



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD  
 चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.  
 दूरभाष क्रमांक Tel. No. 079-26589281  
 DIN-20250671MN000000FF8D

क	फ़ाइल संख्या FILE NO.	S/49-424/CUS/AHD/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-89-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	19.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Order – In – Original No. 173/ADC/VA/ O&A/ 2023-24 dated 20.11.2023 passed by the Additional Commissioner of Customs, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Kanungo Ferromet Pvt. Ltd., Plot No. 4,5,6, Survey No. 239/ 1, Opp. Kishan Cement, Behind GEB Substation, Shapar (Veraval), Rajkot – 360 024.
1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है। This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं। Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary, Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखित सम्बन्धित आदेश/Order relating to :	





(क)	बैगेज 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 I item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेजों 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 जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रुपये दो सौ मात्र) या रु. 1000/- (रुपये एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर. 6 की दो प्रतियां, यदि शुल्क मांगा गया ब्याज लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-	
(d)	The duplicate copy of the T.R. 6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	





(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो: पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो: दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने मांगे गए शुल्क के 10 % अदा करने पर जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



**ORDER-IN-APPEAL**

M/s. Kanungo Ferromet Pvt. Ltd., Plot No. 4,5,6, Survey No. 239/ 1, Opp. Kishan Cement, Behind GEB Substation, Shapar (Veraval), Rajkot – 360 024 (hereinafter referred to as 'the appellant') has filed the present appeal against an Order-In-Original No. 173/ADC/VA/O&A/2023-24 dated 20.11.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Custom House, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that intelligence inputs received from National Customs Targeting Centre [NCTC], DGARM, CBIC, Mumbai dated 17.01.2022 indicated that based on a detailed risk analysis, NCTC have identified a Bill of Entry No. 9838766 dated 05.12.2020 filed by the appellant at ICD-Sanand to be a risky consignment in relation to mis-declaration with following details:

- M/s. Kanungo Ferromet Pvt. Ltd. had imported goods declaring them to be Stainless Steel Melting Scrap.
- The declared country of origin and Port of shipment was UAE.
- The container tracking on PICT (Pakistan International Container Terminal Limited) divulged that the container had originated from Pakistan. The seal which was mentioned on PICT website as being on the container was same as the seal number mentioned in IGM/ICES. Thus, the goods imported into India appeared to have originated in Pakistan. Hence, the country of origin declared by the importer appeared to be incorrect.
- The BCD for Pakistan origin goods is @200% applicable to all goods originating in or exported from the Islamic Republic of Pakistan (classifiable under CTH 98060000).
- The seal which had been mentioned on the container on PICT was the same as the seal number mentioned in IGM/ICES (Seal No. 098012). Thus, the goods imported into India originated in Pakistan.

3. Thus, it appeared that the importer had mis-declared the Country of Origin of the goods as UAE instead of actual Country of Origin i.e. Pakistan, to evade payment of Customs Duty.

4. During the inquiry / investigation, Statement of various persons of the Importer, Shipping line/agents and an Indian entity related to pre-shipment



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inspection agency etc. have been recorded and documents have been examined. Thereafter, a Show Cause Notice bearing F.No. VIII/10-144/ICD-SND/O&A/HQ/2022-23 dated 24.01.2023 has been issued to the appellant, among other entities.

5. The appellant M/s. Kanungo Ferromet Pvt. Ltd. had presented a letter dated 15.03.2023 to the adjudicating authority stating that they had handed over the SCN to their legal counsel to prepare a reply. They requested for an extension of 90 days to submit their reply. However, M/s. Kanungo Ferromet Pvt. Ltd. have not submitted any reply to the Show Cause Notice till the date of passing impugned order by the adjudicating authority. Personal Hearings in the matter were fixed on 17.08.2023, 28.08.2023, 05.09.2023 and 20/29.09.2023. However, the noticee had not appeared before the adjudicating authority to present their viewpoint on the stated dates. The said SCN has been adjudicated vide the impugned Order dated 20.11.2023.

6. The adjudicating authority observed that the goods imported under Bill of Entry No. 9838766 dated 05.12.2020 had originated in Pakistan and thereby, are classifiable under a Customs Tariff Heading No. 98060000. Thus, as per Notification No. 05/2019-Customs dated 16.02.2019, the Customs Duties on the goods imported from the Islamic State of Pakistan are leviable as 200% BCD + 10% SWS + 18% IGST. As regards confiscation of the goods, the adjudicating authority observed that in terms of Section 46(4) of the Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bill of Entry, whereas in the present case, the importer has willfully suppressed the correct Country of Origin. Thus, the goods had been imported without valid PSIC, which was in violation and contrary to the Foreign Trade Policy. Therefore, for the act of mis-declaration, the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and the appellant importer is liable for penalty.

7. Vide the impugned order, the adjudicating authority has rejected the declared classification 18345 kg of Stainless Steel Melting Scrap and re-classified the same under CTH 98060000 in view of Notification No. 05/2019 dated 16.02.2019. He held that the said goods valued at Rs.14,38,890/- were liable for confiscation under Section 111(m), but as they were already cleared, a redemption fine of Rs.1,45,000/- was imposed under Section 125(1). He



confirmed the demand of duty of Rs.39,94,359/- with interest under Section 28(4) read with Section 28AA, and appropriated the duty of Rs.3,05,692/- already paid. Penalty of Rs.39,94,359 + interest under Section 114A, Penalty of Rs.1,50,000/- under Section 114AA and Penalty of Rs.50,000/- under Section 117 have also been imposed on the appellant.

8. Being aggrieved, the appellant has filed the present appeal on 29.01.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 20.11.2023 has been shown as 30.11.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has also submitted a photocopy of the T.R.6 Challan No. 01/23-24 dated 15/16.01.2024 towards payment of differential Customs duty of Rs.36,88,667/- paid against the impugned order. As the appeal has been filed within prescribed time-limit and duty amount, more than pre-deposit, has been paid by the appellant, the appeal has been taken up for disposal on merits.

9. The appellant has, inter-alia, raised various contentions in the Grounds of Appeal, which are mainly as under:



The appellant submitted that Ld. Adjudicating Authority has erred in failing to appreciate that the entire set of allegations levelled in the Show Cause Notice deals with a particular sealed container bearing No. CBHU 3511182 & seal number 098012 allegedly loaded on a ship from Karachi (Pakistan) to Jebel Ali (UAE) and then on another ship from Jebel Ali (UAE) to Mundra (India). The sole evidence is based on tracking report taken from website. The impugned order is based on assumption and presumption that when the container is loaded from Karachi, goods must have originated from Pakistan only. However, it is a settled law that suspicion howsoever strong cannot substitute proof. In this case, suspicion in the form of loading of sealed container from Karachi and alleged discrepancy in the pre-shipment inspection certificate cannot substitute proof that goods had indeed originated from Pakistan inasmuch as availability of goods, namely, stainless-steel melting scrap is not confined to Pakistan only. Hence, it is submitted that tracking details available on website of Pakistan International Container Terminal is suggestive of container movement and does not per se define origin of goods. Moreover, it is a matter of record that goods have been exported to India from UAE. Hence, the appellant hereby says and submits that the impugned order demanding duty @ 200% by treating the goods as originating



or exported from Pakistan is not tenable in the eyes of law.

9.2 The appellant also says and submits that the appellant had filed the bill of entry on the basis of documents like invoice, packing list, certificate of origin and pre-shipment inspection certificate received from the overseas supplier and the appellant were not aware about the discrepancies alleged in the show cause notice. They had entered into contract with the overseas supplier based in UAE and it was never agreed or ordered to supply any goods of Pakistan origin with an intent to evade import duty in India. Hence, it is not justified to attribute mens rea and thereby, to demand duty by invoking extended period of limitation provided in Section 28 (4) of Customs Act, 1962. On this basis, the appellant submitted that the Show Cause Notice is time barred.

9.3 The appellant further says and submits that as per Sale Contract No. 786/FZE/KAN (H)-01/20-21 dated 18.09.2020, the overseas supplier was under obligation to supply a pre-shipment inspection certificate issued by an Agency duly approved by Government of India. Hence, any discrepancy in this regard is on account of the overseas supplier, for which the appellant cannot be held liable to penalty.

9.4 The appellant hereby says and submits that there is no positive evidence to show that requirement of Section 114AA of Customs Act, 1962 is satisfied. Hence, imposition of penalty on appellant under Section 114AA is also not tenable.

9.5 The appellant says and submit that Ld. Adjudicating Authority has imposed redemption fine of Rs.1,45,000/- which is contrary to settled legal position that no fine can be imposed where goods are not available for confiscation at any point in time.

9.6 The appellant also says and submits that scope of Section 114A is confined to duty and not interest. Hence, imposition of penalty under Section 114A of Customs Act, 1962 on the interest portion is not tenable.

9.7 The appellant also says and submits that Section 117 is a residuary provision and could not have been invoked once penalty is already imposed under Section 114A as well as 114AA of Customs Act, 1962.





10. In view of the above grounds, the appellant prayed to quash to set aside the impugned order with consequential relief.

**Personal Hearing**

11. Personal Hearing in this matter was held on 04.06.2025, which was attended by Shri Vikas Mehta, Consultant, on behalf of the appellant. He reiterated the written submissions made at the time of filing of appeal.

**Findings:**

12. I have carefully gone through the impugned order, appeal memorandum and oral submissions made on behalf of the appellant during course of hearing. The issue to be decided in the case is whether the impugned goods are of Pakistan Origin and if so, whether the appellant is liable to pay differential duty of Rs.36,88,667/- along with penalties and redemption fine, as imposed by the adjudicating authority.

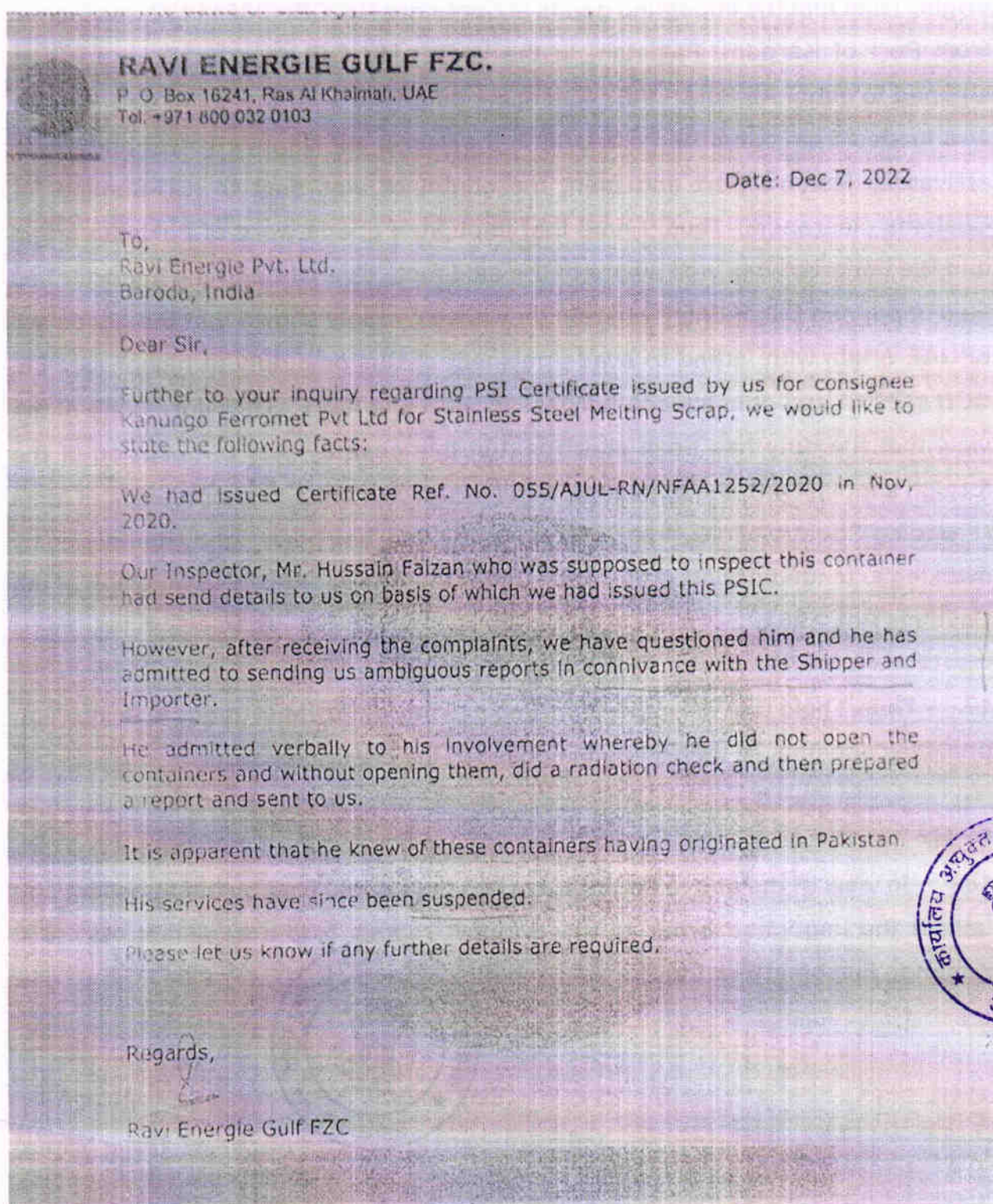
13. I observe that the importer / appellant had neither submitted any reply to the Show Cause Notice nor appeared for Personal Hearing before the adjudicating authority despite of four opportunities for hearing was granted to them. The process of adjudicating is required to be completed in time-bound manner as prescribed under Section 28 (9) of the Customs Act, 1962 and so, the adjudicating authority has passed the impugned order after giving sufficient opportunities to the appellant to defend their case. Even the appellant has not raised any ground in the present appeal regarding not following the principles of natural justice before passing the impugned order.



14. As regards the Country of Origin of the impugned goods, I find that sufficient evidences have been adduced during the investigation to show that the goods were of Pakistan origin. The website of Pakistan International Container Tracking Portal clearly showed that the Container No. CBIHU3511182 had departed from Pakistan on 11.11.2020 with Seal No. 098012 and the said Container with the same Seal arrived to India, for which the appellant has filed the impugned Bill of Entry.

15. The Pre-Shipment Inspection Agency viz. M/s. Ravi Energie Gulf FZE, UAE, has submitted a letter dated 07.12.2022, which has been reproduced in Para 7 of the impugned Order. The said letter has been reproduced below:





In view of the above letter, as well as other evidences, as discussed in the impugned order, I am of the view the impugned goods have been originated from Pakistan, but routed through UAE to India, to evade payment of BCD @200% and the appellant was well aware of the said fact.

16. I do not agree with the contention of the appellant that the it is merely suspicion of Department that the goods were of Pakistan origin. The evidences relied upon in the Show Cause Notice and discussed by the adjudicating authority are sufficient to prove that the goods were of Pakistan origin. The appellant has



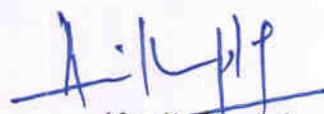
not submitted any contra evidence to prove that the goods were not of Pakistan origin. I find that the impugned goods in Container No. CBHU3511182 was loaded from Port of Karachi, Pakistan, in the vessel MV OEL Kedarnath and it was shipped to Jabel Ali Port, UAE. The same container with the same seal number was loaded from Jabel Ali Port, UAE in the vessel MV Nagoya Tower and it was arrived to Mundra Port and then, the container was sent to ICD-Sanand for Customs clearance. Thus, I hold that impugned goods were of Pakistan origin and the importer was well aware of the said fact. Even though the importer has filed impugned Bill of Entry wherein they have wrongly shown that the goods are of UAE origin with intend to evade payment of Customs duty at higher rate i.e. BCD @200% and consequent increase in SWS and IGST. Therefore, I am of the view that the duty has been short paid in this case by way of collusion of the foreign supplier with the appellant, wilful mis-statement and suppression of facts regarding Country of origin and therefore, the duty has been rightly demanded by invoking extended period of limitation under the provisions of Section 28(4) of the Customs Act, 1962.

17. Thus, I hold that the importer is liable to pay differential duties with interest, penalties and fine, as determined/imposed in the impugned order.

#### Order

18. In view of the above findings, I reject the appeal filed by the appellant and uphold the impugned order to the extent it relates to the appellant viz. M/s. Kanungo Ferromet Pvt. Ltd.



  
(Amit Gupta)

Commissioner (Appeals),  
Customs, Ahmedabad

F.No. S/49-424/CUS/AHD/2023-24

Date: 19.06.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To

M/s. Kanungo Ferromet Pvt. Ltd., Plot No. 4,5,6, Survey No. 239/ 1, Opp. Kishan Cement, Behind GEB Substation, Shapar (Veraval), Rajkot – 360 024.

(Email: [import@kanungo.net](mailto:import@kanungo.net) , [omprakash@kanungo.net](mailto:omprakash@kanungo.net) )





Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: [ccoahm-guj@nic.in](mailto:ccoahm-guj@nic.in) )
2. The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) ; [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in) )
3. The Additional Commissioner of Customs, Custom House, Ahmedabad. (email: [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in) )
4. The Deputy/Assistant Commissioner of Customs, ICD-Sanand. (email: [customs-sanand@gov.in](mailto:customs-sanand@gov.in) )
5. Shri. Vikas Mehta, Consultant, Ahmedabad (email: [vikas@dlegal.in](mailto:vikas@dlegal.in) )
6. Guard File.

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