



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20250671MN0000000E98

क	फ़ाइल संख्या FILE NO.	S/49-02/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-097-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	24.06.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/MK/198/2023-24 dated 01.11.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	24.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Daksh Shipping Services Pvt Ltd 33, Old Port Road, Near Hero Showroom, Ashapura Nagar, Mundra- 370421



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 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 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 (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 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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd 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)	(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 रुपए.	
(a)	(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)	(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; पाँच हजार रुपए	
(b)	(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)	(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 रुपए.	
(c)	(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)	(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)	(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 Daksh Shipping Services Pvt Ltd, 33, Old Port Road, Near Hero Showroom, Ashapura Nagar, Mundra- 370421 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/198/2023-24 dated 01.11.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that appellant, a Customs Broker, alongwith another Customs Broker M/s Accurate Cargo Clearing Pvt Ltd, filed Bill of Entries No. 3923713 dated 12.05.2021 and 7466324 dated 12.02.2022 at Mundra Port for the importer M/s Ayobi Tools Pvt Ltd (IEC: AATCA6427B), detailed as under:

BE Date	BE Number	CTH Code	IEC Name	Country of Origin Name	Full Item Description	Assessable Value Amount	BCD Duty Amount	Quantity	Weight in MTS
12.05.21	3923713	39269090	Ayobi Tools Pvt Ltd	China	TEFLO N NET	461860.63	69279.1	65000	1.5
12.05.21	3923713	39269099		China	TEFLO N NET 5 MOULD	469419.72	70413	90000	1.5
12.02.22	7466324	39269090		China	TEFLO N NET 115x16 MM	179982	17998.2	455	0.455

2.1 During the course of the Analysis of Import data for the period 26.04.2021 to 27.07.2022 in the Jurisdiction of Custom Gujarat Zone for "PTFE products" in light of Notification No. 25/2021-Customs (ADD) dated 26.04.2021 was undertaken by the Data Analytics Cell of CCO, Customs Gujarat Zone, wherein it was found that ADD was not paid in respect of the above-mentioned imported items in Bills of Entry as detailed below:

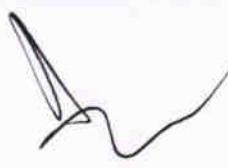


TABLE-I

BE Date	BE Number	CTH Code	IEC Name	Country of Origin Name	Full Item Description	Assessable Value Amount	Antidumping Duty Paid	ADD Leviable	ADD Not Paid
12.05.21	3923713	39269090	Ayobi Tools Pvt Ltd	China	TEFLON NET	461860.63	0	295674	295674
12.05.21	3923713	39269099		China	TEFLON NET 5 MOULD	469419.72	0	295674	295674
12.02.22	7466324	39269090		China	TEFLON NET 115x16 MM	179982	0	90888	90888

2.2 As per Notification No. 25/2021-Customs (ADD) Dated 26.04.2021, Anti-Dumping Duty (ADD) is leviable on the subject goods, the description of which is specified in column (3) of the Table therein, specification of which is specified in column (4), falling under tariff heading of the First Schedule to the Customs Tariff Act, specified in the corresponding entry in column (2), originating in the countries specified in the corresponding entry in column (5), exported from the countries specified in the corresponding entry in column (6), produced by the producers specified in the corresponding entry in column (7), exported by the exporters specified in the corresponding entry in column (8) and imported into India, an anti dumping duty at the rate equal to the amount specified in the corresponding entry in column (9), in the currency specified in the corresponding entry in column (11) and as per unit of measurement specified in the corresponding entry in column (10) of the said Table in the notification.

2.3 It appeared that the goods imported by importer vide above said two (02) Bills of Entry under description "TEFLON NET a PTFE Products classified under Customs Tariff Heading 39269099 / 39219099 are imported after 26th April 2021 (effected date of Notification No. 25/2021-Customs (ADD) dated 26.04.2021) and thus, ADD was leviable in light of Notification No. 25/2021 - Customs (ADD) dated 26.04.2021. It appeared that ADD was not paid in respect of the above-mentioned imported items in aforesaid two (02) Bills of Entry.



2.4 Further, it appeared that the goods imported by importer vide Bill of Entry No. 3923713 Dated 12.05.2021 and Bill of Entry No. 7466324 dated 12.02.2022 are having Teflon Net, to be classifiable under CTH 39269099 having applicable rate of Duty is BCD @ 15% + SWS + ADD + IGST at applicable rate thereon. On-going through both the Bill of Entry it was observed that, filed Bill of Entry No. 3923713 Dated 12.05.2021 with correct CTH and paid applicable Duty thereon, whereas on going through the Bill of Entry No. 7466324 dated 12.02.2022, they mis-classified the goods under CTH 39219099 and paid duty 10% of BCD + SWS + ADD + IGST at applicable rate thereon, thereby short paid Duty by 5% amounting to Rs. 8999/- + SWS + ADD + IGST thereon as shown in Table II below.

TABLE II

BE Date	BE Number	CTH Code	IEC Name	Country of Origin Name	Full Item Description	Assessable Value Amount	Duty Paid in Rs				
							BCD @10/15%	SWS @10%	ADD	IGST @18%	Total Paid
12.05.21	3923713	39269090	Ayobi Tools Pvt Ltd	China	TEFLON NET	461860.6	69279	6928	0	96852	173059
12.05.21	3923713	39269099		China	TEFLON NET MOULD	469419.7	70413	7041	0	98437	175891
12.02.22	7466324	39269090		China	TEFLON NET 115x16MM	179982	17998	1800	0	35960	55758

Duty Payable in Rs					Duty Difference in Rs				
BCD @15%	SWS@10%	ADD	IGST @18%	Total Payable	BCD @10/15%	SWS@10%	ADD	IGST @18%	Total Difference
69279	6928	295674	150073	521954	0	0	295674	53221	348895
70413	7041	295674	151659	524786	0	0	295674	53222	348896
26997	2700	90888	54102	174687	8999	900	90888	18142	118928
Total								816719	

2.5 Therefore, it appeared that total duty (BCD, SWS, ADD & IGST) amounting to Rs. 8,16,718/- (Detailed as per Table-II) have been short paid by the importer in respect of the above-mentioned imported items in above said two (02) Bills of Entry, which are required to be recovered under Section 28(1) of

Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with interest as applicable rate under Section 28AA of the Customs Act, 1962.

2.6 It appeared that importer had not paid Anti-dumping Duty leviable in light of Notification No. 25/2021-Customs (ADD) dated 26.04.2021 in respect of the above-mentioned imported items in above said two (02) Bills of Entry and also mis-classified goods in one of the Bill of Entry No. 7465324 dated 12.02.2022 with an intent evade payment of total duty (BCD, SWS, ADD & IOST) amounting to Rs. 8,16,718/- (Rupees Eight Lakh Sixteen Thousand Seven Hundred & Eighteen only), as detailed in the table-II.

2.7 It appeared that the Importer has deliberately made this willful misstatement, while filing Bill of Entry. Provisions of sub section (4) of Section 46 of the Customs Act, 1962, warrants the importer to make and subscribe to a declaration as to the truth of the contents of Bill of Entry and the provisions of Section 46 (4A), interalia, warrants the importer, who presents the Bill of Entry, to ensure the accuracy and completeness of the information given in the Bill of Entry. Therefore, this act of mis-declaration with an intent to wrongfully evade payment of applicable duty has contravened the Provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962. This contravention appears to have made the subject goods liable to confiscation in terms of Provisions of Section 111 (m) of the Customs Act, 1962. This act of mis-declaration on the part of the importers, which appears to have rendered the subject goods liable to confiscation in terms of provisions of Section 111 (m) read with provision of Section 46 (4) and Section 46 (4A) ibid. also appears to have made the importers liable for penal action in terms of Section 112 (a) or Section 114 (A) and Section 114 AA of the Customs Act, 1962, as the importer has deliberately and willfully made a mis-statement.

2.8 Further, under the provision of Section 17(1) of the Customs Act. 1962 an importer entering any imported goods shall self-assess the duty leviable on such goods. However, in the instant case the importer has self assessed the subject Bills of Entries and not paid Anti-dumping Duty leviable in light of Notification No. 25/2021 -Customs (ADD) dated 26.04.2021 in respect of the above-mentioned imported items in above said two (02) Bills of Entry & also mis-classified goods in one of the Bill of Entry No. 7466324 dated 12.02.2022, as discussed above. Thus, it appeared that they have contravened the provision of



Section 17(1) ibid.

2.9 The goods imported which were self-assessed and cleared with declared assessable value of Rs. 11,11,262/- (Rupees Eleven Lakhs Eleven Thousand Two Hundred Sixty Two only) appeared liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; However, the said goods were already cleared and are not available for confiscation.

2.10 Further, pre-consultative was notice issued to Importer vide letter F. No. CUS/APR/BE/2446/2022-Gr2-0/0 Pr Commr-CUS-Mundra dated 05.11.2022 (DIN No 20221171M000009429BC) under provision to Section. 28(1)(a) of Customs Act, 1962, however no reply was received.

2.11 The Bill of Entry are being filed by the Customs Broker as per the details made available by the Importer, on behalf of the Importer. It is also the duty of the Customs Broker to correctly declare and file the Bill of Entry. In the circumstances, as the appellant and Customs Broker M/s Accurate Cargo Clearing Pvt. Ltd. (AAMCA5633QCH002) have failed to discharge their duties in terms of Sub-clause (d), (e), (m) & (n) of Regulation 10 of Customs Brokers Licensing Regulation Act 2018 and have therefore rendered themselves liable to Penalty under Section 117 of the Customs Act, 1962.

2.12 The investigation culminated into issuance of Show Cause Notice vide File No. GEN/ADJ/ADC/70/2023-Adjn-0/0 Pr Commr-Cus-Mundra dated 04.05.2023 to the Importer, the appellant and M/s Accurate Cargo Clearing Pvt. Ltd. (AAMCA5633QCH002) as to why:

- i. The declared Classification (39219099) of Teflon Net covered under Bill of Entry No. 7466324 Dated 12.02.2022 should not be rejected and should not be classified under CTH 39269099 and accordingly, Bill of Entry should not be re-assessed.
- ii. The differential amount of duty (BCD, SWS, ADD & IGST) total amounting to Rs. 8,16,718/- (Rupees Eight Lakh Sixteen Thousand Seven Hundred & Eighteen only) as detailed in the table-II of para-5 above, leviable on the impugned goods and short/ not paid by them should not be demanded and recovered from them in terms of Section 28(1) of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 along



with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.

iii. Goods imported vide Bills of Entry mentioned in (as detailed in the table-II, which were self-assessed and have already been cleared, having assessable value of Rs. 11,11,262/- (Rupees Eleven Lakhs Eleven Thousand Two Hundred Sixty Two only) should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962. However, the said goods were already cleared and were not available for confiscation.

iv. Penalty under Section 112(a) or Section 114A and 114AA of the Customs Act, 1962 should not be imposed on Importer i.e M/s. Ayobi Tools Private Limited in respect of each of Bill of Entry.

v. Penalty under Section 117 of the Customs Act, 1962, should not be imposed on the appellant i.e M/s DAKSH SHIPPING SERVICES PVT LTD., (AAHCD3010DCH001), who have failed to discharge his duties in terms of Sub-clause (d), (e), (m) & (n) of Regulation 10 of Customs Brokers Licensing Regulations Act 2018.

vi. Penalty under Section 117 of the Customs Act, 1962, should not be imposed on, M/s Accurate Cargo Clearing Pvt. Ltd. (AAMCA5633QCH002), who have failed to discharge his duties in terms of Sub-clause (d), (e), (m) & (n) of Regulation 10 of Customs Brokers Licensing Regulations Act 2018.

2.13 Consequently the adjudicating authority passed a impugned speaking order wherein the adjudicating authority ordered as under :-

i. He rejected the declared Classification (39219099) of Teflon Net covered under Bill of Entry No. 7466324 Dated 12.02.2022 and ordered to classify under CTH 39269099.

ii. He confirmed the demand of differential Customs duty amounting to Rs. 8,16,718/- (Rupees Eight Lakh Sixteen Thousand Seven Hundred & Eighteen only) in respect of BE no. 3923713 dated 12.05.2021 & 7466324 dated 12.02.2022 and ordered the same to be recovered from them in terms of Section 28(1) of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 along with applicable interest



under Section 28AA ibid.

iii. He ordered that the impugned goods having assessable value of Rs. 11,11,262/- (Rupees Eleven Lakhs Eleven Thousand Two Hundred Sixty Two only), cleared by the importer vide impugned Bills of Entry are liable to confiscation under Section 111 (m) of the Customs Act, 1962. However, since the subject goods were not physically available for confiscation, therefore, he refrained from imposing any redemption fine under Section 125 of the Customs Act, 1962.

is. He imposed penalty of Rs.81000/- (Rupees Eighty One Thousand only) in the importer i.e M/s Ayobi Tools Pvt Ltd (IEC no. AATCA6427B) under Section 112(a)(ii) of the Customs Act, 1962.

v. He imposed penalty of Rs.2,00,000/- (Rupees Two Lakh only) on the appellant i.e M/s Daksh Shipping Services Pvt Ltd (AAHCD3010DCH001) under Section 117 of the Customs Act, 1962.

v. He imposed penalty of Rs.2,00,000/- (Rupees Two Lakh only) on M/s Accurae Cargo Clearing Pvt Ltd (AAMCA5633QCH002) under Section 117 of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant, acting as Custom House Agent, the appellant filed 01 bill of entry No. 3923713 dated 12.05.2021 on behalf of importer M/s. Ayubi Tools Private Limited, Jaipur, Rajasthan for clearance of imported goods namely, Teflon Net by classifying the same under CTH 39269099 of the First Schedule to Customs Tariff Act,1975, along with other goods. The goods were permitted clearance on payment of duty as assessed. After around 02 years of clearance, one Show Cause Notice No. GEN/ADJ/ADC (I)/70/2023-ADJN dated 04.05.2023 was issued to the importer inter alia proposing to levy anti-dumping duty in terms of Notification No. 25/2021-Customs (ADD) dated 26.04.2021 and to the appellant, who had prepared the bill of entry at the instructions of

importer, asking to show cause as to why penalty should not be imposed on them under Section 117 of Customs Act,1962.

3.2 The appellant has submitted that the appellant had filed bill of entry on the basis of documents like invoice, packing list, bill of lading, etc. placed in his hands by the importer and there is no dispute over description and classification of goods under consideration. Hence, the appellant is not liable to penalty under Section 117 of Customs Act,1972.

3.3 The appellant has submitted that Customs Broker is not liable to penalty under Section 117 of Customs Act,1962 for dispute between department and importer over interpretation of notification levying anti-dumping duty. The department has not challenged the classification before the appellate authority and the assessment has attained finality. Hence, classification cannot be disturbed and no penalty is imposable on Custom Broker for a different view take by department on classification at a later date.

3.4 The appellant has submitted that imposition of penalty under Section 117 for alleged non-compliance with Regulation 10 (d), (e), (m) & (n) of CBLR,2018 is by Adjudicating Authority is premature and without jurisdiction in as much as no inquiry under CBLR,2018 was ever contemplated against the appellant in this regard. There is no allegation or findings to the effect that there was any mens rea on the part of appellant that has resulted in non-levy or non-payment of anti-dumping duty.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 20.05.2025 . Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellants in their appeal. The Appellant has filed the present appeal on 04.04.2024. In the Form C.A.-1, the Appellant has mentioned date of



office had sent a copy of appeal memorandum to the jurisdictional authority for comments vide letter dtd. 18.06.2024. Further vide letter dtd. 06.06.2025, the Asstt Commissioner (Adjudication), Customs, Mundra was specifically requested to inform the date of service of the impugned order. However, no response has been received by this office. In view of the same, I am left with no option but to consider the date of receipt of the impugned order to be 22.02.2024 as mentioned by the appellant. Accordingly, 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 submitted a copy of the challan dtd 19.03.2024 towards applicable pre-deposit amount of Rs. 15,000/-. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal:

- i. Whether the adjudicating authority had the proper jurisdiction to impose a penalty on the Customs Broker under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018.
- ii. Whether mens rea is an essential ingredient for imposing penalty under Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, and if so, whether it has been established and whether the Appellant, as a Customs Broker, failed in its obligations under CBLR, 2018, in a manner that warrants penalty.

5.2 Firstly, I take up the issue whether the adjudicating authority had the proper jurisdiction to impose a penalty on the Customs Broker under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018. The Appellant has raised a fundamental jurisdictional challenge, which warrants primary consideration. The Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) are a self-contained code governing the licensing and obligations of Customs Brokers. Regulation 18 of CBLR, 2018, specifically deals with "Penalty," stating:

"(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs



importer, asking to show cause as to why penalty should not be imposed on them under Section 117 of Customs Act,1962.

3.2 The appellant has submitted that the appellant had filed bill of entry on the basis of documents like invoice, packing list, bill of lading, etc. placed in his hands by the importer and there is no dispute over description and classification of goods under consideration. Hence, the appellant is not liable to penalty under Section 117 of Customs Act,1972.

3.3 The appellant has submitted that Customs Broker is not liable to penalty under Section 117 of Customs Act,1962 for dispute between department and importer over interpretation of notification levying anti-dumping duty. The department has not challenged the classification before the appellate authority and the assessment has attained finality. Hence, classification cannot be disturbed and no penalty is imposable on Custom Broker for a different view take by department on classification at a later date.

3.4 The appellant has submitted that imposition of penalty under Section 117 for alleged non-compliance with Regulation 10 (d), (e), (m) & (n) of CBLR,2018 is by Adjudicating Authority is premature and without jurisdiction in as much as no inquiry under CBLR,2018 was ever contemplated against the appellant in this regard. There is no allegation or findings to the effect that there was any mens rea on the part of appellant that has resulted in non-levy or non-payment of anti-dumping duty.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 20.05.2025 . Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellants in their appeal. The Appellant has filed the present appeal on 04.04.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 01.11.2023 as 22.02.2024. This



office had sent a copy of appeal memorandum to the jurisdictional authority for comments vide letter dtd. 18.06.2024. Further vide letter dtd. 06.06.2025, the Asstt Commissioner (Adjudication), Customs, Mundra was specifically requested to inform the date of service of the impugned order. However, no response has been received by this office. In view of the same, I am left with no option but to consider the date of receipt of the impugned order to be 22.02.2024 as mentioned by the appellant. Accordingly, 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 submitted a copy of the challan dtd 19.03.2024 towards applicable pre-deposit amount of Rs. 15,000/-. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal:

- i. Whether the adjudicating authority had the proper jurisdiction to impose a penalty on the Customs Broker under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018.
- ii. Whether mens rea is an essential ingredient for imposing penalty under Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, and if so, whether it has been established and whether the Appellant, as a Customs Broker, failed in its obligations under CBLR, 2018, in a manner that warrants penalty.

5.2 Firstly, I take up the issue whether the adjudicating authority had the proper jurisdiction to impose a penalty on the Customs Broker under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018. The Appellant has raised a fundamental jurisdictional challenge, which warrants primary consideration. The Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) are a self-contained code governing the licensing and obligations of Customs Brokers. Regulation 18 of CBLR, 2018, specifically deals with "Penalty," stating:

"(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs



Broker or F-card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations."

Furthermore, Regulation 19 of CBLR, 2018, titled "Appeal," specifies the appellate forum:

"(1) A Customs Broker or F-card holder, who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act."

"(Provided that a G-card holder aggrieved by any order passed by the Deputy Commissioner or Assistant Commissioner of Customs under these regulations may prefer an appeal under section 128 of the Act to the Commissioner of Customs (Appeals) against the orders of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, who shall proceed to decide the appeal expeditiously within two months of the filing of the appeal.)"

5.3 It is evident from these regulations that the power to impose penalties for contraventions of CBLR, 2018, is specifically vested in the Principal Commissioner or Commissioner of Customs. Section 117 of the Customs Act, 1962, is a residuary provision that applies only "where no express penalty is elsewhere provided for such contravention or failure." Since CBLR, 2018, itself provides specific provisions for penalties for its contravention, recourse to the residuary Section 117 by an Additional Commissioner for alleged breach of CBLR appears to be an exercise of powers beyond the scope prescribed by law.

5.4 The adjudicating authority, being an Additional Commissioner, is not the authority specified in Regulation 18(1) of CBLR, 2018, to impose penalties on a Customs Broker for contravention of CBLR. Even if the alleged contravention were to be viewed broadly as a failure to comply with a provision of the Customs Act (by way of Section 146(2) which enables CBLR), the specific mechanism and designated authority under the special regulations (CBLR) should prevail over the general residuary provision of Section 117. Therefore, on



the sole ground of jurisdiction, the penalty imposed on the Appellant under Section 117 of the Customs Act, 1962, for alleged contravention of CBLR, 2018, is not sustainable.

5.5 Now I come to the issue whether mens rea is an essential ingredient for imposing penalty under Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, and if so, whether it has been established. Even assuming, without conceding, that the adjudicating authority had the jurisdiction, the imposition of penalty under Section 117 requires the establishment of mens rea or a deliberate intention to contravene the law. The Hon'ble Supreme Court has consistently held that mens rea is an essential ingredient for imposing penalties, particularly when the provisions involve elements of deliberate evasion or fraudulent intent.

5.6 In *Cosmic Dye Chemical Vs Collector of Central Excise, Bombay* [1995 (75) ELT 721 (SC)], the Supreme Court emphasized the necessity of mens rea for imposing penalties under fiscal statutes. Similarly, in *UOI Vs Rajasthan Spinning and Weaving Mills* [2009 (238) ELT 3(SC)], the Supreme Court reiterated that for penalties linked to "fraud, collusion, wilful misstatement, suppression of facts or contravention... with intent to evade payment of duty," mens rea is indispensable. A mere breach of law, without a deliberate intention to evade, is not sufficient for imposing a penalty.

5.7 Applying these principles to Customs Brokers, the Tribunal has specifically addressed the requirement of mens rea for penalties under Section 117. In *Syndicate Shipping Services Pvt. Ltd.*, 2003 (154) ELT 756 (Tri.-Che), it was clearly held that "mere failure by the Custom House Agent to carry out his duties in accordance with law by itself is not sufficient ground to impose personal penalty under section 117 of the Customs Act, 1962 unless there is evidence to show that the failure was on account of mala fide intention." The Tribunal noted that if the CHA was an active abettor, there would be more direct evidence of their involvement.

5.8 In the present case, the adjudicating authority's findings imply a failure on the part of the Customs Broker to discharge duties under Regulation 10(d), (e), (m), and (n) of CBLR, 2018. These duties broadly relate to advising clients, exercising due diligence, and acting with efficiency. While a Customs Broker is expected to exercise a high degree of care and diligence, the mere fact



that a mis-classification or non-payment of ADD occurred, primarily due to the importer's actions or an interpretation of law, does not automatically impute mens rea to the Customs Broker.

5.9 The impugned order does not provide concrete evidence to demonstrate that the Appellant knowingly or intentionally facilitated the short payment of duty or mis-classification, or that they were in active collusion with the importer for fraudulent purposes. The SCN alleges mis-classification and non-payment of ADD by the importer, but it fails to establish how the Customs Broker had the knowledge or intent to abet such actions. Customs Brokers rely significantly on the information provided by their clients. Expecting a Customs Broker to independently verify every nuance of classification or the applicability of complex ADD notifications, which often involve detailed technical specifications or source-specific conditions, without any indication of suspicious activity or mala fide intent on their part, would be an unreasonable burden.

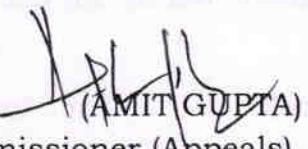
5.10 Therefore, in the absence of clear, cogent, and irrefutable evidence establishing mens rea on the part of appellant regarding the forged NOC, the imposition of penalty under Section 117 of the Customs Act, 1962, is not sustainable. A mere suspicion or a general failure to exercise utmost diligence, without proof of deliberate intent or active abetment, does not warrant such a penalty.

5.11 In light of the detailed discussions and findings, particularly the jurisdictional infirmity and the absence of established mens rea, I find that the penalty imposed on M/s Daksh Shipping Services Pvt Ltd under Section 117 of the Customs Act, 1962, cannot be sustained. The CBLR, 2018, provides a specific framework and designated authority for addressing contraventions by Customs Brokers, and the residuary Section 117 should not be invoked in such cases, especially by an authority not specified in the special regulations. Furthermore, the Department has failed to provide sufficient evidence to prove any deliberate intention or mala fide on the part of the Appellant to warrant the imposition of penalty.

6. In view of the above findings, the penalty of Rs. 2,00,000/- (Rupees Two Lac Only) imposed on the Appellant, M/s Daksh Shipping Services Pvt Ltd, under Section 117 of the Customs Act, 1962, vide Order-in-Original No. MCH/ADC/MK/198/2023-24 dated 01.11.2023, is hereby set aside.



7. The appeal filed by M/s Daksh Shipping Services Pvt Ltd is hereby allowed.


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

F. No. S/49-02/CUS/MUN/2024-25

Date: 24.06.2025

By Registered post A.D/E-Mail



संकायित/ATTTESTED


 अधिकारी/SUPERINTENDENT
 भारत आजुकान (अपील), अहमदाबाद
 CUSTOMS (APPEALS), AHMEDABAD

To,

M/s Daksh Shipping Services Pvt Ltd
 33, Old Port Road, Near Hero Showroom,
 Ashapura Nagar, Mundra- 370421

Copy to:

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