



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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 दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250971MN0000437449

क	फ़ाइल संख्या FILE NO.	S/49-92/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-190-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	23.09.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/262/2023-24 dated 23.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	23.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Nitesh Vijaybhai Chandani Executive of M/s OK Cargo Craft Pvt ltd 202, Sunshine Arcade-2 Near D-Mart, Gandhidham -370201



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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	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
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>				
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5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				



**ORDER-IN-APPEAL**

Appeal has been filed by Shri Nitesh Vijaybhai Chandani, Executive of M/s. OK Cargo Craft Pvt ltd, 202, Sunshine Arcade, Near D-Mart, Gandhidham -370201, (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/262/2023-24 dated 23.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that acting upon Specific intelligence developed by the officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as the "DRI") indicated that Chinese toys were imported into India in CKD or SKD condition by way of mis-declaration and without any statutory BIS compliance by M/s. Solanki Toys Industries (IEC - AGGPK4048Q), 56, Gopal Charan Industrial Hub Bakrol, Bujrang, Daskroi, Ahmedabad 380432 (hereinafter referred to as the "importer"). Acting on the intelligence, 02 containers were examined by the Officers of DRI at Allcargo CFS, Mundra and Honeycomb Logistic Private Limited CFS, Mundra respectively under panchnama proceedings dated 17.02.2023 and 22/23.02.2023 respectively.

2.1 During the course of examination of the goods imported in Container No. CRSU9296651, it was found that in the Customs declaration filed on 07.10.2022 vide IGM No. 2323815, the importer has declared items viz. Toy Spare Parts HS Code 95033330 (546 Cartons), Packing Material HS Code 48191090 (128 Cartons) & Plastic Articles HS Code 392690 (74 Cartons). It appeared that the BIS licence No. 7200220185 as per IS 9873: PART I: 2019 dated 02.05.2022 issued to M/s. Solanki Toys Industries, Ahmedabad, by the Bureau of Indian Standards, Ahmedabad is for Non-Electrical Toys only. However, during examination parts of toys which are operated with battery were found. As per Para 4 of Annex A of Products Manual for Safety of toys - IS 9873 (Parts 1,2,3,4,7,9) and IS 15644, the battery operated toys are considered as Electric Toys and the importer could not produce any BIS certificate for Electric Toys. It was also observed that in Bill of Lading No. SW1CB22000755 dated 15.09.2022 total 74 cartons containing Plastic Parts, HS Code 392690 were declared, However, on examination, no plastic parts were found.

2.3 On detailed examination of the goods, it was found that some




imported goods are not as per the description mentioned in the Bill of Lading dated 15.09.2022 and they do not have the BIS licence for Electric Toys. Thus, the goods appeared to be imported by mis-declaring the same and did not comply with BIS Standard. Hence, the said goods were placed under seizure under Section 110 of the Customs Act, 1962 with a reasonable belief that the said goods are liable for confiscation under the provisions of the Customs Act, 1962. The goods seized vide Seizure Memo dated 17.02.2023 were handed over to Shri Ashok Kumar Giri, deputy Manager Operations, M/s Allcargo Logistics Ltd (CFS), Mundra under Suparatnama dated 17.02.2023 for safe custody.

2.4 During the course of examination of the goods imported in Container No. TCNU8515184, it was found that in the Customs declaration filed on 27.09.2022 vide IGM No. 2322899, the importer had declared items viz. Toy Spare Parts HS Code 95033330, Packing Material HS Code 48191090 (Total 756 Cartons). It appeared that the BIS licence No. 7200220185 as per IS 9873: PART I: 2019 dated 02.05.2022 issued to M/s. Solanki Toys Industries, Ahmedabad by the Bureau of Indian Standards, Ahmedabad is for Non-Electrical Toys only. However, during examination parts of toys which are operated with battery were found. As per Para 4 of Annex A of Products Manual for Safety of toys - IS 9873 (Parts 1,2,3,4,7,9) and IS 15644, the battery operated toys are considered as Electric Toys and the importer could not produce any BIS certificate for Electric Toys. It was also noticed that the items viz. Toy Spare Parts HS Code 95033330 & Packing Material HS Code 48191090 (Total 756 Cartons) were declared in Bills of Lading No. HDMUSZPA28759200 dated 10.09.2022 however, on physical examination, items other than declared were found in the container. It was also noticed that most of the parts found in SKD condition in this container are nothing but others part of the toys found during the examination of the other container No. CRSU9296651 under Panchnama dated 17.02.2023. Thus, it appeared that the importer has intentionally imported parts of the same toys in different containers in knocked down condition in order to evade compliance of BIS requirement and to undervalue the actual price of the toys that are imported.

2.5 On detailed examination of the goods, it was found that the goods declared in the Bill of Lading No. HDMU SZPA28759200 dated 10.09.2022 as "Toy Spare Parts HS Code 95033330 & Packing Material HS Code 48191090 (Total - 756 Carton)" being imported by M/s. Solanki Toys Industries, 56, Gopalcharan Industrial Hub Bakrol, Bujrang, Daskroi, Ahmedabad in container IIO. TCNU8515184 are mis-declared in the Customs documents, non-



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compliance with BIS Standard and without having valid BIS licence for electric Toys. It was also found that some imported goods are not as per the description mentioned in the Bill of Lading dated 10.09.2022 and they do not have the BIS licence for Electric Toys. Further, it appeared that the goods have been imported by mis-declaring the description of goods and do not comply with BIS Standard, hence, the same were placed under seizure vide Seizure Memo dated 23.02.2023. The goods seized vide Seizure Memo dated 23.02.2023 were handed over to Shri Ashok Kumar Pandey, Assistant Manager, M/s. Honeycomb Logistic Private Limited (CFS), Mundra, under Suparatnama dated 23.02.2023 for safe custody.

2.6 Statement of Shri Nitesh Vijaybhai Chandani, Executive of M/s. O. K. Cargo Craft Pvt. Limited, Gandhidham, Customs Broker was recorded under Section 108 of the Customs Act, 1962 on 18.02.2023 wherein he interalia admitted that:

- Container No. CRSU9296651 was arrived at Mundra port during the month of September, 2022; that the clearance was not done within 30 days of its arrival; that Customs, Mundra has issued notice under Section 48 of the Customs Act, 1962;
- As per direction received from the importer, M/s. Solanki Toys Industries, Ahmedabad, they have filed Bill of Entry for clearance of imported goods vide Container No. CRSU9296651 alongwith waiver of Section 48 notice;
- Their request for waiver of notice under Section 48 of the Customs Act, 1962 was still pending with the Customs and therefore, Bills of Entry number was not generated in the systems;
- On being shown panchnama dated 17.02.2023 drawn by DRI officers at M/s. Allcargo CFS, Mundra, he stated that he was present during panchnama proceeding, he confirmed that he has gone through the Panchnama dated 17.02.2023 and admitted that the contents of the said panchnama are true and correct.
- On being shown copy of BIS licence No. 7200220185 as per IS 9873: PART I: 2019 dated 02.05.2022 issued to M/s. Solanki Toys Industries, Ahmedabad by the Bureau of Indian Standards, Ahmedabad wherein under category of Grade/ Class/Type/Variety, following details are mentioned 1. Type: Non-Electrical toys, Description of Toys: Bubble Sticks, Category B, Toys for physical activities Sub-category 39, Soap bubbles toys with accessories for blowing soap for bubbles, input source NA, Model No. SO-8053, SO-007, Starting age 3 years +, Series No S01 Applicable



Primary Indian Standards IS 9873 Part 1, Applicable Secondary Indian Standard IS 9873 Part 2, IS 9873 Part 3 and IS 9873 Part 9. 2. Type: Non-Electrical toys, Description of Toys: Bubble Gun, Category B, Toys for physical activities Sub-category 39, Soap bubbles toys with accessories for blowing soap for bubbles, input source NA, Model No. SO-818, A-777, Starting age 3 years +, Series No S02 Applicable Primary Indian Standards IS 9873 Part 1, Applicable Secondary Indian Standard IS 9873 Part 2, IS 9873 Part 3 and IS 9873 Part 9.

- On perusing the above BIS Licence, he admitted that the importer got the said BIS licence for import of Non-Electrical toys only;
- He also admitted that during the course of examination of Container No. CRSU 9296651 at M/s. Allcargo CFS, Mundra, battery operated toys parts were found by the department and seized under the provisions of the Customs Act, 1962;
- He further admitted that Non-Electrical toys and Electrical toys have different description and required separate BIS licence for each;
- He stated that this was their first import consignments of M/s. Solanki Toys Industries, Ahmedabad.

2.7 Statement of Shri Amit Kumar Jain, Proprietor of M/s. Solanki Toys Industries, Ahmedabad was recorded under Section 108 of the Customs Act, 1962 on 10.04.2023 wherein he interalia stated that:

- Before starting business at Ahmedabad, he was in same business in the name of M/s. Solanki Impex at Chennai as a trader of household items. From 2015-16, he started M/s Solanki Impex at Chennai but due to introduction of BIS in 2020 his import stopped. Then, he shifted to Ahmedabad in the year 2020-21 as there is cheap labour available. They are importing toys parts and started manufacturing/assembling of toys at Ahmedabad; Apart from, M/s. Solanki Impex, Chennai and M/s. Solanki Toys Industries, Ahmedabad no other firm is registered in their name; He stated that Brightson, Henkong, JK Trading Company, Hongkong. Victory Toys Trade, Hongkong and a few more which he forgot, were the agents who provide goods as per their requirement. He didn't know actual Manufacturing units in China; that when he gets order from retailers/whole sellers, he contacts telephonically and place order to the representatives of Agents of above suppliers. After negotiations with them, they place order. The suppliers send the container and they release the payment after receiving the goods; He didn't know about M/s. O.K Cargo



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Craft Pvt. Ltd., Gandhidham. All his Custom Broker work is taken care by Shri Vipul Makawana of M/s. Infinity Global Logistics, Ahmedabad. Shri Vipul Makawana told him to contact M/s. O.K Cargo Craft Pvt. Ltd., Gandhidham for Customs work at Mundra; He has not paid anything to M/s. O.K Cargo Craft Pvt. Ltd., Gandhidham for providing Custom broker work at Mundra and transportation for M/s. Solanki Toys Incnistries, Ahmedabad.

- When received notice from CFS that this container laid i CFS without filing Bill of Entry, he asked Shri Vipul Makawane, CHA to file Bill of Entry, but the same was not accepted by the Customs, Mundra as notice under Section 48 of the Customs Act, 1962 was already in place; He knew Shri Vipul Makawana of M/s Infinity Global Logistics, Ahmedabad since last 2 years, when he started M/s Solanki Toys Industries, Ahmedabad. Shri Vipul Makwana was looking after all CHA related work for our firm; He has paid around Rs. 25,000/- per container for filing of import documents to M/s. Infinity Global Logistics, Ahmedabad. Shri Vipul Makwana has cleared around 7 containers for him till now; he admitted that the contents of the said panchnama are true but according to the invoice value, the department valuation is very high; On being asked about the Packing material having sign printed 'MADE IN INDIA' and 'MFG. DATE, MRP..... (INCLUDING ALL TAXES), as MFG. BY SOLANKI TOYS INDUSTRIES, BAKROL, AHMEDABAD', he stated that 'Made in India' means these toys are made in Ahmedabad (INDIA). 'MFG. Date' represents date of manufacturing and 'MFG. By' indicates that these toys are manufactured by M/s. Solanki Toys Industries, Ahmedabad.
- He came to know that Shri Nitesh Chandani was representing as Customs broker for his imports. He didn't know him otherwise. He didn't know Shri Sunil Joiser, Brarch Manager of M/s. O.K. Cargo Craft Pvt. Limited (Customs Broker). On reading the statement dated 18.02.2023 of Shri Nitesh Chandani of M/s. O.K. Cargo Craft Pvt. Limited and he admitted that the contents of the statement dated 18.02.2023 are true and correct; he admitted and agreed that during examination of above consignment, 'electric/ electronic toy parts' were found instead of toy spare parts' and 'plastic articles'. He further admitted that since they didn't have BIS for Electronic/electric toys/parts, they have not mentioned Electronic/Electric toys/part' in the import documents; he agreed that during the above said panchnama proceedings, undeclared items i.e., Electronic/electric toy parts' were found in the above said consignments



of M/s. Solanki Toys Industries, Ahmedabad that were to be cleared through M/s. O.K Cargo Craft Pvt. Ltd., Gandhidham and the same were seized by the DRI officers; he stated that he was aware that mis-declaring or suppressing the details in Bills of Lading, Invoices and Packing List for imported goods create confusion and is illegal and it can attract legal actions under the Customs Act, 1962 & other relevant laws; he agreed to the fact and stated that the import of Chinese toys in India without BIS certificate is banned; he admitted that they were trying to import the said import consignments of toys alongwith other items without any BIS certificate.

2.8 Further, statement of Shri Amit Kumar Jain, Proprietor of M/s. Solanki Toys Industries, Ahmedabad was recorded under Section 108 of the Customs Act, 1962 on 19.04.2023 wherein he interalia stated that:

- He had carefully gone through his earlier statement recorded on 10.04.2023 and confirmed that the contents of the statement were true and correct. He agreed to the fact that the BIS certificate no. AHBO-I/CM/L-7200220185 dated 02.05.2022 was issued to his firm, M/s. Solanki Toys Industries, Ahmedabad with IS No. IS 9873: Part I: 2019 Bureau of Indian Standards, Ahmedabad for Nor-Electrical toys and not for electronic toys whereas the goods imported by him vide BL No. SW1CB22000755 dated 15.09.2022 & BL No. HDMU SZPA28759200 dated 10.09.2022 were electronic toy parts. he also admitted that he did not have any BIS certificate for electronic toys or toy parts; he stated that he had carefully gone through the Annex-A of the Product Manual for Safety of Toys as per IS 9873 (Parts 1,2,3,4,7,9) and IS 15644 wherein it is mentioned that Electric toys are sub-divided into the following subgroups according to input source:
  - Battery operated
  - Transformer toys
  - Dual-supply toys
- He further admitted that as per the above guidelines, the imported Chinese toys parts examined under Panchnama dated 17.02.2023 and 22/23.02.2023 were considered as Electrical toys parts and not as non-electrical parts.
- He admitted that the toy parts imported vide containers no. CRSU



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9296651 and TCNU 8515184 are battery operated electronic/electrical toy parts and not non-electrical toys parts. He confirmed that the invoices No. SNBI450909-03 dated 09.09.2022 & No. SNB1450827\_01 dated 27.08.2022 wherein they have shown the value of the consignments (Container No. CRSU 9296651 and TCNU 8515184) as US\$13541 40 & US\$15650.20 respectively have been submitted by his firm to the Customs authorities vide IGM No. 2323815 dated 07.10.2022 and IGM No. 2322899 dated 23.09.2022. He admitted that he had undervalued the assessable value of his consignments with the Customs authorities. But he did not agree with the of the government approved valuer who had valued the goods of above containers (No. CRSU9296651 and TCNU8515184) as Rs. 1,80,88,860/- & Rs. 1,03,39,952/- respectively.

- he had admitted that he had imported the above said consignments without any BIS certificate and by way of undervaluation; he is ready to pay the additional duty, fine and penalty for seized imported Chinese toys parts lying at Mundra. But He contested the valuation given by the department as it is too high; he admitted that he has violated the provisions of Customs Act, 1962 by importing electronic toys parts without BIS certificate and by undervaluing the goods. He also stated that he was aware as an importer that violation of provisions of Customs Act, 1962 attracts penal actions under the Act.

2.9 Statement of Shri Sunil Navinbhai Joisher, Branch Manager of M/s. O.K. Cargo Craft Private Limited, Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 22.05.2023 wherein he interalia stated that:

- that Shri Vipul Makwana (Mobile-8306740779) of M/s. Infinity Logistics, Ahmedabad (DGFT Consultant) had contacted him through reference of another Custom broker and requested him to provide Customs Broker services to M/s. Solanki Toys Industries, Ahmedabad; Shri Vipul Makwana has personally visited our Gandhidham office and handed over the documents (Bill of Lading, Invoice, Packing List etc.) for import of M/s. Solanki Toys Industries, Ahmedabad; this is their first consignment of M/s. Solanki Toys Industries, Ahmedabad at Mundra Port and till date they have not cleared any consignment of M/s. Solanki Toys Industries, Ahmedabad at Mundra or any other port of India; they have fixed Rs. 10,000/- per containers for providing customs broker services to M/s. Solanki Toys Industries, Ahmedabad through Shri Vipul Makwana of M/s.




Infinity Logistics, Ahmedabad. Till date they have not received any amount from them for their services; the above said containers No. CRSU 9296651 and TCNU 8515184 arrived at Mundra port long back. As per his knowledge, the clearance was not done within 30 days of its arrival, so the department had issued notice under Section 48 of the Customs Act, 1962. Further, as per direction received from the importer viz. M/s. Solanki Toys Industries, Ahmedabad, they have filed Bills of Entry for clearance of imported goods for above consignments along with waiver of Section 48 notice

- the contents of the Panchnamas are true and correct. He also stated that during panchnama proceeding of both containers representative of his firm Shri Nitesh Chandani was present. He admitted that the description in BL was "Toy Spare Parts / Packing Material" whereas during the examination of the consignments "Battery operated toy parts" in complete knock- down condition (CKD) were found; that during the above said Panchnama proceedings, Battery operated toy parts were found in the above said import consignments of M/s. Solanki Toys Industries, Ahmedabad that were to be cleared through his firm and the same were seized by the DRI officers; that as per BIS licence dated 02.05.2022, the importer got the said BIS licence for import of non-Electrical toys only. He also stated that as per his knowledge, non-Electrical toys and Electrical toys have different description and require separate BIS licence for each. He further stated that mis-declaring or suppressing the details in Bills of Lading, Invoices and Packing List for imported goods create confusion and is illegal and it can attract legal actions under the Customs Act, 1962 & other relevant laws; that M/s. Solanki Toys Industries, Ahmedabad have BIS licence No. CM/L-7200220185 dated 02.05.2022 operative from 28.03.2022 to 27.03.2023 for non-electrical toys (IS 9873: Part I: 2019). However, during the course of examination of the imported consignments "Battery operated toy parts" were found by the DRI officers.
- he stated that it was in his knowledge that import of Chinese toys in India without BIS certificate is banned. He came to know the fact that M/s. Solanki Toys Industries was trying to import the above said import consignments without valid BIS certificate only after the department has opened the containers for examination; the importer has mentioned "Toy Spare Parts" in the Bills of Lading. However, during the examination "Battery operated toy parts" were found; that he has carefully gone through statement recorded on 18.02.2023 of Shri Nitesh Chandani and state that



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the contents of the statement are true and correct. he admitted that he has violated the provisions of Customs Act, 1962 by not mentioning the correct facts to the Customs authorities.

2.9 Statement of Shri Vipul Makwana, Authorized Person, of M/s. Infinite Global Logistics Private Limited, Ahmedabad was recorded under Section 108 of the Customs Act, 1962 on 05.06.2023 wherein he interalia stated that:

- M/s. Infinite Global Logistics Private Limited is a private limited company engaged in providing services to its clients related to DGFT such as obtaining of IEC, Advance Authorisation and EPCG Authorisation, etc.; Apart from DGFT related services, they are also providing forwarding and transportation services to our clients mainly from Mundra and ICD Ahmedabad to their address; All the work of the Company is being looked after by him and he is responsible for all the acts of the Company; that Shri Amit Kumar Jain, proprietor of M/s. Solanki Toys Industries, Ahmedabad had approached him in the year 2020 for updation of his existing IEC. He requested for change the name of the firm from M/s. Solanki Impex to M/s. Solanki Toys Industries and change the registered address from earlier address to present address at Bakrol, Ahmedabad. After few days, Shri Amit Kumar Jain again contacted him and requested for clearance of the consignments being imported by him at Mundra Port. So, he managed to get his cargo cleared through CHA/Customs Broker Firm M/s. Sai Shipping Services Private Limited. Through the said Customs Broker, he managed to clear approximately 5 import consignments of M/s. Solanki Toys Industries. In the subject two consignments i.e., Containers No. CRSU 9296651 and TCNU 8515184, M/s. SSSA quoted higher price than he was getting so he appointed M/s. O.K. Cargo Craft Pvt. Limited, Gandhidham to clear the cargo of M/s. Solanki Toys Industries.
- he confirmed that he has personally visited office M/s. O.K. Cargo Craft Pvt. Limited at Gandhidham and handed over the documents related to import of the subject consignments. For clearance of imported goods, they were charging Rs.25000/- per container from M/s. Solanki Toys Industries, Ahmedabad. These charges are for Customs clearance only. They were charging extra for container booking and transportation, which were usually based on actual charges plus their commission/agency charges. He further added that they were issuing invoices for the above said services and receive payment in their bank account. However, they




have not prepared any invoice and have not received any amount in respect of the subject two containers; that as per his knowledge, M/s. Solanki Toys Industries importing Toy Spare Parts Packing Material/ Plastic Articles; that after initiation of the inquiry by DRI, Jamnagar he came to know that there is mis-declaration in the cargo by M/s. Solanki Toys Industries; he admitted that he has violated the provisions of Customs Act, 1962 by not mentioning the correct facts to the Customs authorities.

2.10 M/s. Solanki Toys Industries had imported two containers, details of which are as under:

Container No.	CRSU9296651	TCNU8515184
Bill of Lading No. & Date	SW1CB22000755, dated 15.09.2022	HDMUSZPA28759200 dated 10.09.2022
Invoice No. & Date	SNBI450909-03 dated 09.09.2022	SNBI450827-01 dated 27.08.2022
Description of Goods	Toy Spare Parts HS Code 95033330 (546 Cartons) Packing Material HS Code 48191090 (128 Cartons) Plastic Articles HS Code 392690 (74 Cartons)	Toy Spare Parts HS Code 95033330 & Packing Material HS Code 48191090 (Total - 756 Carton)
Examination carried out in CFS	M/s. Allcargo CFS, Mundra	M/s. Honeycomb Logistic Private Limited (CFS)
Panchnama Date	17.02.2023	22.02.2023 & 23.02.2023
Seizure Memo Date	17.02.2023	23.02.2023
BIS Licence No. & Date produced by the importer	CM/L-7200220185 dated 02.05.2022	CM/L-7200220185 dated 02.05.2022
Consigned/ shipped by	M/s. Shantou Promise Best Trading Co. Ltd., Shantou, China (As per Bill of Lading)	M/s. Shenzhen Hongsifang Trade Co. Ltd., China (As per Country of Origin Certificate)



2.11 During the course of examination of the goods imported in Container No. CRSU9296651, it was found that the imported goods were not as per the description mentioned in the Bill of Lading. The importer had declared Toy Spare Parts HS Code 95033330 & Packing Material HS Code 48191090 (Total 756 Cartons) in various import documents, such as Bill of Lading, Invoice, Packing List etc. whereas during the course of examination, it was found that instead of the toy spare parts, the importer has imported the toys in SKD condition. The toys so found were also electric/electronic/battery operated toys. The goods declared as packing material in both the Bills of Lading have been classified under HS Code 48191090, however, the same were found to be packing material for the toys in CKD/SKD condition and therefore appears appropriately classifiable as toys under CTH 95030090. In respect of the BIS Licence No. CM/L-7200220185 dated 02.05.2022 produced by the importer, it appears that the said BIS Licence is issued for manufacturing of Non-Electrical Toys and not for import of toys. It is pertinent to mention here that the goods were found to be electric/electronic/battery operated toys in SKD condition during the course of examination, which the importer as well as Customs Broker has admitted to be not valid for the subject import.

2.12 Shri Amit Kumar Jain, Proprietor of M/s. Solanki Toys Industries, Ahmedabad in his statements dated 10.04.2023 and 19.04.2023 has admitted mis-declaration in terms of quantity, value and condition of the goods imported. He also admitted that since they didn't have BIS for Electronic/electric toys/parts, they have not mentioned 'Electronic/Electric toys/part' in the import documents. M/s. Solanki Toys Industries (IEC AGGPK4048Q), Ahmedabad had imported goods i.e. parts of toys in CKD condition, from overseas China based shippers/consignors viz. M/s. Shenzhen Hongsilang Trade Co. Ltd., China and M/s. Shantou Promise Best Trading Co. Ltd., Shantou, China. Whereas M/s. JK Trading Company Limited, Hongkong was the supplier/seller. The goods possess essential character of toy and for importing such consignment of toy parts valid BIS licence of foreign supplier is required as laid down in CBIC Instruction No. 06/2023 dated 13.02.2023 issued vide F. No. 401/104/2023-Cus-III which M/s. Shenzhen Hongsilang Trade Co. Ltd., China or M/s. Shantou Promise Best Trading Co. Ltd., Shantou, China or M/s. JK Trading Company Limited, Hongkong did not possess. The para 4 of the said Instruction illustrates that Toys (Quality Control Order, 2020 defines "toys". The instructions dated 13.02.23 further mentions that in case a toy possess such essential character of toys the BIS licence of foreign supplier is also required and mechanism for




verification of BIS licence of foreign supplier has also been provided in Annexure-1 of the referred instructions. Name of none of the supplies could be verified by following the said mechanism.

2.13 During the course of examination of the goods under Panchnamas dated 17.02.2023 (in respect of Container No. CRSU9296651) & 23.02.2023 (in respect of Container No. TCNU8515184), it was observed that the importer had imported toys in dismantled/knocked down condition in the guise of parts of toys. From the photographs of such parts of toys appended in the Panchnamas, it is evident that the importer has imported different parts of the same toy in different container. For example, body without heads and legs of Cow Toy Part was found from Container No. CRSU9296651. Whereas it further appeared that legs and head of the same Cow Toy Part was found from Container No. TCNU8515184. It further appeared that same is the case for other toys also. Similarity, from the description of toy parts mentioned in packing list and marks on the cartons containing toy parts, it is evident that in both the containers the importer has imported toys in dismantled/knocked down condition. Description of Packing list vis- à-vis marks on the cartons in respect of both the containers.

2.14 The goods were also examined by Shri Kunal Ajay Kumar of M/s. Suvikaa Associates, Customs Empaneled Chartered Engineer (appointed by the Principal Commissioner of Customs, Customs House, Mundra Port vide Public Notice No. 11/2021 dated 10.11.20210). After examination, the Chartered Engineer, in his certificates dated 17.02.2023 & 23.02.2023 has also observed as under:

1. The consignment produced for examination consists of "Different Types of Parts/Sections of electric/Battery Operated Toys."
2. The whole material was well packed in Plastic Bags/Cartons. The consignment contains all the essential parts of toys, so the parts of the toys are in dismantled/knocked down condition.

2.15 As discussed hereinabove, the said goods imported in Containers No. CRSU9296651 and TCNU8515184 were also examined by Shri Kunal Ajay Kumar of M/s. Suvikaa Associates, Customs Empaneled Chartered Engineer for ascertaining the value as well as the condition of the of imported goods. The said Chartered Engineer submitted his reports in respect of the goods contained in



both the subject containers, which is as under:

Report No. & Date	Container No.	Scope of inspection	Observation	Value assessed (Rs.)
DRI/265/22-23, dated 17.02.2023	CRSU 9296651	- Expert/Chartered Engineer's opinion regarding condition of the goods	-The consignment produced for examination consists of "Different Types of Parts/Sections of electric/Battery Operated Toys."	1,80,83,812/-
DRI/265/22-23, dated 23.02.2023	TCNU 8515184	-To determine accurate market value of the cargo depending upon the condition	-The whole material was well packed in Plastic Bags/Cartons. The consignment contains all the essential parts of toys, so the parts of the toys are in dismantled/knocked down condition.	1,03,39,950/-
TOTAL				2,84,28,812/-

As observed in the both the Panchnamas as well as by the Chartered Engineer, the goods are "Different Types of Parts/Sections of electric/Battery Operated Toys" and the same is in dismantled/knocked down condition.

2.16 Accordingly, a Show Cause notice dated 11.08.2023 and Corrigendum dated 18.08.2023 was issued to M/s Solanki Toys Industries and other noticees requiring them to show cause to writing to the Addl/Joint Commissioner of Customs, Custom House, Mundra as to why: -

- (i) the seized goods imported under containers number CRSU 9296651 and TCNU 8515184 Value of the Goods being re- determined by the Govt. approved valuer reported as per their Valuation Report Dated 17.02.2022 and 23.02.2022 respectively having total value of Rs.2,84,28,812/- (Rupees Two Crores Eighty-Four Lakhs Twenty-Eight Thousand Eight Hundred and Twelve Only) should not be confiscated under Section 111(d), Section 111(f), Section 111(i), Section 111(1) and Section 111(m) of the Customs Act, 1962.



- (ii) the goods not to be reassessed as Complete Toy in CKD / SKD condition and appropriate duty, on the value ascertained by Shri Kunal Ajay Kumar of M/s. Suvikaa Associates, Customs Empaneled Chartered Engineer, should not be demanded in terms of Section 125(2) of the Customs Act, 1962.
- (iii) Penalty should not be imposed on them under Section 112(a) and (b) of the Customs Act, 1962;
- (iv) Penalty should not be imposed on them under Section 114AA of the Customs act, 1962.

2.17 A Show Cause notice was issued to Shri Amit Kumar Jain, Proprietor of M/s. Solanki Toys Industries, Ahmedabad, Shri Sunil Navinbhai Joisher, Branch Manager of M/s. O.K. Cargo Craft Private Limiter, Gandhidham, Shri Vipul Makwana, Authorized Person of M/s. Infinite Global Logistics Private Limited, Ahmedabad and Shri Nitesh Vijaybhai Chandani, Executive of M/s. O. K. Cargo Craft Pvt. Limited, Gandhidham, requiring them to show cause to writing to the Addl/Joint. Commissioner of Customs, Custom House, Mundra as to why: -

- (i) Penalty should not be imposed upon them under Section 112(a), 112(b), 114AA and Section 117 of the Customs Act, 1962.

2.18 Consequently, the Adjudicating Authority passed the following order:

- i. He ordered for absolute confiscation the seized goods imported under containers number CRSU9296651 and TCNU8515184 Value of the Goods re-determined by the Govt. approved valuer reported as per their Valuation Report Dated 17.02.2022 and 23.02.2022 respectively having total value of Rs.2,84,28,812/- (Rupees Two Crores Eighty Four Lakh Twenty Eight Thousand Eight Hundred and Twelve Only) under Section 111(d), Section 111(), Section 111(i), Section 111(1) and Section 111 (m) of the Customs Act, 1962.
- ii. He dropped the proposal of demand of duty under section 125(2) the Customs Act, 1962.

- iii. He imposed a Penalty of Rs. 30,00,000/- (Rupees Thirty Lakh Only upon



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the importer M/s Solanki Toys Industries under Section 112(a)(i) of the Customs Act, 1962;

iv. He imposed a Penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) upon the importer M/s Solanki Toys Industries under Section 112(b)(i) of the Customs Act, 1962;

v. He imposed a Penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) upon the importer M/s Solanki Toys Industries under Section 114AA of the Customs Act, 1962;

vi. He dropped penal proceedings initiated upon the Proprietor Shri Amit Kumar Jain under Section 112(a)(i), 112(b)(i) and 114/X of the Customs Act, 1962;

vii. He imposed a Penalty of Rs. 1,00,000/- (Rupees. One Lakh Only) upon the importer Shri Amit Kumar Jain under Section 117 of the Customs Act, 1962;

viii. He imposed a Penalty of Rs. 8,00,000/- (Rupees Eight Lakh Only) upon the importer Shri Sunil Navinbhai Joisher Branch Manager of M/s O. K. Cargo Craft under Section 112(a)(i) of the Customs Act, 1962;

ix. He imposed a Penalty of Rs. 4,00,000/- (Rupees Four Lakh Only) upon the importer Shri Sunil Navinbhai Joisher Branch Manager of M/s O. K. Cargo Craft under Section 112(b)(i) of the Customs Act, 1962;

x. He imposed a Penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) upon the importer Shri Sunil Navinbhai Joisher Branch Manager of M/s O. K. Cargo Craft under Section 114AA of the Customs Act, 1962;

xi. He imposed a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) upon the importer Shri Sunil Navinbhai Joisher Branch Manager of M/s O. K. Cargo Craft under Section 117 of the Customs Act, 1962;

xii. He imposed a Penalty of Rs. 8,00,000/- (Rupees Eight Lakh Only) upon the importer Shri Vipul Makwana Authorised person of M/s Infinite Global Logistics Pvt. Ltd. under Section 112(a)(i) of the Customs Act, 1962;



- xiii. He imposed a Penalty of Rs. 4,00,000/- (Rupees Four Lakh Only) upon the importer Shri Vipul Makwana Authorised person of M/s Infinite Global Logistics Pvt. Ltd. under Section 112(b)(i) of the Customs Act, 1962;
- xiv. He imposed a Penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) upon the importer Shri Vipul Makwana, Authorised person of M/s Infinite Global Logistics Pvt. Ltd. under Section 114AA of the Customs Act, 1962;
- xv. He imposed a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) upon the importer Shri Vipul Makwana, Authorised person of M/s Infinite Global Logistics Pvt. Ltd. under Section 117 of the Customs Act, 1962;
- xvi. He imposed a Penalty of Rs. 8,00,000/- (Rupees Eight Lakh Only) upon the importer Shri Nitesh Vijaybhai Chandani, Executive of M/s O.K.Cargo Craft Pvt. Ltd. under Section 112(a)(i) of the Customs Act, 1962;
- xvii. He imposed a Penalty of Rs. 4,00,000/- (Rupees Four Lakh Only) upon the importer Shri Nitesh Vijaybhai Chandani, Executive of M/s O.K.Cargo Craft Pvt. Ltd. under Section 112(b)(i) of the Customs Act, 1962;
- xviii. He imposed a Penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) upon the importer Shri Nitesh Vijaybhai Chandani, Executive of M/s O.K.Cargo Craft Pvt. Ltd. under Section 114AA of the Customs Act, 1962;
- xix. He imposed a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) upon the importer Shri Nitesh Vijaybhai Chandani, Executive of M/s O.K.Cargo Craft Pvt. Ltd. under Section 117 of the Customs Act, 1962;

#### **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 At the outset, it is submitted Adjudicating Authority has not considered the statement made by the appellants that till date they have not received any communication for filing of Bills of Entry from M/s. Solanki Toys Industries, Ahmedabad. Thus, on this ground only impugned order is liable to



be set aside as this is non-speaking order and passed in violation of principal of natural justice. Customs House Agent (CHA) or a Customs Broker is a license holding individual that helps exporters and importers with their shipments at the customs station.

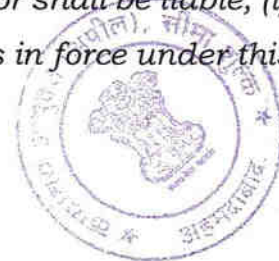
3.2 As per the Customs Act 1962, IATA regulations, and the Customs Broker Licensing Regulations of 2018, the three main activities of a Customs Broker are:

- Inward and outward processing of vessels and carriages. This means that a customs broker can undertake the clearance of conveyances, inwards and outwards entries of all the different types of carriers like ships, railway trains, and aircraft.
- Import and Export of goods.
- An audit of the same at any customs station that has endorsed the broker.

3.3 In the present case, it can be seen from the statement of Proprietor of M/s. Solanki Toys Industries, Shri Amit Kumar Jain dated 10.4.2023 that he doesn't know anything about M/s. O.K. Cargo (Custom Broker), Shri Sunil Joiser (Branch Manager) and Shri Nitesh Chandani. He also submitted that all the custom broker work is handled by M/s. Infinity Global Logistics and paid amount to them accordingly. He has not paid anything to M/s. O.K. Cargo. As per statement of Appellant, Shri Vipul Makwana, authorized representative of M/s. Infinite Global Logistics that they have provided clearance documents of M/s. Solanki Toys Industries, Ahmedabad and the information to the Appellant. Appellant as received documents from them only and they were not aware of any mis- declaration by the importer. BIS is attained by the Importer and not Custom Broker. On this ground alone, impugned order against the Appellant is liable to be set- aside.

3.4 Vide the impugned SCN, the department has proposed to impose a penalty on the Appellant under Section 112(a)(i) of the Customs Act, 1962. The provisions of Section 112 read as under:

*"SECTION 112. Penalty for improper importation of goods, etc. person, - Any (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, or 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) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:"*

3.5 It is respectfully submitted that as per the provisions of Section 112(a) of the Customs Act, penalty is imposable 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, or abets the doing or omission of such an act. Therefore, the penalty under this sub-section is linked to the liability of the goods to confiscation. It is submitted that Appellant and Main Appellants had acted in bona fide belief. The Appellant had acted to the best of their knowledge while determining the classification. The Main Appellants and Appellant were under a bonafide belief that the classification proposed by them were correct. Reliance is placed on P. Ripakumar and Company v. Union of India, 1991 (54) ELT 67, wherein demand of confiscation and redemption fine was set aside on the ground that the importer had acted in good faith i.e. bona fide. Thus, it submitted that goods are not liable for confiscation.

3.6 The Appellant has neither done nor omitted to do any act which would have rendered the goods liable to confiscation nor have the Appellant abetted the doing or omissions of such an act. Therefore, the penalty proposed to be imposed on the Appellant is not sustainable. As already submitted; the conduct of the Appellant was bonafide. Therefore, it cannot be said that the Appellant has in any manner, abetted the doing or omission of an act, which act, or omission rendered the goods liable to confiscation. In the case of Trade Wings Ltd. v. Commissioner of Customs, Mumbai (2009 (243) ELT 439 (Tri. - Mumbai)), Hon'ble Tribunal held that mere lack of care and diligence by the Appellant is not sufficient to pin them with the charge of abetment. Similarly, in the case of Commissioner of Customs (EP) v. P.D. Manjrekar [2009 (244) ELT 51 (Bom.)], the Hon'ble Bombay High Court held that in case of abetment, Revenue has to prove knowledge on the part of the assessee. No such proof has been furnished by the Department in the present case. Therefore, the proposition of imposition of penalty on the Appellant is not sustainable in law. It is therefore, submitted that the proposal of imposition of penalty on the Appellant vide the impugned order is not sustainable in law.



3.7 The Appellants submits that no penalty is imposable when the conduct is bona fide, and all actions are taken in good faith. The conduct of the Appellants in the present case can under no circumstances warrant penal proceedings as there was no contumacious or dishonest conduct on its part nor has it acted in conscious disregard of its obligation towards the revenue department. In the case of Hindustan Steel Ltd. vs. State of Orissa [1978 (2) ELT (J159) (SC)], the Hon'ble Supreme Court held that no penalty should be imposed where the breach flows from a bona fide belief. Following the above judgment, in the case of Cement Marketing Co. of India Ltd. vs. Assistant Commissioner of Sales Tax [1980 (6) ELT 295 (SC)], the Hon'ble Supreme Court held that penalty cannot be imposed when an assessee raises a contention of bona fide. Thus, relying on these decisions of the Hon'ble Supreme Court, the Appellants humbly submits that no penalty should be imposed on it. Penalty under section 114AA is not imposable

3.8 The impugned order has imposed penalty on the appellant under Section 114 AA of the Customs Act, 1962. It is submitted that the penalty under this section can be imposed on the person if he knowingly or intentionally makes statement which is false or incorrect. In the present case the appellant has not made any false statement or incorrect document. Neither the SCN alleged, nor the Adjudicating Authority of Customs has given a finding to this effect. Thus, penalty cannot be imposed under section 114AA on the appellant. Penalty is not imposable in cases involving interpretation The Appellants humbly submits that penalty is not imposable when the issue is one of interpretation. Reliance is placed on the case of Vadilal Industries Ltd. vs. Commissioner Of C. Ex., Ahmedabad 2007 (213) E.L.T. 157 (Tri. Ahmd.), the Hon'ble Tribunal has again held: -

*"10. However, the learned Advocate submits the following alternative pleas that the price realised by them, should have been treated as cum-duty price and no penalty should have been imposed as this is a case of difference in interpretation. There is no issue of limitation involved as the show cause notices were issued within the normal period of limitation.*

*11. There are merits in these alternative pleas of the ld. Advocate. We hold that on merits the appeal is to be rejected. However, there is no warrant for imposition of penalty and accordingly penalty is set aside. Further, the price charged by them should be treated as cum-duty price. Accordingly, the matter is remanded for the limited purpose of quantifying the duty taking the price charged by them as cum-duty price." (Emphasis Supplied)*




3.9 It has been held by the Hon'ble Tribunal in a large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions. Some of these cases are as under:

- (a) Auro Textile vs. Commissioner of Central Excise, Chandigarh 2010 (253) ELT 35 (Tri. -Del.).
- (b) Hindustan Lever Ltd. vs. Commissioner of Central Excise, Lucknow 2010 (250) ELT 251 (Tri. -Del.).
- (c) Prem Fabricators VS. Commissioner of Central Excise, Ahmedabad-1 2010 (250) ELT 260 (Tri. -Ahmd.).
- (d) Whiteline Chemicals vs. Commissioner of Central Excise, Surat - 2009 (229) ELT 95 (Tri. - Ahmd.).
- (e) Delphi Automotive Systems vs. Commissioner of Central Excise, Noida 2004 (163) ELT 47 (Tri. -Del.).

Thus, it is respectfully submitted that the present case also involves interpretation of tariff entries. Thus, penalty is not imposable.

3.10 It is further submitted that there is no evidence of any pecuniary benefit flowing to the Appellants. There is no personal benefit flowing to the Appellants in the present case and the same has not been disputed in the impugned order. Further, in this regard, the Hon'ble Appellate Tribunal, in the case of Commissioner of Customs, Mumbai vs. M. Vasi, 2003 (151) ELT (312) (Tri. - Mumbai), held that for imposing penalty for abetment, knowledge of the proposed offence and also the benefit to be derived from the abetment has to be demonstrated. The relevant extract is as under:

*"Abetment presupposes the knowledge of the proposed offence and also presupposes the benefit to be derived from the abetment there from...In the absence of conscious knowledge, penalty on charge of aiding and abetting would not sustain." (Emphasis Supplied)*

3.11 Therefore, it is very clear that to allege abetment on part of the Appellants the department must prove that the Appellants had a guilty mind and the Appellants deliberately and consciously suppressed the information with intent to derive some benefit out of the entire transaction. In view of the aforesaid submissions, it is submitted that the imposition of penalties on the Appellants is liable to be dropped.

3.12 Without prejudice, it is submitted that the penalty cannot be imposed on the Appellants when he has only acted in his capacity as broker for



the Company. This position has been upheld in *Sterlite Industries (India) Ltd. vs. CCE* reported at 2002 (143) ELT 682 (Tri. - Mumbai) with following observations:

*"5. We have considered the circumstances. When we look into the facts of the case, it is clear that if the assessee was interested in violating the provisions of Central Excise Rules; he would not have mentioned the relevant entry in the invoice. The facts would reveal that on the fateful day the incharge of the Central Excise fell sick, therefore these things have happened. In this connection, it will be useful to refer to the judgment of the Tribunal in Z.U. Alviv. CCE - 2000 (117) E.L.T. 69. The Tribunal dealing with the question of liability of the employees under Rule 209A of the Central Excise Rules noted as follows:*

*"Commissioner proceeded against the appellant under Rule 209A, which can apply to a person who dealt with the contraband article, not as manufacturer. Appellant had no dealings with the contraband article otherwise than in his official capacity as an employee of BHEL, the manufacturer. So, by no stretch of imagination can the appellant fall within the purview of Rule 209A of the Central Excise Rules. Therefore, the Commissioner was clearly in error in thinking that penalty contemplated by Rule 209A could be imposed on the appellant who was only an employee of the manufacturer, namely BHEL."*

*6. If we look into the observations of the Tribunal, it will be clear that the proceedings initiated against the employees and the directors are not correct inasmuch as they do not have the knowledge or dealing with the goods which are concerned. As far as the truck owners and drivers are concerned, we hold that it is for stronger reasons that they would not have the knowledge or having reason to know that the goods which they were transported have contravened the provisions of Central Excise Rules."*

3.13 Further, the Appellants rely on case of *R.K. Ispat Udyog vs. Commissioner Of C. Ex., Raipur* 2007 (211) E.L.T. 460 (Tri. - Del.), wherein it has been clearly held that manager working under the instructions of the manufacturer is not liable to penalty under Rule 26 of the Excise Rules. Relevant portion of the decision is reproduced below:



*"7....However, I find that the appellant no. (2), Shri N.N. Swamy, is the Manager of the appellant no. (1) and working under the instructions of the manufacturer and, therefore, penalty imposed upon him is liable to be set aside. Hence the penalty imposed on the appellant no. (2) is set aside..."*

3.14 Reliance is also placed on the order of CESTAT Mumbai in the case of Pankaj Extrusion Limited v. CC (Export) Order No. A/ 86988 - 86989/2021 dated 13.10.2021 where it was observed that no personal liability on director is imposable if he has merely acted in his official capacity and if no specific case has been made against the director. In these circumstances, the Appellants cannot be said to have been in any way personally responsible or liable for being proceeded against under the provisions of section 114 or 114AA of the Customs Act. Therefore, the impugned order is liable to be dropped.

3.15 It is submitted that the present order has imposed penalty on the Company which is the main importer. The Appellants are merely broker who helped the Company in filing the export documents. It is, thus, totally unjust and improper to impose penalty for the same event on the company as well as other parties especially when malafide intention of Appellants have not been proven. In the case of Rajendra F. Doshi vs. CC (Gen.), Mumbai reported at 2007 (82) RLT 429 (CESTAT-Mum.), it was held by the Hon'ble Tribunal that once the company has suffered penalty, there is no justification for imposing penalty on the Director. To similar effect are the judgments of Hon'ble Tribunal in the following cases:

- (i) Globe Rexine Pvt. Ltd. vs. Commissioner of Central Excise, Chennai, 2006 (203) ELT 632 (Tri.-Chennai)
- (ii) Rutvi Steel & Alloys vs. Commissioner of Central Excise, Rajkot 2009 (243) ELT 154 (Tri.-Ahmd.)

3.16 In view of the above circumstances, the Appellants cannot be said to have been in any way personally liable under Section 114 and 114AA of the Customs Act. Thus, from a look at the above referred cases, it is respectfully submitted that since there already exists a proposal for penalty or the Company, the same is liable to be set-aside against the Appellants G.4 The Appellants therefore submits that penalty is not imposable on the Appellants and the impugned order is liable to be dropped in toto.



*A*

3.17 The Appellants submit that the Adjudicating Authority in the impugned order has imposed penalty under Section 117 of the Customs Act, 1962 read with Customs (Finalization of Provisional Assessment) Regulations, 2018. Section 117 of the Act has been extracted below for ready reference:

*"SECTION 117. Penalties for contravention, etc., not expressly mentioned. Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]."*

3.18 It is submitted that Section 117 of the Customs Act, 1962 is a residuary provision which provides for penalty where a person contravenes provision of Customs Act, 1962 or abets any such contravention or fails to comply with any provision of the Customs Acts, 1962. However, such penalty under Section 117 is attracted when no express penalty is elsewhere provided for such contraventions or failures. In other words, penalty under Section 117 cannot be imposed for a contravention/failure, where for such contraventions/failures a specific penalty is also provided for. The Adjudicating Authority has imposed a total penalty of Rs. 50,000/- on the Appellants under Section 117 of the Customs Act, 1962. In above circumstances, the Appellants submit that as per Section 117, The Appellant rely on Central Warehousing Corporation vs. Commissioner of Customs (Export) Nhava Sheva reported at 2015-TIOL- 329-CESTAT-MUM, wherein the adjudicating authority had imposed a penalty of Rs. 1.5 lakhs under Regulation 12(8) of the Handling of Cargo in Customs Area Regulation, 2009 and a further penalty of Rs. 1 lakh under Section 117 of the Customs Act for contravention of Regulations 6(2), 6(1)(k) and 6(1)(a) of the said Regulations read with Section 141 (2) of the Customs Act, 1962. The Hon'ble Tribunal while setting aside the penalty under Section 117 Customs Act, 1962, observed as follows:

*"5.1 As regards the penalty imposed under Section 117, the said provision would apply only if there is no other penalty provide for violations of the provisions of the Handling of Cargo in Customs Area Regulations. Penalty is specified under Regulation 12(8). That being the position, the question of imposition of penalty under Section 117 would not arise at all. Therefore, the penalty imposed under Section 117 is clearly unsustainable in law."*




3.19 Thus, in view of the above, the imposition of penalty under section 117 is illegal and the impugned order is required to be set aside. It is further submitted that the issue in dispute in the present case involves interpretation of provisions of law. Penalty is not imposable for this reason as well. Reference may be made to the following judgments wherein it has consistently been held that penalty is not imposable when the issue in question involves interpretation of the provisions of law:

- (a) CCE v. Swaroop Chemicals (P) Ltd.
- (b) 2006 (204) ELT 492 (T) Haldia Petrochemicals Ltd. v. CCE 2006 (197) ELT 97 (T)
- (c) CCE v. TELCO LTD. 2006 (196) ELT 308 (T)
- (d) Siyaram Silk Mills Ltd. v. CCE 2006 (195) ELT 284 (T)
- (e) CCE Vs. Sikar Ex-Serviceman Welfare Coop. Society Ltd. 2006 (4) STR 213 (T)
- (f) Fibre Foils Ltd. Vs. CCE 2005 (190) ELT 352 (T)
- (g) ITEL Industries Pvt. Ltd. Vs. CCE 2004 (163) ELT 219 (T)
- (h) Birla Corporation Ltd. Vs. CCE 2002 (148) ELT 1249 (T)

In view of the aforesaid submissions, the Appellants submit that penalty cannot be imposed on them under Section 117 of the Customs Act, 1962.

#### **PERSONAL HEARING:**

4. Personal hearing in the matter was granted to the appellant on 28.05.2025, 17.06.2025, 26.06.2025 and 09.07.2025. However, no one appeared for personal hearing. Hence, I proceed to decide the case on merits on the basis of the documents available on record.

#### **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 Appellant in their appeal. It is observed that the Appellant has filed the present appeal on 19.07.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original 23.02.2024 as 14.06.2024. This office had sent a copy of appeal memorandum



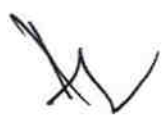
to the jurisdictional authority for comments vide letter dtd. 04.10.2024. Further vide letter dtd. 27.08.2025, the Asstt Commissioner (Adjudication), Customs, Mundra was specifically requested to inform the date of service of the impugned order. However, no response has been received by this office. In view of the same, I am left with no option but to consider the date of receipt of the impugned order to be 14.06.2024 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.

5.1 On going through the material on record, I find that the following issues need to be addressed:

- (i) Whether the import of toys in CKD/SKD condition without valid BIS certification constitutes mis-declaration and makes the goods liable for confiscation.
- (ii) Whether the Appellant, as an Executive of the Customs Broker firm, had a culpable role and mens rea in the contraventions, justifying penalties under Sections 112(a), 112(b), 114AA, and 117 of the Customs Act, 1962.
- (iii) Whether the impugned order violates principles of natural justice and is a non-speaking order.

5.2 The adjudicating authority found that M/s. Solanki Toys Industries imported electric/battery-operated toy parts in CKD/SKD condition, mis-declaring them as "Toy Spare Parts" or "Packing Material," and imported them without the mandatory BIS certification for electric toys. The import of toys is governed by Import Policy Condition 2 of Chapter 95 of the ITC (HS) and the Toys (Quality Control) Order, 2020. S.O. No. 853(E) dated 25.02.2020 mandates BIS certification for toys, including toy parts in CKD/SKD condition if they retain the essential character of a toy. Section 15 of the BIS Act, 2016, prohibits the import, sale, or distribution of goods without a standard mark from the Bureau. Para 2.03(a) of the Foreign Trade Policy 2015-20 stipulates that domestic laws/rules, including quality control orders, apply to imported goods.

5.3 The examination by the Chartered Engineer confirmed that the goods were "Different Types of Parts/Sections of electric/Battery Operated Toys"




in dismantled/knocked-down condition and contained all essential parts of toys. The importer's BIS license was only for non-electrical toys. The importer, Shri Amit Kumar Jain, admitted mis-declaration and undervaluing goods to escape stringent import policy conditions and BIS requirements. He admitted violating the Customs Act, 1962, by importing electronic toy parts without a BIS certificate. This clearly establishes that the goods imported were in violation of the mandatory BIS compliance, rendering them "prohibited goods" under Section 2(33) of the Customs Act, 1962. Therefore, the goods were correctly held liable for absolute confiscation under Section 111(d) (import contrary to prohibition), 111(f) (undeclared prohibited goods in manifest), 111(i) (concealed prohibited goods), 111(l) (goods not included in entry), and 111(m) (mis-declaration of description/value) of the Customs Act, 1962.

5.4 The Appellant, Shri Nitesh Vijaybhai Chandani, as an Executive of the Customs Broker firm, has been penalized for his role in facilitating the import of these non-compliant toys. The Appellant, Shri Nitesh Vijaybhai Chandani, admitted his presence during the panchnama proceedings and confirmed the panchnama contents as true and correct. He acknowledged that the importer's BIS license was only for non-electrical toys and that battery-operated toy parts were found. He also admitted that non-electrical and electrical toys require separate BIS licenses. These admissions, made under Section 108 of the Customs Act, 1962, carry high evidentiary value unless proven involuntary. The Appellant's subsequent generic retraction, without concrete evidence of coercion, is deemed an afterthought, as consistently held by courts. (Refer: K.I. Pavunny v. Assistant Collector (HQ), Excise, Cochin, 1997 (90) ELT 241 (SC) and Surjeet Singh Chhabra v. Union of India, 1997 (89) ELT 646 (SC).

5.5 The Appellant's admissions are strongly corroborated by the statements of the importer (Shri Amit Kumar Jain), who admitted mis-declaration and undervaluing to evade BIS requirements, and the Branch Manager (Shri Sunil Navinbhai Joisher), who also admitted that battery-operated toy parts were found and that mis-declaration is illegal. Both stated that they became aware of the lack of a valid BIS certificate only after the department's examination. However, the adjudicating authority observed that the Customs Broker firm was responsible for ensuring correct documentation. The adjudicating authority found that the Appellant had "played a role for the importer" and "knew that the importer got the BIS licence for import of Non-




Electrical toys only" and "that Non-Electrical toys and Electrical toys have different description and required separate BIS licence for each." This implies

that the Appellant, despite his knowledge of BIS requirements, proceeded with the customs formalities for non-compliant goods.

5.6 Section 112(a) applies to those who act or omit to act, rendering goods liable for confiscation, or abet such acts. Section 112(b) targets those who deal with goods knowing or having reason to believe they are liable for confiscation. The Appellant's admissions and the corroborative evidence indicate that he was aware of the nature of the goods (battery-operated toy parts) and the mandatory BIS requirements, as well as the importer's lack of a valid license. His continued involvement despite this knowledge clearly establishes the requisite mens rea for these provisions. The argument that his conduct was bona fide is not persuasive, given the admitted mis-declaration and intent to evade compliance. The cases cited by the Appellant, such as *P. Ripakumar and Company v. Union of India*, 1991 (54) ELT 67, or those discussing mere lack of care (e.g., *Trade Wings Ltd. v. Commissioner of Customs, Mumbai* [2009 (243) ELT 439 (Tri. Mumbai)]), are distinguishable. Those cases involved general importers or situations where a clear intent to defraud was not established. Here, the Appellant, as a Customs Broker Executive, has a professional duty of due diligence and admittedly knew critical facts about the goods and BIS compliance. His role extends beyond mere transportation to active facilitation of customs clearance, which was compromised by mis-declaration.

5.7 This section applies 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." The adjudicating authority found that the Appellant was aware that the imported toys required BIS certification and that the documents/declarations submitted were false or incorrect. This finding, based on the Appellant's admissions and corroborative statements, directly establishes the "knowingly or intentionally" element required for Section 114AA. The Appellant's argument that he did not make any false statements is rebutted by his admitted knowledge of the goods' nature and the importer's non-compliance.

5.8 The Appellant argues that penalties are not imposable when the issue is one of interpretation of law (e.g., *Vadilal Industries Ltd. vs.*



Commissioner Of C. Ex., Ahmedabad 2007 (213) E.L.T. 157 (Tri. - Ahmd.)). This argument is not applicable here. This case is not a mere interpretational dispute of a tariff heading where facts are undisputed. Instead, it involves a clear factual misrepresentation of the nature of goods (toy parts vs. electric toy parts in SKD condition) to bypass a mandatory quality control order (BIS). The deliberate concealment of the goods' true nature and the lack of a mandatory license are factual violations, not merely interpretational differences.

5.9 The Appellant's claim that no penalty should be imposed without evidence of pecuniary benefit (e.g., Commissioner of Customs, Mumbai vs. M. Vasi, 2003 (151) ELT (312) (Tri. Mumbai)) is not a standalone ground for setting aside a penalty. While pecuniary benefit might strengthen a case, the core requirement for penalty under Section 112 is the commission of an act or omission that renders goods liable for confiscation, or knowledge/reason to believe such goods are illicit. Here, the Appellant's admitted role in facilitating the import of non-compliant goods, even if for a commission (which implies pecuniary benefit), is sufficient. His actions rendered the goods liable for confiscation, fulfilling the statutory requirement.

5.10 The Appellant argues that penalty should not be imposed on individuals once it's imposed on the company, and that he merely acted in his official capacity as a Customs Broker. While a proprietor and his firm are often treated as a single entity, the law permits penal action on individuals who are responsible for the contravention. The cases cited (Rajendra F. Doshi vs. CC (Gen.), Mumbai 2007 (82) RLT 429 (CESTAT-Mum.), Sterlite Industries (India) Ltd. vs. CCE reported at 2002 (143) ELT 682 (Tri. Mumbai)) often involve situations where employees acted without knowledge or culpable intent. In this case, the Appellant's personal admissions of knowledge and involvement rebut this defense. Penalties can be imposed on individuals if their direct role and mens rea are established, which the adjudicating authority has found here.

5.11 The Appellant claims the impugned order is non-speaking and violates natural justice, specifically stating that the adjudicating authority did not consider his assertion about not receiving communication for filing Bills of Entry from M/s. Solanki Toys Industries. The records show that Personal Hearings were fixed on multiple occasions (e.g., 10.10.2023, 22.11.2023, 04.01.2024, and subsequent dates as per PH notices), allowing sufficient opportunity to the noticees. The adjudicating authority observed that despite



sufficient opportunities, the noticees "chose not to join adjudication proceedings" or "neither acknowledged the letter nor attended the PH." Only a letter dated 12.01.2024 was received from the CB M/s O.K. Cargo, stating their role was limited to formalities. Section 128 of the Customs Act, 1962, limits adjournments to three. Therefore, proceeding ex parte due to non-appearance after due intimation is permissible and does not violate natural justice.

5.12 A speaking order must provide reasons for its conclusions. The impugned order spans several pages, detailing the intelligence, examination findings, extensive statements of all concerned individuals, legal provisions, and a summary of findings before concluding on confiscation and penalties for each noticee. It explicitly addresses the roles of various parties and the grounds for imposing penalties. The adjudicating authority has clearly articulated its reasoning for holding the Appellant liable based on his admitted knowledge and role. The mere fact that the Appellant's specific defense regarding "not receiving communication for filing of Bills of Entry" was not explicitly discussed at length does not render the entire 28-page order "non-speaking," especially when the core findings against him are based on his admitted knowledge and participation, which he acknowledged during the panchnama.

5.13 The Appellant argues that Section 117 is a residuary provision and specific penalties for Customs Broker contraventions exist under CBLR, 2018. Section 117 applies "where no express penalty is elsewhere provided for such contravention or failure." While the Customs Brokers Licensing Regulations (CBLR), 2018, provide for penalties under Regulation 18 for contraventions of its provisions, these penalties are typically imposed by the Principal Commissioner or Commissioner of Customs for breaches of licensing regulations. However, the contraventions in this case also involve direct violations of the Customs Act, 1962, such as mis-declaration (Section 46) and aiding in import contrary to prohibition (Section 111), which are also covered by Section 117 as "failure to comply with any provision of this Act with which it was his duty to comply." Customs Brokers have a statutory duty to ensure compliance with the Customs Act.

5.14 While some of the Hon'ble Tribunals (e.g., Central Warehousing Corporation vs. Commissioner of Customs (Export) Nhava Sheva 2015-TIOL-329-CESTAT-MUM) have held that Section 117 cannot be invoked when specific penalties exist under other regulations, this distinction often pertains to where



the sole contravention is of the specific regulation itself. Here, the violation is also of the main Customs Act (e.g., mis-declaration under Section 46, which is directly linked to Section 111 contraventions). Therefore, invoking Section 117 for facilitating import against the provisions of the Customs Act is not necessarily misplaced. The Appellant, as an Executive of the Customs Broker firm, had a duty to ensure compliance with the Customs Act, and his failure to do so, with admitted knowledge of non-compliance, could attract Section 117.

5.15 Based on the comprehensive analysis of the facts and legal provisions, it is unequivocally established that the Appellant, Shri Nitesh Vijaybhai Chandani, played a culpable and knowing role in the import of mis-declared and BIS non-compliant electric/battery-operated toys. His own admissions, corroborated by the statements of other individuals in the syndicate and robust circumstantial evidence (examination reports, expert valuation), clearly prove his active involvement and knowledge of the illicit activity. The goods were correctly held liable for absolute confiscation due to their prohibited nature and mis-declaration. Consequently, the imposition of penalties on the Appellant for his acts and omissions that rendered the goods liable for confiscation, and for dealing with goods he knew to be non-compliant/prohibited, is entirely justified under the Customs Act, 1962. The Appellant's arguments regarding involuntary statements, lack of mens rea, and procedural lapses are not substantiated by any credible evidence and are rebutted by the facts on record and established legal precedents.

5.16 In view of the detailed discussions and findings above, I uphold the absolute confiscation of the goods (Parts/Sections of electric/Battery Operated Toys in dismantled/knocked down condition, valued at Rs. 2,84,28,812/-) under Sections 111(d), 111(f), 111(i), 111(l), and 111(m) of the Customs Act, 1962, as ordered by the adjudicating authority. I find that the Appellant, Shri Nitesh Vijaybhai Chandani, was actively involved in facilitating the import of mis-declared and BIS non-compliant electric/battery-operated toys. His admissions and corroborative evidence conclusively establish his knowledge and participation in the contravention of import regulations.



5.17 In view of the above, I pass the following order:-

- (i) I uphold the imposition of penalty of Rs. 8,00,000/- (Rupees Eight Lakh Only) on Shri Nitesh Vijaybhai Chandani under Section 112(a)(i) of the Customs Act, 1962.
- (ii) I uphold the imposition of penalty of Rs. 4,00,000/- (Rupees Four Lakh Only) on Shri Nitesh Vijaybhai Chandani under Section 112(b)(i) of the Customs Act, 1962.
- (iii) I uphold the imposition of penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on Shri Nitesh Vijaybhai Chandani under Section 114AA of the Customs Act, 1962.
- (iv) I uphold the imposition of penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on Shri Nitesh Vijaybhai Chandani under Section 117 of the Customs Act, 1962.

6. The appeal filed by the Appellant Shri Nitesh Vijaybhai Chandani is rejected.



(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-92/CUS/MUN/2024-25  
3672

Date: 23.09.2025

By Speed post/E-Mail

To,  
Shri Nitesh Vijaybhai Chandani  
Executive of M/s. O. K. Cargo Craft Pvt. Limited,  
202, Sunshine Arcade-2, Near D-Mart,  
Gandhidham-370201



सत्यापित/ATTESTED

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

Copy to:

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

