



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 - 20260371MN00002782A0

क	फ़ाइल संख्या FILE NO.	S/49-419/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-935-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Sarfaraz Kamani, 502, 5th Floor, Fatima Apartment, 109 Morland, Mumbai Central, Mumbai



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
(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 Sarfaraz Kamani, 502, 5th Floor, Fatima Apartment, 109 Morland, Mumbai Central, Mumbai, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024 (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 matter originated from specific, actionable intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit. The intelligence indicated the operation of a high-level, organized smuggling cartel involving a common set of individuals who utilized multiple dummy entities and front firms to facilitate the illegal importation of restricted and prohibited goods. Initial enforcement actions were triggered on September 1, 2022, by the interception of vehicle No. GJ12BV0610 near Palsana Chokdi, Surat. This vehicle was found to be carrying a consignment of 823 cartons cleared from Mundra Port (Container No. TLLU4615592). Upon detailed inspection at ICD Sachin, officers discovered a massive concealment of foreign-brand E-cigarettes of the "Yuotto" brand, totaling 85,600 pieces in various flavors such as Strawberry Watermelon and Blueberry Ice. These items were hidden behind a "cover" of declared household goods to deceive visual inspections.

2.1 Subsequent analysis of the Customs system data, combined with extensive field investigations and the recovery of incriminating digital records, revealed that this interception was merely the tip of a much larger operation. Investigations revealed that this was part of a larger operation involving 18 containers imported under the names of eight different dummy entities, including M/s. J.H. Enterprises.

2.2 The specific focus of this proceeding pertains to a high-value consignment imported in the name of M/s. J.H. Enterprises (IEC: AQIPH7863E) via Container No. TGBU5160748 under Bill of Lading No. YMLUS226013593. The investigation into this specific container highlighted



the syndicate's agility in attempting to evade detection once an enforcement action was initiated. As the DRI began intercepting related shipments, the importers, in connivance with the overseas shipper (M/s. Yiwu Surui Imp and Exp Co. Ltd.) and the shipping line (M/s. Huan Ming/Yang Ming Line), attempted a desperate "Change of Destination" (COD) while the vessel was still in transit to Mundra. They sought to divert the container to Jebel Ali, UAE, by manipulating the manifest and preparing two parallel sets of Bills of Lading—one declaring "Floor Clean MOP" for Mundra and another declaring "Household Items" for Jebel Ali. This fraudulent maneuver was intended to erase the shipment's connection to the Indian port and escape the jurisdiction of Indian Customs. Despite these elaborate attempts to divert the cargo, the DRI successfully placed the container on hold, and it was examined at Mundra Port under Panchnama dated September 16/17, 2022.

2.3 The physical examination of Container No. TGBU5160748 yielded an inventory of highly offending and prohibited goods that vastly differed from the manifest. While the documents declared 754 cartons of "Floor Clean MOP," the search actually recovered 200,400 pieces of foreign-brand E-cigarettes and 80,000 pieces of silicon "pop-up" toys. Additionally, the consignment contained 14,000 LCD writing pads and 2,500 head massagers that were used as structural concealment. The E-cigarettes, falling under HS Code 8543, are strictly prohibited for import into India under DGFT Notification No. 20/2015-2020 dated September 26, 2019, and the Prohibition of Electronic Cigarettes Act, 2019. The 80,000 toys were also classified as offending goods due to a total lack of mandatory Bureau of Indian Standards (BIS) compliance as required under Policy Condition 2 of Chapter 95 of the Customs Tariff (specifically IS: 9873 parts 1, 2, 3, 4, 7, and 9). The syndicate's failure to provide safety certifications and the deliberate concealment behind "Floor Clean MOPs" underscored a clear intent to bypass public health regulations and safety standards, posing a significant risk to the domestic market.

2.4 The investigation into the culpability of the parties involved established Shri Mohammad Asif Sathi as the central mastermind and "beneficial owner" of the cartel. He orchestrated the racket by acquiring IECs from dummy firms; in this specific instance, he utilized the services of Shri Tahir Menn to create the firm M/s. J.H. Enterprises by fraudulently using the identity documents of Shri Juma Hamir Halepotra, a caretaker of Asif's bungalow in Bhuj who had no knowledge of the business. The cartel's modus operandi involved a professional division of labor: Shri Baldevsinh Vala of M/s.

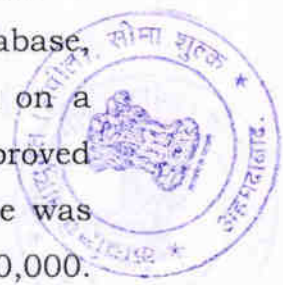


Kalpana Exim managed the logistics of "crossing" containers—a process where cleared goods were moved between vehicles or containers at secret locations to evade e-way bill tracking and enforcement checkpoints between Mundra and Bhiwandi. Meanwhile, Shri Samir Sharma, a G-Card holder of a Customs Broker firm, was implicated in submitting manipulated documents to the authorities, often on the instructions of the forwarders rather than the actual IEC holders, whom he had never met.

2.5 Granular details of the coordination were recovered from the "Mm" WhatsApp group, where members discussed the "stuffing" of prohibited items in the containers. Chat logs showed Baldevsinh Vala advising other members to stack E-cigarettes away from the container doors to avoid detection during partial Customs examinations and suggesting that "crossing" was necessary to prevent the DRI from tracking the containers via electronic surveillance. Shri Asif Sathi admitted in his statement that he paid hefty sums—up to ₹17 Lakh per container—for the successful clearance of these prohibited consignments. The investigation also unearthed a financial circuit where cash was collected from domestic buyers like "Raju Bhai" or "Sohail Bhai" and deposited into the bank accounts of the dummy firms to facilitate formal remittances to the foreign suppliers in China, thereby giving the illicit trade a veneer of legitimate commerce.

2.6 The legal and financial implications of the seizure are substantial. Under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the transaction values declared in the documents were rejected due to gross mis-declaration and the absence of any credible price data. Consequently, the value was re-determined sequentially through Rules 4 to 9. Given the absence of identical or similar goods in the valuation database, the value was arrived at using Rule 9 (the residual method) based on a comprehensive market survey and a report from a Government-approved Chartered Engineer. The market price of the seized E-cigarettes alone was estimated at approximately ₹2,400 per piece, totaling ₹48,09,60,000. Combined with the mis-declared toys and electronics, the total value of the offending goods in this single container approached ₹50 Crore.

2.7 By knowingly concerning themselves with the removal, concealment, and dealing of prohibited and mis-declared goods, the noticees violated multiple sections of the Customs Act, including:



- Section 111(d), (f), and (m): For importing goods contrary to prohibitions and for filing entries that did not correspond to the actual value or description of the goods.
- Section 112(a) and (b): For acts of omission and commission—including the failure to examine goods and the facilitation of fraudulent clearances—that rendered the goods liable for confiscation.
- Section 114AA: For the deliberate use of false and fraudulent documents, including forged invoices and manipulated packing lists, in the transaction of business with Customs.

2.8 The investigation concluded that the entire operation was a deliberate attempt to defraud the government exchequer of legitimate revenue and bypass essential quality standards intended for consumer safety. The cumulative evidence, including WhatsApp chats, voluntary statements under Section 108, and the physical recovery of contraband, established a "preponderance of probability" that the syndicate operated with full knowledge of the illegal nature of their trade.

2.9 On the basis of the investigation, Show Cause Notice was issued to M/s. J.H. Enterprises and other persons involved. Consequently, the Adjudicating Authority confirmed the liability of the goods for confiscation and the imposition of significant personal penalties on M/s. J.H. Enterprises and other accomplices under Sections 112 and 114 of the Customs Act, 1962, for their roles in a "well-hatched conspiracy" to defraud the national exchequer. The Adjudicating Authority passed the following order in respect of the appellant.

**(A) In respect of offending goods i.e E-Cigarettes and toys :-**

- (I) He imposed penalty of Rs. 20,00,000/- upon the appellant under Section 112(a)(i) of the Customs Act, 1962.

**(B) In respect of dutiable goods where bills of Entry not filed :-**

- (I) He imposed penalty of Rs. 5,000/- upon the appellant under Section 112(a)(ii) of the Customs Act, 1962.



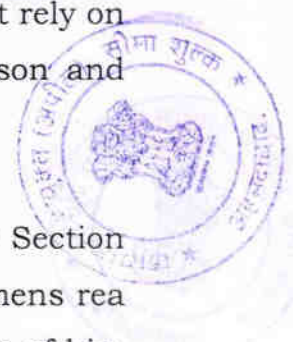
**SUBMISSIONS OF THE APPELLANT:**

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 Adjudicating Authority failed to recognize that he had no role in the actual import process, such as placing orders, negotiating with suppliers, remitting payments, or filing Bills of Entry. He maintains that his business activities were limited to managing warehouse operations in Bhiwandi via WhatsApp groups and that he had no knowledge of the specific contents—particularly the prohibited e-cigarettes—concealed within the containers. Furthermore, he argues that the mastermind, Shri Asif Sathi, confirmed in his own statement that the Appellant was not involved in the e-cigarette imports and that their shared travel to Dubai was for leisure and exploring unrelated business opportunities like dry dates.

3.2 A significant portion of the appeal focuses on the Respondent's reliance on the statement of Shri Tahir Memn, which the Appellant describes as vague and lacking concrete evidence. The Appellant argues that his right to a fair hearing was violated because he was denied the opportunity to cross-examine Shri Tahir to clarify assumptions regarding the ownership of overseas companies. Citing Section 138B of the Customs Act and various judicial precedents, the Appellant asserts that an adjudicating authority cannot rely on incriminating statements without first examining the witness in person and allowing the accused to challenge their testimony.

3.3 The Appellant argues that the penalties imposed under Section 112(a) are legally unsustainable because the Revenue failed to prove mens rea or any act of abetment on his part. He asserts that there is no evidence of him receiving any consideration or benefit from the alleged mis-declaration, which is essential to establish involvement in a smuggling conspiracy. Additionally, he challenges the allegations regarding Intellectual Property Rights (IPR) violations, stating the department failed to follow the mandatory procedures under the IPR (Imported Goods) Enforcement Rules, 2007, which require involving the actual



right holders to verify if goods are truly counterfeit.

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 18.12.2025 following the principles of natural justice wherein Shri Hardik Modh, Advocate, 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 concept of "Beneficial Owner" was introduced into the Customs Act, 1962, via the Finance Act, 2017, specifically through Section 2(3A). This amendment was a strategic anti-avoidance measure designed to pierce the corporate or nominal veil often used by smuggling syndicates. Section 2(3A) defines a "beneficial owner" as:

*"any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported."*

5.2 Furthermore, the definitions of "importer" [Section 2(26)] and "exporter" [Section 2(20)] were simultaneously expanded to include the "beneficial owner." This legislative shift allows the Department to hold accountable the actual mastermind or financier of an import, even if their name does not appear on the Importer Exporter Code (IEC) or the Bill of Entry. In the instant case, M/s. J.H. Enterprises was found to be a "conduit" or "dummy" entity. The investigation revealed that the Appellant was not merely a passive traveler with the co-accused, but a key participant in the commercial orchestration of the illicit shipment.

5.3 The Department recovered digital evidence showing the Appellant participating in a video call with the Chinese supplier, Mrs. Shelly. During this call, the actual "stuffing" of prohibited e-cigarettes into the container was visible. His presence in such a sensitive, high-level negotiation—at the very moment the concealment was being executed—demonstrates "effective control" and a direct stake in the cargo's composition. The Adjudicating Authority correctly noted that



in organized smuggling, the "beneficial owner" rarely appears on the front-end documents. However, the Appellant's involvement in the 'Mm' WhatsApp group, where terms like "stuffing," "customs clearance," and "concealment" were discussed, confirms he was one of the persons on whose behalf the goods were brought into India.

5.4 The Adjudicating Authority correctly relied on the landmark judgment in Collector of Customs, Madras v. 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." In cases of smuggling, which are clandestine by nature, the "preponderance of probability" and the "totality of circumstances" are the yardsticks. The Appellant's close proximity to the mastermind Mohammad Asif Sathi, his presence during the Dubai planning trip, and his involvement in the supplier calls create an inescapable conclusion that he was a beneficial owner.

5.5 The primary purpose of Section 2(3A) is to tackle cases exactly like this one—where individuals use "paper firms" (like J.H. Enterprises) to shelter themselves from legal consequences while reaping the financial benefits of the crime. By exercising control over the supplier negotiations and monitoring the cargo, the Appellant falls squarely within the ambit of Section 2(3A). Therefore, I find that the Appellant's role transcends that of a mere "associate"; he was a principal orchestrator and a beneficial owner of the mis-declared and prohibited goods.

5.6 The Appellant has challenged the reliance on statements, particularly those of co-accused and his own, on the grounds that they are uncorroborated or were given under duress. However, a detailed examination of the legal framework surrounding Section 108 of the Customs Act, 1962, reveals that these statements carry significant weight and are not merely "police confessions." Section 108(4) explicitly states that every inquiry under this section "shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code." This gives statements recorded under Section 108 a unique legal sanctity, distinguishing them from statements made before police officers under Section 161 of the CrPC. The deponent is under a legal obligation to tell the truth.

5.7 The Hon'ble Supreme Court, in Naresh Kumar Sukhwani v. Union of India [1996 (83) ELT 285 (S.C.)], settled the position that a statement made before a Customs officer is material evidence that can be used to connect the

person with the contravention. Crucially, the court held that a statement of a co-accused can be used as substantive evidence against another person involved in the same transaction. In the current case, the statement of Shri Tahir Memn, which names the Appellant as a core member of the syndicate, is perfectly admissible.

5.8 The "uncorroborated statement" argument fails in the face of the seized digital records. The Department has produced WhatsApp Group 'Mm' wherein the logs show active participation by the Appellant discussing logistics and "clearance" issues. Screen captures from the mastermind's phone show the Appellant witnessing the "stuffing" of e-cigarettes. The statements explain the flow of funds and the use of dummy IECs, which is corroborated by the fact that M/s. J.H. Enterprises had no actual business infrastructure at its declared address.

5.9 The Appellant's claim that Asif Sathi's statement of 22.09.2022 is exculpatory is a misinterpretation. Sathi initially tried to mislead the investigators, but the recovery of the "stuffing" video and the parallel Bills of Lading proved that the association between Sathi and the Appellant was purely for the purpose of large-scale smuggling. In conclusion, the statements recorded under Section 108, combined with the digital "footprints" left by the syndicate, provide a comprehensive and legally sound basis for finding the Appellant guilty of involvement in the smuggling of prohibited goods worth Rs. 48 Crore.

5.10 The Appellant claims that the denial of cross-examination of Shri Tahir Memn is a violation of natural justice. I find this argument to be a "dilatory tactic" as observed by the Adjudicating Authority. In *Telestar Travels Pvt. Ltd.*

*Special Director of Enforcement [2013 (289) ELT 3 (SC)]*, the Hon'ble Supreme Court held that the rules of natural justice do not require an opportunity for cross-examination in every case; it depends on the facts and whether any prejudice is caused.

5.11 In the current case, the evidence is not just "oral." It is supported by:

- Seizure of 200,400 e-cigarettes.
- Digital proof of video calls with the supplier.
- Attempted diversion of the container via parallel B/Ls.

5.12 The Appellant argues that since he was not the "importer" of record, no penalty can be imposed on him. This argument is legally fallacious. The

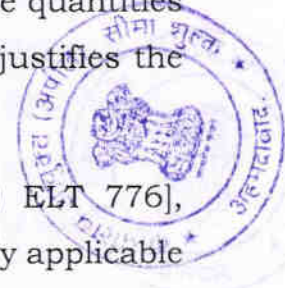


Adjudicating Authority has correctly imposed penalties under Section 112(a) and Section 114AA based on the Appellant's active role as an abettor and a facilitator of fraud. Section 112(a) provides for penalties for any person who, in relation to any goods, "does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act." Abetment, in the context of customs smuggling, does not require the person to be the owner of the goods. It only requires proof of intentional aid or participation in a conspiracy. The Appellant's presence during the video call showing the stuffing of e-cigarettes proves his "knowledge" of the illicit cargo. His participation in the logistics discussions in the 'Mm' group proves "intentional aid." The Appellant's use of a dummy firm (J.H. Enterprises) to mask his identity is the quintessential act of abetment.

5.13 Section 114AA was introduced specifically to address the use of false declarations and documents in customs transactions. It applies to any person who "knowingly or intentionally makes, signs or uses... any declaration, statement or document which is false or incorrect in any material particular." The investigation uncovered an elaborate attempt to generate parallel Bills of Lading to divert the container to Dubai once the DRI started its inquiry. This act of manipulating transport documents to evade detection is a direct violation of Section 114AA. The Appellant's association with Mohammad Asif Sathi, who was coordinating these parallel documents, makes him liable for the fraudulent scheme.

5.14 Considering the value of the seized prohibited goods is approximately Rs. 48 Crore, the penalties imposed on the appellant are extremely lenient and proportional. The prohibition on e-cigarettes (PECA, 2019) is a matter of public health policy. Smuggling such items in massive quantities is a grave offense. The Appellant's role in a multi-crore syndicate justifies the penalties imposed.

5.15 The Appellant cited *Dawa Palzar v. CC* [2000 (123) ELT 776], involving a young student caught with a bad character. This is hardly applicable here. The Appellant is an experienced trader in Mumbai, not a naive student. The scale of operation and the use of sophisticated means (parallel B/Ls) distinguish this from the cited case. Similarly, *Mahadeo Baburao Darekar v. CC* [2001 (135) ELT 365] dealt with administrative lapses. Here, the issue is the direct physical concealment of prohibited e-cigarettes. The nexus between the



Appellant and the smuggling act is firmly established through digital evidence and his association with the mastermind, Asif Sathi.

5.16 The investigation has established a clear "well-hatched conspiracy." The Appellant was an integral part of the smuggling cartel. The prohibited nature of e-cigarettes and the requirement of BIS for toys were ignored in a blatant attempt to profit at the cost of public health and safety. The Absolute Confiscation of the prohibited goods is upheld. The penalties imposed on the Appellant are commensurate with the gravity of the offense. The attempt to divert the container after being "exposed" by the DRI highlights the mala fide intent of the syndicate. The Adjudicating Authority has followed the principles of natural justice by providing multiple opportunities for hearings and considering all written submissions. The denial of cross-examination was justified as it was a dilatory tactic in the face of overwhelming documentary and digital evidence.

6. In view of the detailed discussions and findings above, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I hereby reject the Appeal filed by Shri Sarfaraz Kamani.



114/4

(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-419/CUS/MUN/2024-25 264 to 265

Date:31.03.2026

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