सत्यमेव जयते

सीमा शुल्क (अपील) आयुक्त का कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हुडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN- 20260371MN0000000FE0

क	फ़ाइलसंख्या FILE NO.	S/49-319/CUS/AHD/ 2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL No. (सीमा शुल्क अधिनियम, 1962 की धारा 128 क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-704-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No.: 138/ADC/ACC/OIO/Troikaa/24-25 dt. 09.01.2025 passed by the Additional Commissioner, Customs, Air Cargo Complex, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Troikka Pharmaceuticals Ltd, Survey No.: 791 & 792, Taluka-Kadi, Sanand-Kadi Road, Thol, Guajarat. Troikaa@troikaapharma.com jigneshpandit-exim@troikaapharma.com prakashgirigosai@troikaapharma.com

.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.	
	लिखित 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 यथासंशोधित (में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु)-/200 .रूपए दो सौ मात्र (या रु)-/1000.रूपए एक हज़ार मात्र(,जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर 6.की दोप्रतियां .यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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 अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद380016-	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 129ए (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 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

M/s Troikka Pharmaceuticals Ltd, Survey No.: 791 & 792, Taluka-Kadi, Sanand-Kadi Road, Thol, Guajarat (herein after referred as the appellant) filed appeal against the OIO No.: OIO No.: 138/ADC/ACC/OIO/Troikaa/24-25 dt. 09.01.2025 (hereinafter referred to as the impugned OIO) passed by the Additional Commissioner, Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as the adjudicating authority).

2. Brief facts of the case are that the appellant filed the Bill of Entry No.: 2390140 dated 02.03.2024 at Customs, Air Cargo Complex, Ahmedabad for the import and clearances of goods "Enoxaparin Sodium" (hereinafter referred to as the impugned goods) classifying under CTI 2942 0090 under the First Schedule to the Customs Tariff Act, 1975.

2.1 The importation and clearances of the impugned goods governed by the provisions of the Drugs and Cosmetic Rules, 1945. The CDSCO (Central Drugs Standard Control Organization), with reference to NOC, vide mail dated 04.03.2024 raised the query that the shelf life of the impugned good is less than 60% and expiry as 4 years instead of 3 years. As the appellant couldnot obtained the NOC, approached to the office of the AC, Customs, Air Cargo Complex, Ahmedabad with a request to permit re-export of the impugned goods to its foreign supplier M/s Yantai Dongcheng Biochemicals Co Ltd., China.

2.2 A letter dated 12.04.2024 was written to the Assistant Drugs Control (I), CDSCO, Ahmedabad by the AC, Customs, Air Cargo Complex, Ahmedabad to inform the status of the NOC with respect to the impugned goods. In response to the same, vide letter dated 03.05.2024, it was informed that *"With reference to the subject cited above and after verification the shelf of product Enoxaparin Sodium bearing Certificate No.240515/04779/84 dated 15.05.2024 received as of Standard quality is enclosed herewith for your kind information and further necessary action in the matter please confirmed the goods to be standard quality."*

2.3 As per the provisions of the Rule 31 of Drugs and Cosmetics Rules, 1945, no drug having less than Sixty percent (60%) of residual life period as on the date of import shall be allowed for import by the Licensing authority. In the present case, the Assistant Drugs Control (I), CDSCO, Ahmedabad vide letter dated 03.05 2024 has

reported the shelf life of the subject imported product was found less than 60% and as such the goods were prohibited as per Rule 31 of Part V of the Drugs and Cosmetics. Rule 1945. Therefore, the appellant has rendered the subject goods sought clearance under Bill of Entry No. 2390140 dated 02.03.2024 liable for confiscation under Section 111 (d) of Customs Act 1962 for being imported in contravention of Rule 31 of Drugs and Cosmetics Rules 1945 and the appellant, also liable under penal provisions under Section 112 (a) (i) of Customs Act 1962 for rendering goods liable for confiscation.

2.4 The Customs authority under reasonable belief that the impugned goods i.e. "Enoxaparin Sodium" sought clearance under Bill of Entry No. 2390140 dated 02.03.2024 were liable to confiscation under Section 111(d) of Customs Act 1962, the impugned goods were placed under seizure under Section 110 of Customs Act 1962 vide seizure memo dated 05.06.2024. The appellant vide letter dated 15.07.2024 requested for the provisional release of the impugned goods for re-export. The competent authority has allowed provisional release of the goods, for the purpose of re-export only, subject to the two conditions (a) Bond for the value of seized goods in proper format and (b) Bank Guarantee equivalent to 25% of the Bond amount. The appellant submitted (i) Notarized Bond for the value of seized goods for an amount of Rs.42,00,000/-in prescribed format. (ii) Bank Guarantee equivalent to 25% of the bond value issued by Axis Bank Ltd. CBB Ahmedabad bearing the B.G. No. 15300100018479 dated 21.08.2024

2.5 The customs Broker in the matter is M/s Tulsidas Khimji Pvt Ltd., who has filed the present Bill of Entry No 2390140 dated 02.03.2024 for clearance of "Enoxaparin Sodium for home consumption. The impugned goods have been imported in contravention of the provision of Rule 31 of Drugs and Cosmetics Rules 1945. Thus, Customs Broker have abetted with import in rendering the goods liable for confiscation under Section 111 (d) of Customs Act 1962 and have rendered themselves liable for penalty under Section 112 (a) (i) of Customs Act 1962.

2.6 A Show Cause Notice F.No.: ACC/ASST/AMND/BE/85/2024 dated 10.06.2024 issued to the appellant under Section 124 of the Customs Act, 1962 proposing confiscation of the impugned goods under section 111(d) and penalty on the appellant under section 112(a) of the Customs Act, 1962. A penalty under section 112(a) of the Customs Act, 1962 on the CHA M/s Tulsidas Khimji Pvt Ltd., Ahmedabad also proposed.

2.7 The adjudicating authority, after following principles of natural justice,

passed impugned order confirming confiscation of the impugned goods under section 111(d) of the Customs Act, 1962 and imposed fine of Rs. 4,00,000/- in lieu of confiscation for the purpose of re-export, penalty on the appellant of Rs. 4,00,000/- under section 112(a)(i) of the Customs Act, 1962 and penalty on Customs Broker of Rs. 4,00,000/- under section 112(a)(i) of the Customs Act, 1962.

3. Being aggrieved and dissatisfied with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal dt. Nil on 07.03.2025. They have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims :

"The Appellant at the very outset submits that the Impugned Order passed by Ld. Additional Commissioner is grossly erroneous on facts and law and deserves to be set aside on the following grounds, amongst other grounds, which are in the alternative and without prejudice to each other. The Appellant further reserves the right to add, alter or modify grounds of appeal during the course of proceedings in the instant matter

A. SUBJECT GOODS ARE NOT LIABLE TO BE CONFISCATED UNDER SECTION 111(D) OF THE CUSTOMS ACT, 1962.

***A.1**. The Impugned Order confirms that the subject goods are liable for confiscation under Section 111(d) of the Customs Act, 1962 The relevant part of the Section is extracted below for ease of reference:*

"Section 111-Confiscation of improperly imported goods, etc. The following goods brought from a place outside India shall be liable to confiscation:
(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force

Subject goods are not completely prohibited under Rule 31 of the Drugs Rules 1945. Thus, Section 111(d) is not invokable.

***A2** The Appellant submits that the provisions of Section 111(d) of the Act are not invokable in the present case since the subject goods imported by the Appellant are not completely prohibited or restricted by Rule 31 of Part V of the Drugs and Cosmetics Act, 1945.*

The Relevant part is extract below for ease of reference:

"31 Standard for certain imported drugs - No drug shall be imported unless it complies with the standard of strength, quality and purity, if any, and the test prescribed in the rules shall be applicable for determining whether any such imported drug complies with the said standards
Provided that the drugs intended for veterinary use, the standards of strength, quality and purity, if any, shall be those that are specified in Schedule F(1) and the test prescribed in that Scheduled shall be applicable for determining whether any such imported drug complies with the said standards and where no standards are specified in Schedule F(1) for any veterinary drug, the standards for such drug shall be those specified in the current edition, for the time being in force, of the British Pharmacopoeta Veterinary:

Provided further that the licensing authority shall not allow the import of any drug having less than sixty per cent, residual shelf-life period as on the date of import

Provided also that in exceptional cases the licensing authority may for reasons to be recorded in writing, may allow the import of any drug having lesser shelf-life period, but before the date of expiry as declared on the container of the drug"

A.3. *It is submitted that there is no complete prohibition on the import of subject goods under Rule 31 Part V of the Drugs and Cosmetics Act, 1945 even when the subject goods have less than sixty percent residual shelf-life on the date of import. The Rule provides that such goods may be allowed to be imported on the recording of the reasons of having a lesser shelf life.*

A.4. *Thus, it is submitted that Rule 31 does not impose a complete restriction or prohibition on the import of the subject goods. Therefore, the subject goods are not liable for confiscation under Section 111(d) of the Customs Act, 1962.*

Imported goods are covered under the valid license issued under the Drugs and Cosmetics Act, 1945.

A.5. *Additionally, it is submitted that the Appellant has been importing the subject goods on a regular basis and in total has imported 79.05kgs of the same. Further, the Appellant has a valid license for the import of the subject goods under Drug and Cosmetics Act, 1945. The copy of the license is enclosed herewith and marked as Annexure-14*

A.6*. Thus, it is submitted that Section 111(d) of the Customs Act is not invokable as the goods are not prohibited.*

A.7*. Further, it is also submitted that the Foreign Supplier vide the letter dated 03.04.2024 has stated that they were not aware of the DCGI rules of the minimum requirement of shelf-life of 60% of RM at the time when the goods were imported into India.*

A.8. *The Ld. Additional Commissioner at Para 12 of the Impugned Order has placed reliance on the decision of the Hon'ble Supreme Court ion the case of Sheikh Mohd. Omer v Collector of Customs, Calcutta, 1983 (13) ELT 1439 and observed that restriction on an import even to an extent is prohibition". The Appellant in this regard submits that the Ld. Additional Commissioner has wrongly placed reliance on the aforesaid decision because the same talks about restriction on goods. In the present case, there is no restriction on the subject of goods. Thus, the said decision is not applicable to the Appellant's case*

A.9*. In view of the above submissions, the subject goods are not liable to be confiscated under Section 111(d) of the Customs Act, 1962 and the Impugned Order is liable to be set aside*

B. NO REDEMPTION FINE IS IMPOSABLE UNDER SECTION 125 OF THE CUSTOMS ACT, 1962*.*

B.1*. The Ld. Additional Commissioner of Customs vide the Impugned Order has imposed redemption fine under Section 125 of the Customs Act, 1962. For ease of reference, the relevant extract of Section 125 is reproduced below:*

SECTION 125. Option to pay fine in lieu of confiscation.-

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods the importation or exportation

whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods (or, where such owner is not known, the person from such possession or custody such goods have been seized.] an option to pay in lieu of confiscation such fine as the said officer thinks fit

***B.2**. Section 125 of the Customs Act provides for an option to the importer to redeem the confiscated goods upon payment of redemption fine. It clearly follows that the importer is liable to pay redemption fine only when the goods are confiscated. In the present case, it has been clearly shown in the preceding paragraphs that the confiscation under Section 111(d) is not applicable. Consequently, any proposal to impose redemption fine is also not sustainable.*

***B.3.** Moreover, under Section 125, fine is imposable in situation where goods are available for confiscation. In the present case goods are not available for confiscation therefore fine under Section 125 is not imposable.*

***B.4**. The Appellant submits that it is the settled legal position that when the goods are not physically available for confiscation, a redemption fine cannot be imposed. Reliance is placed upon the decision of the Hon'ble Bombay High Court in CC v. Finesse Creations Inc [2009 (248) ELT. 122 (Bom.) in this regard.*

***B.5**. In the said case, the Hon'ble Court held that no redemption fine is imposable if the goods are not physically available. The relevant portion of the decision is extracted below:*

5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act. rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only he passed if the goods are available for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed

***B.6**. The above decision was also affirmed by the Hon'ble Apex Court in Commissioner v. Finesse Creation Inc. 2010 (255) E.LT. A120 (S.C.)|*

***B.7**. Thus, as per Section 125, fine is imposable in situation where goods are available for confiscation. In the present case goods are not available for confiscation therefore, Redemption Fine under Section 125 of the Customs Act, 1962 is not imposable. Further, in absence of seizure, redemption fine is not imposable.*

C. NO PROPOSAL FOR IMPOSITION OF REDEMPTION FINE HAS BEEN MADE IN THE SHOW CAUSE NOTICE. THUS, THE IMPUGNED ORDER IS BEYOND THE SHOW CAUSE NOTICE

***C.1**. The Appellant submits that in any case, the imposition of Redemption is not sustainable in the present case since no proposal has been made in the SCN for*

imposition of Redemption Fine. Thus, to that extent, the Ld. Additional Commissioner has passed the Impugned Order beyond the Show Cause Notice.

***C.2**. It is submitted that the Hon'ble courts have on numerous occasions held that an order passed beyond the scope of the show cause notice is liable to be set aside. The Appellant places reliance on the following decisions:*

a. Aaram Plastics (P) Ltd. v. CCE, 2014 (307) ELT 904 (Tri.-Del)
b. Dhanuka Pesticides v. CCE, 2014 (303) ELT 90 (Tri-Del)
c. N.D. Metal Industries Ltd. v. CCE, 2013 (292) ELT 520 (Tri-Ahd)
d. CCE v. Vivek Pharmachem (India) Ltd., 2011 (266) ELT 244 (Tri-Del)
e. Waterbase Limited v. CCE, 2006 (201) ELT 81 (Tri-Bang)
f. Vaspar Concepts Ltd. v. CCE, 2006 (199) ELT 711 (Tri-Bang)
g. Punjab Communication Ltd. v. CCE, 2006 (199) ELT 161 (Tri-Del)

***C3**. In view of the above submissions, it is humbly submitted that the Impugned Order has been passed by travelling beyond the SCN and thus, the same is liable to be quashed and set aside.*

D. NO PENALTY CAN BE IMPOSED ON THE APPELLANT UNDER SECTION 112(a) OF THE CUSTOMS ACT, 1962

***D.1**. It is submitted that the Impugned Order confirms that the Appellant is liable to pay a penalty under Section 112(a) of the Customs Act, 1962 as the subject goods are liable to be confiscated under Section 111(d) of the Customs Act, 1962.*

***D.2**. The relevant part of Section 112(a) of the Customs Act is extracted herein for ease of reference:*

Section 112-Penalty for improper importation of goods, etc. -
Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or shall be liable,

***D.3**. It is submitted that Clause (a) of Section 112 has two limbs the first being improper importation of goods by any person who, concerning "any goods does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111"; and the second limb starts with "or abets the doing or omission or such an act." For imposition of penalty, mala fide act/omission is one of the requirements.*

***D.4.** A bare perusal of Section 112 provides that confiscation (or a reasonable belief of confiscation) under Section 111 is an essential condition for imposition of a penalty. As submitted in the foregoing submissions, the Appellant has not contravened Section 111, and hence, the penal provisions under Section 112(a) are not imposable in the present case.*

***D.5**. The second limb of Section 112(a) of the Customs Act covers the abetment of commission/omission of any act which would render the goods liable to confiscation under Section 111 of the Customs Act. In this instant case, the Appellant did not abet the commission or omission of any act, which has rendered the imported subject goods liable for confiscation.*

***D.6**. As the words "abet" or "abetment are not defined in the Customs Act, it is pertinent to refer to the General Clauses Act, 1897. Section 3(1) of the General Clauses Act, 1897 defines "Abet" as under:*

"Abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860)"

***D.7**. The relevant portion of Section 107 of the Indian Penal Code, 1860 defines "abetment" as under*

107. Abetment of a thing
A person abets the doing of a thing who
Firstly-Instigates any person to do that thing or
Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or
Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing
Explanation 1-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to dis-close, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing

***D.8**. Further, the Hon'ble Courts have in various cases enlisted the basic ingredients which must be present for an act to constitute "abetment" The main ingredients are as under:*
i. There must be a mala fide intention on the part of the accused to provoke, incite or encourage the doing of an offence;
There must be a positive act on part of the accused, ii.
A person should facilitate the commission of that act,
iv. Mere negligence is not sufficient to constitute abetment;
Mere lack of care and diligence is not sufficient to constitute abetment, and
vi. The accused must be proved to have derived a pecuniary benefit from the act.
***D.9.** In the judicial precedents, it has been held that the presence of mens rea is an essential prerequisite for establishing abetment and for imposition of penalty under Section 112(a). In this regard Hon'ble Tribunal in the case of Harbhajan Kaur v. Collector of Customs, 1991 (56) E.L.T. 273 (Tribunal), observed the following:*

3.[] Similarly A mere giving of an aid will not make the act an abetment of an offence, if the person who gives the aid did not know that an offence was being committed or contemplated for it is the act of intentional aiding and therefore active complicity which is the gist of the offence of abetment made punishable by law[]"

***D.10**. Similarly, in case of Commissioner of Customs (EP) v. P.D. Manjrekar, 2009 (244) E.L.T. 51 (Bom.), the Hon'ble Bombay High Court held that in case of abetment, Revenue must prove knowledge on the part of the assessee. No such proof has been furnished in the present case.*
***D.11** It is submitted that the Appellant is a regular importer of the subject goods and has a valid license for the import of the same However, it was beyond the control of the Appellant to ensure that the imported subject goods satisfied the 60% shelf-life criteria of the Drugs and Cosmetics Act, 1945.*
***D.12**. Thus, the Appellant cannot be held liable for the events that were beyond his control Reliance in this regard is placed on the Age of Enlightenment Publications vs. C.C. (Air Cargo Export), New Delhi, 2017 (357) E.L.T. 632 (Tri-Del), wherein it was held that non-installation of the machine was beyond the control of the Appellant and therefore no redemption fine and penalty in imposable*
***D. 13**. Reliance in this regard is also placed on the decision of Taurus Novelties Ltd v. Commissioner, 2004 (173) E.L.T. 100 (Tri-Bangalore) wherein the confiscation and penalty imposed under Section 111 and 112 of the Customs Act, 1962 were held as unsustainable as the fulfilment of the Export obligation was beyond the control of the Appellant*
***D.14**. It is submitted that mens rea or mala fide intention is a necessary requirement for the imposition of penalty under Section 112*
***D.15**. Reliance is also placed on the case Jaswal Neco Av. CC, Vishakhapatnam,*

2015 (8) TMI 243-SUPREME COURT, wherein the Hon'ble Supreme Court has held that when the EO could not be fulfilled due to difficult market considerations and the Appellant had no mala fide intention, in such a case no penalty was leviable under Section 112.

D.16. In view of the bona fide conduct of the Appellant, it is submitted that penalty is not imposable under Section 112(a) of the Customs Act and the Impugned Order is liable to be set aside.

E. THE APPELLANT SUBMITS THAT ONCE RE-EXPORT OF GOODS IS ALLOWED, IMPOSITION OF PENALTY UNDER SECTION 112(A) AND REDEMPTION FINE CANNOT BE SUSTAINED.

***E.1**. The Appellant submits that the imposition of penalty under Section 112(a) of the Custom Act, 1962 cannot be sustained in light of the fact that the Department has allowed the Appellant to re-export the subject goods vide letter dated 12.08.2024.*

***E.2**. On the same ground, the imposition of redemption fine under Section 125 of the Customs Act, 1962 cannot be sustained.*

***E.3.** To support the above contention, the Appellant places reliance on the decision of the Hon'ble Mumbai Tribunal in the case of M/s. Goyal Trading Co. v. CC, Nhava Sheva-III, 2023 (10) TMI 294-CESTAT MUMBAI wherein the Hon'ble Tribunal relied on the decision of the Hon'ble Kolkata Tribunal in the case of Seimens Public Communication Networks Ltd. v. CC (Airport) Calcutta, 2001 (1) TMI 686- CEGAT, KOLKATA and categorically held that when the goods are allowed to be re-exported, neither redemption fine nor duty was required to be paid and that at the same time, penalty is also not to be imposed on the importers. The relevant portion of the said decision is extracted as under*

> *"5. I have carefully gone through the record of the case and submissions made. 1 note that the contention of learned counsel for the appellant that earlier similar goods were allowed for clearance has not been contested by Revenue I also note that the appellants have re-exported the goods. I also have gone through the final order in the above stated case of Siemens Public Communication Networks Ltd. For the sake of ready reference, paragraphs 5 & 6 of the said final order are reproduced below*
>
> *5. We have heard the submissions made from both the sides. During the course of the arguments the ld. adv appearing for the appellant made it clear that the appellants have opted for recxport of the goods. Accordingly they have challenged the order of the Commissioner imposing a redemption fine and penalty for the said re-export, which according to the appellants is not permissible to be imposed in view of the various case laws relied upon by them. It is seen that in the case of Siemens Lid. v. CC-1999 (113) ELT 776 (SC.) their Lordships have held that since goods have been allowed to be re-exported, neither redemption fine nor duty was required to be paid. The Tribunal in the case of HCL Hewlett Packard Ltd. -1997 (92) E.LT 367 (1) has held that no redemption fine is imposable when reexport of the goods is allowed. To the same effect is the decision of the Tribunal in the case of Padia Sales Corpn. v. CC-1992 (61) ELT. 90 and in the case of Skantrons (P) Ltd.-1994 (70) ELT 635 We further find that the Tribunal in the case of G.V International and Another-2000 (118) ELT 5172000 (39) RLT 272 following the earlier decisions of the Tribunal, has set aside the orders passed by the lower authorities ordering confiscation of goods and their release on payment of*

redemption fine and penalty. Further in the case of Commissioner of Customs Calcutta v J.V. (P) Ltd. 2000 (39) RLT 1074, the order of the lower authorities allowing re-export of the goods without fine and penalty was upheld.

6. As discussed above the issue is squarely covered in favour of the appellants by the various decisions of the Tribunal and the Hon ble Supreme Court. Inasmuch as the Commissioner vide his impugned order has given an option to the appellants to re-ship the goods back to the supplier, we hold that the redemption fine and the penalty imposed by him was not justified. We accordingly set aside the same and allow re-export of the consignment in question without any redemption fine or penalty or duty. Appeal is thus allowed in above terms."

As can be seen from the findings and order in the precedent decision of this Tribunal in the case of Siemens Public Communication Networks Ltd. when the goods are allowed to be re-exported, neither redemption fine nor duty was required to be paid. At the same time, penalty is also not to be imposed on the importers. I, therefore, hold that penalties imposed in these six appeals are not justified. 1, therefore, set aside all the penalties imposed under Section 112(a) of Customs Act, 1962."

(Emphasis Supplied)

E.4. *Further, the Hon'ble Tribunal of Chennai in the case of M/s. Perfect Trading Company v. CC (Air), Chennai, 2022 (2) TMI 631-CESTAT CHENNAI following the decision in the case of Seimens (supra) set aside the penalties imposed on the Appellant therein. Similar view was taken by the Hon'ble Tribunal of Chennai in the case of M/s. SDS Ramcides Crop Science Pvt. Ltd. v. CC, Chennai- II, 2023 (7) TMI 891-CESTAT CHENNAI.*

E.5. *The Ld. Additional Commissioner at Para 13 of the Impugned Order has placed reliance on CBEC Circular No. 745/61/2003-CX dated 16.09.2003 and observed that penalty can be imposed on the Appellant even if the subject goods have been re-exported by the Appellant.*

E.6. *In this regard, the Appellant submits that the various decisions have been passed that favour the Appellant after the issuance of the aforesaid Circular. Therefore, the Ld. Additional Commissioner has erred in ignoring the same. Moreover, it is submitted that decision of CESTAT would prevail over the CBEC Circular Therefore, reliance on the said Circular is erroneous*

E.7 *The Appellant, in view of the decisions cited above, humbly avers that the decision to impose penalty under Section 112(a) of the Customs Act, 1962 and redemption fine under Section 125 of the Customs Act, 1962 is erroneous considering the fact that the Department had allowed provisional release of the subject goods only for the purpose of re-export and the same has been done by the Appellant. Thus, the Impugned Order is liable to be set aside on this ground itself.*

PESONAL HEARING:-

4. Personal hearing in the matter was held on 18.12.2025, wherein Shri Mukul Sharda, Associate Director, Indirect Tax and Shri Varenyam Shastri, Assistant Manager, Indirect Tax attended personal hearing on behalf of the Appellant in virtual mode and he reiterated the submissions made in appeal memorandum. They also filed additional submission which is the reiteration of their defence submission filed in their appeal.

DISCUSSION & FINDINGS:

5. Before going into the merits of the case, it is observed from Form C.A.-1 that the impugned order dated 09.01.2025 is shown to be received on 09.01.2025 and the present appeal has been filed on 07.03.2025. Thus, the appeal has been filed with in the normal period of 60 days prescribed for filing an appeal.

5.1 It is further observed that the appellant, with respect to the payment of mandatary pre-deposit for filing appeal, has submitted that they have paid Rs. 30,000/- vide challan 06.03.2025 which fulfil the requirement of pre deposit under the provisions of Section 129E of the Customs Act, 1962.

5.2 As the appeal has been filed within the stipulated time-limit under Section 128 of the Customs Act, 1962 and with fulfilling the requirement of mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal. One set of the appeal memorandum has forwarded to the adjudicating authority for comments vide this office letter dated 03.04.2025, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. I have carefully examined the impugned order, the Appeal Memorandum filed by the appellant, the written and oral submissions made during the course of personal hearing, and the documents available on record. The issue that arises for consideration in the present appeal is whether, in the facts and circumstances of the case, the adjudicating authority was justified in holding the imported goods liable for confiscation under the provisions of the Customs Act, 1962, and in imposing redemption

fine thereon, as well as penalty under Section 112(a)(i) of the Act, and whether such findings are legal, proper, and justified in light of the evidence available on record.

6.1. It is observed that the appellant filed Bill of Entry No. 2390140 dated 02.03.2024 at Air Cargo Complex, Ahmedabad for import and clearance of goods namely "Enoxaparin Sodium" for home consumption. The import of the said goods is governed by the provisions of the Drugs and Cosmetics Rules, 1945. The matter was referred to CDSCO for grant of No Objection Certificate (NOC). However, CDSCO did not grant NOC on the ground that the residual shelf life of the imported goods was less than 60% at the time of import. Consequently, the goods were held to be in contravention of Rule 31 of the Drugs and Cosmetics Rules, 1945. The goods were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 05.06.2024. Subsequently, the goods were provisionally released for re-export subject to execution of bond and furnishing of bank guarantee. In the instant case, the SCN dated 10.06.2024 was adjudicated by the authority, who confirmed the allegations set out in the said notice.

6.2 It is an admitted fact on record that the impugned goods, at the time of import, had residual shelf life of less than 60%. Further, it is also not in dispute that the clearance of such goods required a No Objection Certificate (NOC) from CDSCO, which was not granted in the present case on account of non-compliance with the prescribed shelf life requirement. The plea of the appellant that they were not aware of the requirement of minimum 60% residual shelf life is not tenable, as the importer is under a statutory obligation to ensure compliance with all applicable laws governing import of goods.

6.2.1 I find that Rule 31 of the Drugs and Cosmetics Rules, 1945 mandates that no drug shall be allowed to be imported into India unless it has a residual shelf life of not less than sixty percent (60%) on the date of import. In the present case, the impugned goods admittedly did not satisfy the said mandatory condition. Therefore, the import of the subject goods was in clear contravention of the provisions of Rule 31 of the Drugs and Cosmetics Rules, 1945.

6.2.2 In view of the above contravention, I find that the impugned goods fall within

the ambit of Section 111(d) of the Customs Act, 1962, which provides that any goods imported or attempted to be imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation. In this regard, I also take note of the definitions under Section 2(23) and Section 2(33) of the Customs Act, 1962, wherein "import" means bringing goods into India from a place outside India, and "prohibited goods" include goods the import of which is subject to any prohibition under any law for the time being in force, where the conditions of such import have not been complied with.

6.2.3 In the present case, since the mandatory condition of minimum residual shelf life prescribed under Rule 31 has not been fulfilled, the impugned goods are rightly classifiable as "prohibited goods" for the purpose of import. The restriction imposed under the said Rule operates as a prohibition. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Sheikh Mohd. Omer v. Collector of Customs, Calcutta [1983 (13) ELT 1439 (S.C.)], wherein it has been held that the expression "prohibition" includes both complete and partial prohibitions, and that any restriction on import would amount to prohibition. This view has also been affirmed by the Hon'ble Gujarat High Court in Bhargavraj Ramesh Kumar Mehta v. Union of India [2018 (361) ELT 260 (Guj.)].

Therefore, I hold that the impugned goods, having been imported in contravention of Rule 31 of the Drugs and Cosmetics Rules, 1945, are liable for confiscation under Section 111(d) of the Customs Act, 1962.

6.2.4 As regards the contention of the appellant that the goods were subsequently re-exported and hence should not be subjected to confiscation and penalty, I find that the same is devoid of merit. It is a settled legal position that liability to confiscation is determined with reference to the time of importation. Subsequent re-export of goods does not obliterate the initial illegality of import. In the present case, the appellant had filed the Bill of Entry for home consumption, thereby clearly indicating intent to clear the goods into the domestic market, despite non-compliance with statutory requirements.

6.2.5 Further, I note that the impugned goods were seized under Section 110 of the Customs Act, 1962 and were subsequently provisionally released for the limited

purpose of re-export upon execution of bond and furnishing of bank guarantee. Such provisional release does not absolve the importer of the consequences arising from improper importation.

6.3 Coming to the issue of penalty, I find that Section 112(a)(i) of the Customs Act, 1962 provides for imposition of penalty on any person who, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation under Section 111. In the present case, by importing goods in contravention of the mandatory provisions of Rule 31 of the Drugs and Cosmetics Rules, 1945, the appellant has rendered the goods liable to confiscation under Section 111(d) of the Act.

6.3.1 The contention of absence of mala fide intent is also not acceptable in the facts of the case. It is well settled that penalty under Section 112(a) is attracted for acts or omissions which render goods liable to confiscation, irrespective of intent, particularly where statutory compliance is mandatory in nature. The appellant, being a pharmaceutical importer, is expected to be fully aware of the regulatory framework governing such imports.

6.3.2 I further find support from CBEC Circular No. 745/61/2003-CX dated 16.09.2003, issued in the light of the Hon'ble Supreme Court judgment in Collector of Customs, Bombay v. M/s. Elephanta Oil and Industries Ltd. [2003 (152) ELT 257 (S.C.)], wherein it has been categorically held that confiscation of goods followed by permission to re-export does not preclude imposition of penalty under Section 112 of the Customs Act. The Hon'ble Supreme Court has clarified that the power to impose penalty under Section 112 is distinct from the power to confiscate goods under Section 111 and to allow redemption under Section 125, and both operate in separate fields.

6.4 Accordingly, I conclude that the adjudicating authority has rightly held the impugned goods liable for confiscation under Section 111(d) of the Customs Act, 1962 and has correctly imposed penalty under Section 112(a)(i) of the Act. The findings of the adjudicating authority are legal, proper, and justified in the facts and circumstances of the case.

7. In view of the foregoing discussion and findings, it is observed that a Show Cause Notice dated 10.06.2024 was duly issued and the same was adjudicated by the competent authority after following the prescribed procedure. The adjudicating authority has rightly appreciated the facts and evidence on record and has correctly confirmed the allegations contained in the said notice. I do not find any infirmity, illegality, or impropriety in the impugned order. Accordingly, the impugned order is upheld in toto and the present appeal filed by the appellant is hereby rejected.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-319/CUS/AHD/2024-25 Date: 30.03.2026

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

To,

M/s Troikka Pharmaceuticals Ltd,
Survey No.: 791 & 792,
Taluka-Kadi, Sanand-Kadi Road,
Thol, Guajarat

Regd. Office:

M/s Troikka Pharmaceuticals Ltd,
"Commerce House-1", Satya Marg, Bodakdev,
Ahmedabad-380 054.

troikaa@troikaapharma.com
prakashgirigosai@troikaapharma.com / jigneshpandit-exim@troikaapharma.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 Additional Commissioner of Customs, Air Cargo Complex, Ahmedabad. (email: aircargo-amd@gov.in cus-ahmd-adj@gov.in)
4. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad. (accusacc@gmail.com
5. Shri Mukul Sharda , Associate Director and Shri Varenayam Shastri, Assistant Manager on behalf of M/s Troikka Pharmaceuticals (MukulSharda@bdo.in VarenyamShastri@bdo.in)
6. Guard File.