



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road  
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DIN - 20260171MN0000777FE3

क	फ़ाइल संख्या FILE NO.	S/49-351/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-789-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.01.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/175/2024-25 dated 25.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Kalpana Exim, Office No. B-11, Hotel Indraprasth, Near Shakti Nagar Circle, Adani Port Road, Mundra (K) - 370 421.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव-/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते 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
	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.
	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
	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 ।
	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

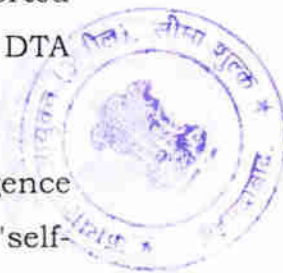


**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Kalpana Exim, Office No. B-11, Hotel Indraprasth, Near Shakti Nagar Circle, Adani Port Road, Mundra (K) – 370 421, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AKM/175/2024-25 dated 25.10.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the present case involves an intricate and wide-ranging investigation conducted by the Directorate of Revenue Intelligence (DRI), Gandhidham, which unearthed a large-scale, highly organized smuggling cartel operating through the Mundra Port. The investigation revealed that a common group of persons had established a sophisticated, multi-layered syndicate designed specifically to exploit the regulatory relaxations and procedural flexibilities inherent in the Special Economic Zone (SEZ) to Domestic Tariff Area (DTA) clearance mechanism. This syndicate was created for the primary purpose of importing prohibited and restricted goods—specifically high-value foreign-brand electronic cigarettes and various types of toys requiring mandatory Bureau of Indian Standards (BIS) compliance—by resorting to gross and calculated mis-declaration of description, quality, quantity, and value. While the broader investigation covered a staggering 18 import consignments involving eight different importers, the specific subject of this adjudication is the consignment imported in the name of M/s. M.M. Enterprises (IEC: BMEPM3625G) covered under DTA Bill of Entry No. 2012895 dated 26.08.2022.

2.1 The genesis of the case lies in specific, actionable intelligence gathered by the DRI suggesting a systematic and predatory abuse of the "self-assessment" and "trusted trader" schemes that underpin modern customs operations within the SEZ. The intelligence indicated that a smuggling cartel was utilizing front companies to move prohibited contrabands into the domestic market. Analysis of system data revealed that Vehicle No. GJ12BV0610 was carrying the import consignment imported through Container No. TLLU4615592. Acting swiftly upon this intelligence, DRI officers,



in coordination with the Surat Regional Unit, intercepted the truck near Palsana Chokdi on the National Highway on 01.09.2022.

2.2 The vehicle was found to be carrying Container No. TLLU4615592, which had been cleared from the SEZ Warehouse Unit of M/s. Empezar Logistics, Mundra, and was supposedly destined for a godown in Bhiwandi. Upon interception, the driver, Shri Chuna Singh Rawat, was questioned regarding the nature of the cargo. The preliminary inquiry and the recovery of incriminating documents from the driver—including e-way bills featuring unrelated entities—corroborated the intelligence that the container did not merely contain the declared items but was a vessel for contraband. Given the complexity of the concealment, the vehicle was escorted to ICD Sachin, where DRI officials requested the assistance of mechanical labor and equipment to de-stuff the entire container for an exhaustive examination in the presence of two independent arbitrators (Panchas). During the process, a person named Mr. Parvez Alam arrived at ICD Sachin, introducing himself as the representative of the actual buyers, Shri Mohammad Asif Sathi and Shri Sarfaraj Kamani, confirming the syndicate's oversight of the transit.

2.3 The rigorous examination of the impugned goods at ICD Sachin was conducted under Panchnamas dated 01/02.09.2022 and 19.10.2022. This process revealed a masterclass in smuggling techniques. Amidst the declared cargo of "Head Massagers" and "Exercise Books," officers recovered 107 cartons marked with the brand "DK123 XXL." Upon opening these cartons, they discovered a total of 85,600 pieces of electronic cigarettes of the "Yuoto" brand. These were found in a wide array of flavors clearly designed to appeal to younger demographics, including Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, Milk, and Coffee. These goods, falling under CTH 85434000, are strictly prohibited for import in terms of DGFT Notification No. 20/2015-2020 dated 26.09.2019 and the Prohibition of Electronic Cigarettes Act, 2019.

2.4 Furthermore, the examination revealed 89,000 pieces of silicon "Pop up" toys falling under CTH 9503. These items were imported in direct violation of Policy Condition 2 of Chapter 95 of the Customs Tariff. This policy mandates that all imported toys conform to rigorous BIS standards, including IS: 9873 Part 1 (Safety aspects related to mechanical and physical properties), Part 2 (Flammability), and Part 3 (Migration of certain elements). The importer



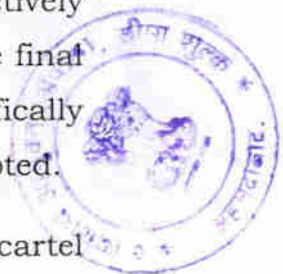
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failed to produce any valid BIS compliance certificates, rendering the toys "prohibited goods" under Section 2(33) of the Customs Act, 1962. The examination also found excess quantities of declared items, such as 240 additional Head Massagers and 1,364 Exercise Books. These "filler" goods were strategically used to pad the container, ensuring that the prohibited items remained shielded from the container doors and providing a facade of legitimacy during any casual visual inspection at the port or SEZ gate.

2.5 The investigation into the role and culpability of the noticees revealed a deep-rooted conspiracy characterized by a high degree of planning and division of labor. M/s. M.M. Enterprises, through its proprietor Shri Mohammed Tahir Hanif Menn, acted as a willing front for the syndicate. Shri Tahir Menn admitted that he allowed the smuggling cartel led by Shri Mohammad Asif Sathi to use his firm's IEC and bank accounts in exchange for "rental" monetary benefits ranging from Rs. 15,000 to Rs. 50,000 per consignment. To further insulate the mastermind from detection, Shri Tahir Menn facilitated the creation of dummy firms like M/s. J.H. Enterprises in the names of domestic workers, such as Shri Juma Hamir Halepotra, demonstrating the predatory nature of the syndicate's recruitment.

2.6 A critical aspect of the syndicate's modus operandi was the "crossing" operation, a tactical maneuver designed to disrupt the surveillance of enforcement agencies. After a container was cleared from the Mundra SEZ, the syndicate would monitor its movement in real-time via "Wheelseye" tracking links. To evade detection by agencies tracking e-way bills or container numbers, the syndicate would arrange for the "crossing" of goods at intermediate locations like Navsari or Surat. This involved transloading the contraband from the original container into secondary vehicles, effectively breaking the digital and physical trail between the port of entry and the final destination. In the present case, Shri Parvej Alam was dispatched specifically to oversee this transloading just before the vehicle was tactically intercepted.

2.7 During the investigation, it was revealed that the smuggling cartel had utilized the IEC of M/s. M.M. Enterprises for successful importations in the past. Shri Tahir Menn, Shri Asif Sathi, and Shri Parvez Alam all confirmed in their voluntary statements that a total of 265 cartons (comprising 125 and 140 cartons respectively) had been imported in July and August 2022. These consignments contained approximately 212,000 pieces of electronic cigarettes. Although these goods had already been disposed of in the domestic market and



were not available for physical seizure, the Adjudicating Authority held them liable for confiscation under Section 111, noting that the proceeds of these past crimes were laundered through the same dummy accounts.

2.8 The individual roles in this well-oiled machinery were established through various voluntary statements recorded under Section 108:

- a. Shri Mohammad Asif Sathi (The Mastermind): Sathi was the architect and financier of the racket. He coordinated directly with overseas suppliers in China (such as "Mrs. Shelly") and finalized deals through firms like "AH International Trading Co." and "HK Longcheng Trade Co." He managed the financial trail, collecting cash from domestic purchasers and depositing it into dummy firm accounts to facilitate outward remittances, thereby bypassing legitimate forex regulations.
- b. Shri Mohammed Tahir Menn (The Facilitator): As the proprietor of M.M. Enterprises, he lent the "credibility" of a local business to the cartel. He introduced Shri Baldevsinh to Sathi to handle port-side logistics and was actively involved in monitoring the location of trucks via shared GPS links. He admitted that his firm never conducted any actual business in the goods imported but served merely as a conduit for Sathi's contrabands.
- c. Shri Sarfaraj Kamani (The Associate): A close partner of Sathi, Kamani was involved in the loading phase in China and was identified as a joint owner of the Bhiwandi godowns. Evidence confirmed his participation in planning the import of counterfeit goods and mobile phone accessories infringing the Intellectual Property Rights (IPR) of brands like Vivo, Oppo, and Realme.
- d. Shri Baldevsinh Vala (The Logistical Operative): Operating through M/s. Kalpana Exim, Vala was the operative who manipulated the shipping documents and invoices provided by the overseas suppliers. For ensuring the smooth clearance of prohibited items, he charged Sathi a premium of approximately Rs. 17 Lakhs per container—a fee far exceeding any legitimate forwarding commission.
- e. Shri Samir Sharma (The Customs Broker): A G-Card holder of M/s. Al Cargo Services, Sharma misused the SEZ Online portal's sub-login functionality. He filed the Bills of Entry despite knowing that the descriptions were false. To facilitate the exit of the trucks from the SEZ gate, he submitted e-way bills featuring unrelated parties, ensuring the actual destination remained masked.



2.9 The investigation also highlighted gross professional negligence on the part of the then-Preventive Officer, Shri Vipin Sharma. Charged with the statutory duty to verify the physical cargo against the invoice, Sharma submitted an examination report stating he had "inspected the lot." The subsequent seizure of nearly 175,000 units of prohibited or un-declared cargo from that very container proved that no meaningful physical examination was ever performed. This "casual approach" provided the syndicate with a virtual "green channel," directly enabling the entry of prohibited contrabands that pose a risk to national health and child safety.

2.10 Under the Customs Valuation Rules (CVR), 2007, the Adjudicating Authority rejected the transaction values declared in Bill of Entry No. 2012895. Rule 12 was invoked because the significant mis-declaration rendered the declared values—and the associated invoices—fraudulent. Consequently, the value was re-determined using the "Best Judgment Method" under Rule 9. A government-approved Chartered Engineer assessed the market price of the seized goods at approx. Rs. 21.67 Crores, compared to a declared value of approx. Rs. 4.43 Lakhs.

2.11 On the basis of the investigation, Show Cause Notice dtd. 31.08.2023 was issued to the appellant and other persons. Consequently, the Adjudicating Authority passed the following order in respect of the appellant.

**IN RESPECT OF GOODS IMPORTED AND CLEARED THROUGH BILL OF ENTRY NO. 2012895 DT. 26.08.2022:**

- (I) He imposed penalty of Rs. 5,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.
- (II) He imposed penalty of Rs. 1,00,000/- upon the appellant under Section 114AA of the Customs Act, 1962.

**SUBMISSIONS OF THE APPELLANT:**

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant contends that the impugned order is a non-speaking



order because the Adjudicating Authority failed to address all the specific grounds and submissions raised by the appellant during the adjudication process. Furthermore, the appellant argues that the authority ignored their request for the cross-examination of key individuals, including Shri Asif Sathi, Shri Baldevsinh Vala, and Shri Samir Sharma. By brushing aside these requests without providing findings, the appellant asserts that the order was passed in direct violation of the principles of natural justice.

3.2 A major point of the appeal is that the Adjudicating Authority did not establish that the appellant was involved in any import or clearance-related activities concerning the goods in question. The appellant submits that the notice failed to provide evidence showing they were part of any WhatsApp groups or had occasions to deal with the primary parties involved in the smuggling. Consequently, the appellant argues there is no "omission or commission" attributable to them that would render the goods liable for confiscation under Section 111, thereby making the penalties under Section 112 and Section 114AA inapplicable.

3.3 The appellant maintains that there is no evidence to prove they had prior knowledge of the actual nature of the goods imported by M/s. M. M. Enterprises. They argue that even regarding the preparation of invoices, the statements from involved persons—including the beneficial owner and the Customs Broker—do not demonstrate mala-fide intention or knowledge of the mis-declaration on the part of the appellant. Without proof of such knowledge, the appellant asserts that the imposition of penalties for providing false documents or concealing prohibited goods is legally flawed.

3.4 Finally, the appellant alleges that the investigation was conducted behind their back, as the Directorate of Revenue Intelligence (DRI) never recorded a statement from the appellant before leveling allegations regarding the specific goods imported by M/s. M. M. Enterprises. The appellant claims this procedural lapse further weakens the basis for the penalties imposed under Sections 112(a), 112(b), and 114AA of the Customs Act, 1962.

**PERSONAL HEARING:**

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

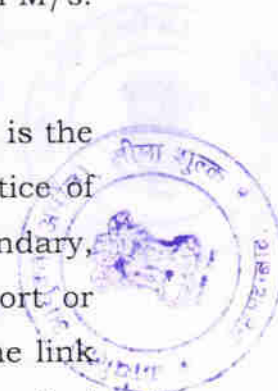
appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

**DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The investigation has painstakingly pieced together the operational methodology of the smuggling cartel, placing M/s. Kalpana Exim at the focal point of the local logistics and clearance mechanism. The Appellant's contention that they were mere "freight forwarders" is belied by specific findings. The evidence indicates that M/s. Kalpana Exim did not merely receive documents; they actively managed their "revision" to facilitate mis-declaration. The mastermind, Shri Asif Sathi, confirmed in his statement that the original invoices from suppliers contained the actual descriptions of e-cigarettes and restricted toys. These documents were sent to Shri Baldevsinh Vala of M/s. Kalpana Exim. Shri Baldevsinh, instead of reporting the discrepancies, coordinated the preparation of "revised" invoices and packing lists. These revised documents mis-declared the cargo as "Massagers," "Exercise Books," or "Plastic Beads" to match the description of "freely importable" items. The Appellant served as the bridge between the cartel and the Customs Broker, Shri Samir Sharma. The Broker's statement confirms that all instructions and documents for filing the Bills of Entry for dummy firms like M/s. M.M. Enterprises came exclusively from M/s. Kalpana Exim.

5.2 One of the most incriminating aspects of the Appellant's role is the orchestration of the "Crossing" maneuver. "Crossing" refers to the practice of transferring cargo from the container that cleared Customs into a secondary, "clean" local truck at a secluded location shortly after leaving the port or warehouse. This is a classic hallmark of smuggling intended to break the link between the import documents (including E-way bills) and the actual physical movement of goods. WhatsApp chats recovered from the mobile of Shri Parvej Alam (the Bhiwandi warehouse manager) show Shri Baldevsinh Vala providing real-time instructions on where and when the "crossing" should occur. Shri Baldevsinh was found to have advised the cartel on avoiding specific routes known for mobile wing checks by State Tax/Customs. A bona fide logistics



provider would have no reason to provide such "evasion tactics" if the goods were indeed legitimate massagers as declared.

5.3 The investigation into the financial dealings of the Appellant reveals a fee structure that is entirely inconsistent with legitimate trade. The investigation established that M/s. Kalpana Exim was charging a "lumpsum" fee of Rs. 17 Lakhs per container for shipments containing e-cigarettes. The "Insurance" Element: This exorbitant fee was essentially an "all-inclusive" price for managing the risks of smuggling, including document fabrication, bribing intermediaries, and ensuring safe passage via "crossing." Statements of co-accused indicate that these payments were often made in cash or through complex hawala channels to hide the trail. The Appellant's failure to account for these massive "service fees" in their regular books of accounts further underscores the clandestine nature of their involvement.

5.4 The investigation found that M/s. Kalpana Exim essentially "owned" the clearance process for several dummy firms. They managed the IEC credentials, handled the digital signatures for filing, and even coordinated with the warehouse (M/s. Empezar Logistics) for the "de-stuffing" and "re-stuffing" of containers. This level of granular control is far beyond the scope of a traditional forwarder and confirms that the Appellant was a key "logistical partner" in the criminal conspiracy.

5.5 The Appellant contends that there is no "direct evidence." In customs matters involving smuggling cartels, the standard of proof is the preponderance of probability, not proof beyond reasonable doubt. I rely on the following judicial precedents:

- **Collector of Customs, Madras vs. D. Bhoormull [1983 (13) ELT 1546 (S.C.)]**: The Hon'ble Supreme Court held that the department is not required to prove its case with mathematical precision. Inferences must be drawn from the whole circumstances of the case. The recovery of prohibited goods combined with incriminating WhatsApp chats and the statement of the beneficial owner forms a robust chain of evidence.
- **Naresh Kumar Sukhwani vs. Union of India [1996 (83) ELT 285 (SC)]**: The Supreme Court affirmed that a statement made before a Customs officer under Section 108 is a material piece of evidence and can be used as substantive evidence.



*[Handwritten signature]*

5.6 The Adjudicating Authority correctly applied the ruling in **Surjeet Singh Chabra vs. UOI [1997 (84) ELT 646 SC]**, noting that a statement tendered before Customs is valid evidence. The Appellant's claim that they were unaware of the contents is belied by the WhatsApp chats where Shri Baldevsinh specifically instructed other cartel members to ensure that e-cigarette cartons were not stuffed near the container gates to avoid detection during accidental inspections. This proves "active knowledge" and "mens rea."

5.7 The Appellant cited several cases suggesting that "penalties cannot be imposed on the basis of co-accused statements alone." However, these are not applicable in instant case. The evidence is not just the statement of Shri Asif Sathi; it is corroborated by recovered digital data (WhatsApp chats). The Appellant's own employee/signatory, Shri Baldevsinh, provided details that align with the mastermind's version. The recovery of the 107 cartons of e-cigarettes is a "fact discovered" which validates the statements of the cartel members.

5.8 The Appellant argued that the denial of cross-examination violated natural justice. I find this argument to be a dilatory tactic. Various judicial pronouncements have held that where there is no dispute regarding the facts emerging from documents, the right of cross-examination is not an absolute requirement of natural justice. In the present case, the "facts" are established by the recovery of prohibited goods and the digital footprints of the participants. Shri Baldevsinh Vala was given an opportunity to explain the WhatsApp chats and could not provide a legitimate business reason for suggesting the "crossing" of containers or for charging Rs. 17 Lakhs per container. Therefore, the Adjudicating Authority was correct in proceeding without cross-examination.

5.9 The Appellant argues that the penalties imposed are excessive and lack legal basis. I find this contention to be legally untenable for a lot of reasons. Section 112(a) provides for penalties on any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111. The phrase "any person who, in relation to any goods, does or omits to do any act" is broad enough to include facilitators, coordinators, and logistics providers.

5.10 M/s. Kalpana Exim committed multiple acts of commission: (i) Orchestrating the "crossing" of trucks to evade post-clearance detection; (ii) Coordinating the mis-declaration of e-cigarettes as "massagers"; and (iii) Managing dummy IECs. These actions were fundamental to the goods reaching the market without detection. Even if the Appellant claims they didn't "own" the

goods, Section 112(b) and 112(a) apply to those who "acquire possession of or are in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing... prohibited goods." Charging Rs. 17 Lakhs per container is irreproachable evidence that the Appellant had "reason to believe" the goods were liable to confiscation.

5.11 Section 114AA was specifically inserted into the Act to penalize those who knowingly or intentionally use false or incorrect material in the transaction of any business for the purposes of the Act. The investigation revealed that M/s. Kalpana Exim (through Shri Baldevsinh) was the conduit for the fabricated invoices. They provided the "revised" data to the Customs Broker to be uploaded onto the ICEGATE system. Unlike Section 112(a) which can sometimes be attracted by negligence, Section 114AA requires a high degree of intent. The WhatsApp instructions from Shri Baldevsinh regarding the "stuffing" patterns of the cartons to hide e-cigarettes from "accidental gate-opening" by officials constitutes undeniable proof of intentional fraud. The role of M/s. Kalpana Exim as the "manager" of M/s. M.M. Enterprises' clearance documents falls squarely within this precedent.

5.12 The Appellant claims the penalties (Rs. 5 Lakhs under 112(a) and Rs. 10 Lakhs on the signatory under 114AA) are "arbitrary." Considering that the value of the seized goods in this single interception alone was over Rs. 21 Crores, the penalties imposed are actually on the lower end of the statutory limits. The smuggling of e-cigarettes is not just a revenue issue but a public health risk, as these items are prohibited under the PECA Act, 2019. Facilitators like the Appellant who provide the professional "infrastructure" for such cartels must be dealt with stringently to ensure the integrity of the Customs clearance system.

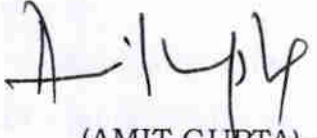
5.13 The investigation has established a deep-rooted connivance between the Appellant and the smuggling cartel. The Appellant was not an innocent bystander but a "facilitator" who provided the logistical infrastructure necessary for the cartel to operate. The high profit margins and the tactical advice given on how to avoid detection prove beyond doubt that the Appellant was fully aware of the illegal nature of the trade. The Adjudicating Authority's order is well-reasoned, supported by both documentary and statement-based evidence, and correctly applies the law.



6. In view of the detailed discussions and findings recorded above, I find no reason to interfere with the Order-in-Original No. MCH/ADC/AKM/175/2024-25 dated 25.10.2024.

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

सत्यापित/ATTESTED  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील), अहमदाबाद  
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-351/CUS/MUN/2024-25

Date: 29.01.2026

By Speed post /E-Mail

To,  
M/s. Kalpana Exim,  
Office No. B-11, Hotel Indraprasth,  
Near Shakti Nagar Circle,  
Adani Port Road,  
Mundra (K) – 370 421.



Copy to:

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