सीमाशुल्क (अपील) आयुक्त का कार्यालय, OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road, नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN: 20260171MN00006176BC

क	फ़ाइल संख्या FILE NO.	S/49-160/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-794-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no.: MCH/ADC/MK/70/2024-25 dated 11.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	Shri Vipin Yadav, HR-118/6, Pulprahladpur, New Delhi.

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 है.
	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)	बैगेज़ 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 दस्तावेज़ों 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 हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd 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 ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(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 ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(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 ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(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 Vipin Yadav, HR-118/6, Pulprahladpur, New Delhi, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/70/2024-25 dated 11.06.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs House, Mundra.

2. Facts of the case, in brief, are that based on actionable intelligence received by the Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit (DRI-DZU). The intelligence indicated that a sophisticated and highly organized criminal syndicate was attempting to smuggle Red Sander logs—a timber species strictly prohibited for export under India's Foreign Trade Policy and protected under international law—out of the country. These logs were being systematically disguised as mundane industrial goods, specifically "Brass Builder Hardware and Iron Builder Hardware," to bypass automated risk management systems. The operation was purportedly being carried out by an exporter identified as M/s Taurus Englobe Ltd. [IEC: 050700757], an entity officially registered within the Noida Special Economic Zone (NSEZ), a location typically associated with high-compliance exports and expedited processing.

2.1 The flagged consignment, housed in Container No. ECNU2250524, was destined for M/s Taeheung Line Co. Ltd in Busan, Korea. Investigating officers discovered that the container had been railed from Inland Container Depot (ICD) Piyala, Haryana, to Nhava Sheva port using a suite of forged NSEZ documents. On November 13/14, 2021, a physical examination of the container confirmed the intelligence: authorities recovered 12.163 metric tons (MTs) of Red Sanders logs. This initial seizure served as the catalyst for a much broader investigation, revealing that this was not an isolated incident but part of a systemic exploitation of SEZ export procedures. The syndicate leveraged the "trusted" status of SEZ units—which often benefit from self-sealing and reduced physical scrutiny—to create a "green channel" for prohibited goods to exit the country without oversight.

2.2 Following the first seizure, a meticulous scrutiny of records at the custodian of ICD Piyala, Gateway Rail Freight Limited (GRFL), revealed a suspicious pattern of documentation. The syndicate was utilizing a recurring modus operandi involving forged NSEZ paperwork to bypass standard customs checks at the gateway ports. This deep-dive led to the identification of a second suspicious container, OOLU1743923, linked to Shipping Bill No. 4015562 (dated October 18, 2021) filed in the name of M/s Bholi Hardware and Exports Pvt Ltd. By the time this was discovered, the container had already been railed to Mundra Port and was on a vessel destined for Guangzhou, China. At the urgent request of the DRI, the shipping line Korea Marine Transport Co. Ltd (KMTC) intervened and brought the container back to Mundra Port on December 25, 2021. An intensive examination conducted on December 29/30, 2021, by Special Intelligence and Investigation Branch (SIIB) and DRI officers revealed 379 red-colored wooden logs, meticulously wrapped in white PP sheets and brown gunny sheets to escape visual detection during any casual handling. The Wildlife Crime Control Bureau (WCCB) later verified these logs as Red Sanders, weighing approximately 12.036 MTs. The logs, along with 204 kg of concealing material, were seized under Section 110 of the Customs Act, 1962. This second seizure confirmed the transnational scale of the syndicate and their ability to successfully export multiple shipments before detection.

2.3 The investigation uncovered a multi-layered scheme of forgery designed to create an "institutional veneer" for the smuggling operations. The syndicate produced fraudulent signatures of Customs and NSEZ officers and fabricated commercial invoices, packing lists, and SEZ Shipping Bills. Crucially, it was found that these shipping bills were entirely fictitious; they did not exist on the National Securities Depository Limited (NSDL) data or the official SEZ portal. The syndicate essentially created a "shadow" documentation system that looked identical to official government outputs but existed entirely outside the digital tracking systems of the Customs Department. Furthermore, the syndicate intentionally bypassed the mandatory Radio Frequency Identification (RFID) seal protocol required for SEZ exports. In genuine cases, scanning a QR code on the documents would reveal all shipment details via the SEZ portal; however, the documents for the seized containers lacked these QR codes or used forged ones that led to dead links. The deception extended to the physical transport of the goods. The trailer used to move container OOLU1743923 bore a forged number plate (HR38R8231), masking its true identity (HR38R6231). The driver, Shankar Kumar Yadav, testified that the truck was owned by an individual named Vipin Yadav. Yadav would direct drivers to pick up empty containers from ICD Tughlakabad and bring them to "secret stuffing" locations in Ghaziabad. At these locations, the Red Sanders were loaded under the cover of night, and the drivers were instructed to wait at specific locations to avoid witnessing the actual loading process, thereby maintaining strict operational security and "deniability" for the lower-level participants.

2.4 The DRI's investigation expanded beyond the immediate seizures to analyze historical data through the "Gateway Rail" systems. It was revealed that a total of 44 containers had been successfully railed out of ICD Piyala between 2019 and 2021 using this identical modus operandi. The syndicate systematically misappropriated the identities and Import Export Codes (IECs) of three NSEZ-based firms to lend credibility to their shipments:

- M/s Taurus Englobe Ltd.
- M/s Bholi Hardware & Exports Pvt Ltd.
- M/s Jagan Automotive Pvt Ltd.

2.5 These 44 shipments were facilitated through seven different shipping lines, with Orient Overseas Container Line (OOCL) and Expressway Shipping handling the bulk of the traffic. The investigation into these past exports highlighted a systemic failure to verify the "Application cum Gate Pass" permissions required for moving cargo from NSEZ to the ICD. By treating the NSEZ units as "factory-sealed" and "low-risk," the terminal custodians and customs officers effectively allowed the syndicate to operate an illicit export corridor unchecked for nearly two years. This cumulative volume of 44 containers suggests that hundreds of metric tons of Red Sanders—worth hundreds of crores in international markets—had been successfully smuggled out of India through this single vulnerability in the SEZ logistics chain.

2.6 The investigation identified a structured hierarchy within the smuggling syndicate, ranging from "boots on the ground" to high-level masterminds:

- Vipin Tomar and Manish Singh: Acted as key facilitators and logistics coordinators. Tomar, working through his firm Indian Freight Solutions, admitted to booking containers for the syndicate even after learning of Red Sanders seizures in Vietnam and Malaysia. He prioritized illicit profits over legal compliance, even arranging meetings between the "Amit/Saurav" group and freight forwarders to "sort out" seized consignments. Manish Singh, proprietor of M/s Win Win Logistics, acted as the primary bridge to the shipping lines, using fake addresses and "burnable" contact details to manage bookings for M/s Bholi Hardware.

- Amit Sharma and Saurav: Identified as the primary field organizers and "handlers." They recruited logistics personnel, provided the fake KYC documents of the SEZ firms, and coordinated the dangerous task of stuffing the containers. They operated using untraceable mobile numbers and aliases like "Rajiv" or "Rajnish" to insulate the higher-ups from the operational risks. They were seen meeting logistics agents near Gurudwara, Yusuf Sarai, and various malls to hand over cash for freight payments.
- Tenzi Norbu Bhutia and Tendu Tashi: Emerged as the masterminds and financial controllers. Bhutia was identified as a habitual smuggler who managed the domestic procurement of Red Sanders and the "proxy firm" documentation. Tendu Tashi handled the international dimension, dealing with overseas buyers in China and Korea and managing the receipt of illicit payments. Incriminating documents and Red Sanders samples were found at Tashi's residence in C.R. Park, New Delhi, during a search on May 2, 2022, confirming his role as the primary link to international markets and his involvement in at least 12 of the 44 past containers.
- Vipin Yadav: As the transport owner, he managed the physical logistics, ensuring drivers never saw the actual loading godowns or the faces of the stuffing crew to maintain strict operational security. He provided the trailers and coordinated the "drop-off" and "pick-up" of containers at secret Ghaziabad godowns.

2.7 A critical component of the case involved the abetment—both active and passive—by logistics professionals and terminal custodians. Vengalathur Dorairaj of M/s DR Shipping confessed to continuing container bookings for the syndicate in exchange for "extra remuneration" (approximately Rs. 50,000 per shipment) even after being notified that a container he booked (SEGU2530170) had been seized by Vietnamese Customs at Hai Phong. This established a "wilful blindness" where logistics agents were paid premiums to ignore the obvious red flags. Similarly, Bijaya Laxmi Pandit of Sea Globe Logistics facilitated eight containers, including one (WSCU3917751) seized by Malaysian Customs. In that instance, the syndicate paid 18,000 USD in cash to cover demurrage charges for the seized container, a transaction she failed to report to authorities, effectively helping to launder the incident and prevent a broader investigation at that time.

2.8 The custodian of ICD Piyala, M/s Gateway Distriparks Ltd (GRFL), was found to have significant procedural lapses that the syndicate exploited. Personnel at the gate accepted manual documents without scanning for RFID seals, which would have immediately flagged the shipping bills as non-existent. They failed to differentiate between genuine and fake shipping bills, which lacked the unique QR codes mandated by the SEZ portal since 2017. Most egregiously, they allowed "Gate-Out" permissions based on "Self-Sealing Reports" that carried forged signatures of Customs Superintendents. This negligence effectively provided the syndicate with a "green channel" for illegal exports, bypassing every statutory safeguard intended to prevent the smuggling of prohibited wildlife products.

2.9 The export of Red Sanders is a violation of multiple Indian and international laws. Under the Export Policy (Schedule 2 of ITC (HS)), Red Sanders wood in any form is strictly prohibited. Because it is listed in CITES Appendix II, it requires specific permits and non-detriment findings that the syndicate never obtained. These goods are classified as "prohibited goods" under Section 2(33) of the Customs Act, 1962, as their export is subject to an absolute prohibition.

2.10 In the final adjudication, the authorities ordered the absolute confiscation of the seized Red Sanders logs and the packing material used for concealment. Significant financial penalties were imposed on the syndicate members to deter future illegal activity. Vipin Tomar, Tenzi Norbu Bhutia, Tendu Tashi, Vengalathur Dorairaj, Manish Singh, Vipin Yadav, Bijaya Laxmi Pandit, Rajesh Kumar Singh, Amit, and Saurav were each ordered to pay a penalty of Rs. 60,00,000 under Section 114(i) and a further penalty of Rs. 30,00,000 under Section 114AA for their roles in the conspiracy and for using forged documents. Additionally, M/s Gateway Distriparks Ltd was penalized Rs. 4,00,000 under Section 117 for its negligence and failure to adhere to prescribed security protocols.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Deputy 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 assessing authority lacks substantive evidence, such as CCTV footage, to prove their involvement in the alleged smuggling of red sander blocks. While it is alleged that the appellant was personally involved in loading the blocks, they clarify that their role is strictly that of a transporter. As a transporter, their responsibility is limited to moving containers from one location to another, not the physical loading or unloading of goods, which is typically handled by the company at the loading premises or a crane operator. Furthermore, no statement from the crane operator was recorded to place the appellant at the scene during the loading of prohibited goods.

3.2 The appeal further highlights that the statement of the appellant's driver, Shankar, confirms they were merely following transport directions and were not involved in any illicit activity. Legally, the appellant argues that penal liability requires strict proof, which is absent in this case. They specifically challenge the application of Section 114AA of the Customs Act, 1962, noting that this section pertains to the intentional use of false documents. The appellant asserts they did not sign or use any false declarations or material, as they were acting solely as a transporter, making the penalty a result of "non-application of mind" by the authority.

3.3 Additionally, the appellant disputes the penalty under Section 114(i) of the Customs Act, which concerns the improper export of goods. They argue that as they are neither the exporter nor the purchaser, and only received standard transportation charges, they cannot be held liable for the nature of the cargo. To support this, the appeal cites judicial precedents where courts have ruled that transporters should not be penalized for carrying out their professional transport duties. Ultimately, the appellant seeks to quash the impugned order and the associated penalties of ₹60 lacs under Section 114(i) and ₹30 lacs under Section 114AA.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 03.07.2025, 27.10.2025, 30.10.2025 following the principles of natural justice however, neither the appellant nor their representative has appeared for the PH nor given any submission in this regard.

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. I find that ample opportunities for personal

hearing have been given to the Appellant in the matter but they have failed to appear for the same.

5.1 The right to appeal is a creation of statute and must be exercised subject to the conditions laid down in the statute itself. The primary issue is the Appellant's failure to deposit the mandatory pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Section 129E(i) of the Customs Act, 1962, explicitly mandates:

> *"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,— (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs]".*

5.2 The phrase "shall not entertain" has been interpreted by various courts to mean that the appellate authority is barred from hearing the case on merits if the statutory deposit is not made. Prior to the amendment in 2014, the Appellate Authority had the discretion to waive the pre-deposit in cases of "undue hardship" under the erstwhile proviso to Section 129E. However, the Finance Act, 2014, substituted Section 129E with a new provision that removed this discretionary power. The current law uses the word "shall," indicating that the requirement is mandatory and a condition precedent for "entertaining" the appeal. In the case of Ramesh Bhojani vs. U.O.I (2017 (357) E.L.T. 63 (Guj.)), the Hon'ble Gujarat High Court held:

> *"While the Commissioner (Appeals) cannot entertain an appeal, namely, hear and decide it unless the pre-deposit is made... if the appeal comes up for hearing and the pre-deposit is not paid, the Commissioner (Appeals) may refuse to entertain the same and dismiss it on that ground."*

5.3 In the present case, the Appellant was given ample opportunity during the personal hearing through departmental communications to satisfy this condition. The failure to do so leaves this authority with no option but to refuse to entertain the appeal. The right to appeal is a conditional statutory remedy. For an appeal filed against an Order-in-Original passed by an Additional Commissioner, the mandatory pre-deposit is 7.5% of the aggregate of the Duty, Fine, and Penalty in dispute. The facts on record demonstrate that the Appellant has failed to comply with this statutory requirement.

5.4 The appeal was filed without the necessary pre-deposit, which is a mandatory statutory requirement for the appeal to be 'entertained'. The core legal principle at hand is established in Section 129E(i) of the Customs Act, 1962, which explicitly states that the Commissioner (Appeals) "shall not entertain any appeal" unless the appellant has deposited the prescribed percentage of the duty or penalty in dispute. The word "shall not entertain" in Section 129E creates an absolute bar for the appellate authority to proceed with the merits of the case in the absence of the stipulated pre-deposit. The appellate authority has no discretionary power to waive the pre-deposit below the statutory percentage, which was explicitly removed by the 2014 amendment to Section 129E. In the instant case, the Appellant failed to provide proof of the mandatory deposit before the final consideration of the appeal.

5.5 The right to appeal is not an inherent right but a statutory one. It is settled law that a right of appeal can be subject to conditions imposed by the legislature. If the conditions (like pre-deposit) are not met, the right to appeal does not effectively crystallize. The Appellant's failure to deposit the 7.5% amount is a fatal procedural lapse. Allowing an appeal to proceed without pre-deposit would render Section 129E redundant and violate the legislative intent of the Finance Act, 2014, which sought to streamline the appellate process and ensure the security of revenue during litigation. As noted in Ramesh Bhojani (supra), filing an appeal and entertaining an appeal are distinct. While the department may accept the physical memorandum of appeal to ensure limitation is not missed, the "entertainment" (hearing/decision) is strictly contingent upon the payment. Since the matter has reached the stage of hearing and findings, and the payment remains outstanding, the appeal has become "defective" and "non-maintainable." The records conclusively demonstrate that the mandatory deposit was not made at the time of filing the appeal, nor by the date of the Personal Hearing. The Appellant was aware of the statutory defect but failed to rectify it before the final consideration of the appeal, confirming a clear and sustained non-compliance with the jurisdictional requirement of Section 129E. In line with the settled legal position, the appeal is not entertainable.

5.6 Since the appeal cannot be entertained due to the fatal procedural defect of non-payment of the mandatory pre-deposit, it is not necessary and indeed impermissible to proceed to discuss the merits of the appeal. The appeal is therefore rejected solely on the ground of non-compliance with the statutory pre-condition.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

i. The appeal filed by Shri Vipin Yadav against the Order-in-Original No. MCH/ADC/MK/70/2024-25 dated 11.06.2024 is hereby rejected.

ii. The rejection is based purely on the grounds of non-compliance with the mandatory pre-deposit requirement under Section 129E(i) of the Customs Act, 1962, and is passed without entering into the merits of the case.

iii. Consequently, the duty, interest and penalties imposed in the impugned Order-in-Original remain confirmed for the purpose of this appeal.

The appeal filed by Shri Vipin Yadav is hereby REJECTED.

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

F. No. S/49-160/CUS/MUN/2024-25 Date 29.01.2026

By Registered post A.D/E-Mail

To,
Shri Vipin Yadav,
HR-118/6
Purlprahladpur, New Delhi. 09824021235

Shri Vipin Yadav, S/o Yashwant,
Village-Garwa Mishra, PO Pipra Ramdhar,
PS-Salempur, Deoria, Uttarpradesh.

Email: ramnandansingh043@gmail.com

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Mundra.
3. The Additional Commissioner of Customs, Custom, Mundra.
4. Shri R N Singh, Advocate, Ahmedabad on behalf of Shri Vipin Yadav.

Email: ramnandansingh043@gmail.com

5. Guard File.