customs Appraiser, Nhava Sheva, Mumbai, P. D. Bond, Show cause notice, test results etc were obtained from SIIB(I) and Group – IV, JNCH, Nhava Sheva, Mumbai. The Dy. Commissioner, SIIB (I), Mumbai vide letter F. No. SG/Misc/261/2016-17/SIIB(I) JNCH dated 06-04-2018 informed that the cargo vide Bill of entry No. 8948204 dated 18-03-2017 was imported by M/s S. K. Enterprises, 601, Suvidhi Apartment, Surendranagar, Gujarat, declaring it as 'Aluminum P. S. Plates', having thickness 0.28 mm under HSN 76069290. He further informed that as per information with them, the goods were 'Computer to Conventional Plates (CtCP)' falling under HSN 37013000 attracting ADD to the tune of 4.87 USD per square meter as per the provisions of Notifn. No. 51/2012-ADD dated 03-12-2012.

6.5 From the documents obtained from SIIB(I) & Group-IV, JNCH, Nhava Sheva, Mumbai, it was found that the subject goods were earlier imported vide the Bill of entry 8948204 dated 18-03-2017, wherein also the goods were declared as 'Aluminium P. S. Plates',, but when the samples of the goods, drawn by Customs authorities at JNPT, Mumbai, were sent to three different laboratories by the SIIB (I) JNCH, Mumbai and all the three different laboratories confirmed the goods as 'CtCP i.e. Computer to Conventional Plates', which were falling under HSN 37013000 attracting ADD to the tune of 4.87 USD per square meter as per the provisions of Notifn. No. 51/2012-ADD dated 03-12-2012. Thereafter, the importer filed a writ petition 12964 of 2017 before Mumbai High Court for allowing the re-export of the imported goods and the re-export was allowed by Customs Authorities, JNPT, Mumbai, subject to payment of fine and penalty, if imposed by the adjudicating authority. The goods were re-exported vide Shipping Bill No. 2360404 dated 22-01-2018. The documents like copies of the P. D. Bond and the statement of Shri Siddharth K. Shah, Proprietor of M/s S. K. Enterprises, revealed that in the P. D. Bond, signature of Shri Mukesh R. Sheth, the Proprietor of M/s Naitik Enterprise, Ahmedabad were found as a witness. Further, in his statement dated 10-04-2017 recorded under section 108 of the Customs Act, 1962 before Superintendent of Customs, SIIB, JNCH, Nhava Sheva, Mumbai, Shri Siddharth Kirtibhai Shah, the Proprietor of M/s S. K. Enterprise, Surendranagar, stated that Shri Mukesh Sheth is his father-in-law and he was forwarding all the import related documents of the goods imported by M/s S. K. Enterprise.

6.6 From the above details, it is evident that Mukesh Ravichandra Sheth, the Proprietor of M/s Naitik Enterprise, Ahmedabad was well aware of the earlier import of the subject goods at JNCH, Nhava Sheva, Mumbai by M/s S. K. Enterprise and that the goods imported by his firm M/s Naitik Enterprise vide Bill of Entry No. 5574760 dated 14-03-2018, was the same import cargo which earlier imported by M/s S. K. Enterprise, Surendranagar, a firm related to him and owned by his son-in-law Shri Siddharth Kirtibhai Shah at JNCH, Nhava Sheva, Mumbai under Bill of entry No. 8948204 dated 18-03-2017. However, in spite of being in complete knowledge of the subject cargo, which was earlier imported by the related person of the importer and the same cargo was being re-routed as import by his own Proprietorship firm.

6.7 When another statement of Shri Mukesh Ravichandra Sheth, the Proprietor of M/s Naitik Enterprise, Ahmedabad was recorded on 12-04-2018, wherein, on being shown the copies of all the documents obtained from SIIB(I) & Group-IV, JNCH, Nhava Sheva, Mumbai which consisted his signatures, he admitted that the goods imported by his firm were the same goods which were *earlier imported at JNCH, Nhava Sheva Port, Mumbai vide Bill of entry No. 8948204 dated 18-03-2017, by M/s S. K. Enterprise, Surendranagar, which was owned by his son-in-law, he also categorically admitted to be in complete knowledge of the earlier import and deposed that he had acted as the Authorised Signatory of M/s S. K. Enterprise, Surendranagar, during the course of earlier import.*

6.8 From the above details, it is found that the imported cargo declared as 'Positive Offset Plates (Pre-sensitized positive offset Aluminium Plates)' under Bill of entry No. 5574760 dated 14-03-2018, by M/s Naitik Enterprise, Ahmedabad at ICD-Valvada, was the same import cargo, which was earlier imported by M/s S. K. Enterprise, Surendranagar at JNCH, Mumbai, for which they filed bill of entry No. 8948204 dated 18-03-2017. The original importer had filed the bill of entry No. 8948204 dated 18-03-2017, declaring the description of goods as 'Aluminium P. S. Plates', having thickness of 0.28 MM, classifying them under Chapter Sub-heading No. 76069290, showing Anti-dumping duty ADD @ 0.22 USD per kg as per the provisions of Notifn. No. 25/2014-ADD dated 09-06-2014. However, the said goods were 'Computer to Conventional Plates (CtCP)' attracting ADD (i.e. Anti-dumping Duty) @ 4.87 USD per Square Meter (Sqm), as per the provisions of Notification No. 51/2012-ADD dated 03-12-2012.

6.9 Further, M/s Naitik Enterprise, Ahmedabad, on importing the same cargo, at ICD-Valvada vide Bill of Entry No. 5574790 dated 14-03-2018, declared the description as 'Positive Offset Plates (Pre-sensitized positive offset Aluminium Plates) and classified them under Chapter sub-heading No. 37013000, however, again in the bill of entry showed Anti-dumping duty leviable @ 0.22 USD per Kg as per the provisions of Notifn. No. 25/2014-ADD dated 09-06-2014. Thus, M/s Naitik Enterprise mislead the Customs Department, by submitting the wrong information in the bill of entry filed by them in respect of the above goods, which were actually earlier imported and ascertained as 'Computer to Conventional Plates' in three different sample testing at separate testing laboratories. Therefore, M/s Naitik Enterprise had re-routed the goods which were earlier imported and once again tried to avoid the proper levy of ADD (i.e. Anti Dumping Duty) @ 4.87 USD per Square meter, as per the provision of Notifn. No. 51/2012-ADD dated 03-12-2012. Therefore, the Bill of entry No. 5574760 dated 14-03-2018, was assessed provisionally subject to testing of sample of the goods drawn.

6.10 The goods imported by M/s Naitik Enterprise, Ahmedabad at ICD-Valvada, vide Bill of Entry No. 5574760 dated 14.03.2018, were placed under seizure under Panchnama dated 12-04-2018, drawn at ICD-Valvada, The seized goods were provisionally released by the Principal Commissioner of Customs, *Ahmedabad vide letter F. No. VIII/10-52/ICD-Khod/O&A/2018 dated 01-06-2018, on the request of M/s Naitik Enterprise, Ahmedabad. The Importer had furnished the Bond for an amount of Rs. 44,22,023/-, Bank Guarantee of Rs. 16,00,000/- and paid the Basic Customs Duty of Rs. 4,42,202.40, IGST amount of Rs. 9,42,314/-, Social Welfare Surcharge of Rs. 44,220.40 and ADD (Anti Dumping Duty) of Rs. 49,87,396/-.*

6.11 The sample of the goods imported vide Bill of Entry No. 5574760 dated 14-03-2018, drawn during Panchnama dated 12-04-2018, was sent to CRCL, Vadodara vide Letter F. No. VIII/48-60/ICD-VALVADA/Misc./2017-18 dated 05-06-2018 of ICD-Valvada, however, CRCL, Vadodara vide their letter dated 08-06-2018, informed that their laboratory does not have the testing facility to test the subject samples. Thereafter, after obtaining approval from CRCL, Vadodara, the sample was sent to R. C. Technical Institute, Ahmedabad on 27-09-2018, however, the said institute vide their letter dated 03-10-2018, declined test the sample. Again, after obtaining from CRCL, Vadodara, the sample of the imported goods, was sent to Directorate of Government Printing and Stationary (DGPS), Government of Gujarat, Gandhinagar, however, the DGPS, Gandhinagar, gave an inconclusive report. In this regard, vide letter F. No. VIII/48-02/PI/HQ/2018-19 dated 26-10-2018, the Director DGPS, Gandhinagar was requested to specifically confirm the type and category of the Plates contained in the sample. However, in reply to the above letter, the Senior Manager, Government Central Press, Gandhinagar, an organization functioning under Directorate of Government Printing and Stationary (DGPS), Gandhinagar vide their letter No. Admin/2018-19/7330 dated 06-11-2018, informed that the reply given by them in respect of the sample was based on their working experience, Chemistry and image visualization taken during the testing procedure from their end and categorically replied that "for more clarifications, you may contact any laboratory or plate manufacturing unit". So, it appeared that the Directorate of Government Printing and Stationary Gandhinagar, is not appropriate facility equipped with testing of goods in question.

6.12 The matter was again referred vide letter dated 14-11-2018, to the Director, CRCL, New Delhi, requesting to provide the name of the Laboratory equipped with adequate facilities for testing of the sample. The CRCL, New Delhi vide their letter F. No. 35-Cus/Misc. Corres/2018-19 dated 13-12-2018) provided the name of the Principal, PVG College of Engineering & Technology, 44, Vidhya Nagri, Parvati, Pune – 411009 for testing of sample drawn in respect of goods imported vide Bill of entry No. 5574760 dated 14-03-2018. The sample was sent to the Principal, PVG College of Engineering & Technology, 44, Vidhya Nagri, Parvati, Pune – 411009 vide Letter F. No. VIII/48-02/PI/HQ/2018-19 dated 19-12-2018. The

Principal, PVG College of Engineering & Technology, Pune, vide their letter bearing No. PVG/COET/PTG/595/2018-19 dated 26-12-2018, confirmed that the sample tested by them was 'Computer to conventional Plates' i.e. CtCP'.

6.13 So, the test result received categorically evidences that the cargo imported by M/s Naitik Enterprise, Ahmedabad at ICD-Valvada is "Computer to conventional Plates' i.e. CtCP and therefore, the above-mentioned cargo, for which they filed Bill of entry No. 5574760 dated 14-03-2018, is falling under the Chapter sub-heading No. 37013000 attracting ADD (i.e. Anti-dumping Duty) @ 4.87 USD per Square Meter (Sqm), as per the provisions of Notification No. 51/2012-ADD dated 03-12-2012. Apart from the above test result, three tests of the sample of the subject import cargo, when imported earlier at Nhava Sheva, Mumbai, have also confirmed that the plates imported have been 'Computer to Conventional Plates – CTCP'.

6.14 In the meanwhile, the petitioner, after the provisional release of the goods, vide their letter dated 04-06-2018, approached the Principal Commissioner of Customs, Ahmedabad for permission to re-export of the goods. However, the Hon'ble Principal Commissioner of Customs, Ahmedabad vide their letter F. No. VIII/10-52/ICD-Khod/O&A/2018 dated 08-06-2018, informed the petitioner that as the goods imported under the bill of entry No. 5574760 dated 14-03-2018, were placed under seizure and the investigation in respect of alleged mis-declaration with an intention to evade payment of Customs duty against them is going, also, that the goods in question have already been provisionally released, the request of the petitioner is rejected.

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6.15 However, the petitioner filed a Shipping bill No. 8962904 dated 17-11-2018, before, ICD-Valvada for re-export of goods in question and also submitted a letter dated 24-11-2018, to the Asst. Commissioner of Customs, ICD-Valvada to assess the shipping bill and allow the export of goods in question. The Asstt. Commissioner of Customs, ICD-Valvada vide their letter dated 29-11-2018, informed the petitioner that the request for re-export of goods has been rejected by the Hon'ble Principal Commissioner of Customs, Ahmedabad vide their letter F. No. VIII/10-52/ICD-Khod/O&A/2018 dated 08-06-2018.

6.16 Further, the petitioner filed a special civil application No. 833/2019 before High Court of Gujarat under which the petitioner had requested to allow the export of subjected goods covered under Shipping Bill No. 8962904 dated 17.11.2018. The Hon'ble High Court of Gujarat ordered to respondent to process the shipping bill filed by the petitioner at ICD-Valvada for export of the goods in question. In view of the order dated 02.05.2019 passed by the High court of Gujarat, *the respondent processed the shipping bill under section 51 of the Customs Act, 1962 on dated 20.06.2019; as per the direction imparted by the Hon'ble High Court of Gujarat and allowed the export of goods in question.*

6.17 The subjected goods were earlier re-exported at JNCH, Nhavasheva with intent to recover the duty paid through the route of drawback at JNCH. Further, the petitioner had taken one more attempt to import the re-exported goods through ICD- Valvada again willfully mis-declaring the goods. Enquiry/investigation was concluded and duty as well as penalty was imposed/confirmed on the petitioner vide OIO No. AHM-CUSTM-000-COM-019-19-20 dated 14.01.2020 passed by the Principal Commissioner of Customs, Customs Commissionerate, Ahmedabad. Vide the aforesaid Order-in-original, it is established that the petitioner had mis-classified their imported goods to avoid payment of higher anti-dumping duty; willfully and knowingly as the identity of goods was "Computer to Conventional Plates i.e CtCP" instead "Positive Offset Plates [Pre-sensitized Positive Offset Aluminium Plates"'.

6.18 The appellant had preferred the appeal against the Order-In _original No.: AHD-CUSTM-000-COM-19-20 dated 14.01.2020 before the Hon'ble CESTAT, Ahmedabad. The case No.: Custom/0010232/2020. The same is pending with the Hon'ble CESTAT, Ahmedabad.

6.19 The petitioner had filed a drawback claim application after exporting the subjected goods before the respondent vide their letter dated 16.08.2019 under section 74 of the Customs Act, 1962 for which the respondents was issued deficiencies letter dated 14.11.2019. In response to letter dated 14.11.2019, the petitioner submitted a fresh application dated 02.01.2020 for drawback claim under Section 74 of the Customs Act, 1962 amount of Rs. 62,87,810/- in respect of re-export of the goods under Shipping Bill No. 8962904 dated 17.11.2018.

6.20 The opportunity of personal hearing was granted to the petitioner in respect of drawback application dated 02.01.2020 and accordingly they appeared before the respondent on 03.02.2020 and all the submissions made by the petitioner were taken on record as detailed in OIO No. Drawback/DC/01/OPB/2019-2020 dated 06.03.2020.

6.21.1 It is submitted that Section 74 of Customs Act, 1962 is related to the provisions of drawback in case of re-export of the goods. It is pertinent to mention that the re-export of goods is considered to be related to the sending back the goods imported for genuine reasons like jobbing, execution of a contract, *servicing/repairing of machineries, display in fair/exhibition etc. It happens when indigenously manufactured goods were returned back after export and re-imported for repairing/reprocessing etc. due to reasons such as being defective, not meeting buyer's requirement/specifications etc. The aforesaid discussion itself clarifies that these are the specific situations which can be regarded as the circumstances in which the goods need to be re-exported and the same must be for genuine reason. In this regard the re-export of the goods by the petitioner in the instant situation definitely does not satisfy its intended purpose and has substantially failed in its spirit. The essence of the re-export of goods which can be conceived from the Customs Act, 1962 is definitely not justifiable in the instant case. The petitioner was forced to send the goods back due to the situation which prevailed after the investigation in respect of alleged mis-declaration with an intention to evade payment of Custom duty. The above facts are clear to demonstrate that under these circumstances the export of goods does not qualify to be called as re-export for the purpose pose of drawback in terms of Section 74 of the Customs Act, 1962. But, the export of the goods was permitted by appropriately following the direction of the Hon'ble Court in regard of SCA No. 833/2019 dated 02.05.2019. It is noteworthy that the Hon'ble High Court of Gujarat had not allowed re-export, rather it was for export under section 51 of the Customs Act, 1962.*

6.21.2 It is submitted that it is evident from the case records that the appellant had tirelessly tried to import the goods in question to evade payment of Customs Duty and had endlessly disputed the classification of the goods imported by the appellant. The Department has been meticulously proving their allegations that the goods in question are CtCP plates as detailed discussed in OIO No. AHM-CUSTM-000-COM-019-19-20 dated 14.01.2020 passed by the Principal Commissioner of Customs, Customs Commissionerate, Ahmedabad. It was the intention of the appellant to evade the payment of anti dumping duty (ADD) and the appellant had in-depth knowledge of the classification and antidumping related issues with the goods as the same had been already imported at JNCH by their related party. When the appellant failed in their attempt to clear their goods by evading the payment of Anti Dumping Duty once, they again devised the same strategy to recover the duty amount as confirmed on appellant vide OIO No. AHM-CUSTM-000-COM-019-19-20 dated 14.01.2020 passed by the Principal Commissioner of Customs, Custom Commissionerate, Ahmedbad; by the way of drawback application dated 02.01.2020 under section 74 of the Customs Act, 1962. The appellant claimed the duty drawback under section 74 of the Customs Act, 1962 at JNCH and the drawback was given on 16.10.2019 vide OIO No.408/19-20/AC/CAC/JNCH. After getting the drawback from JNCH the appellant want to follow the same route to commit fraudulent activity and again claim the drawback.

Further, it is submitted that Section 74 of Customs Act, 1962 is related to the provisions of drawback in case of re-export of goods. In the instant case the export of goods does not qualify to be called as re-export in terms of Section 74 of the Customs Act, 1962. But the export of goods was permitted by appropriately following the direction of the Hon'ble Court. Hence, the contention of the petitioner is not justified so far as it is related to the claim of benefit accrued to a genuine re-export of goods under Section 74 of Customs Act, 1962. It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence.

6.21.3 The appellant was mandated to pay the applicable import duty after import of the goods and the same was done by the appellant. With egard to drawback in terms of Section 74 of the Customs Act, 1962, the instant case is not related to the drawback under the normal circumstances as the act of the appellant can never be regarded as bona-fide act wherein the benefit accruing to the appellant out of a legitimate procedure should unequivocally be applied. Accordingly, the drawback of duty paid on goods may not be equated to a genuine drawback claim

6.21.4 It is further submitted that the Judgement of the Hon'ble court in case of SCA No. 833/2019 dated 02.05.2019 was limited to the question of whether the applicant was justified in its request to get the goods exported out of India or not. The Hon'ble court allowed the export of goods and the order of the Hon'ble Court was duly implemented by the respondent immediately. The issue of sanction of drawback to the appellant against such export was never the part of any deliberation in this Hon'ble Court and the same was not brought to the notice of the Hon'ble court either. The issue of sanctioning drawback to the appellant has been brought afresh. The drawback claim of the appellant under section 74 of the Customs Act, 1962 cannot be considered as the export of goods under the normal circumstances as the act of the appellant can never be regarded as bona-fide act wherein the benefit accruing to the petitioner out of a legitimate procedure should unequivocally be applied. Accordingly, the drawback of duty paid on goods may not be equated to a genuine drawback claim

6.21.5 It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence. It is a fraud in law if a party makes representations, which he knows to be false and misleading in order to defraud the system. In the present case the importer M/s Naitik Enterprise ie appellant has misrepresented the facts by declaring the goods to be "Positive Offset Plates (Presentized Positive Offset Aluminium Plastes) and tried to mislead the *department. They first approached the JNCH, Nhava Sheva Customs for importing the goods in the name of M/s. S. K. Enterprises, Surendranagar, which was related to the present importer. It is worth noting that the appellant has not brought to the notice of Hon'ble Court that they have adopted the same strategy and have recovered the substantial amount of duty paid at JNCH. Later on the same goods had been re-imported at ICD-Valvada again by mis-declaration of facts in order to clear the goods from ICD, Valvada. Further, they have already recovered the duty paid earlier via drawback route from Nhava Sheva through the OIO No.408/19-20/AC/CAC/JNCH dated 16.10.2019 and again the same goods was imported at ICD-Valvada on 14.03.2018.*

6.21.6 When the importer could not succeed in their evil design, they resorted to the well schemed idea of re-exporting the goods and claimed drawback at the port of re-export. In this way in spite of having knowledge of the actual classification of goods and unsuccessful attempt to import the same by misclassification, they were in a position to recover the substantial amount of tax paid by them. Further, the importer again resorted to the path of importing the same goods from ICD, Valvada by adopting the same modus operandi and hence the present drawback claim in question was filed by M/s Naitik Enterprises. It is also well settled that misrepresentation itself amounts to fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. The present act of fraud on revenue should always be viewed seriously by the department. The act of "Fraud" and collusion vitiate even the most solemn proceeding in any civilized system of jurisprudence.

It has been held by Apex Court in case of Commissioner of Customs, Kandla v. Essar Oil Ltd.-2004 (172) E.LT. 433 (S.C.) that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the deceived. Undue advantage obtained by the deceiver, will almost always call loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is deception in order to gain by another's loss. It is a cheating intended to get an advantage.

Thus, the appellant had adopted a modus operandi, whereby attempt to import the goods by mis-declaration is made and if attempt is failed, then goods are re-exported and duty so paid is claimed back under the mechanism of drawback. This method has been adopted by the importer twice, which establishes that the importer is willingly trying to defraud the department and re-export is done only with a motive to *recover the duty, so paid, when caught by the department, and not on any genuine grounds*

7. I have carefully examined the impugned order, the appeal memorandum submitted by the Appellant, department's submission as well as the documents and evidence available on record. The main issue to be decided in present appeal is whether the impugned order rejecting drawback claim of Rs. 62,87,810/- filed by the appellant in respect of the Shipping Bill No.: 4552606 dated 30.05.2019 under Section 74 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

7.1 I observe and find from the impugned order, the Department's submissions, and the records available that the appellant filed a drawback claim of Rs. 64,16,810/- under Section 74 of the Customs Act, 1962 on re-export of imported goods vide Shipping Bill No. 4552606 dated 30.05.2019. The appellant had originally imported these goods vide Bill of Entry No. 5574760 dated 14.03.2018. At the time of examination of these goods, some stickers affixed on the boxes/pallets were found which indicated that the goods were permitted to be re-exported by the Jawaharlal Nehru Customs House (JNCH), Customs, Nhava Sheva, Mumbai.

7.1.1 Accordingly, inquiries were initiated by the Officers of ICD Valvada, Customs with JNCH, Customs, Nhava Sheva, Mumbai. These inquiries revealed that the subject goods had earlier been imported at JNCH, Customs, Nhava Sheva, Mumbai, by the importer M/s S.K. Enterprise, Surendranagar, Gujarat, declaring them as "Aluminium P.S. Plates" falling under CTH 7606 9290 vide Bill of Entry No. 8948204 dated 18.03.2017. The Department's case is that the goods are actually "Computer-to-Conventional Plates (CtCP)" falling under CTH 3701 3000, attracting Anti-Dumping Duty at USD 4.87 per square meter under Notification No. 51/2012-ADD dated 03.12.2012. Samples of these goods were drawn by SIIB(I), JNCH, Mumbai, and sent to three different laboratories, which reportedly confirmed the goods as "Computer-to-Conventional Plates (CtCP)" falling under CTH 3701 3000 and attracting ADD@ 4.87 USD per square meter under Notification No.: 51/2012-ADD dated 03.12.2012. Further, it is noted that M/s S.K. Enterprise filed a writ petition No.: 12964/2017 before the Hon'ble High Court of Mumbai seeking permission to re-export the imported goods, and the re-export was allowed by the Customs authorities at JNPT, Mumbai, subject to payment of fine and penalty.

7.1.2 On the basis of records and documents such as the Bill of Entry, Invoice, Packing List, and statements recorded by Customs, Nhava Sheva, Mumbai, it is found that the imported cargo declared as "Positive Offset Plates (Pre-sensitized Positive Offset

Aluminium Plates)" under Bill of Entry No. 5574760 dated 14-03-2018 by M/s Naitik Enterprise, Ahmedabad at ICD-Valvada, was the same imported cargo earlier imported by M/s S.K. Enterprise, Surendranagar at JNCH, Customs, Nhava Sheva, Mumbai, vide Bill of Entry No. 8948204 dated 18-03-2017. The original importer had declared the goods as "Aluminium P.S. Plates", having thickness of 0.28 mm and classified under Chapter Sub-heading No. 7606 9290, showing Anti-Dumping Duty @ USD 0.22 per kg as per Notification No. 25/2014-ADD dated 09-06-2014. However, after sample test report, it was found that the said goods were "Computer to Conventional Plates (CtCP)" attracting Anti-Dumping Duty @ USD 4.87 per square meter under Notification No. 51/2012-ADD dated 03-12-2012, and not merely "Aluminium P.S. Plates", as declared.

7.2 Further, it is found that the appellant, M/s Naitik Enterprise, Ahmedabad, imported the same goods at ICD-Valvada through Bill of Entry No. 5574760 dated 14-03-2018, declaring them as "Positive Offset Plates (Pre-sensitized positive offset aluminium plates)" falling under CTH 3701 3000, showing Anti-Dumping Duty leviable @ USD 0.22 per kg as per Notification No. 25/2014-ADD dated 09-06-2014. It is thus alleged that M/s Naitik Enterprise re-routed the goods earlier imported by M/s S.K. Enterprise, Surendranagar at JNCH, Customs, Nhava Sheva, Mumbai, vide Bill of Entry No. 8948204 dated 18-03-2017, and again attempted to evade the proper levy of Anti-Dumping Duty @ USD 4.87 per square meter as per Notification No. 51/2012-ADD dated 03-12-2012 by declaring the goods incorrectly. Accordingly, Bill of Entry No. 5574760 dated 14-03-2018 was assessed provisionally subject to testing of the sample of the goods drawn to determine the correct nature and classification for levy of anti-dumping duty.

7.2.1 The goods imported by M/s Naitik Enterprise, Ahmedabad at ICD-Valvada were placed under seizure vide Panchnama dated 12-04-2018 drawn at ICD-Valvada. The seized goods were provisionally released by the Principal Commissioner of Customs, Ahmedabad vide letter F. No. VIII/10-52/ICD-Khod/O&A/2018 dated 01-06-2018, on the request of M/s Naitik Enterprise. The importer furnished a bond for Rs. 44,22,023/-, a Bank Guarantee of Rs. 16,00,000/-, and paid the following duties: Basic Customs Duty of Rs. 4,42,202.40, IGST of Rs. 9,42,314/-, Social Welfare Surcharge of Rs. 44,220.40, and Anti-Dumping Duty of Rs. 49,87,396/-

7.2.2 The sample of the goods imported vide Bill of Entry No. 5574760 dated 14-03-2018 were sent to the Principal, PVG College of Engineering & Technology, 44, Vidhya Nagri, Parvati, Pune – 411009, vide their letter dated 26-12-2018, confirmed that the sample tested by them was "Computer to Conventional Plates' i.e. CtCP".

7.2.3 Meanwhile, the appellant requested the Principal Commissioner of

Customs, Ahmedabad for permission to re-export of the goods, however, the same was denied vide letter dt. 08-06-2018 giving reason that the investigation was going on. The appellant filed a SCA No. 833/2019 before High Court of Gujarat to allow the export of imported goods. Same was allowed vide order High Court of Gujarat order dt. 02.05.2019 to process the shipping and allow for re-export of imported goods. In view of the order dated 02.05.2019, the shipping bill No.: 4552606 dated 30.05.2019 was processed and passed for re-export of the imported goods in question.

7.2.4 The appellant filed a drawback claim under Section 74 of the Customs Act, 1962 after re-exporting the imported goods, which was rejected by the adjudicating authority in the impugned order. The authority held that the goods had previously been re-exported from JNCH, Nhava Sheva with the alleged intent to recover duty paid by way of drawback and that the appellant had made another attempt to import the re-exported goods through ICD-Valvada with willful mis-declaration. It was further stated that an inquiry/investigation was concluded and both duty and penalty were confirmed against the appellant vide Order-in-Original No. AHM-CUSTM-000-COM-019-19-20 dated 14.01.2020, passed by the Principal Commissioner of Customs, Commissionerate, Ahmedabad. According to the said Order-in-Original, it was alleged that the appellant had mis-classified the imported goods to avoid higher anti-dumping duty, knowingly and willfully, by treating the goods as "Positive Offset Plates (Pre-sensitized positive offset aluminium plates)" instead of their true identity as Computer to Conventional Plates (CtCP) attracting a higher Anti-Dumping Duty.

8. On careful examination of records, it is evident and confirmed that the goods imported vide Bill of Entry No. 5574760 dated 14.03.2018 at ICD-Valvada are the same goods earlier imported at JNCH, Nhava Sheva vide Bill of Entry No. 8948204 dated 18.03.2017. Documentary evidence such as pallet vouchers, statements recorded ,ICEGATE verification and shipping records etc. conclusively establish the identity of the goods.

8.1 I find that the appellant's plea of ignorance regarding the earlier import is not acceptable. Statements recorded under Section 108 of the Customs Act, 1962 clearly establish that the proprietor of the appellant firm is the father-in-law of the proprietor of M/s S.K. Enterprise and he acted as Authorised Signatory during the earlier import. His signature appears as a witness on the PD Bond executed in the earlier proceedings. Therefore, the appellant had complete knowledge of the nature, classification and duty liability of the goods.

8.2 In the earlier import, the goods were declared as Aluminium P.S. Plates but were conclusively tested by three different laboratories and found to be Computer to Conventional Plates (CtCP) classifiable under CTH 37013000 and attracting ADD @ 4.87

USD per Sq. Meter under Notification No. 51/2012-ADD. In the present import also, despite having prior knowledge, the appellant attempted to evade correct ADD by mis-declaration of ADD@0.22 per kgs . The final test report from PVG College of Engineering & Technology, Pune again confirmed the goods as Computer to Conventional Plates (CtCP) classifiable under CTH 37013000 and attracting ADD @ 4.87 USD per Sq. Meter.

8.3 The sequence of events clearly shows a deliberate attempt to re-route goods through a related firm to avoid payment of higher anti-dumping duty. The mis-declaration is wilful and conscious, and not a clerical or interpretational error.

8.4 The adjudicating authority, vide Order-in-Original No. AHM-CUSTM-000-COM-019-19-20 dated 14.01.2020, has categorically held that the goods were CtCP plates and the appellant knowingly mis-classified the goods with intent to evade Anti-Dumping Duty. These findings remain operative, as the appeal before the Hon'ble CESTAT is pending without any stay.

8.5 I find that the section 74 of the Customs Act, 1962 presupposes lawful import and correct payment of duty. In the present case, the import is vitiated by fraud, willful mis-declaration and suppression of material facts. Hence, the basic conditions for grant of drawback are not satisfied.

8.6 The contention that payment of duty entitles the appellant to drawback is misconceived. Duty and ADD were paid only after seizure and during investigation for provisional release. Such payment cannot be treated as voluntary or valid duty payment for the purpose of claiming drawback. These payments made by the appellant when the investigation was initiated and came to the logical conclusion. The facts reveal a clear pattern of misuse of the re-export route to neutralize anti-dumping duty. Grant of drawback in such circumstances would defeat the object of anti-dumping measures and result in unjust enrichment.

8.7 The re-export of goods was permitted only pursuant to directions of the Hon'ble High Court of Gujarat for processing of the shipping bill. Such permission does not automatically confer entitlement to drawback, particularly when fraud and mis-declaration stand established.

8.8 It is a settled principle that fraud vitiates all transactions, and no benefit under fiscal statutes can be claimed by a person who has acted dishonestly. The maxim *"Ex turpi causa non oritur actio"* squarely applies to the present case. In simple terms, the appellant cannot base a legal claim on their own illegal or immoral act.

8.9 In view of the foregoing discussion, I hold that the appellant knowingly mis-declared and mis-classified the imported goods and the import transaction is tainted with

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fraud and intent to evade duty. The conditions for grant of drawback under Section 74 of the Customs Act, 1962 are not fulfilled.

8.10 Further from the verification and scrutiny of facts, records, submissions and evidence discussed hereinabove, it is conclusively established that the export of goods by the appellant cannot be regarded as a "re-export" in the true spirit and intent of Section 74 of the Customs Act, 1962. The scheme of Section 74 is intended to extend relief in cases where goods are re-exported for genuine, bona fide reasons, such as job work, repairs, exhibition, contractual execution or return of defective goods. The present case does not fall under any such category.

8.11 The facts clearly demonstrate that the appellant was compelled to export the goods only after detection of mis-declaration, seizure, investigation and confirmation of duty and penalty. Such export, undertaken to mitigate the consequences of fraudulent import, cannot be equated with a genuine re-export envisaged under Section 74. The export permitted in the present case was only in compliance with directions of the Hon'ble High Court for processing the shipping bill under Section 51 of the Customs Act, 1962, and not a judicial recognition of entitlement to drawback.

8.12 The conduct of the appellant clearly establishes a well-devised modus operandi: first attempting to import goods through mis-declaration to evade Anti-Dumping Duty; upon failure, opting for re-export; and thereafter seeking to recover the duty paid through the drawback mechanism. This pattern has been repeated more than once, including earlier recovery of drawback at JNCH, Nhava Sheva, which was not candidly disclosed by the appellant. Such conduct amounts to systematic abuse of the import–export framework and the drawback provisions, with the sole objective of neutralising lawfully leviable duties. Section 74 cannot be permitted to operate as a refund mechanism for duties paid on fraudulent imports, nor can it be used as a shield to legitimise acts of evasion detected by Customs authorities.

8.13 It is a settled principle of law that fraud and justice do not dwell together. Any benefit under a fiscal statute, including drawback, is unavailable where the foundational transaction is tainted by fraud, suppression or misrepresentation. An assessee who knowingly mis-declares goods and adopts deceptive practices cannot subsequently claim innocence or equity. In the present case, the appellant deliberately misrepresented the nature of the goods as "Positive Offset Plates" despite having full knowledge that the goods were CtCP plates, as already established in earlier proceedings. Such misrepresentation squarely falls within the ambit of fraud in law, rendering the appellant disentitled to any consequential benefit. The Hon'ble Supreme Court, in Commissioner of Customs, Kandla v. Essar Oil Ltd. – 2004 (172) E.L.T. 433 (S.C.), has held that fraud involves an intention to deceive and secure an undue advantage at the cost of the revenue, and that such conduct vitiates even the most solemn proceedings. The present case satisfies all elements of fraud—**deceit, intention, and injury to revenue**. Applying the said ratio, it is evident that the appellant's actions were not isolated or inadvertent but part of a deliberate strategy to defeat customs law. Consequently, the appellant cannot derive any benefit from a transaction rooted in deception.

8.14 In view of the foregoing findings, I hold that the export of goods by the appellant does not qualify as re-export for the purposes of Section 74 of the Customs Act, 1962 and the import and subsequent re-export transactions are vitiated by willful mis-declaration, suppression of material facts and fraudulent intent. Further, payment of duty under compulsion of investigation or adjudication does not create any vested right to drawback, therefore grant of drawback in the present case would amount to rewarding fraud and causing unjust enrichment, besides defeating the object of anti-dumping measures. Accordingly, the drawback claim filed by the appellant under Section 74 of the Customs Act, 1962 is legally untenable and rightly rejected by the adjudicating authority.

9. I, therefore, reject the appeal filed by M/s Naitik Enterprise, Ahmedabad and uphold the impugned order passed by the adjudicating authority denying drawback under Section 74 of the Customs Act, 1962.

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

F. No. S/49-180/CUS/AHD/2024-25 Dated 24.12.2025

By email (as per Section 153(1)(c) of the Customs Act, 1962)

To
M/s. Naitik Enterprises,
F/35, 36 & 37,
Ravi Estate, Tavdipura,
Dhobighat, Ahmedabad-380 004.

(email: naitik_enterprise@yahoo.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, ICD-VALVADA, Taluka-Umbergaon, Dist-Valsad (email: acicdval-custahd@nic.in)
4. Shri Anil Gidwani, Advocate, Ahmedabad (email: anilgidwani5868@gmail.com)
5. Guard File.