



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20260171MN0000000EF9

क	फ़ाइल संख्या FILE NO.	S/49-321/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-671-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.01.2026
च	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024
छ	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.01.2026
ज	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Parwej Alam Anand Nagar, Shri Kiran Ubale Ki Chawl, Anjul Fata, Bhiwandi-Thane Maharashtra



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव-/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (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 :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.
(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 रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(द)	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

Appeal has been filed by Shri Parwej Alam, Anand Nagar, Shri Kiran Ubale Ki Chawl, Anjul Fata, Bhiwandi-Thane, Maharashtra, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AKM/175/2024-25 dated 25.10.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present case involves an intricate and wide-ranging investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, which unearthed a large-scale, highly organized smuggling cartel operating through the Mundra Port. The investigation revealed that a common group of persons had established a sophisticated, multi-layered syndicate designed specifically to exploit the regulatory relaxations and procedural flexibilities inherent in the Special Economic Zone (SEZ) to Domestic Tariff Area (DTA) clearance mechanism. This syndicate was created for the primary purpose of importing prohibited and restricted goods—specifically high-value foreign-brand electronic cigarettes and various types of toys requiring mandatory Bureau of Indian Standards (BIS) compliance—by resorting to gross and calculated mis-declaration of description, quality, quantity, and value. While the broader investigation covered a staggering 18 import consignments involving eight different importers, the specific subject of this adjudication is the consignment imported in the name of M/s. M.M. Enterprises (IEC: BMEPM3625G) covered under DTA Bill of Entry No. 2012895 dated 26.08.2022.

2.1 The genesis of the case lies in specific, actionable intelligence gathered by the DRI suggesting a systematic and predatory abuse of the "self-assessment" and "trusted trader" schemes that underpin modern customs operations within the SEZ. The intelligence indicated that a smuggling cartel was utilizing front companies to move prohibited contrabands into the domestic market. Analysis of system data revealed that Vehicle No. GJ12BV0610 was carrying the import consignment imported through Container No. TLLU4615592. Acting swiftly upon this intelligence, DRI officers,



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in coordination with the Surat Regional Unit, intercepted the truck near Palsana Chokdi on the National Highway on 01.09.2022.

2.2 The vehicle was found to be carrying Container No. TLLU4615592, which had been cleared from the SEZ Warehouse Unit of M/s. Empezar Logistics, Mundra, and was supposedly destined for a godown in Bhiwandi. Upon interception, the driver, Shri Chuna Singh Rawat, was questioned regarding the nature of the cargo. The preliminary inquiry and the recovery of incriminating documents from the driver—including e-way bills featuring unrelated entities—corroborated the intelligence that the container did not merely contain the declared items but was a vessel for contraband. Given the complexity of the concealment, the vehicle was escorted to ICD Sachin, where DRI officials requested the assistance of mechanical labor and equipment to de-stuff the entire container for an exhaustive examination in the presence of two independent arbitrators (Panchas). During the process, a person named Mr. Parvez Alam arrived at ICD Sachin, introducing himself as the representative of the actual buyers, Shri Mohammad Asif Sathi and Shri Sarfaraj Kamani, confirming the syndicate's oversight of the transit.

2.3 The rigorous examination of the impugned goods at ICD Sachin was conducted under Panchnamas dated 01/02.09.2022 and 19.10.2022. This process revealed a masterclass in smuggling techniques. Amidst the declared cargo of "Head Massagers" and "Exercise Books," officers recovered 107 cartons marked with the brand "DK123 XXL." Upon opening these cartons, they discovered a total of 85,600 pieces of electronic cigarettes of the "Yuoto" brand. These were found in a wide array of flavors clearly designed to appeal to younger demographics, including Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, Milk, and Coffee. These goods, falling under CTH 85434000, are strictly prohibited for import in terms of DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes Act, 2019.

2.4 Furthermore, the examination revealed 89,000 pieces of silicon "Pop up" toys falling under CTH 9503. These items were imported in direct violation of Policy Condition 2 of Chapter 95 of the Customs Tariff. This policy mandates that all imported toys conform to rigorous BIS standards, including IS: 9873 Part 1 (Safety aspects related to mechanical and physical properties), Part 2 (Flammability), and Part 3 (Migration of certain elements). The importer



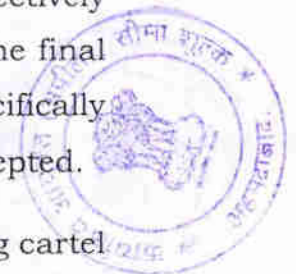
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failed to produce any valid BIS compliance certificates, rendering the toys "prohibited goods" under Section 2(33) of the Customs Act, 1962. The examination also found excess quantities of declared items, such as 240 additional Head Massagers and 1,364 Exercise Books. These "filler" goods were strategically used to pad the container, ensuring that the prohibited items remained shielded from the container doors and providing a facade of legitimacy during any casual visual inspection at the port or SEZ gate.

2.5 The investigation into the role and culpability of the noticees revealed a deep-rooted conspiracy characterized by a high degree of planning and division of labor. M/s. M.M. Enterprises, through its proprietor Shri Mohammed Tahir Hanif Menn, acted as a willing front for the syndicate. Shri Tahir Menn admitted that he allowed the smuggling cartel led by Shri Mohammad Asif Sathi to use his firm's IEC and bank accounts in exchange for "rental" monetary benefits ranging from Rs. 15,000 to Rs. 50,000 per consignment. To further insulate the mastermind from detection, Shri Tahir Menn facilitated the creation of dummy firms like M/s. J.H. Enterprises in the names of domestic workers, such as Shri Juma Hamir Halepotra, demonstrating the predatory nature of the syndicate's recruitment.

2.6 A critical aspect of the syndicate's modus operandi was the "crossing" operation, a tactical maneuver designed to disrupt the surveillance of enforcement agencies. After a container was cleared from the Mundra SEZ, the syndicate would monitor its movement in real-time via "Wheelseye" tracking links. To evade detection by agencies tracking e-way bills or container numbers, the syndicate would arrange for the "crossing" of goods at intermediate locations like Navsari or Surat. This involved transloading the contraband from the original container into secondary vehicles, effectively breaking the digital and physical trail between the port of entry and the final destination. In the present case, Shri Parvej Alam was dispatched specifically to oversee this transloading just before the vehicle was tactically intercepted.

2.7 During the investigation, it was revealed that the smuggling cartel had utilized the IEC of M/s. M.M. Enterprises for successful importations in the past. Shri Tahir Menn, Shri Asif Sathi, and Shri Parvez Alam all confirmed in their voluntary statements that a total of 265 cartons (comprising 125 and 140 cartons respectively) had been imported in July and August 2022. These consignments contained approximately 212,000 pieces of electronic cigarettes. Although these goods had already been disposed of in the domestic market and



were not available for physical seizure, the Adjudicating Authority held them liable for confiscation under Section 111, noting that the proceeds of these past crimes were laundered through the same dummy accounts.

2.8 The individual roles in this well-oiled machinery were established through various voluntary statements recorded under Section 108:

- a. Shri Mohammad Asif Sathi (The Mastermind): Sathi was the architect and financier of the racket. He coordinated directly with overseas suppliers in China (such as "Mrs. Shelly") and finalized deals through firms like "AH International Trading Co." and "HK Longcheng Trade Co." He managed the financial trail, collecting cash from domestic purchasers and depositing it into dummy firm accounts to facilitate outward remittances, thereby bypassing legitimate forex regulations.
- b. Shri Mohammed Tahir Menn (The Facilitator): As the proprietor of M.M. Enterprises, he lent the "credibility" of a local business to the cartel. He introduced Shri Baldevsinh to Sathi to handle port-side logistics and was actively involved in monitoring the location of trucks via shared GPS links. He admitted that his firm never conducted any actual business in the goods imported but served merely as a conduit for Sathi's contrabands.
- c. Shri Sarfaraj Kamani (The Associate): A close partner of Sathi, Kamani was involved in the loading phase in China and was identified as a joint owner of the Bhiwandi godowns. Evidence confirmed his participation in planning the import of counterfeit goods and mobile phone accessories infringing the Intellectual Property Rights (IPR) of brands like Vivo, Oppo, and Realme.
- d. Shri Baldevsinh Vala (The Logistical Operative): Operating through M/s. Kalpana Exim, Vala was the operative who manipulated the shipping documents and invoices provided by the overseas suppliers. For ensuring the smooth clearance of prohibited items, he charged Sathi a premium of approximately Rs. 17 Lakhs per container—a fee far exceeding any legitimate forwarding commission.
- e. Shri Samir Sharma (The Customs Broker): A G-Card holder of M/s. Al Cargo Services, Sharma misused the SEZ Online portal's sub-login functionality. He filed the Bills of Entry despite knowing that the descriptions were false. To facilitate the exit of the trucks from the SEZ gate, he submitted e-way bills featuring unrelated parties, ensuring the actual destination remained masked.



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2.9 The investigation also highlighted gross professional negligence on the part of the then-Preventive Officer, Shri Vipin Sharma. Charged with the statutory duty to verify the physical cargo against the invoice, Sharma submitted an examination report stating he had "inspected the lot." The subsequent seizure of nearly 175,000 units of prohibited or un-declared cargo from that very container proved that no meaningful physical examination was ever performed. This "casual approach" provided the syndicate with a virtual "green channel," directly enabling the entry of prohibited contrabands that pose a risk to national health and child safety.

2.10 Under the Customs Valuation Rules (CVR), 2007, the Adjudicating Authority rejected the transaction values declared in Bill of Entry No. 2012895. Rule 12 was invoked because the significant mis-declaration rendered the declared values—and the associated invoices—fraudulent. Consequently, the value was re-determined using the "Best Judgment Method" under Rule 9. A government-approved Chartered Engineer assessed the market price of the seized goods at approx. Rs. 21.67 Crores, compared to a declared value of approx. Rs. 4.43 Lakhs.

2.11 On the basis of the investigation, Show Cause Notice dtd. 31.08.2023 was issued to the appellant and other persons. Consequently, the Adjudicating Authority passed the following order in respect of the appellant.

IN RESPECT OF GOODS IMPORTED AND CLEARED THROUGH BILL OF ENTRY NO. 2012895 DT. 26.08.2022:

- (I) He imposed penalty of Rs. 10,00,000/- upon the appellant (associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- (II) He imposed penalty of Rs. 10,00,000/- upon the appellant (associate of beneficial owner) under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

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3.1 The appellant contends that his involvement was strictly limited to the physical loading and unloading of containers at warehouses in Bhiwandi under the direct instructions of his employers, Shri Asif Sathi and Shri Sarfarazbhai. He maintains that as a hired representative, he was responsible for supervising the movement of cargo and maintaining stock, for which he received a nominal fee of ₹3 per carton. He argues that he never verified the names of consignees or the specific contents of the cartons, as these tasks fell outside his job description. Citing legal precedents, the appellant asserts that an employee should not be held liable for the malpractices of an employer unless there is specific evidence of independent involvement or personal benefit from the alleged fraud, neither of which the department has established.

3.2 A major point of the appeal is the lack of evidence connecting the appellant to the alleged undervaluation, mis-declaration, or concealment of goods. The appellant highlights that during his interrogation, the authorities only questioned him regarding the import of e-cigarettes and raised no inquiries about the valuation or description of other items like hair straighteners or toys. He further argues that he played no part in the core import process—such as placing orders, negotiating with suppliers, remitting payments, or filing Bills of Entry—and therefore had no reason to know if the goods were liable for confiscation. Consequently, he asserts that the essential element of mens rea is absent, making the imposition of penalties unjust.

3.3 The appellant points out that his role in this investigation has already been scrutinized by the Hon'ble CESTAT, Ahmedabad, in related cases arising from the same common investigation. He notes that in a recent order dated December 5, 2024, the Tribunal set aside penalties imposed on him and other individuals under Sections 112 and 114AA of the Customs Act. He argues that since the judicial authority has already struck down his alleged role in the broader smuggling cartel investigation, the current impugned order—which relies on the same factual matrix—should similarly be quashed to maintain legal consistency.

3.4 Finally, the appellant challenges the legal basis for invoking Sections 112(a) and 114AA of the Customs Act. He argues that Section 112(a) requires proof of abetment or a specific act/omission that renders goods liable for



confiscation, neither of which apply to a worker unaware of the container's contents. Regarding Section 114AA, he contends that this penalty is reserved for those who knowingly use false documents or statements in customs transactions. Since he did not sign, prepare, or use any of the import documents, he maintains that he did not fulfill the "knowledge" and "intent" requirements necessary to trigger such severe financial penalties.

PERSONAL HEARING:

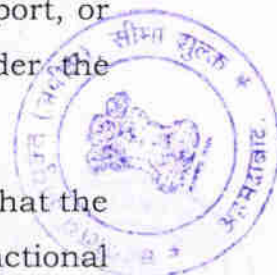
4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh , Advocate, appeared for the hearing on behalf of the appellant and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The core of the offense involves E-Cigarettes, the import of which is strictly prohibited in India vide Notification No. 20/2015-2020 dated 26.09.2019 issued by the DGFT and the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019. The legislative intent behind this prohibition is the protection of public health. Any person concerned in the import, transport, or storage of such goods is liable for the most stringent penalties under the Customs Act.

5.2 The investigation has established beyond reasonable doubt that the Appellant was not a peripheral or "innocent" employee, but a vital functional node in the smuggling syndicate. His involvement is characterized by active coordination, operational oversight, and prior knowledge of the illegal nature of the goods. When the DRI intercepted the vehicle GJ12BV0610 at Palsana Chokdi near Surat, the Appellant did not happen to be there by chance. He had traveled from Bhiwandi to Surat specifically to escort and monitor the consignment. Upon interception, he represented himself as the person in charge of the goods on behalf of the beneficial owners, Shri Mohammad Asif Sathi and Shri Sarfaraj



Kamani. This "escort" role is a classic signature of a person "knowingly concerned" in smuggling, as it ensures the goods reach their destination while bypassing standard check-posts.

5.3 The recovery of digital evidence from the Appellant's mobile phone provides the most damning proof of his involvement. The WhatsApp chats reveal that he was in continuous communication with the Mastermind (Asif Sathi) regarding the arrival of the container at the port and its subsequent movement, he was coordinating directly with the Logistics Provider (Baldevsinh Vala) to track the GPS location of the trailer, he shared photographs of the goods being unloaded in previous shipments, which included E-Cigarettes. The chats indicate a specific "modus operandi" for "crossing"—a term used by the syndicate to describe the transshipment of goods from the original container to local vehicles to scrub the paper trail. The Appellant was the primary coordinator for these "crossing" operations in the Bhiwandi area.

5.4 The investigation revealed that the Appellant was responsible for managing multiple godowns in the Bhiwandi region. These were not declared to the Customs or GST authorities. The Appellant admitted in his statement dated 03.11.2022 that he oversaw the receipt and storage of "prohibited goods" in these secret locations. Managing a clandestine storage facility for prohibited goods constitutes a direct violation of the provisions that render such goods liable to confiscation. The Appellant's defense of being a "new employee" is contradicted by his own admission of handling at least two prior consignments involving E-Cigarettes in July and August 2022. He admitted that for these prior shipments, the "actual" goods were separated from the "cover" goods under his direct supervision. This demonstrates a pattern of criminal behavior and a deep-seated knowledge of the syndicate's fraudulent practices. While the Appellant claims to be a simple salary-earner, the investigation showed he was entrusted with significant sums of cash to pay for local labor, vehicle "crossing" charges, and godown rents. Such high levels of financial trust are rarely extended to a "mere employee" without their full complicity in the underlying illegal activity.

5.5 The Appellant's central defense is that he was a "salaried employee" acting under the instructions of his employers and should therefore not be held personally liable for penalties. I have analyzed this defense in the context of statutory provisions and judicial precedents and find it to be legally flawed.

Section 112(a) of the Customs Act, 1962, is an "in personam" penalty provision designed to deter any person who is "in any way concerned" with the smuggling of goods. The phrase "in any way concerned" has been interpreted by various courts to have a very wide amplitude. It does not require the person to be the owner of the goods or the person who signed the import documents. Any person who provides logistics, storage, or transport support with the knowledge that the goods are prohibited or mis-declared falls squarely within the ambit of this section. The Appellant's role as the manager of clandestine godowns and the coordinator for "crossing" operations clearly constitutes being "concerned" in the harbouring and concealing of prohibited goods.

5.6 The Appellant argues a lack of mens rea or "guilty mind." However, in Customs law, particularly regarding prohibited goods like E-Cigarettes, the burden of proving innocence shifts significantly once the department establishes a "knowing concern." The evidence of WhatsApp chats showing the Appellant tracking the container, his presence at the point of interception, and his management of secret godowns collectively establishes that his concern was not "innocent" but "knowing." He was aware that the goods inside the containers were not the "Head Massagers" declared on paper but were high-value contraband.

5.7 The Hon'ble Supreme Court, in **Naresh Kumar Sukhwani vs. Union of India [1996 (83) ELT 258 (SC)]** landmark judgment, dealt with a similar situation where a person acted as a conduit or facilitator. The Court held that the statement of a co-accused can be used to establish the role of a facilitator. Furthermore, the Court emphasized that in smuggling operations, the person who manages the logistics is as liable as the person who provides the capital. The Appellant's active management of the Bhiwandi logistics hub makes the Sukhwani ruling directly applicable here. Further, I rely upon decision on case of **Collector of Customs vs. D. Bhoormull [1983 (13) ELT 1546 (SC)]** which established that the Department does not need to prove the charge of smuggling with "mathematical precision." Smuggling is an operation often conducted in secrecy. The "preponderance of probability" derived from the Appellant's conduct (traveling to Surat to escort the vehicle, handling cash for illegal labor) is sufficient to reject the claim of being an "innocent employee."

5.8 The Appellant's claim that he received no "extra" consideration

beyond his salary does not absolve him of liability. Penalties under the Customs Act are not "profit-sharing" taxes; they are punitive measures for violating the law. Whether a person gains a million rupees or just their monthly salary, if they facilitate the entry of prohibited goods into the country, the statutory penalty remains applicable.

5.9 The Appellant cited cases like Sachin Mehra vs. Commissioner and Sanjeev Bhardwaj vs. Commissioner where employees were let off. I have examined these rulings and find them distinguishable. In those cases, the employees were clerical staff with no access to the physical goods or knowledge of the concealment. In contrast, the current Appellant was a "Ground Manager" who personally oversaw the "crossing" and the physical storage of E-Cigarettes in unmanifested godowns. His involvement was physical and operational, not merely clerical.

5.10 The Appellant has specifically challenged the imposition of a penalty under Section 114AA of the Customs Act, 1962, on the ground that he did not sign the Bills of Entry or the related invoices. I have carefully examined this legal contention and find it to be a misinterpretation of the scope and intent of Section 114AA. Section 114AA provides that: *"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty..."* The legislature has intentionally used the phrase "causes to be made, signed or used." This phrase creates a broad net that catches not only the "signatory" but also the "facilitator" or the "orchestrator" who provides the fraudulent data or logistical support that makes the use of the false document possible.

5.11 In the present case, the import documents (Invoice, Packing List, Bill of Lading, and Bill of Entry) declared the goods to be "Head Massagers" and "Exercise Books." In reality, the containers held 85,600 E-Cigarettes. The Appellant was the person responsible for receiving these goods at the Bhiwandi godown. He was aware that the goods he was "harbouring" were entirely different from the goods declared in the documents. By coordinating the clandestine receipt and "crossing" of these goods, he was the essential "last mile" that gave effect to the false declarations. Without a logistics manager like the Appellant

who is willing to handle the actual contraband, the false documents filed at the port would be useless. Therefore, he "caused the use" of these false documents in the transaction of Customs business.

5.12 The penalty under Section 114AA requires "knowledge" or "intent." The WhatsApp evidence and the Appellant's own statement confirm that he knew exactly what was inside the container. He was tracking the container specifically because it contained high-value E-Cigarettes. He was part of the "unloading" operation where the E-Cigarettes were separated from the "cover goods." This prior knowledge establishes the intentional use of fraudulent documentation to clear prohibited goods.

5.13 The Appellant's submission that he is a "bona fide employee" with "no intent to evade duty" is inherently contradictory to the facts. E-Cigarettes are prohibited; there is no question of "evading duty" because they cannot be imported at all. The entire purpose of the false documentation (declaring them as massagers) was to bypass a total prohibition, which is a far more serious offense than mere duty evasion. The use of dummy IECs (M/s. M.M. Enterprises) further underscores the fraudulent intent in which the Appellant was a willing participant.

5.14 The Appellant relied on several cases suggesting that "salary-based employees" should not be penalized. However, those cases typically involve situations where the employee had no knowledge of the contents of the packages. In the instant case, the Appellant's WhatsApp communications and his presence at the site of interception near Surat prove he was fully aware of the nature of the contraband.


5.15 The Appellant's role was "Managerial" in the context of the smuggling operation. He was the "feet on the street" for the mastermind. If such facilitators are exempted from penalties, the entire enforcement mechanism against smuggling cartels would collapse. The "employee" tag is a convenient facade often used by cartel members to escape liability. The sheer volume of the contraband and the Appellant's admission of handling past shipments demonstrate that he was a seasoned member of the syndicate. The findings of the Adjudicating Authority are well-founded on facts and law. The Appellant was "knowingly concerned" in the smuggling of prohibited E-Cigarettes and restricted Toys. His role in managing the Bhiwandi godown and coordinating the transit of

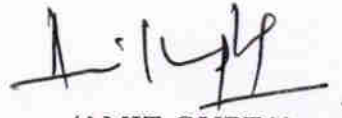


the intercepted container makes him liable for penalties under Sections 112 and 114AA.

6. In view of the detailed discussions and findings recorded above, I find no reason to interfere with the Order-in-Original No. MCH/ADC/AKM/175/2024-25 dated 25.10.2024.

7. The Appeal filed by Shri Parwej Alam is hereby rejected.

सत्यापित/ATTESTED

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


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

F. No. S/49-321/CUS/MUN/2024-25
5138

Date: 29.01.2026

By Speed post/E-Mail

To,
Shri Parwej Alam
Anand Nagar,
Shri Kiran Ubale Ki Chawl, Anjul Fata,
Bhiwandi-Thane
Maharashtra



Copy to:

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