सत्यमेव जयते

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20260371MN000000E832

क	फ़ाइल संख्या FILE NO.	S/49-353/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-905-25-26
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.	Order-in-Original no. MCH/ADC/AK/205/2024-25 dated 27.11.2024
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. Kalpana Exim, Office No. B-11, Hotel Indraprasth, Near Shakti Nagar Circle, Adani Port Road, Mundra (K) – 370 421.

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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध 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/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	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 **129** ए **(1)** के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार 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

Appeal has been filed by M/s. Kalpana Exim, Office No. B-11, Hotel Indraprasth, Near Shakti Nagar Circle, Adani Port Road, Mundra (K) – 370 421, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/205/2024-25 dated 27.11.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority ').

2. Facts of the case, in brief, are that the present matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. Nikhat Enterprises.

2.2 The specific focus of the impugned OIO involves the activities surrounding a consignment imported by M/s. Nikhat Enterprises (IEC: ANDPB0477C) via Container No. NYKU0844232. In a calculated and professional attempt to bypass automated risk management systems (RMS) and standard regulatory scrutiny, the goods were initially declared in the Import General Manifest (IGM) as "Floor Clean Mop (Misc Item Non-popular Brand)" under HS Code 96039000. This specific HS code was selected by the syndicate for its low duty profile and the physical volume of the product, which provided ample "void space" for the concealment of high-value contraband.

2.3 When filing the Warehouse Bill of Entry (No. 1011448 dated August 25, 2022), the syndicate slightly adjusted the declaration to include "Back Cover, Exercise Book, and Tempered Glass," creating a "mixed-merchandise" profile. This profile was designed to deter customs officers from conducting a full de-stuffing, as mixed consignments are often perceived as standard low-risk consumer imports. The container was processed through the Mundra SEZ warehouse unit M/s. Empezar Logistics Pvt. Ltd., which, rather than serving its intended statutory purpose for value-addition, manufacturing, or legitimate storage, acted as a high-speed transit point or "revolving door." This facility was utilized to rapidly facilitate the diversion of goods into the Domestic Tariff Area (DTA) under DTA Bill of Entry No. 2012900 dated August 26, 2022, after which the cargo was immediately dispatched to a decentralized distribution hub in Bhiwandi, Maharashtra.

2.4 The investigative trail, supported by GPS tracking and statement analysis, led DRI officers to the Madhvi Compound godowns in Village Rahanal, Bhiwandi. This location was strategically chosen by the cartel for its proximity to major transportation routes serving the Mumbai Metropolitan Region, allowing for rapid "last-mile" distribution to retailers. During the course of investigation, the driver of the transport vehicle (Registration No. GJ-12 BT-4667), Shri Poona, provided a comprehensive voluntary statement under Section 108 of the Customs Act, 1962. His testimony provided an insider's view of the operation, detailing how he received real-time location coordinates and voice instructions via WhatsApp, directing him to offload the cargo from Container No. NYKU0844232 at these specific premises under the cover of night on August 31, 2022.

2.5 During search conducted on September 2, 2022, at Gala Nos. 5, 6, and 7—warehouses managed by the associate Shri Parwej Alam—officers recovered 12 leftover cartons containing 9,600 pieces of "Yuoto" brand e-cigarettes (specifically the XXL 2500 Puffs Disposable Vape model). These items were found hidden behind voluminous stacks of "cover goods," including mops, exercise books, and plastic chocolate moulds. The recovery of these goods highlighted a severe and intentional breach of the Prohibition of Electronic Cigarettes Act, 2019. Consequently, the recovered 9,600 pieces were placed under absolute seizure as prohibited contraband.

2.6 The investigation unearthed a structured syndicate masterminded by Shri Asif Sathi, a Mumbai-based operative who exercised absolute control over the network's financial, logistical, and communicative architecture. Shri Sathi's modus operandi relied on the systematic exploitation of economically vulnerable individuals to serve as "dummy" proprietors for front entities. Mrs. Nikhat Baig, the declared proprietor of M/s. Nikhat Enterprises, admitted in her statement that she was merely an "on-paper" owner with no knowledge of the firm's actual imports, suppliers, or bank accounts. She had been induced by an intermediary named Shri Kishore to provide her KYC documents, PAN, and Aadhaar, and to sign multiple blank forms in exchange for a nominal fee, which was presented to her as a facilitation fee for a bank loan. This tactic created a legal shielding Shri Sathi from direct culpability and allowing the cartel to burn through IECs once they were compromised. The mastermind coordinated these imports with key associates, including Shri Sarfaraz Kamani and Shri Mohammed Tahir Menn. Together, they managed an "end-to-end" chain that originated with suppliers in China—often managed through shadow entities like M/s. AH International Trading Co. Limited and M/s. HK Longcheng Trade Co. Limited—and concluded with a network of domestic buyers such as Sohail Bhai and Raju Bhai, who specialized in the distribution of contraband into the grey market.

2.7 A critical component of this scheme was the role played by Shri Baldevsinh Vala of M/s. Kalpana Exim, who functioned as the syndicate's primary forwarder, logistics manager, and "fixer" at Mundra Port. Forensic analysis of messages of WhatsApp group "Mm" revealed that Shri Vala was instrumental in the fabrication and manipulation of shipping documents. He would routinely receive original invoices from Chinese suppliers and then alter them to ensure they matched the false, low-value declarations intended for the Bills of Entry. Furthermore, the syndicate employed a tactical "crossing" of containers—a sophisticated counter-surveillance maneuver where goods were de-stuffed and re-loaded into different domestic vehicles immediately after customs clearance but before leaving the port vicinity. This was designed to generate fresh e-way bills with new vehicle numbers, effectively "cleaning" the cargo of its import history. By doing so, the syndicate effectively broke the digital audit trail, making it nearly impossible for enforcement agencies to link the original import container at Mundra to the final delivery point in Bhiwandi.

2.8 Shri Samir Sharma, a G-Card holder of M/s. Al Cargo Services, filed the false Bills of Entry. He conspicuously and willfully neglected the mandatory due diligence on IEC holders required under the Customs Broker Licensing Regulations (CBLR). Rather than acting as a gatekeeper of the law, he served as a professional enabler, receiving payments ranging from ₹2.5 lakh to ₹3 lakh per consignment for his cooperation.

2.9 Finally, the DRI noted a failure in the regulatory oversight provided by the Customs Preventive Officer, Shri Vipin Sharma. Despite receiving explicit, system-generated examination orders to "examine as per SEZ norms and check description and packages with respect to invoice and packing list," the officer submitted a cursory and misleading report claiming the cargo matched the declarations. This "casual approach" was not merely a procedural lapse; it was the final, critical gap in the safety net that allowed prohibited contraband to flow into the domestic market. The implications of such failures are profound, as they compromise the integrity of the entire SEZ framework, which relies heavily on the trust and diligence of its officers to prevent the leak of goods into the DTA.

2.10 Regarding the valuation of the seized goods, the total absence of a legal market meant that traditional valuation methods were inapplicable. Consequently, the DRI utilized internet-based pricing from the official "Yuoto" brand website (www.yuoto.in), which listed the product at a retail price of ₹2,499 per unit. This valuation brought the total market value of the seized 9,600 pieces to a staggering ₹2,39,90,400. The department has alleged that these goods are liable for absolute confiscation under multiple sub-sections of Section 111 of the Customs Act, 1962, including 111(d) for the violation of absolute prohibitions, 111(f) for non-mention in manifest, and 111(m) for the deliberate and mala-fide mis-declaration of quantity, value, and description.

2.11 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:

- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.
- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.12 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.13 On the basis of the investigation, Show Cause Notice was issued to M/s. Nikhat Enterprise and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. Nikhat Enterprise and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The Adjudicating Authority passed the following order in respect of the appellant.

(I) He imposed penalty of Rs. 3,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.

(II) He imposed penalty of Rs. 1,00,000/- upon the appellant under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner,

Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant contends that the impugned order is a non-speaking order because it fails to address the specific grounds and arguments advanced during the initial adjudication. Furthermore, the appellant argues that the principles of natural justice were violated when the Adjudicating Authority "brushed aside" requests for the cross-examination of key individuals, including Shri Asif Sathi and Shri Baldevsinh Vala, without providing any findings or justification. The investigation is also challenged on the basis that it was conducted without recording the appellant's statement, thereby making allegations regarding the imported goods behind their back.

3.2 A primary defense raised is that the Adjudicating Authority failed to prove the appellant's direct involvement in the import or clearance activities of the goods in question. The appellant asserts there is no evidence—such as WhatsApp messages or inculpatory statements—linking them to the goods or showing they had prior knowledge of the actual nature of the items imported by M/s. Nikhat Enterprises. Without proof of an omission or commission that rendered the goods liable to confiscation, the appellant maintains they cannot be held liable for penalties under Section 112 or Section 114AA of the Customs Act.

3.3 The appellant points out a significant factual contradiction regarding the timeline of the seizure. The notice alleges that 12 cartons of e-cigarettes were unloaded at a godown on August 31, 2022, and were covered by a Bill of Entry dated August 26, 2022. However, the appellant cites a statement from a representative of the beneficiary claiming the goods were actually leftover stock unloaded on September 9, 2022. This anomaly suggests the goods were allegedly unloaded even before the Bill of Entry was filed, leading the appellant to argue that the notice is misdirected and the goods were not actually covered by the specified documentation.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.12.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant,

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 The Appellant has attempted to create a shadow of doubt regarding the timeline of the seizure. However, the records indicate that the container NYKU0844232 arrived at Mundra and was cleared for DTA on 26.08.2022. The truck driver, Shri Poona, explicitly stated that he unloaded the cargo at Asif Sathi's Bhiwandi godown. The seizure of the leftover 9,600 E-cigarettes from that very godown on 02.09.2022 is a logical continuation of the investigation.

5.2 The investigation has unearthed a deep-rooted conspiracy where the Appellant, M/s Kalpana Exim, was not merely a passive forwarder but a strategic architect. The authorized signatory, Shri Baldevsinh Vala, in his statement under Section 108, admitted to coordinating the entire clearance process. He was the bridge between the mastermind (Asif Sathi) and the Customs Broker. The argument that they had no "occasion to deal with the goods" is legally hollow. Section 112(b) applies to any person who is "in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with" goods liable to confiscation.

5.3 The Appellant has vehemently argued that they cannot be held liable under Section 112 because they never had physical possession of the illicit goods. I find this interpretation of the law to be fundamentally flawed and restrictive. Section 112 of the Customs Act, 1962, provides for penalties for the improper importation of goods. Specifically, Section 112(a) penalizes 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. Section 112(b) penalizes any person who acquires possession of or is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

5.4 The term "abetment" under Section 112(a) is not defined in the Customs Act but takes its meaning from the Indian Penal Code (IPC). Abetment involves instigating, engaging in a conspiracy, or intentionally aiding the commission of an act. In the present case, M/s Kalpana Exim did not just "provide a service"; they intentionally aided the smuggling syndicate. The Appellant was instrumental in identifying and utilizing IECs like M/s Exemplar Trading and M/s Nikhat Enterprises, knowing fully well that these were "fronts" for the actual beneficial owner, Shri Asif Sathi. By providing the mechanism for the import, they abetted the entry of prohibited goods. The act of receiving original documents from China and then "filtering" or "modifying" them to ensure the mis-declaration of E-cigarettes as "Floor Clean Mops" is a classic example of intentional aid.

5.5 The Appellant's defense centers on the lack of physical handling. However, the phrase "in any way knowingly concerned... or in any other manner dealing with" is designed by the legislature to catch participants in a smuggling chain who may never touch the goods but are vital to the operation's success. In the landmark case of **Collector of Customs, Madras vs. D. Bhoormull [1983 (13) ELT 1546 (SC)]**, the Hon'ble Supreme Court held that in cases of smuggling, direct evidence is seldom available, and the Department is not required to prove its case with "mathematical precision." The court emphasized the "preponderance of probability" and noted that the surrounding circumstances, the conduct of the parties, and the nature of the transaction must be considered as a whole.

5.6 The "knowledge" of the Appellant is proven by the investigation retrieved chats where the Appellant's representative discussed the specific method of "stuffing" the container. Instructions were given to place the E-cigarettes at the back and the "cover load" (mops) at the front to avoid detection during a potential partial check. No "innocent" forwarder engages in discussions regarding concealment strategies. The Appellant shared tracking links and coordinated the movement of the specific truck (No. GJ 12 BT 4667) that transported the illicit cargo to the Bhiwandi godown. The receipt of "extra" commissions beyond standard forwarding charges (ranging from ₹15,000 to ₹50,000) further indicates that the Appellant was being compensated for the risk associated with handling prohibited cargo. Here, the Appellant's role was even more critical—they ensured the goods cleared the port of entry.

अपील आयुक्त (अपील) सीमा शुल्क अहमदाबाद

5.7 The Appellant's contention that they were "merely following instructions" is negated by their active participation in the conspiracy as evidenced by the WhatsApp communications. Therefore, I hold that the Appellant was "knowingly concerned" in the illicit importation of E-cigarettes, a prohibited item under the Prohibition of Electronic Cigarettes Act, 2019. Their actions directly facilitated the evasion of prohibitions and the defrauding of the exchequer, making them squarely liable for penalty under Section 112(a)(i).

5.8 Section 114AA was specifically introduced to penalize the use of false and incorrect material in the transaction of business. The investigation revealed that Shri Baldevsinh Vala (for M/s Kalpana Exim) forged/manipulated invoices received from China to reflect "Floor Clean Mops" instead of the actual prohibited E-cigarettes. This was done "knowingly and intentionally" to ensure the passage of the prohibited goods through the SEZ system. The Hon'ble CESTAT in various rulings has held that if a person causes the filing of a Bill of Entry with the knowledge that the description is false, Section 114AA is rightly invoked. The Appellant's contention that they merely "passed on documents" is rejected because they were aware of the actual contents and the illicit nature of the business.

5.9 The Appellant has retracted their statements, claiming coercion. It is a settled law that statements recorded under Section 108 of the Customs Act are admissible as substantive evidence and are not hit by Section 25 of the Evidence Act. In **Naresh Kumar Sukhwani vs. Union of India [1996 (83) ELT 258 (SC)],** the Apex Court held that a statement made before a Customs Officer under Section 108 is a material piece of evidence and can be used against the maker as well as co-accused. The retractions in the present case are mere afterthoughts. The statements of the Appellant are corroborated by Statements of the Mastermind (Asif Sathi), Statements of the godown in-charge (Parvej Alam), Digital evidence (WhatsApp chats and tracking links shared by the Appellant).

5.10 The Appellant alleges violation of natural justice. However, in quasi-judicial proceedings, cross-examination is not an absolute right. It is granted only if the adjudicating authority finds that it would help in uncovering the truth. Since the findings are based on a "mountain of evidence" including digital records and multi-layered corroborative statements, the denial of cross-examination does not vitiate the order. This is supported by the ruling in **Kanungo & Co. vs. Collector of Customs [1983 (13) ELT 1486 (SC)].**

5.11 The adjudicating authority correctly applied the ratio of D. Bhoormull regarding the "preponderance of probability" in smuggling cases. In the instant case, the "syndicate" nature of the operation makes individual physical possession irrelevant when the "intent" and "facilitation" are proven. I find that the adjudicating authority's reliance on these cases is legally sound.

5.12 The Appellant relied on cases suggesting that "forwarders are not liable for the acts of the importer." These cases are not applicable here because the Appellant in this case was not a "regular" forwarder. A regular forwarder does not discuss how to "conceal" goods in WhatsApp groups, manipulate invoices, arrange for "dummy" IECs for a fixed "clearing fee." The Appellant's involvement went far beyond professional services into the realm of criminal conspiracy.

5.13 The evidence gathered by the DRI clearly establishes that M/s Kalpana Exim was an integral part of a smuggling syndicate. Their actions were not limited to logistics but extended to the creation of dummy entities and the forgery of customs documents. The prohibition on E-cigarettes under the Prohibition of Electronic Cigarettes Act, 2019 and Notification No. 20/2015-2020 is absolute. Any person facilitating the breach of this prohibition renders themselves liable to the highest degree of penal action. The penalties imposed under Section 112(a)(i) and Section 114AA are proportionate to the gravity of the offence and the pivotal role played by the Appellant in the smuggling operation.

6. In view of the detailed discussion and findings above, I find no merit in the appeal filed by M/s Kalpana Exim. The findings of the Adjudicating Authority in the impugned order are correct, legal, and proper.

7. The appeal filed by M/s. Kalpana Exim is hereby rejected.

सीमा शुल्क आयुक्त (अपील), अहमदाबाद

सत्यापित/ATTESTED

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

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

F. No. S/49-353/CUS/MUN/2024-25

Date:30.03.2026

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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.