



F.No. S/49-11/CUS/MUN/2024-25

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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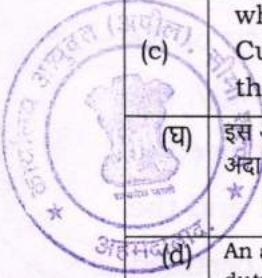
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क	फ़ाइल संख्या FILE NO.	S/49-11/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-630-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/AK/254/2023-24 dated 12.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	01.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Shivom Plastic & Impex, F-22/100, Sector- 3, Rohini, New Delhi-110085



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)	बैगज़ 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। 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.
(b)	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। Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
(c)	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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए 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 हजार 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 हजार 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 हजार 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।
(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

Appeal has been filed by M/s. Shivom Plastic & Impex, F-22/100, Sector-3. Rohini, New Delhi-110085, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/254/2023-24 dated 12.02.2024 (hereinafter referred to as 'the impugned order') by the Additional Commissioner, Customs, Mundra.

2. Facts of the case, in brief, are that the Appellant had filed Bill of Entry No. 2617973 dated 04.02.2021 (herein after referred to as the said Bill of Entry' for the sake of brevity) through their Custom Broker M/s Continental Shipping Services (herein after referred to as 'CB' for the sake of brevity) for importation of goods, declared as 'LLDPE Regrind (Mix Color)' CTH-39011010 (herein after referred to as the imported goods' for the sake of brevity), total quantity i.e. 38275 Kgs. The declared assessable value and the duty on the imported goods are Rs. 16,33,780/-and Rs. 1,21,912/-respectively. The goods were examined by the Docks Officers and samples of the goods imported vide above Bill of Entry were drawn and sent to CRCL for testing vide TM dated 04.02.2021.

2.1 The test report No. 6425 dated 04.02.2021 was uploaded on portal by the CB; wherein, the goods are stated as HDPE Regrind' instead of 'LLDPE Regrind' as declared in the BE. On the basis of the above test report, the importer has requested to re-assess the said bill of entry and agreed to pay differential duty. Accordingly, the said bill of entry No. 2617973 dated 04.02.2021 was re-assessed. As per the re-assessment order the importer paid the duty of Rs 5,06,237/- vide Challan No. 2033900691 dated 17.02.2021 and accordingly, the goods were cleared for home consumption. Further, information was received to the effect that the test report received from CRCL Kandla was tampered and the tampered test report was uploaded by the CB in the system. Therefore, certified copy of the test report No. 6425 dated 04.02.2021 received from CRCL Kandla was obtained from the Docks Officers.

2.2 Ongoing through the same, it was observed that the goods were declared as 'LLDPE Regrind' but the Test Report showed that the goods are HDPE and are 'other than regrind'. However on seeing the test report e-sanchit by the

CB, it is noticed that the goods were stated as 'HDPE regrind' in the tampered report, whereas, the actual test report stated as 'colored cut pieces of various sizes of plastic based on Polyethylene (HDPE) and other than regrind' as per the test reports. From the test report, it appeared that the goods were off-grade HDPE granules.

2.3 Summons dated 27.08.2021, 22.09.2021, 14.10.2021, 09.02.2022 and 23.03.2022 were issued to the Importer and CB. The Appellant vide their letter dated 04.04.2022 had furnished Authorization in the name of Shri Satish Maheshwari, Authorized Person of CB to represent their case on behalf of them. However, no one from the CB or Appellant had appeared. Whereas, another summons dated 20.04.2022 was issued to the CB - M/s Continental Shipping Services to submit the facts of the case and to tender statement. In response to the same, the CB vide e-mail dated 25.04.2023 submitted a letter from the appellant, wherein, it was submitted that one of their consignments was under Custom Examination and during the Examination Samples were drawn for Testing at Kandla (CRCL) Lab and wrong Sample Test Report was submitted to Customs by their Authorized Agent; that they apologize for the same and once again requested for Re assessment of the said Bill of Entry. They further agreed to pay all applicable duties, fine & penalty for the goods. Another letter from CB was also forwarded via e-mail, wherein, they submitted that they filed the said bill of entry for M/s Shivom Plastic & Impex with goods descriptions as LLDPE Regrind; that the Bill of Entry was under Customs Examination and during the Examination Samples were drawn for Testing at Kandla (CRCL) Lab and edited Sample Test Report was submitted to Customs by one of their office Staff; that when they got to know about the same, they immediately suspended the staff; that they regretted for this and once again requested for Re-assessment of the said Bill of Entry and agreed to pay applicable duties, fine & Penalty.

2.4 In view of the above, it appeared that the CB and the appellant were well aware of the facts that the goods are 'other than HDPE regrind' or off-grade HDPE granules, however, they declared their goods as LLDPE regrind' further, they produced altered test report and got the said Bill of entry re-assessed as 'HDPE regrind', though they were in possession of original test report given by CRCL, Kandla, they suppressed the material facts from the department to evade correct and proper duty liability by hiding the exact description and valuation of the goods; whereas, as per the test results the goods are 'off grade HDPE granules'.



2.5 In view of the above, it appeared that the Appellant mis-declared the description of the goods before the authorities as the goods covered under the said Bill of entry were off grade HDPE, which were assessed as 'HDPE regrind' as per tampered test report. Therefore, the transaction value declared/accepted by the appellant is liable to be rejected as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007. Further, the appellant and CB vide their letters dated 24.04.2023, agreed for re assessment of the said bill of entry as per the original test report. The bill of entry is required to be re-called/re-assessed as per off-grade HDPE. Whereas, the goods have already left the port and are not available for examination, therefore, the transaction value of the similar goods i.e. 'off-grade HDPE' is taken as per Rule 5 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 for the determination of the value of the imported goods. Accordingly, reference of the assessed Bill of Entry of "off-grade HDPE granules" from Mundra port during the same time is considered and the value of the said goods is taken as USD 0.97 per Kg as per Bill of Entry No. 2624120 dated 04.02.2021.

2.6 Accordingly, the value of the said imported goods is calculated as of Rs. 27,42,107.45/- (alongwith insurance). HDPE granules are classifiable under CTH 39012000 and attract duty BCD @7.5%, SWS @10% and IGST @18%. The calculation of the duty is as under:

Ass. value	Duty Payable in Rs. (BCD @7.5%, SWS @10% and IGST @18%)	Duty Paid (Rs.)	Differential Duty to be Paid. (Rs.)
2742107.45	7,60,524/-	5,06,237/-	2,54,286/-

2.7 It appeared that the importer had imported goods in violation of the Section 46 of the Customs Act, 1962 and filed the Bill of Entry with incorrect description of goods and with incorrect valuation; hence, the said imported goods having assessable value of Rs. 27,42,107/- were liable for confiscation under Sections 111(m) of the Customs Act, 1962, however, as the goods were not available, seizure under Section 110 of the Customs Act, 1962 of the Customs Act, 1962 cannot be done. The importer rendered themselves liable for penalty under section 114AA for use of false and incorrect material, and also liable for penalty under section 114A for short payment of duty on self-assessed bill of entry. Also, the Custom Broker did not follow due diligence in respect of classification. He classified the said imported goods under CTH 39011010, thus,

mis-classified the goods. Further, the CB intentionally tampered the test report and uploaded the tampered report on the portal and suppressed the facts from the department and as a result of the same the goods were cleared for home consumption with lower assessable value. Therefore, it appeared that they totally failed to comply with the provisions of the Custom Broker Licencing Regulations, 2018 (CBLR, 2018), thus, appeared to be liable for penal action under Section 114AA and Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018.

2.8 Accordingly, a Show Cause notice dated 28.07.2023 was issued to the Appellant and CB M/s Continental Shipping Services requiring them to show cause as to why:

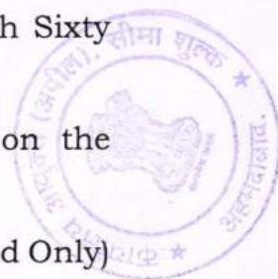
- i. The Bill of Entry No. 2617973 dated 04.01.2021 should not be recalled and the imported goods should not be re-assessed as per "off-grade HDPE" instead of HDPE regrind'.
- ii. The goods totally valued at Rs. 27,42,107/- (Rupees Twenty-Seven Lakh Forty-Two Thousand One Hundred & Seven only) covered under impugned Bill of Entry should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.
- iii. Total duty of Rs. 7,60,524/- (Rupees Seven Lakh Sixty Thousand Five Hundred and Twenty-Four only) on the aforesaid imported goods should not be demanded from importer under Section 28(4) of the Customs Act, 1962 and the duty amounting to Rs. 5,06,237/- paid by them at the time of clearance of goods should not be appropriated against the total duty demand.
- iv. Penalty should not be imposed on the importer M/s. Shivom Plastic & Impex under Section 112 (a), 114A and 114AA of the Customs Act, 1962.
- v. Interest at appropriate rates as provided under Section 28AA of the Customs Act, 1962 should not be levied and recovered from the appellant.
- vi. Penalty should not be imposed on Customs Broker M/s Continental Shipping Services under Section 114AA and 117 of the Customs Act, 1962.



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2.9 Consequently, the Adjudicating Authority passed the order as under:

- i) He rejected the declared description of goods and ordered to re-assess the Bill of Entry No. 2617973 dated 04.01.2021 as "Off-Grade HDPE" instead of HDPE regrind'.
- ii) He ordered for confiscation the goods having assessable value of Rs. 27,42,107/- (Rupees Twenty-Seven Lakh Forty-Two Thousand One Hundred & Seven only) covered under impugned Bill of Entry under the provisions of Section 111(m) of the Customs Act, 1962. Since, the imported goods were not physically available; he refrained from imposing any redemption fine in lieu of confiscation.
- iii) He refrained from imposing penalty on the importer M/s. Shivom Plastic & Impex under Section 112(a) of the Customs Act, 1962 as discussed in above paras.
- iv) He demanded the total duty of Rs. 7,60,524/- (Rupees Seven Lakh Sixty Thousand Five Hundred & Twenty-Four Only) on the aforesaid imported goods from importer under Section 28(4) of the Customs Act, 1962 and he also appropriated the duty amounting to Rs. 5,06,237/- paid by appellant at the time of clearance against the total duty demand.
- v) He imposed penalty of Rs. 7,60,524/- (Seven Lakh sixty thousand five hundred twenty-four Only) on the Appellant under Section 114A of the Customs Act, 1962.
- vi) He ordered to recover Interest at appropriate rates as provided under Section 28AA of the Customs Act, 1962 from the Appellant on the demanded duty amount of Rs. 7,60,524/- (Rupees Seven Lakh Sixty Thousand Five Hundred & Twenty-Four Only).
- vii) He imposed penalty of Rs. 10,00,000/- (Ten Lakhs Only) on the Appellant under Section 114AA of the Customs Act, 1962.
- viii) He imposed penalty of Rs. 3,50,000/- (Three Lakh Fifty Thousand Only) on Customs Broker M/s Continental Shipping Services under Section 117 of the Customs Act, 1962.
- ix) He imposed penalty of Rs. 5,00,000/- (Five Lakh Only) on Customs Broker M/s Continental Shipping Services under Section 114AA of the Customs Act, 1962 or otherwise.



SUBMISSIONS OF THE APPELLANT:

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

3.1 The appellant argues that the imported goods, described as "plastic cut pieces of assorted shapes and sizes" in the CRCL Test Report, do not meet the definition of "Off-Grade HDPE granules". Citing the Collins Cobuild English Language Dictionary, the appellant contends that "granules" are small round pieces, which does not match the physical description of the actual imported material. Furthermore, they assert there was no intent to mis-declare the goods because both HDPE and LLDPE attract the same 10% customs duty rate, and the physical assorted nature of the goods means their valuation should remain consistent with what was originally declared.

3.2 The appellant challenges the enhancement of the goods' value based on a separate Bill of Entry for "Off-Grade HDPE granules". They maintain that the transaction value originally declared should be accepted as the assessable value under Section 14 of the Customs Act, 1962, as it represents the price actually paid. Relying on Supreme Court precedent in C.C.E. & S.T., Noida vs. Sanjivani Non-Ferrous Trading Pvt. Ltd., the appellant argues that the department must accept the price paid unless they can prove with cogent evidence that it was not the sole consideration, which they claim the department failed to do in this instance.

3.3 Regarding the penalties imposed, the appellant points out a calculation error in the Order-in-Original, noting that the total duty demand of Rs. 7,60,524 improperly includes Rs. 5,06,237 that they had already paid at the time of clearance. They argue that under Section 28, the demand and subsequent penalty under Section 114A should only be based on the actual

short-levied duty of Rs. 2,54,286. To demonstrate good faith and avail themselves of the reduced penalty benefit, the appellant deposited Rs. 4,35,475, which covers the short-levied duty, interest, and a 25% penalty on the short-levied amount.

3.4 Finally, the appellant contends that the Rs. 10,00,000 penalty under Section 114AA is legally unsustainable and should be set aside. They state that

they were entirely unaware that an employee of the Customs Broker (CB) had tampered with and uploaded a fabricated test report. The appellant emphasizes that the Adjudicating Authority acknowledged the CB's intentional tampering, and since the appellant did not knowingly use false documents or possess knowledge of the fraud, they should not be held liable for the CB's independent actions.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 12.06.2025, following the principles of natural justice wherein Shri Prachit Mahajan, Advocate, appeared for the hearing 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 On going through the material on record, I find that the following issues need to be addressed:

- (i) Whether the rejection of declared value and re-classification as "Off-Grade HDPE" is sustainable.
- (ii) Whether the Appellant can evade liability for the submission of the forged test report by blaming the Customs Broker.

5.2 The Appellant has placed heavy reliance on the Hon'ble Supreme Court's judgment in C.C.E. & S.T., Noida Vs. Sanjivani Non-Ferrous Trading Pvt.

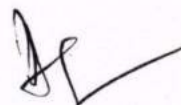
Ltd. [2019 (365) E.L.T. 3 (S.C.)] to argue that the transaction value cannot be rejected without cogent reasons. I find this reliance to be fundamentally misconceived and legally untenable in the present context. The Sanjivani judgment pertains to cases of bonafide commercial disputes where the Department alleges undervaluation based on NIDB data or comparable imports without evidence of a mutuality of interest or flow back of funds. It does not cover cases where the very foundation of the declaration is a forged document.



5.3 It is a settled principle of law that "Fraud vitiates everything" (Fraus omnia corrumpit). This principle supersedes standard valuation protections. In **Commissioner of Customs vs. Aafloat Textiles (I) P. Ltd. [2009 (235) E.L.T. 587 (S.C.)]**, the Hon'ble Supreme Court categorically held that fraud voids all judicial acts, ecclesiastical or temporal. The Court noted that "fraud" involves a deliberate deception with the design of securing something by taking unfair advantage of another. Furthermore, in **Commissioner of Customs, Kandla vs. Essar Oil Ltd. [2004 (172) E.L.T. 433 (S.C.)]**, the Apex Court reinforced that fraud committed against the Revenue cannot be condoned and strips the perpetrator of any equitable relief or statutory benefit.

5.4 Rule 12 of the Customs Valuation Rules (CVR), 2007, empowers the Proper Officer to reject the transaction value when there is "reason to doubt" the truth or accuracy of the declaration. The submission of a forged Test Report is not merely a "reason to doubt"—it is definitive proof that the declaration regarding the quality and nature of the goods was false. Therefore, the declared value, which was based on the premise that the goods were "Regrind," is rightly rejected.

5.5 Once the transaction value is rejected due to the fraudulent nature of the documents, the valuation must proceed sequentially under the CVR, 2007. Rule 4 (Identical Goods): The Adjudicating Authority correctly noted that identical goods (same country of origin, same manufacturer, same physical characteristics) at the same commercial level were not available. Rule 5 (Similar Goods): The Department relied on the value of "Off-Grade HDPE" cleared under a contemporary Bill of Entry. The Original Test Report described the goods as "colored cut pieces... other than regrind." In trade parlance, material that is not prime virgin granules and not simple regrind often falls into the category of "Off-Grade" or "Odd-Size" material, which commands a higher value than scrap but lower than virgin material. The comparison adopted by the Adjudicating Authority is reasonable and legal under Rule 5, as the physical characteristics and reputation of the goods are similar. The Appellant's contention that "cut pieces" cannot be "Off-Grade" is a semantic argument that fails to address the substantive quality of the material which the forged report sought to conceal.



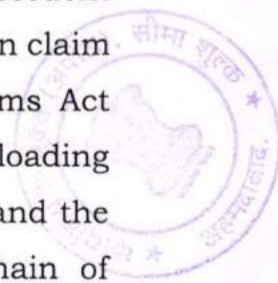
5.6 The Appellant's primary defense is that the forgery was the handiwork of the Customs Broker's staff, done without their knowledge. I reject this defense based on the Doctrine of Beneficiary Liability and the principle of Cui Bono (Who benefits?). A Customs Broker (CB) operates on a commission basis. There is no logical commercial incentive for a CB or their operational staff to unilaterally take the immense criminal risk of forging a Government Laboratory Report (CRCL Report) merely to save customs duty for a specific client. The sole beneficiary of the suppression of the correct description ("other than regrind") and the resulting lower duty liability is the Appellant (Importer).

5.7 Based on the preponderance of probability, it is rational to conclude that the forgery was committed at the insistence of the Appellant. The Appellant, being in the trade, would be aware that "Off-Grade" material attracts higher duty than "Regrind." The instruction to "manage" the clearance to ensure it passes as the lower-valued "Regrind" constitutes the "insistence" that drove the forgery.

5.8 The Appellant cannot absolve themselves of liability by pointing fingers at their agent. Section 147 of the Customs Act, 1962, clearly establishes the liability of the principal for the acts of the agent.

Section 147(3) states: "When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent... such owner, importer or exporter shall also be liable for the acts of the agent."

5.9 The trust reposed by the importer in the broker includes the responsibility for the broker's conduct in clearing those specific goods. If the Appellant's argument were accepted, it would create a dangerous precedent where every importer could instruct their broker to commit fraud and then claim ignorance when caught, rendering the penal provisions of the Customs Act toothless. The sequence of events viz. the adverse original report, the uploading of the forged favorable report, the payment of duty on the lower value, and the silence of the Appellant until the fraud was detected—creates a chain of circumstances that heavily preponderates against the Appellant. The Appellant "accepted" the benefit of the forgery (clearance at lower duty) which implies ratification of the agent's act.



5.10 Section 114AA imposes a penalty on a person who "knowingly or intentionally makes, signs or uses, or causes to be made, signed or used" any false declaration or document. The phrase "causes to be made... or used" is

pivotal. Even if the Appellant did not physically edit the PDF file, by creating a commercial pressure or instruction to clear the goods as "Regrind" despite the material being "Off-Grade," the Appellant caused the false document to be made. Furthermore, the Appellant "used" the false document indirectly to secure the Out-of-Charge order. One cannot enjoy the fruits of a poisoned tree and then claim they never watered it. The imposition of Rs. 10,00,000/- penalty is proportionate to the gravity of forging a government record, which is a direct assault on the integrity of the Customs assessment system. The cases cited by the Appellant in their appeal memo (regarding innocent importers) are distinguishable on facts. Those cases generally involve situations where the importer was genuinely defrauded by a third party (e.g., a supplier sending wrong goods) which is not the case in the instant appeal.

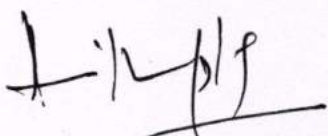
6. In view of the comprehensive discussions and findings above, I hold that the Appellant cannot escape liability for the forged test report submitted by their agent. The evidence and circumstances firmly point to the conclusion that the manipulation was done to benefit the Appellant, and by all probabilities, at their insistence. I find no infirmity in the Impugned Order No. MCH/ADC/AK/254/2023-24 dated 12.02.2024 passed by the Additional Commissioner of Customs, Mundra.

7. The appeal filed by M/s Shivom Plastic & Impex is rejected, and the Impugned Order is upheld in its entirety.



सत्यापित/ATTESTED

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


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

By Speed Post/E-Mail

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M/s Shivom Plastic & Impex,
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New Delhi-110085.



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.