



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,अहमदाबाद

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

चौथीमंज़िल 4th Floor, हडकोभवनHUDCO Bhawan, ईश्वरभुवनरोड़Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260171MN0000887658

क	फ़ाइलसंख्या FILE NO.	S/49-227/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-643-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	21.01.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/AK/129/2024-25 dated 28.08.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	21.01.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Vipin Sharma , (the then Preventive Officer at Mundra Customs House) Presently posted at CGST & CE Commissionerate, Surat



1	यह प्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै।
	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, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं।
	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)	बैगेज़केरूपमेंआयातितकोईमाल।
(a)	any goods exported
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो।
(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.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी 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, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए।
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 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/- (रूपएएकहज़ारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोएसेफीसकेरूपमेंरु.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.	<p>मदसं. 2</p> <p>केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p> <p>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 :</p>
	<p>सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p> <p>दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016 2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>
5.	<p>सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</p> <p>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 -</p>
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहज़ाररूपए.
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, अपीलरखाजाएगा।
(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.	<p>उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क)</p> <p>रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख)</p> <p>अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p>
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>

ORDER-IN-APPEAL

Shri Vipin Sharma, the then Preventive Officer, Mundra Customs House, currently posted at CGST, Central Excise, Surat Commissionerate, Surat (hereinafter referred to as "the appellant"), has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-In-Original No. MCH/ADC/AK/129/2024-25 dated 30.08.2024 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner of Customs, Customs House, Mundra, Kutch (hereinafter referred to as "the adjudicating authority").

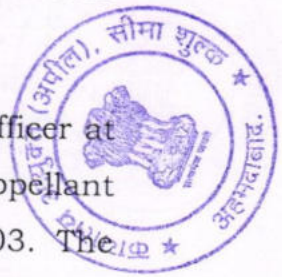
2. Briefly stated, the facts of the case in brief are as follows:

2.1 Intelligence gathered by the DRI, Gandhidham, indicated that a smuggling cartel was involved in the importation of mis-declared and prohibited goods, including e-cigarettes and toys requiring BIS compliance, by concealing them in consignments declared as permissible items. The investigation identified various importers involved in this racket, including M/s. Aditi Trading Company (IEC No. AZHPR0377B).

2.2 Based on this intelligence, two import consignments belonging to M/s. Aditi Trading Company were investigated. One consignment, imported in Container No. TEMU6643503, was covered by Bill of Entry No. 2013050 dated 30.08.2022. The goods were declared as "Vegetable Slicer, Foot Pump, Mobile Holder, Hair Dryer" etc.

2.3 The Appellant, Shri Vipin Sharma, was posted as a Preventive Officer at Mundra SEZ at the material time. It is a matter of record that the Appellant had examined the said consignment in Container No. TEMU6643503. The examination order given by the Appraising Officer was to "Check the goods, Inspect the lot. Check description, Qty., w.r.t. Invoice and P/L." The Appellant submitted an examination report stating: "Examined as per SEZ Norms, Examined the goods. Inspected the Lot. Checked description, Qty, w.r.t. Invoice and P/L."

2.4 Subsequently, the DRI conducted a re-examination/detailed examination of the goods. It was found that apart from the declared goods, the container concealed undeclared/mis-declared items, including 30,000 pieces of "Dancing Cactus (Toys)" and other items like small water bottles, which were not



declared in the Bill of Entry. The toys were found to be prohibited for import due to non-compliance with the Bureau of Indian Standards (BIS) norms (Quality Control Order).

2.5 A Show Cause Notice dated 31.08.2023 was issued to the importer and various persons, including the Appellant. The allegation against the Appellant was that he failed to examine the goods properly despite directions, which led to the clearance/attempted clearance of mis-declared and prohibited goods. It was alleged that his negligence rendered the goods liable for confiscation and himself liable for penalty under Section 112(a) of the Customs Act, 1962.

2.6 The Adjudicating Authority adjudicated the case vide the impugned order wherein he observed that while the investigation agency DRI "failed to bring forth the outright connivance of Shri Vipin Sharma," the Appellant had submitted the examination report without due diligence and application of mind. Consequently, he ordered as under:

- (i) He imposed a penalty of Rs. 50,000/- on the Appellant under Section 112(a)(ii) of the Customs Act, 1962.
- (ii) He further imposed a penalty of Rs. 1,00,000/- on the Appellant under Section 112(a)(i) of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal contending, inter alia, as under:

3.1 The Appellant contends that the imposition of penalty under Section 112(a) is legally unsustainable as there is no evidence of mens rea, connivance, or deliberate abatement on his part. He relies on the Adjudicating Authority's own finding in Para 26.12(iv) of the impugned order, which explicitly states that the DRI "failed to bring forth the outright connivance" of the Appellant. The Appellant argues that without knowledge or intent to smuggle, penal provisions for abetment cannot be invoked against a customs officer performing statutory duties.

3.2 The Appellant contends that he strictly followed the examination norms prescribed for Special Economic Zones. He relies on Rule 75 of the SEZ Rules, 2006, which stipulates that inward/outward movement shall be based on self-declaration and that "no routine examination" shall be made unless specific orders are obtained from the Development Commissioner or Specified Officer.

3.3 It is further contended that the examination order issued to him was general in nature ("Check the goods, Inspect the lot. Check description, Qty., w.r.t. Invoice and P/L") and did not contain specific instructions for 100% examination or opening of all packages. He argues that he was not aware about any specific intelligence regarding the concealment of toys or mis-declaration in the said consignment. He cites CBIC Circular No. 92/2000-Cus dated 20.11.2000, which prohibits routine examination of SEZ cargo at the gateway port in absence of specific intelligence or specific orders from the AC/DC.

3.4 The Appellant asserts that assessing/examining 35-40 containers a day makes 100% examination of every package impossible and contrary to the facilitation measures inherent in the SEZ scheme. Therefore, conducting examination "as per SEZ norms" was the correct procedure, and holding him liable for goods concealed inside other packages is unjust and in violation of the Rule 75 of SEZ Rules 2017 and Board's directions under Circular 92/2000-Cus.

3.5 The Appellant also claims protection under Section 155 of the Customs Act, 1962, arguing that his actions were performed in good faith in the discharge of his official duty, and therefore, no legal proceeding (including penalty) should lie against him.

3.6 The appellant, in support of his contentions, has relied on several judicial precedents, including: Amritlakshmi Machine Works vs. Commissioner of Customs (Import), Mumbai [2016 (335) E.L.T. 225 (Bom.)] regarding the necessity of *mens rea* for invoking Section 112(a); Shri C.S. Prasad vs. Additional Director General [2022 (11) TMI 1237 - CESTAT Mumbai] concerning the jurisdiction of Customs authorities over dereliction of duty by officers; Amit Ghosh vs. Commissioner of Customs (Preventive), Kolkata [Customs Appeal No. 75232 of 2022] regarding the protection under Section 155 of the Customs Act; and Minkart India Pvt. Ltd. [HC-2019 (BOM)-VAT] regarding the requirement of a speaking order.

PERSONAL HEARING:

4. Shri Ashok Israni, Consultant, appeared for the personal hearing on 07.11.2025, on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and emphasized the finding of the Adjudicating Authority regarding the absence of connivance.



DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case available on record, the grounds of appeal, submissions made by the appellant at the time of filing the appeal and during the personal hearing, and the impugned order passed by the adjudicating authority. The primary issue to be decided in the present appeal is whether the imposition of penalties under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962 on the Appellant, a Customs Officer, is sustainable in law, particularly in light of the finding by adjudicating authority that the DRI "failed to bring forth the outright connivance" of the Appellant.

5.1 The primary contention raised by the appellant is that the imposition of penalty under Section 112(a) of the Customs Act, 1962, is legally untenable because the adjudicating authority itself recorded a finding that there was no "outright connivance" on his part. The appellant argues that Section 112(a) requires mens rea (guilty mind) or active abetment, neither of which was established.

5.1.1 I find considerable merit in this contention. A plain reading of Section 112(a) indicates that it penalizes a person who does or omits to do an act which renders goods liable to confiscation, or abets such an act. In the context of a Customs Officer discharging statutory duties, penal liability under this section generally necessitates a finding of conscious knowledge or active facilitation of the offence (abetment). In the impugned order, at Para 26.12(iv), the adjudicating authority explicitly observed: "**I find that the investigation agency DRI failed to bring forth the outright connivance of Shri Vipin Sharma in relation to impugned goods.**" Despite this categorical finding exonerating the appellant of connivance, the authority proceeded to impose penalties based on a finding of negligence. It is a settled legal principle, as held by the Hon'ble Bombay High Court in *Amritlakshmi Machine Works vs. Commissioner of Customs*, that while the first part of Section 112(a) may impose strict liability on the importer, its application to other persons (such as officers or facilitators) requires the establishment of *mens rea* or knowledge. Furthermore, the Hon'ble CESTAT (West Zonal Bench, Ahmedabad), vide Final Order No. 13094-13108/2024 dated 05.12.2024, has categorically held that a penalty under Section 112(a) of the Customs Act, 1962 is not sustainable in the absence of evidence establishing "knowledge" or "reason to believe" that the



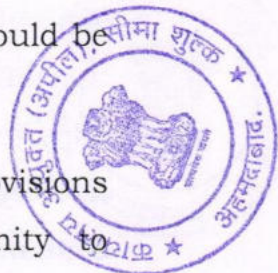
goods were liable to confiscation. Since the adjudicating authority has acknowledged the absence of connivance, the essential ingredient for imposing a penalty under Section 112(a) is missing.

5.2 The appellant has further argued that he performed the examination in accordance with Rule 75 of the SEZ Rules, 2006 and CBIC Circular No. 92/2000-Cus dated 20.11.2000. He submits that in the absence of specific intelligence and specific orders from the Development Commissioner or Specified Officer or Assistant/Deputy Commissioner, a 100% examination of SEZ cargo is not mandated, and clearances are primarily based on self-declaration.

5.2.1 Upon perusal of the relevant rules and circulars, I find that Rule 75 of the SEZ Rules indeed emphasizes that the movement of goods is based on self-declaration and routine examination is not to be conducted unless specific orders are obtained. The examination order issued to the appellant was general in nature—"Check the goods, Inspect the lot. Check description, Qty., w.r.t. Invoice and P/L" —and did not contain any specific direction to open every package or conduct a 100% examination. The appellant submitted a report stating, "examined as per SEZ Norms, Examined the goods. Inspected the Lot. Checked description, Qty, w.r.t. Invoice and P/L ". In the absence of any specific alert or intelligence shared with the officer at that time, limiting the examination to a representative lot "as per SEZ norms" cannot be construed as an act of abetment to smuggling or negligence of duty. Penalizing an officer for not conducting a 100% examination, when the governing circulars and rules expressly discourage routine detailed examination to facilitate trade, would be contradictory to the established legal framework.

5.3 The appellant has also claimed statutory protection under the provisions of Section 155 of the Customs Act, 1962, which grants immunity to Government officers for acts done in "good faith" in pursuance of the Act.

5.3.1 Upon perusal of the relevant provision, I find that Section 155 is designed to protect officers from legal proceedings for actions taken in the honest discharge of their duties. Given the adjudicating authority's own finding that there was no connivance, it follows that the appellant's actions, even if arguably negligent, were not malicious and fall within the ambit of "good faith."



5.4 Finally, the appellant has argued that allegations of mere negligence or dereliction of duty fall within the domain of disciplinary proceedings under the CCS (Conduct) Rules, rather than penal proceedings under the Customs Act.

5.4.1 I agree with the submission that the Customs Act, 1962, is not the appropriate statute to punish a Customs Officer for administrative lapses or negligence where no mens rea or abetment is proved. As held by the Hon'ble CESTAT in Shri C.S. Prasad, Shri Yogendra Singh Vs. Additional Director General Mumbai Adj., (2022 (11) TMI 1237 - Cestat Mumbai), charges of dereliction of duty cannot be adjudicated in terms of the provisions of the Customs Act, 1962, and must be considered as per CCS Rules. Since the charge of "abetting" has not been sustained by positive evidence, and connivance has been expressly ruled out by the adjudicating authority, the imposition of a penalty under Section 112 for alleged negligence exceeds the jurisdiction of the adjudicating authority in this context.

5.5 In view of the above, I find that the imposition of penalties on the appellant is legally unsustainable. The findings of the adjudicating authority suffer from a contradiction where the appellant is exonerated of connivance yet penalized for abetment. The appellant acted within the framework of the SEZ Rules and is entitled to the protection of Section 155 of the Customs Act, 1962.

6. In light of the aforesaid findings and observations, the impugned Order-In-Original No. MCH/ADC/AK/129/2024-25 dated 30.08.2024, passed by the Additional Commissioner of Customs, Customs House, Mundra, is set aside insofar as it relates to the imposition of penalties on the appellant, Shri Vipin Sharma.

The appeal filed by the Appellant, Shri Vipin Sharma, is allowed with consequential relief, if any, in accordance with law.



(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

By Speed post /E-Mail

To,

(1) Shri Vipin Sharma ,
(the then Preventive Officer at Mundra Customs House)
CGST & CE Commissionerate, Surat.
(Email:-vipin.g20130@gmail.com)

(2) Sai Tax Law, 4th Floor,
4D Square Mall, Visat Gandhinagar Road,
Nr Visat Circle, Motera,
Ahmedabad-380005
(Email-sitaxconsultant.org@gmail.com)



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.