



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हड्कोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN – 20250671MN0000323923

क	फ़ाइलसंख्या FILE NO.	CAPPL/COM/CUSP/1322/2023
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128कक्षेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUS-000-APP-057-25-26
पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad	
घ	दिनांक DATE	10.06.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/APR/62/MK/ADC/2023-24, dated 06.06.2023 issued by Additional Commissioner of Customs, Customs House, Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	10.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Balaji Enterprises (IEC ASHPR7959N), 24, Mangalam Park, 2nd Floor, Near Alliance Hospital, Mundra Bhuj Road, Nana Kapaya, Mundra 370 421
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय,	

	(राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै।	
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरारेनगएमालयाउसगन्तव्यस्थानपरउत्तरारेजानेकेलिएअपेक्षितमालउत्तरारेनजानेपरयाउसगन्तव्यस्थानपरउत्तरारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो।	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्टफीएक्ट, 1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यापालयशुल्कटिकटलगाहोनाचाहिए.	
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र) 1,जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क,मांगागयाव्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	करण, पश्चिमी क्षेत्रीय पीठ	
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधर नगर पुल, असार वा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 कीधारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 कीधारा 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड कीर कम पाँच लाख रुपए या उससे कम होतो एक हजार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड कीर कम पाँच लाख रुपए से अधिक होले किन रुपये पचास लाख से अधिक न होतो; पांच हजार रुपए	
(ब)	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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड कीर कम पचास लाख रुपए से अधिक होतो; दस हजार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
 6.	इस आदेश के विरुद्ध अधिकारण के सामने, मांगे गए शुल्क के 10% अदाकरने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, यांदे के 10% अदाकरने पर, जहां के वल दंड विवाद में हैं, अपील रखा जाएगा।	इस आदेश के विरुद्ध अधिकारण के सामने, मांगे गए शुल्क के 10% अदाकरने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, यांदे के 10% अदाकरने पर, जहां के वल दंड विवाद में हैं, अपील रखा जाएगा।
	(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	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 कीधारा 129 (ए) के अन्तर्गत अपील प्राधिकारण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए यागलति यों को सुधारने के लिए याकि सीमाशुल्क अधिकारी द्वारा आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए। (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.

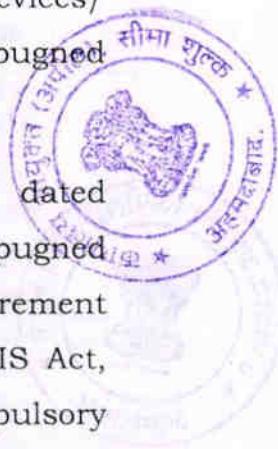
ORDER-IN-APPEAL

M/s Balaji Enterprises, Proprietor: Shri Ramesh Kumar (IEC ASHPR7959N), 24, Mangalam Park, 2nd Floor, Near Alliance Hospital, Mundra Bhuj Road, Nana Kapaya, Mundra 370 421 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-in-Original No. MCH/APR/62/MK/ADC/2023-24, dated 06.06.2023 (hereinafter referred to as "the impugned order") issued by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had imported the goods vide 02 Bills of Entry No. 2087988, dated 23.12.2020 having declared assessable Value of Rs. 13,89,055/- and No. 2088351, dated 24.12.2020 having declared assessable Value of Rs. 11,51,899/- and declaring the imported goods as "Filter (for Industrial Use)" in all the relevant supporting documents to Import viz. Bill of Entry, Bill of Lading, Commercial Invoice. Further, on the basis of specific intelligence, the goods were examined under Panchnama, dated 26.12.2020 and it was found that the goods were Multi-Function Devices/ Digital Printer/Photocopier Machines (herein after referred as "impugned goods") which falls under the category of restricted import as per FTP.

2.1 Further, as per Notification No. 35(RE-2012)/2009-2014, dated 28.02.2013, authorization from DGFT is required for the import of impugned goods, also requires BIS Certificate as compulsory compliance requirement under DGFT Notification No. 05/2015-2020, dated 07.05.2019 and BIS Act, 1986 read with Electronics and IT Goods (requirement for compulsory registration) (RCR) Order, 2012, and Circular No. 01/2019, dated 02.05.2019 issued by the Ministry of Electronics and Information Technology. Since, the compulsory registration and permissions were not obtained, the impugned goods were "Prohibited", therefore, the impugned goods were placed under seizure vide Seizure Memo dated 10.06.2021 as per the provisions of the Customs Act, 1962. Thereafter, service of Chartered Engineer was engaged to determine assessable value of subject Goods who vide their report provided the market Value of the impugned goods imported under Bill of Entry No. 2088351 as Rs.37,21,000/- and under Bill of Entry No. 2087988 as Rs.44,08,000/-.

2.2 Further, it appeared that the appellant had violated the provisions of the Foreign Trade Policy 2015-2020 by importing second-hand goods, which are classified as "Restricted" under Clause 2.31, without obtaining the necessary authorization. Further, as per DGFT Notification No. 05/2015-20 dated 07.05.2019 and Circular No. 1 of 2019 issued by Ministry of Electronics and Information Technology, the impugned goods fall under the category of



"Printers, Plotters" notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012, and their import was **prohibited** unless registered with BIS and compliant with BIS labelling requirements. Additionally, DGFT Notification No. 50/2015-20 dated 08.01.2019 mandates that unregistered consignments must be re-exported or disposed of as scrap by Customs, which was not complied with. Consequently, the goods qualify as "Prohibited Goods" under Section 2(33) of the Customs Act, 1962, and the appellant appeared found to have violated Sections 46, 111(d), 111(m), and 111(o), attracting penal provisions under Sections 112 and 114AA of the Act. Further, the Customs Broker and its employees (Co-noticees) had failed to fulfil their obligations under Clauses (d), (e), (f), (n), and (q) of Regulation 10 of the Customs Brokers Licensing Regulations, 2018, and are therefore liable for penalty under Sections 112 and 117 of the Customs Act, 1962.

2.3 On conclusion of investigation, a show cause vide SCN F. No. S/43-17/INV-BALAJI-ENTERPRISES/SSIB-C/CHM/2020-21 dated 09.12.2021 issued to the appellant and others as to why:

- i. Goods declared as Filter (Industrial Use) whereas acting upon Intelligence, verified the goods and during examination it was found that the goods so imported are Multifunction Devices / Digital Printer / Photocopier Machines, got the same valued through valuer and reported as Market Value of Rs. 81,29,000/-, the same were placed under seizure and proposed for confiscation under 111 (d) and 111 (m) of the Customs Act, 1962.
- ii. Proposed to impose penalty under Section 112-(a)(ii) of the Customs Act, 1962 on the appellant;
- iii. Proposed to impose penalty under Section 114AA of the Customs Act, 1962 on the appellant;
- iv. Proposed to take action as specified under Notification No 50/2015-20 dated 08.01.2019 issued by DGFT, on the appellant.
- v. Proposed to impose penalty under Section 112 (a) & (b) and Section 117 of the Customs Act, 1962 on 03 co-noticees viz. Shri Shiv Kumar Gaur; Shri Vijay Vashishta and Shri Amit Mali.



3. Thereafter, the adjudicating authority vide the impugned order passed the following order as:

- i. I order, to absolute Confiscate Goods imported under Bill of Entry No. 2087988 dated 23.12.2020 and Bill of Entry No. 2088351 dated 24.12.2020, having total revised Market Value of Rs .81,29,000/- as worked out by the Chartered Engineer and ordered to deform the goods and dispose them as SCRAP, by following prescribed procedure by the DGFT and Ministry of Electronics and Information Technology.
- ii. I impose a penalty of Rs. 3,00,000/- on the appellant under Section 112(a) of Customs Act, 1962.
- iii. I impose a penalty of Rs. 5,00,000/- on the appellant, under Section 114AA of Customs Act, 1962.
- iv. I refrain from imposing any penalty on 03 co-Noticees viz. Shri Shiv Kumar Gaur; Shri Vijay Vashishtha and Shri Amit Mali, under Section 117 of Customs Act, 1962

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

- That the impugned order has been passed in breach of the principles of natural justice. The Appellant was given only one opportunity of personal hearing, for which an adjournment was duly requested via email dated 06.01.2023, along with a Vakalatnama and a request for rescheduling with prior notice. Despite this, no further hearing was granted. The Appellant also submitted written submissions via email on 25.03.2023, which were ignored in the order. The Adjudicating Authority wrongly recorded that no reply was filed and passed the order solely on the basis of the SCN, without considering the Appellant's submissions. This denial of a fair hearing renders the order legally unsustainable and liable to be set aside.
- That the impugned order was passed solely on the basis of the Show Cause Notice (SCN), without considering the appellant's written submissions or evidence. This constitutes a serious procedural lapse and an arbitrary use of adjudication powers.
- That the imported goods, at best, may be treated as restricted, not prohibited, as wrongly held under Section 111(d). Therefore, absolute confiscation and destruction under the guise of prohibition is unjustified. The appellant should have been given an option for redemption fine under Section 125 of the Customs Act, 1962.



- **Section 112(a) and (b):** Penalty is not warranted since the Appellant neither abetted nor knowingly imported prohibited goods.
- **Section 114AA:** No false or forged documents were knowingly submitted by the Appellant; no mens rea (guilty intent) was established.
- **DGFT Notification 50/2015-20:** Customs has no authority to impose penal action under DGFT notifications; BIS non-compliance may call for re-export but not destruction if re-export is not first attempted.
- Reliance is placed on the following case laws:
 - Priya Blue Industries Ltd. vs. Commissioner of Customs (Preventive), 2004 (172) ELT 145 (SC)
 - Ruchi Soya Industries Ltd. vs. Commissioner of Customs, Jamnagar, 2013 (296) ELT 114 (Tri-Ahmd.)

PERSONAL HEARING

5. Shri T Chakrapani, Consultant, appeared for personal hearing on 27.05.2025 in virtual mode on behalf of the Appellant. He reiterated the submission made in the appeal memorandum.

DISCUSSION & FINDINGS

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

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 16.08.2023 against the impugned order dated 06.06.2023 received by the appellant on 16.06.2023 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.2 It is observed that the appellant has contended that they have received only one opportunity of personal hearing, for which an adjournment was duly

requested via email dated 06.01.2023, along with a Vakalatnama and a request for rescheduling with prior notice. However, no further opportunity was given to the appellant and adjudicating authority had passed the impugned order. In this regard, I find that the appellant could not present his case before the original adjudicating authority at the first instance. Therefore, I am of the considered view that in the interest of justice an opportunity may be granted to the appellant to be heard and to submit his submissions.

6.3 In view of the above, I find that remitting the present appeal to adjudicating authority for passing fresh order for considering the submissions made by the appellant in the present appeal has on record, become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding that Commissioner (Appeals) has power to remand the case under Section – 35A (3) of the Central Excise Act, 1944 and Section – 128A (3) of the Customs Act, 1962.

7. In view of the above discussion, I allow the appeal by way of remand to the adjudicating authority for passing fresh order after examining the available facts, documents, submissions and after giving the sufficient opportunity to the appellant of being heard thus maintaining the principles of natural justice and legal provision.



(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F.Nos. CAPPL/COM/CUSP/1322/2023

Dated – 10.06.2025

1359
By Registered Post A.D.

To,
M/s Balaji Enterprises (IEC ASHPR7959N),
24, Mangalam Park, 2nd Floor,
Near Alliance Hospital, Mundra Bhuj Road,
Nana Kapaya, Mundra 370 421

सत्यापित/ATTESTED

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

Copy to:

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

