



सीमा शुल्क आयुक्त (निवारक) कार्यालय
सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर, गुजरात – (361 001)

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN- 20260971MM000084A7CF

1.	फ़ाइल क्रमांक/ File Number	F. No. CUS/1467/2026-Adjn
2.	मूल आदेश क्रमांक/ Order-in-Original No.	07/ADC/2026-27
3.	द्वारा पारित/ passed by	एन .सृजन कुमार / N. Srujan Kumar अपर आयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक जामनगर/ Customs (Preventive) /Jamnagar
4.	Date of Order /आदेश दिनांक	24.09.2026
	Date of issue / आदेश जारी किया	24.09.2026
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice No. & Date	ADC-23/2025-26 dated 19.02.2026
6.	नोटिसी का नाम/ Name of Noticee	M/s Meena Refractories Private Limited, 8A-National Highway, Survey No. 137P, Village: Lalpar, Wankaner, Gujarat-363621

01.	इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned.	
02.	इस मूल आदेश (Order-In-Original) से असंतुष्ट कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 1962 की धारा 128 और सीमा शुल्क (अपील) नियम, 1982 के नियम 3 के तहत, इस आदेश की प्राप्ति की तारीख से साठ दिनों के भीतर ऊपर बताए गए पते पर कमिश्नर (अपील) के समक्ष फॉर्म CA-1 में अपील दायर कर सकता है। अपील का फॉर्म (फॉर्म नंबर CA-1) दो प्रतियों में दायर किया जाना चाहिए और इसके साथ उस आदेश की उतनी ही प्रतियां भी संलग्न होनी चाहिए जिसके खिलाफ अपील की जा रही है (जिनमें से कम से कम एक प्रमाणित प्रति होनी चाहिए)।	
	आयुक्त (अपील) चौथी मंजिल, हडको भवन , ईश्वर भुवन रोड, नवरंगपुरा अहमदाबाद – 380 009	Commissioner (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380 009

	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above-mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).
03.	अपील पर भारतीय स्टाम्प अधिनियम, 1989 जिसे राज्य के कानून के अनुसार बदला जा सकता है रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए 5 के तहत (, जबकि इस अपील के साथ लगी ऑर्डर की कॉपी पर कोर्ट फीस एक्ट, -की अनुसूची 1870I, आइटम के अनुसार 6 का कोर्ट फीस स्टाम्प लगा होना चाहिए। (केवल पचास पैसे) रुपये 0.50 The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपील मेमो के साथ ड्यूटी पेनल्टी के भुगतान का सबूत भी लगाना ज़रूरी है / जुर्माना /; ऐसा न करने पर, कस्टम्स एक्ट, के प्रावधानों का पालन न होने के 128 की धारा 1962 कारण अपील खारिज की जा सकती है। Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील दाखिल करते समय, कस्टम्स (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 का हर तरह से पालन किया जाना चाहिए। While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है। An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

1. Introduction:

1.1. The present de-novo proceedings is initiated in pursuance to the Order-In-Appeal (OIA) No. JMN-CUSTM-000-APP-18-26-27 dated 24.06.2026 passed by the Commissioner of Customs (Appeals), Ahmedabad in respect of Appeal dated 08.04.2026 filed by M/s. Meena Refractories Pvt. Ltd., (hereinafter referred to as "the Noticee" or "the importer") situated at 8A - National Highway, Survey No. 137P, Village: Lalpar, Wankaner, Gujarat – 363621, against OIO No. 26/Additional Commissioner/2025-26 dated 13.03.2026 passed by the Additional Commissioner of Customs (Prev.), Jamnagar with reference to the Show Cause Notice No. ADC-23/2025-26 dated 19.02.2026 (hereinafter referred to as "the impugned notice") issued to the Noticee; wherein Commissioner of Customs (Appeals), Ahmedabad has set aside OIO No. 26/Additional Commissioner/2025-26 dated 13.03.2026 (hereinafter referred to as "the impugned order") and the matter was remanded to the adjudicating authority for de novo adjudication in accordance with law.

2. Brief facts of the case

2.1. The Noticee had filed a Bill of Entry No. 6187405 dated 09.12.2025 for clearance of goods declared as Alumina Carbon Bricks (CTH - 69022030) having declared assessable value of Rs. 19,75,002/- and customs duty amounting to Rs. 5,47,767/- for home consumption through their authorized Customs Broker M/s. Sharma Enterprises (AADFS1983PCH002) on self- assessment basis under section 17 of Customs Act, 1962.

2.3. This Bill of Entry was assigned to Faceless Assessment Group for virtual assessment and the Faceless Assessment Group officer raised the following query on 15.12.2025:

"Upon perusal of the submitted pictures of the goods, it can be concluded that the goods are old and used refractory bricks i.e. Other than capital goods, which requires authorization from DGFT as per para 2.31(ii) of FTP, 2023. The party has failed to produce the same and accordingly the instant B/E may be pushed to Port Assessment Group (PAG) for adjudication as the same falls under the category of restricted goods without a valid authorization."

Accordingly, the said BoE was returned from Virtual Assessment to Local Assessment on 17.12.2025.

2.4. Further, during Local Assessment, the officers of ICD Morbi on 19.12.2025 raised the following query:

"Upon perusal of the uploaded pictures of the import goods – Alumina Carbon Bricks, FAG has concluded that the goods are old and used Refractory Bricks i.e. other than Capital Goods which requires authorization from DGFT as per para 2.31(ii) of FTP, 2023. Subject goods fall under the

category of restricted goods without any valid authorization, therefore, appears to be liable to confiscation. Hence, please submit valid DGFT authorization in this regard, if any, along with your specific reply in detail."

2.5. Examination of the imported goods was conducted under Panchnama dated 31.12.2025 at ICD, Morbi in the presence of the appellant and the customs Broker/CHA. During examination, the goods were found to be old and used refractory bricks, i.e. goods other than capital goods, import of which requires DGFT authorisation in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. Since the appellant failed to produce the requisite DGFT authorisation and had not declared the old and used nature of the goods, the goods appeared liable for confiscation under sections 111(d) and 111(m) of the Customs Act, 1962. The goods were thereafter seized under the provisions of Section 110 of the Customs Act, 1962 vide Seizure Memo dated 31.12.2025 and handed over to the custodian M/s. Navkar Corporation under Supratnama dated 31.12.2025 for safe custody of the imported goods.

2.6. The Noticee vide their letter dated 31.12.2025, addressed to the Assistant Commissioner, ICD Morbi, submitted that they have applied to DGFT for 'Restricted Import Authorisation', the status of which is 'in process'; that in order to avoid congestion, detention and demurrage charges, they requested for granting permission to warehouse the import goods under Section 49 of the Customs Act, 1962 till completion of proceedings. They further stated that they "*voluntarily request waiver of issuance of Show Cause Notice (SCN) and waiver of Personal Hearing (PH)*" and that they "*request that the matter may kindly be decided on merits based on available records*".

2.7. Further, opinion of a Government-approved Chartered Engineer, Shri Pankaj N. Udani, was obtained, who vide Report No. PNU/SLI/25-26/207 dated 08.01.2026, after detailed examination and analysis of the consignment, opined that the imported Alumina carbon Bricks were old and used. The chartered Engineer also certified that the declared value of the goods was fair and reasonable. The subject Bill of Entry No. 6187405 dated 09.12.2025 was got cancelled automatically by system on 08.01.2026 as it was not appraised/assessed pending adjudication, therefore, the appellant filed fresh/new Bill of Entry No. 6943986 dated 17.01.2026 for the above said consignment of 208 MTs of Alumina Carbon Bricks (CTH 69022030) with same import documents i.e. Bill of Lading No. VASDMMNMB001635 dated 06.12.2025, Invoice No. 00003811 dated 27.11.2025, for the processing and clearance of the above said imported goods. The new BoE No. 6943986 dated 17.01.2026 was also pushed to PAG for local assessment on the request of Importer and provisionally assessed by PAG since the goods falls under the category of restricted goods without valid authorization.

2.8. In view of the above, it appeared that the appellant was aware that the goods were "old & used" falling under the category of goods other than capital goods, import of which is restricted and requires valid authorisation from DGFT in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. Further, the Noticee failed to

furnish any authorization from DGFT for import of the refractory bricks imported vide Bill of Entry No. 6187405 dated 09.12.2025, as required by the FTP, 2023. Therefore, the import of "Old and Used Refractory Bricks" which falls under the category of 'Second Hand Goods, other than capital goods' appeared to be in violation of Para 2.31(II) of Foreign Trade Policy, 2023, and thus, appeared liable to be considered as import of 'restricted goods' as per the relevant provisions of the Customs Act, 1962 as elaborated above.

2.9. Further, it was observed that the importer never used the term "used" or "old & used" in the description of the goods mentioned in Bill of Entry. Further, in the invoice also the word "used" or "old & used" was not mentioned. Hence, it appeared that, the importer's intention was to get the goods cleared by suppressing the fact that the goods are old & used. From above, it appeared that the importer was well aware from the fact that the subject goods were restricted in nature and requires Authorization from DGFT and in absence of such authorization, the goods became restricted. So, to circumvent the statutory provision of Authorization from DGFT, the importer did not disclose the nature of the goods in Bill of Entry and import documents. If the Bill of Entry were RMS facilitated, the importer could have succeeded in his intention to get the goods cleared without fulfilling the statutory provisions of DGFT Authorization. It was only when the goods were noticed during the assessment by the FAG and the images of the goods were uploaded in e-sanchit, the facts came to the notice that the goods are "old & used" and restricted in nature.

2.10. The Noticee, therefore, appeared to have attempted to clear the impugned goods without producing the required import authorization from DGFT, by not declaring the goods as "old and used", which appeared to be a mis-declaration and in contravention of the Noticee's statutory obligation to declare or produce documents before the officer of customs to the best of their knowledge and belief under Sections 46(4) and 46(4A) of the Customs Act, 1962 as well as the provisions of Rule 11 of the Foreign Trade (Regulations) Rules, 1993.

2.11. Thus, it appeared that the Noticee was well aware of the fact that the goods in the present consignment were "old & used goods, and 'other than capital goods' – which are restricted in nature and requires authorization from DGFT. The Noticee submitted that they have applied to DGFT and the same is 'in process', however, the Noticee failed to submit any details of the application and any authorization for the same issued by DGFT before the event of import.

2.12. Accordingly, a Show Cause Notice No. ADC-23/2025-26 dated 19.02.2026 was issued to the importer asking them, as to why:

- (i) Customs duty of Rs. 5,47,767/- (Rupees Five Lakh Forty-Seven Thousand Seven Hundred Sixty-Seven only) should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (ii) Interest on duties of customs should not be recovered under Section 28AA of the Customs Act, 1962;

- (iii) The goods i.e. "Alumina Carbon Bricks" valued at Rs. 19,75,002/- (Rupees Nineteen Lakh Seventy-Five Thousand and Two Only) should not be held liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962 and why fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962;
- (iv) Penalty should not be imposed under Section 112(i) of the Customs Act, 1962;
- (v) Penalty should not be imposed under Section 114AA of the Customs Act, 1962.

2.13. In reply of the above show cause notice, the Noticee submitted that they had imported 208 MTs of Alumina Carbon Bricks (CTH 69022030) under Bill of Lading No. VASDMMNMB001635 dated 06.12.2025 and Invoice No. 00003811 dated 27.11.2025 and initially filed Bill of Entry No. 6187405 dated 09.12.2025, which was referred to PAG on 17.12.2025 for local assessment and adjudication as the goods were found to be restricted without valid authorization. Since the said Bill of Entry remained pending for assessment and was subsequently cancelled automatically by system on 08.01.2026, they filed a fresh Bill of Entry No. 6943986 dated 17.01.2026 using the same import documents for the processing and clearance of the above said imported goods.

2.14. The Noticee further submitted that they were unaware of the fact that the goods supplied were old and used and that their import was restricted, and became aware of the issue only during examination, pursuant to which they applied to DGFT for the requisite authorization. They claimed full cooperation with the Customs authorities and stated that they had paid Customs duty of Rs. 5,47,167/-, along with applicable interest of Rs. 19,449/- and penalty of Rs. 82,165/- (being 15% of Customs duty) in terms of Section 28(5) of the Customs Act, 1962, vide Challan No. 2059613911, 1621827266 & 1349931568 all dated 19.02.2026 and Challan No. 3604731174 dated 20.02.2026 in respect of the said Bill of Entry and therefore, requested to conclude the proceedings under Section 28(6) of the Customs Act, 1962. They also highlighted the accumulation of ICD charges due to prolonged detention of the cargo, waived personal hearing, and requested expeditious adjudication and appropriate relief.

2.15. Further, vide letter dated 02.03.2026, the importer submitted that their application to DGFT for Restricted Import Authorization would still take considerable time and the same will be issued by them having prospective effect only. Therefore, DGFT Authorization would not have retrospective effect and thereby, would not be considered valid for current consignment. They again requested for waiver of personal hearing and to decide the case on merit based on available records.

2.16. After following the principles of natural justice, the show cause Notice dated 19.02.2026 was adjudicated by the Additional Commissioner, Customs (Prev.), Jamnagar vide OIO No. 26/Additional Commissioner/2025-26 dated 13.03.2026, whereby the adjudicating authority dropped the demand of customs duty and interest, imposed penalty of Rs. 50,000/- under section 112(a) and Rs. 1,00,000/-

under section 114AA of the customs Act, 1962. The adjudicating authority further ordered to confiscate the imported goods valued at Rs. 19,75,002/- under section 111(d) and 111(m) of the customs Act, 1962 but allow the appellant to re-export the goods without payment of redemption fine.

2.17. Being aggrieved and dissatisfied by the OIO No. 26/Additional Commissioner/2025-26 dated 13.03.2026, the appellant filed appeal with Commissioner of Customs (Appeals), Ahmedabad against the impugned order vide appeal dated 04.04.2026 which was allowed by way of remand. The impugned order was set aside and the matter was remanded to the adjudicating authority for de novo adjudication in accordance with law. It was expressly clarified that no opinion or views have been expressed on the merits of the case.

3. Defence Submission:

The Noticee vide email dated 06.08.2026 submitted their defence reply which is summarised as under:

3.1 Impugned Order has travelled beyond show cause notice

The Noticee submitted that the impugned order has travelled beyond the scope of the Show Cause Notice by imposing a mandatory re-export condition under para 15(iii), whereas the SCN had specifically proposed only redemption fine under Section 125. Since no new facts had emerged and the Noticee had consistently sought expeditious adjudication and redemption of the goods without requesting re-export, the adjudicating authority could not introduce a condition that was neither proposed in the SCN nor contemplated by the Noticee. Accordingly, relying on the settled principle that an adjudication order cannot travel beyond the SCN, the Noticee contends that the mandatory re-export condition is liable to be set aside.

3.2 Even otherwise, the re-export condition is bad in law:

The Noticee submitted that the mandatory re-export condition imposed under para 15(iii) of the impugned order is beyond the statutory powers conferred by the Customs Act, 1962, particularly Section 125, which merely provides an option to redeem confiscated restricted goods on payment of redemption fine and does not expressly authorise compulsory re-export as a condition of such redemption. The Noticee had never sought re-export and had instead requested expeditious adjudication to minimise accumulating ICD charges; nevertheless, the adjudicating authority imposed re-export on its own motion. The Noticee further contends that re-export to Saudi Arabia is practically difficult due to prevailing disruption of maritime trade routes. Relying upon *CC v. M/s. Magat Engg. Tech.*, *CC v. M/s. HBL Power Systems* and the jurisdictional Commissioner (Appeals), Ahmedabad in *D. Bhatia & Company*, it is argued that, in the absence of a specific statutory provision conferring such power, a mandatory re-export condition cannot be imposed

under Section 125. Accordingly, the Noticee contends that the re-export condition is contrary to settled judicial precedent and is liable to be quashed and set aside.

3.3 Redemption Fine should be proportionate and reasonable

The Noticee submitted that the redemption fine should be reasonable and proportionate to the margin of profit, having regard to the nature of the contravention, conduct of the importer and other charges incurred. Relying upon decisions including *Navpad Enterprises v. CC and Omex International v. CC*, the Noticee contends that 10% of the CIF value represents a consistent judicial approach for redemption fine in comparable cases, with 5% being adopted for penalty. It was further submitted that substantial ICD charges of ₹3.22 lakh have accumulated due to the earlier direction for mandatory re-export, despite repeated requests by the Noticee for expeditious adjudication and voluntary payment of duty and interest under Section 28(5). Since the claimed ICD charges are already higher than the proposed 10% redemption fine of approximately ₹1.97 lakh, any further substantial redemption fine would, according to the Noticee, go beyond the purpose of Section 125 and impose an undue financial burden. Accordingly, the Noticee requested that the redemption fine be fixed at a nominal and reasonable amount, keeping in view the accumulated ICD charges, the Noticee's conduct and the following judicial precedents:

- (i) *CC& CE, Hyderabad v. Komma Reddy Computer Services - By Final Order No. 143 and 144/2008 dated 7-2-2008 [2008 (227)E.L.T. 393 (Tribunal)]*.
- (ii) *Navpad Enterprises v. CC, Cochin - By Final Order, 1231-1233/2007 dated 31 -10-2007 & also by Final Order No. 26 & 27/2006 dated 28-12-2006*
- (iii) *Atul Commodities Pvt. Ltd. v. CC, Cochin, 2006 (205) E.L.T. 950 (Tri.-Bang.)*
- (iv) *Rajeswari Graphics v. CC, 2007 (212) E.L.T. 117 (Tri.-Bang.)*
- (v) *Rex Printing Press v. CC, 2005 (184) E.L.T. 73 (Tri.-Bang.)*

3.4 Penalty under section 112(a) is liable to be set aside

The Noticee submitted that penalty under Section 112(a) cannot be imposed merely because the imported goods were ultimately found to be old and used, unless the Department establishes a positive act or omission, coupled with the Noticee's knowledge or involvement in making the goods liable to confiscation. It was contended that the Noticee acted bona fide, relying on the Purchase Order, supplier's invoice, Safety Data Sheet, Certificate of Analysis and Certificate of Origin, all of which described the goods as Alumina Carbon Bricks/refractory products, while this was the

Noticee's first transaction with the supplier. According to the Noticee, the discrepancy therefore resulted from contractual misrepresentation by the foreign supplier, and there is no evidence of parallel documents, incriminating communications, statements or any other material establishing prior knowledge or intentional mis-declaration. The Noticee further stated that the Department cannot establish the necessary jurisdictional fact of knowledge merely through presumptions or conjectures and relies upon *Rajesh Gandhi v. CC* to contend that penal liability must be supported by cogent evidence. Accordingly, it is submitted that, in the absence of evidence establishing the Noticee's active involvement or knowledge, the penalty of ₹50,000 under Section 112(a) is not legally sustainable and deserves to be dropped.

3.5 Penalty under section 114AA is liable to be set aside.

The Noticee submitted that penalty under Section 114AA requires proof that the false or incorrect declaration was made knowingly or intentionally, and cannot be imposed merely because the declaration was subsequently found to be incorrect. They further contended that the impugned order neither records any specific finding nor identifies any evidence establishing that the Noticee knowingly or intentionally misdeclared the goods in the Invoice or Bill of Entry. The Noticee consistently maintained that it was unaware that the goods were old and used and had a bona fide belief, based on the supplier's documents, that the goods were new solid-shaped bricks. Relying upon the decision in the case of *Kamal Sehgal v. CC (Appeals)*, the Noticee argues that the burden lies on the Department to establish prior knowledge, intention or mens rea through cogent evidence, which cannot be presumed. In the present case, there is allegedly no evidence of parallel documents, incriminating communications, statements, conspiracy or other material indicating prior knowledge or deliberate misdeclaration. Accordingly, the Noticee contended that the essential ingredients of Section 114AA are not established and the penalty imposed thereunder is liable to be set aside.

3.6 In *arguendo*, amount of penalties should be reduced

Without prejudice to the contention that penalties under Sections 112(a) and 114AA are not leviable, the Noticee alternatively submitted that, if penalties are held to be imposable, their quantum should be substantially reduced as the existing penalties of ₹50,000 under Section 112(a) and ₹2,00,000 under Section 114AA are alleged to be disproportionate. Relying on the claimed consistent practice of restricting penalty to 5% of CIF value, the Noticee further highlighted its bona fide conduct, cooperation with the investigation, and voluntary payment of duty and interest under Section 28(5) as mitigating factors. Accordingly, the Noticee requested that, if any penalty is imposed, the aggregate quantum should be suitably reduced and in any event not exceed 5% of the CIF value of the imported goods.

3.7 In view of the above, the Noticee requested to:

- (i) Quash and set aside the mandatory condition of re-export imposed vide para 15(iii) of the impugned Order;
- (ii) Determine an appropriate amount of redemption fine as per the peculiar facts and circumstances of the present case, and in any case, at a rate not exceeding 10% of CIF value;
- (iii) Determine an appropriate abatement for ICD charges payable by the Noticee;
- (iv) Quash and set aside the penalty of Rs. 50,000/- imposed under section 112(a) of the Customs Act;
- (v) Quash and set aside the penalty of Rs. 2,00,000/- imposed under section 114AA of the Customs Act;
- (vi) *In the alternative*, reduce the quantum of both penalties, and in any case, at a rate not exceeding 5% of CIF value.

4. RELEVANT LEGAL PROVISIONS:

The relevant legal provisions in this regard are as under: -

4.1. Capital goods have been defined in Para 11.08 of the FTP, 2023 as:

"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector".

4.2. Foreign Trade Policy, 2023, issued under Foreign Trade (Development and Regulation) Act, 1992: As per para 2.02(d) of the FTP, the Import Policy regime for Second Hand Goods is governed as per para 2.31. Further, as per clause (II) of para 2.31 as aforesaid, import of 'Second Hand Goods other than capital goods' is restricted and importable only against authorization, as follows:

Import Policy for Second Hand Goods:

2.31 Second Hand Goods

Sl. No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation

4.3 Section 2(33) of the Customs Act, 1962 defines “prohibited goods” as

“means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

In the instant case, since the import goods were subject to a condition under FTP, 2023 which has not been complied, inasmuch the Noticee has not submitted any valid authorization issued by DGFT, the goods appear to fall within the meaning of ‘restricted goods’.

4.4 Section 17 of the Customs Act, 1962 provides for assessment of duty as follows:

“Assessment of duty-

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.”

4.5 Section 46 of the Customs Act, 1962: Entry of goods on importation.

Clearance of Imported goods:

Section 46. Entry of goods on importation. -

“(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

(2)

(3)

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any. and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

- a) the accuracy and completeness of the information given therein,*
- b) the authenticity and validity of any document supporting it;*
- c) compliance with the restriction or prohibition, if any, relating to the*

goods, under this Act or under any other law for the time being in force."

4.6 Section 111 of the Customs Act, 1962 inter alia provides that the following goods brought from a place outside India shall be liable to confiscation:

"Section 111(d):

any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;"

"Section 111(m):

any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

4.7 Section 112(a) of the Customs Act, 1962:

Penalty for improper importation of goods:

Any person, -

(a) *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,*

(b) *.....*

shall be liable,

(i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater"*

(ii) *.....*

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

4.8 Section 114AA of the Customs Act, 1962:

Penalty for use of false and incorrect material.

“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction or any business for the purpose of this Act, shall be liable to a penalty not exceeding five times the value of the goods.”

5. Record of Personal Hearing:

5.1 Following the principles of natural justice, the Noticee was granted an opportunity for personal hearing scheduled on 31.07.2026 in virtual mode and intimated vide email/letter dated 24.07.2026. In response of the same, the Noticee vide email dated 30.07.2026 intimated that due to compelling circumstances, they were unable to attend the personal hearing scheduled on 31.07.2026 and requested to give a short date for next personal hearing.

5.2 Considering the request of the Noticee, personal hearing in the instant case was again scheduled on 07.08.2026 in virtual mode and intimated to the Noticee vide email/letter. In response of the same, Sh. Parthiv Joshi, Advocate, duly authorised by the Noticee, appeared on 07.08.2026 for personal hearing on behalf of the Noticee and reiterated submissions made vide their written reply dated 06.08.2026.

5.3 Further, in view of the observation made by the Commissioner of Customs (Appeals), Ahmedabad, the Noticee was requested vide email/letter dated 03.09.2026 to submit their views/comments whether they are willing to re-export the subject imported goods or otherwise and in response of the same, the Noticee vide mail dated 03.09.2026 submitted that they are not willing to re-export the imported goods.

6. Discussion and findings:

6.1 I have carefully gone through the Show Cause Notice dated 19.02.2026, the earlier Order-in-Original dated 13.03.2026, the Order-in-Appeal dated 20.11.2025 relied upon in the de novo proceedings, the written submissions filed by M/s. Meena Refractories Pvt. Ltd., the documents placed on record, the relevant provisions of the Customs Act, 1962, the Foreign Trade Policy, 2023, and the judicial precedents cited by the Noticee.

6.2 The Commissioner of Customs (Appeals), Ahmedabad while remanding the matter for de novo adjudication, has directed that the issues raised by the appellant be examined afresh by passing a reasoned and speaking order after considering the statutory provisions and judicial precedents. Accordingly, each issue is examined independently hereunder.

6.3 I find from the Show Cause Notice, the defence submissions and the remand directions that the main issues to be determined in the instant case are as under:

- (i) Whether the imported Alumina Carbon Bricks are "old and used" refractory bricks falling under the category of second-hand goods under the Foreign Trade Policy, 2023 which are restricted for import.
- (ii) Whether import of such goods without a valid DGFT authorisation renders them liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962.
- (iii) Whether demand of customs duty and interest, as proposed in the notice, is liable to confirmed.
- (iv) Whether penalty under Section 112(a) is liable to be imposed.
- (v) Whether penalty under Section 114AA is attracted on the facts of the present case.

6.4 Now, I proceed to examine the first and foremost issue whether the imported goods i.e. Alumina Carbon Bricks are "old and used" goods which are restricted for import.

6.4.1 In this regard, I find that it has been alleged in the notice that the importer was aware that the goods were "old & used" falling under the category of goods other than capital goods, import of which is restricted and requires valid authorisation from DGFT in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. During physical examination conducted under Panchnama dated 31.12.2025, the imported bricks were found to be old and used. Further, the Chartered Engineer's report dated 08.01.2026 also concluded that the goods were old and used while certifying that the declared transaction value was fair and reasonable. These findings form part of the departmental record and have not been rebutted by any contrary technical evidence. The Noticee has also not disputed these facts. In this regard, it is pertinent to mention the import policy of such goods as mentioned under:

Import Policy for Second Hand Goods:

2.31 Second Hand Goods

Sl. No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation

It is evident from a plain reading of Para 2.31 and by examining the nature of the goods being imported, the said goods fall under the category of the goods detailed

in Para 2.31 of FTP and thus, it is evident that all 'Second Hand Goods other than capital goods' are only importable against Authorization.

6.4.2 Capital goods have been defined in Para 11.08 of the FTP, 2023 as:

"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector".

The above definition clearly show that refractory items are not included within the scope of Capital Goods under FTP, 2023. Therefore, it appears that the imported goods cannot fall within the definition of Capital Goods and hence the goods are restricted for import as per Para 2.31 of Import Policy under FTP, 2023.

6.4.3 The Noticee has also admitted in the de novo reply that they became aware of the used nature of the goods only after examination and thereafter applied to DGFT for obtaining the requisite authorisation. Their principal defence is not that the goods were new, but that they lacked prior knowledge of the actual condition of the goods supplied by the overseas exporter.

6.4.4 It is an admitted position that no DGFT authorisation existed on the date of import, no authorisation was produced at the time of filing the Bill of Entry, even at the time of examination, no authorisation was available and the application to DGFT was filed only after departmental queries. Therefore, the import was admittedly made without the prescribed authorisation. The Noticee has submitted that the application remained pending with DGFT and that authorisation, if granted subsequently, should be considered sufficient. However, the Noticee has not produced any authorization issued by DGFT till date. Accordingly, I hold that the import contravened Paragraph 2.31 of the Foreign Trade Policy, 2023.

6.4.5 I have considered the contention of the Noticee that the discrepancy in the condition/description of the goods was not intentional and that the Noticee had relied upon the documents and representations furnished by the overseas supplier.

6.4.6 I find that the above contention of the Noticee is not acceptable as the Faceless Assessment Group Officer had raised a query on **15.12.2025** in respect of assessment of BoE No. 6187405 dated 09.12.2025 filed by the Noticee as under:

"Upon perusal of the submitted pictures of the goods, it can be concluded that the goods are old and used refractory bricks i.e. Other than capital goods, which requires authorization from DGFT as per para 2.31(ii) of

FTP, 2023. The party has failed to produce the same and accordingly the instant B/E may be pushed to Port Assessment Group (PAG) for adjudication as the same falls under the category of restricted goods without a valid authorization. ”

In response of the above query, no response was submitted by the importer and accordingly, Faceless Assessment Group Officer returned the BoE No. 6187405 dated 09.12.2025 for Local Assessment on 17.12.2025.

6.4.7 I find that the importer had filed the impugned Bill of Entry on 09.12.2025 wherein pictures of import goods which appeared to be old and used refractory bricks, were uploaded for assessment well before the opening of sealed containers containing imported goods vide BoE No. 6187405 dated 09.12.2025 and examination of the said goods on 31.12.2025 under panchnama proceedings. Thus, the contention of the Noticee that they got to know about the actual nature/description of the imported goods only after opening of the said containers on 31.12.2025 is not correct and not acceptable.

6.4.8 In view of the above, it is evident that the Noticee had uploaded the pictures of old and used refractory bricks while filing the present Bill of Entry for assessment well before the arrival of the imported goods into India and thus, they were well aware that the goods being imported was old and used refractory bricks which mandatorily requires DGFT Authorization. It clearly transpires that the importer intentionally tried to import the said restricted goods by suppressing the material facts i.e. actual description of the goods to bypass the mandatory requirement of DGFT Authorization.

6.5 Whether confiscation under Sections 111(d) and 111(m) is attracted

6.5.1 I find that Section 111(d) renders liable to confiscation any goods imported contrary to any prohibition imposed under the Customs Act or any other law for the time being in force. Section 2(33) of the Customs Act, 1962 defines “prohibited goods” as any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. Since the Foreign Trade Policy requires authorisation for import of second-hand goods, which has not been complied with in this case, the goods became prohibited and consequently, liable for confiscation under Section 111(d) of the Customs Act, 1962.

6.5.2 I find that the Show Cause Notice has also proposed confiscation under Section 111(m) on the ground that the goods were effectively declared as normal Alumina Carbon Bricks whereas the goods were found to be old and used refractory bricks. The import documents did not describe the goods as "old and used". Further, the Chartered Engineer's report and examination report subsequently established that they were in fact used goods. The omission to disclose this material characteristic had a direct bearing upon the applicable import policy because only old and used goods required DGFT authorisation. Therefore, the declaration was materially

incomplete regarding the true nature of the imported goods. Accordingly, confiscation under Section 111(m) for mis-declaration is also attracted.

6.5.3 Further, the fact remains that the goods actually imported and presented before Customs are required to satisfy the statutory requirements applicable to importation into India. The liability of the goods to confiscation has to be determined on the basis of the condition and circumstances in which the goods were imported and presented for clearance. The examination report/panchnama constitutes material evidence regarding the actual condition of the imported goods.

6.5.4 In view of the foregoing discussion and findings, I hold that the imported goods are liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Considering the nature and gravity of the contravention, the actual condition of the goods as found on examination, the applicable restrictions governing their importation and the circumstances of the case, I find that the goods are not deserving of release to the Noticee. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of misdeclaration being clever and ingenious, quantity being large and commercial, clear attempt to import the restricted goods i.e. used and old refractory bricks, is a fit case for absolute confiscation as a deterrent to such offenders.

6.5.5 In the instant case, the goods was declared as "Alumina Carbon Bricks" despite being it used and old refractory bricks which indicates that the Noticee did not have any intention to declare the correct description of the goods to bypass the mandatory DGFT authorization. The redemption of the imported goods will encourage such import as, if the goods is not detected by the Custom authorities, the importer gets away with importing used and old refractory bricks and if not, he has the option of redeeming the goods. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked.

6.5.6 Thus, in view of the foregoing discussion, the facts and circumstances of the case, and the deliberate misdeclaration of the imported goods as "Alumina Carbon Bricks" instead of the actual description as old and used refractory bricks, I hold that the imported goods are liable to absolute confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Since the goods are ordered for absolute confiscation, no option for redemption of the confiscated goods is granted. Further, as the goods are not ordered for the re-export, the goods needs to be destroyed at the cost of importer, to ensure that India doesn't become dumping ground for old and used goods and end-of-life industrial waste. Accordingly, I order for destruction of the goods, which are attempted to be imported without authorisation, at the cost of importer, following statutory requirement of Customs Act, 1962 and any other law as applicable.

6.5.7 In view of the foregoing findings, since the subject goods have been ordered to be absolutely confiscated under Section 111(d) and Section 111(m) of the Customs Act, 1962, with no option for redemption under Section 125 of the said

Act, and are consequently liable to vest in the Central Government under Section 126 thereof, the goods are not available for release for home consumption. Accordingly, the proposal for recovery of customs duty and interest in respect of the said confiscated goods does not survive and the corresponding demand of customs duty and interest proposed in the Show Cause Notice is liable to be dropped.

6.5.8 Further, the Noticee has relied upon various judgements of Hon'ble Higher Courts wherein it has been held that mandatory re-export condition cannot be imposed by the adjudicating authority on its own motion under section 125 of Customs Act 1962. The legal position emerging from the said judicial precedents has been duly considered and followed in the present proceedings and accordingly, the impugned goods, which are restricted for import in the absence of the requisite authorisation from the DGFT, are ordered to be absolutely confiscated.

6.6 Whether Penalty under Section 112(a) is imposable

6.6.1 I find that the Show Cause Notice has proposed imposition of penalty under Section 112(a) of the Customs Act on the ground that the Noticee imported restricted goods without obtaining the requisite authorisation under the Foreign Trade Policy, thereby rendering the goods liable to confiscation under Sections 111(d) and 111(m).

6.6.2 In this regard, I observe that the Noticee has contended that:

(i) They had placed a purchase order for supply of Alumina Carbon Bricks and the overseas supplier's commercial invoice also described the goods as Alumina Carbon Bricks without indicating that they were "old and used";

(ii) Immediately after the departmental query and physical examination revealed that the goods appeared to be old and used, they approached the Directorate General of Foreign Trade (DGFT) for obtaining a Restricted Import Authorisation; that this shows their bona fides;

(iii) There was no intention to violate the import policy or evade customs duty;

(iv) Customs duty, applicable interest and the prescribed reduced penalty under Section 28 had already been voluntarily discharged within the statutory period; and

(v) Therefore, no further penalty deserves to be imposed.

6.6.3 I have carefully considered these submissions of the importer. Section 112(a) provides for imposition of penalty upon any person who, by any act or omission, renders imported goods liable to confiscation under Section 111. Thus, the test under Section 112(a) is whether the conduct of the importer has resulted in goods becoming liable to confiscation. In the instant case, from the query raised by the Faceless Assessment Group Officer on 15.12.2025 in respect of the pictures of impugned goods uploaded by the importer for assessment of B/E dated 09.12.2025, it is evident that the goods being imported vide Bill of Entry 6187405 dated

09.12.2025 was old and used refractory bricks whereas the importer misdeclared the same as “Alumina Carbon Bricks”.

6.6.4 In the present case, it has been already held in para(s) supra that the goods imported were old and used refractory bricks, such goods were restricted under the Foreign Trade Policy, no valid import authorisation existed on the date of import, the imported goods do not correspond in respect of description with the entry made and consequently, confiscation under Section 111(d) and 111(m) is legally sustainable. From the observation dated 15.12.2025 made by FAG officer in respect of the photos uploaded during filing of bill of entry dated 09.12.2025, it is amply clear that goods are old and used refractory bricks and importer was well aware of this fact well before filing bill of entry and opening containers for examination of goods on 31.12.2025. Despite knowing that the goods are old and used, they failed to declare these facts in bill of entry to circumvent the restriction imposed under FTP 2023. This act of omission and commission made by the Noticee rendered the impugned goods liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962 and consequently, the Noticee is liable for penalty under Section 112(a) of Customs Act, 1962.

6.7 Whether Penalty under Section 114AA is attracted

6.7.1 I find that the Show Cause Notice has further proposed penalty under Section 114AA of the Customs Act alleging that the importer knowingly /intentionally used false declarations and documents in relation to the import of the goods. In this regard, the Noticee has challenged the said penalty, contending that the commercial invoice, packing list and Bill of Lading were issued by the overseas supplier; there is no evidence that the importer fabricated or manipulated any document; there is no finding that the importer knowingly made a false declaration; at best, the dispute concerns the actual condition of the goods supplied by the exporter; therefore, the essential ingredients of Section 114AA are absent.

6.7.2 I have carefully examined these submissions. I find that Section 114AA reads as under:

Section 114AA. Penalty for use of false and incorrect material. –

" If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods. "

In the instant case, I observe that the importer had declared the goods simply as “Alumina Carbon Bricks” in the invoice and Bill of Entry without disclosing that the goods were old and used. Apart from this, the Noticee has uploaded pictures of “Alumina Carbon Bricks” for assessment of B/E No. 6187405 dated 09.12.2025 which clearly shows that the said goods were old and used refractory bricks falling under the category of goods other than capital goods, import of which is restricted

and requires valid authorisation from DGFT in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023 and thus, they intentionally made false or incorrect declaration to circumvent Import Policy restriction. Even after uploading pictures reflecting the imported goods as old and used refractory bricks, the importer has not made any attempt to correct the description in Bill of Entry.

6.7.3 In view of the above, in my considered opinion, such intentional incorrect declaration to circumvent Import Policy restriction, is sufficient evidence to establish conscious falsification and thus, Section 114AA is rightly invocable in the instant case. Accordingly, I hold that the mandatory ingredients of Section 114AA have been satisfactorily established on the basis of the evidence available on record and penalty under Section 114AA is liable to be imposed.

6.7.4 The Noticee has submitted various case laws with respect to imposing less penalty at 5% of value of the goods. I note that section 112(a) allows penalty up to the value of goods and Section 114AA of Customs Act, 1962 allows penalty up to five times of value of goods. In this regard, I find that various courts have consistently held that penalty should be reasonable and commensurate with the facts and circumstances of the case. In the present case, I note that the Noticee has intentionally mis-declared the goods as “Alumina Carbon Bricks” when the goods are actually “used and old refractive bricks” falling under the category of goods other than capital goods, import of which is restricted and requires valid authorisation from DGFT in terms of Para 2.31(ii) of the Foreign Trade Policy, 2023. The fact that the Noticee is in full knowledge of actual nature of goods, is well established by the photos of the goods uploaded while filing bill of entry, which was well before opening the containers for examination of goods. Even during the adjudication proceedings, the Noticee pleaded ignorance shifting the entire blame to supplier while the facts prove otherwise. Further, the penalty should be sufficient to deter the Noticee from repeating this fraud and using India as dumping ground for end-of-life industrial waste. Accordingly, the Noticee’s submission that penalty should be confined to 5%, is not acceptable and higher penalty needs to be imposed considering the severity of the issue, the active involvement in fraud, the extent of violation and requirement of maintaining effective deterrence against such non-compliance.

7. In view of above discussion, I pass the following order:

:ORDER:

- (i) I drop the demand of Customs Duty of Rs. 5,47,767/- (Rupees Five Lakh Forty Seven Thousand Seven Hundred Sixty Seven Only) proposed in the notice under Section 28(4) of the Customs Act, 1962.
- (ii) I drop the demand of interest proposed in the notice under Section 28AA of the Customs Act, 1962;
- (ii) I order for absolute confiscation of the imported goods, declared as Alumina Carbon Bricks, valued at ₹19,75,002/- under Sections 111(d) and 111(m) of the Customs Act, 1962. The confiscated goods shall be destroyed at the cost



of the importer in accordance with law in coordination and under supervision of Customs Officers.

(ii) I impose penalty of Rs. 3,00,000/- (Rupees Three Lakh only) under Section 112(a) of the Customs Act, 1962.

(iii) I impose penalty of Rs. 3,00,000/- (Rupees Three Lakh only) upon the importer under Section 114AA of the Customs Act, 1962.

8. Show Cause Notice No. ADC-02/2026-27 dated 10.06.2026 issued to M/s. Meena Refractory Private Limited, stands disposed of in view of the above manner.

9. This order is issued without prejudice to any other action which may be contemplated against the Importer or any other person in terms of any of the provisions of the Customs Act, 1962 and/or any other law for the time being in force.



(N. Srujan Kumar)

Date: 24.09.2026

Additional Commissioner
Customs (Preventive), Jamnagar

फाइल क्रमांक/File No. : CUS/1467/2026-Adjn.

By Speed Post A.D. / Email

To,

1. M/s Meena Refractories Private Limited,
8A-National Highway,
Survey No. 137P, Village: Lalpar,
Wankaner, Gujarat-363621

Copy to:

1. The Commissioner, Customs (Preventive), Jamnagar [Kind Attention: the Superintendent (Review-HQ), Customs (Preventive) Jamnagar];
2. The Deputy/Assistant Commissioner, ICD, Morbi for information and further necessary action;
3. Guard File.