

सीमाशुल्क(अपील) आयुक्तकाकार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड IshwarBhuvan Road
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DIN – 20250471MN000000F276

क	फ़ाइलसंख्या FILE NO.	S/49-02,03,04/CA-2/CUS/JMN/2022-23
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-001 to 003-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	09/ADC/2022-23 dated 28.11.2022
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	11.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	The Additional Commissioner of Customs (P), Jamnagar, Sheema Shulk Bhawan, Jamnagar-Rajkot Highway, Jamnagar.

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 imported on baggage

(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	<p>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 :</p> <p>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 :</p> <p>(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.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1,000/- (रुपए एक हजार मात्र) जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी आर. 6 की दो प्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए एकलाख या उससे कम महोतो ऐसे फीस के रूप में रु. 200/- और यदि एकलाख से अधिक होतो फीस के रूप में रु. 1,000/-</p> <p>(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/-.</p>
4.	<p>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</p> <p>In respect of cases other than those 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 :</p>
	<p>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p> <p>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</p> <p>2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>
5.	<p>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-</p> <p>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 -</p> <p>(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 रुपए.</p>

(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 रूपये पचास लाख से अधिक न हो तो; पाँच हजार 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 व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार 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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके %10 अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेहै,यादंडके %10 अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.
	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

The Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as 'the Appellant department') has filed these appeals in terms of Section 129D (4) of the Customs Act, 1962 on the basis of Review Order No. 02/2022-23, dated 21.02.2023 issued by the Principal Commissioner, Customs (Preventive), Jamnagar challenging the Order - In - Original No. 09/Additional Commissioner/2022-23, dated 28.11.2022 (hereinafter referred to as "the impugned order"), passed in case of below mentioned Respondents.

S.No.	Name & address of the Respondent	Hereinafter referred to as
1	M/s Green Exim 707, Basera Hights, Fatehabad Road, Agra, UP-282006.	"the Respondent No. 01"
2	M/s Ruchi Agricom India (Pvt.) Ltd. 408, Geetansh, Class of Pearl, K 48-49, Income Tax Colony, Durgapur, Tonk Road, Jaipur-18, Rajasthan.	"the Respondent No. 02"
3	M/s Omkar Shipping, C/o Arjanbhai Govindji & Co., Ganar Quarter Porter Area, Bunder Road, Porbandar-360575.	"the Custom Broker cum Shipping Agent"

2. Facts of the case, in brief, are that intelligence was gathered by the officers of Customs (Preventive), Jamnagar that the Respondent No. 01 was indulging in the export of Broken Rice falling under the category of Prohibited goods as per DGFT Notification No. 10/2015-20, dated 24.05.2022 from Porbandar Port with the connivance of the Custom Broker cum Shipping Agent. On the basis of intelligence gathered, the officers of Customs (Preventive), Jamnagar visited the Porbandar Port on 24.10.2022 and conducted further proceedings under Panchnama dated 24.10.2022. It was found that the goods, i.e., Non-Basmati Parboiled rice was being loaded in two Country Craft Vessels i.e MSV Anjali Puja PBR-3798 and MSV-AL Mehraab BDI-1448. Further, one Country Craft i.e. MSV Madina Zulficar BDI-288 was already loaded with the goods to be exported and anchored away from the Porbandar Port Jetty. The said goods were loaded without the supervision of Proper Officer of Customs and without any examination or grant of LEO by the proper officer. M/s. Omkar Shipping, Custom Broker for both the respondents and the Shipping Agent for the Vessel was looking after the export consignment for which the goods were loaded on the vessel, on behalf of the Respondents.

2.1. Further, examination of the goods was also carried out under Panchnama proceedings dated 25.10.2022. During the examination, the goods were found as declared (Non-Basmati Parboiled Rice CTH-10063010) in the 06 Shipping Bills filed by the Custom Broker cum Shipping Agent on behalf of the Respondent No. 1 and 01 Shipping Bill in respect of the Respondent No. 2 which were neither subjected to any prohibition nor any restriction for the export.

2.2. The said goods along with the Vessels (as stated above) were seized vide Seizure Memo Cum No Objection for Provisional Release dated 26.10.2022 read with Addendum to Seizure Memo Cum No Objection for Provisional Release dated 28.10.2022, in terms of Section 110 of Customs Act, 1962 as the said goods were loaded without any examination or grant of LEO by the Proper Officer of Customs and on a reasonable belief that the same are liable for confiscation under Section 113(f), 113(g) and 115(2) of Customs Act, 1962.

2.3. Further, during investigation, it was revealed that the Custom Broker cum Shipping Agent has contravened the provisions of Section 34 and Section 51 of the Customs Act, 1962 by way of loading the goods i.e. Non-Basmati Parboiled Rice being exported by the said Respondents into the vessels without the supervision of proper officer as required under Section 34 of the Customs Act, 1962 and without the order permitting clearance and loading of the goods for exportation by the proper officer as prescribed under Section 51 of the Customs

Act, 1962.

2.4. The custom broker cum shipping agent as an authorized representative on behalf of the respondents, requested for waiver of show cause notice as well as personal hearing and also requested for spot adjudication. The Additional Commissioner of Customs (Preventive), Jamnagar has subsequently passed the impugned order wherein he, inter alia, imposed penalty of Rs. 10,000/- each upon Shri Juber Abdulkadar Ker, Tindel of the Vessel MSV ANJALI PUJA PER-3798, Shri Murtaza Akbar Bhaya, Tindel of the Vessel MSV AL MEHRABBDI 1448, Shri Yunus Talab Ker, Tindel of at the Vessel MADINA ZULFIKAR BDI-288, u/s 117 of the Customs Act, 1962 and imposed penalty of Rs. 25,000/- upon Shri Jitendera Shial, Partner of the Custom Broker cum Shipping Agent, and imposed a penalty of Rs. 50,000/- upon the Custom Broker cum Shipping Agent, under Section 117 of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the Appellant department has filed the present appeal and mainly contended that:

- As per provisions of Section 113 (f) & 113 (g) read with Section 34 & 51 of the Customs Act 1962, the export goods shall be liable to confiscation

which are loaded or attempted to be loaded in contravention of the provisions of Section 34 of the Act i.e. without the supervision of the Proper Officer or which are loaded or attempted to be loaded on any Vessel without the permission of the Proper Officer under Section 51 of the Act.

➤ The goods were loaded without the supervision of Proper Officer and without any examination or granting of LEO by the Proper Officer which clearly makes the goods liable for confiscation under the provisions of Section 113 (f) and 113 (g) of the Act. Thus, the impugned order is erroneous and not legal & proper to that extent and also contrary to the following settled case law:

- M/s. Blossom Grocery & Food India Pvt. Ltd. reported at [2014 (302) ELT 267 (Tri. Mumbai)]
- M/s. Mehta Exports reported at [2009 (247) E.L.T. 394 (Tri. - Mumbai)]
- M/s. LMJ International Ltd. reported at [2008 (224) ELT 91 (Tri. Mumbai)]

➤ The act of loading of the goods in the vessel on the part of the Respondents and the Custom Broker cum Shipping Agent in contravention of the provisions of Section 34 and 51 of the Act made the said goods liable to confiscation under Section 113 of the Act. Accordingly, the Respondents and the Custom Broker cum Shipping Agent are liable to penalty under Section 114 (iii) of the Act and further relied upon the following settled case law:

- M/s. Patkar & Sons Shipping Agency P. Ltd. reported at [2016 (337) E LT 569 (Tri. Mumbai)]
- M/s. Inox India Ltd. reported at [2013 (294) ELT 630 (Tri. Mumbai)]

4. M/s Ruchi Agricom India Pvt. Ltd. (Respondent No. 2) and M/s Omkar Shipping (the Custom Broker cum Shipping Agent) Submitted memorandum of Cross Objection against the appeal filed by the Appellant department and in brief submitted as under:

- They are engaged in exports of various goods including non-Basmati Rice from various ports of Gujarat including Porbandar and had appointed M/s. Omkar Shipping as Customs Broker for export of Non-Basmati Parboiled Rice from Porbandar port to Djibouti and hired Country Craft / Vessel namely MSV Madina Zulfircar – BDI – 288.
- The Custom Broker had filed 3 check lists for Shipping Bill Nos. 4851223, 4851225 and 4851278 in EDI System for export of Non-Basmati Parboiled Rice packed in 25 Kg Bags of ITC(HS) 10063010 on 15.10.2022 on behalf of the Respondent No. 01 and 4 Check List for Shipping Bill No. 4909908, 4909922, 4909974 and 4912358 in EDI System for export of Non-Basmati

Parboiled Rice packed in 25 Kg Bags of ITC(HS) 10063010 on 18.10.2022 on behalf of the Respondent No. 01 and Respondent No. 02.

- Thereafter, trucks loaded with goods started to arrive under various Gate Passes with details, inter alia, like Serial Number, Date, Number of Packages Description of Goods, Truck Number, Shipping Bills Numbers and Date, Name of Vessel, Exporter's Name issued by Customs Broker at the Custom House, Porbandar between 19.10.2022 to 24.10.2022. As per prevailing practice at Custom House, Porbandar, copy of such gate passes were handed over to the officer of the Customs, Port Officer and also informed proper officer about filing of Shipping Bills and examination of goods etc.
- Their Customs Broker representative Shri Kamlesh Lodhari on arrival of cargo in trucks had intimated/sent text message to the Proper Officer, Custom House, Porbandar on his mobile number 83204 28721 on 19.10.2022 from his mobile number 9724444416 with SB Number 4909908 and Truck Number - 4135 provided for examination and he replied that "Ok, Examination will be done afternoon." Similar messages on the same day for two other Shipping Bills 4912358 dated 18.10.2022 for 75MT and 4851278 dated 15.10.2022 for 33 MT were provided for examination. On 22.10.2022 and 23.10.2022 similar messages were sent for examination of goods with details of shipping bills etc. and the said officer had replied on 23.10.2022 that "tomorrow examination will be done."
- The Proper Officer after examination of goods had orally granted permission as per prevailing practice to load the goods on respective vessels. Therefore, loading of the goods was started under supervision of the proper officer of the Customs. The Proper officer who was present at Custom House, Porbandar had noted down the details of cargo in the diary maintained by him about examination etc. and permitted to load the goods on vessel on being satisfied about the cargo as per declaration made in the Shipping Bills.
- Further, they submitted that Porbandar Port CCTV Footage also clearly shows arrival of the said officer at Jetty for examination of goods.
- The Customs Broker at the behest of the investigating officer and under pressure vide its letter dated 17.11.2022 addressed to the Additional Commissioner had submitted that the goods were scheduled to be examined by the proper officer on 24.10.2022 but before examination of goods was carried out, a team of officers from custom preventive Jamnagar arrived at Porbandar Jetty.

- The Additional Commissioner, Customs, Jamnagar had passed and issued impugned Order-in-Original on 28.11.2022 inter alia not imposed any penalty upon respondents with clear findings that respondents were not aware of the goods being loaded in the vessel without proper procedure and no malafide intention on their part is revealed during the investigation, granting unconditional release of goods and port clearance for vessels on 21-11-2022.
- Further, in view of the above facts and circumstance of the case, case laws relied upon by the department are totally mis-placed.

5. Personal hearing in the matter was held on 07.10.2024. Shri P. D. Rachchh, Advocate, appeared for hearing on behalf of the Respondent No. 2 and the CHA cum Shipping Agent. During the personal hearing, he reiterated submissions made in the cross objection.

5.1 Further, opportunities of personal hearing were granted to Respondent No. 1 on 14.11.2024, 28.11.2025, 11.02.2025, 20.02.2025 and 12.03.2025. Neither anyone appeared for personal hearing on behalf of the Respondent No. 01 nor any cross objection was filed by the Respondent No. 1 against the appeal filed by the department. Therefore, matter in respect of the Respondent No. 1 is being decided on the basis of documents available on record.

6. I have carefully examined the appeal filed by the appellant department, submissions made by the respondents and documents available on record. The issues to be decided in the present appeal are:

- I. Whether the impugned order holding the seized goods not liable for confiscation under Section 113(f) and 113(g) of the Customs Act, 1962 in facts and circumstances of the case, is legal and proper or otherwise;
- II. Whether the impugned order not imposing penalty upon the Respondent No. 01, Respondent No. 02 and the CHA cum Shipping Agent under Section 114(iii) of Customs Act, 1962, in facts and circumstances of the case, is legal and proper or otherwise.

7. It is observed that, on the basis of intelligence gathered that the Respondent No.1 was indulging in the export of Broken Rice falling under the category of Prohibited goods as per DGFT Notification No. 10/2015-20, dated 24.05.2022 from Porbandar Port with the connivance of the Custom Broker cum Shipping Agent, the officers of Custom (Preventive), Jamnagar had visited Porbandar Port on 24.10.2022 and found that the goods i.e. Non-Basmati Parboiled Rice was being loaded in two Country Craft Vessels i.e. MSV Anjali Puja PBR-3798 and MSV-AL Mehraab BDI-1448. One Country Craft i.e. MSV Madina Zulficar Bdi-288 was already loaded with the goods to be exported and

anchored away from the Porbandar Port Jetty. The said goods were loaded without the supervision of Proper Officer and without any examination or grant of LEO by the Proper Officer. The above stated facts were recorded in the Panchnama proceedings dated 24.10.2022. Further, under Panchnama proceedings dated 25.10.2022, the goods were examined and were found as declared (Non-Basmati Parboiled Rice CTH-10063010) in the 06 Shipping Bill filed by the CHA cum Shipping Agent on behalf of the Respondent No. 1 and 01 Shipping Bill in respect of the Respondent No. 2 which are neither subjected to any prohibition nor any restriction for the export. The said goods along with Vessels were seized vide Seizure Memo Cum No Objection for Provisional Release, dated 26.10.2022 read with Addendum to Seizure Memo Cum No Objection for Provisional Release, dated 28.10.2022, in terms of Section 110 of Customs Act, 1962. Further the Custom Broker cum Shipping agent as an authorised representative on behalf of the Respondents, requested for waiver of show cause notice as well as personal hearing and also requested for spot adjudication. The Additional Commissioner of Customs (Preventive), Jamnagar subsequently passed the impugned order against which the Appellant department has filed the present appeals.

7.1. As regards the confiscation of goods under Sections 113(f) and 113(g) of the Customs Act, 1962, it is the contention of the Appellant department that as per provisions of Section 113 (f) & Section 113 (g) read with Section 34 & Section 51 of the Customs Act 1962, the export goods shall be liable for confiscation which are loaded or attempted to be loaded in contravention of the provisions of Section 34 of the Act, i.e., without the supervision of the proper officer or which are loaded or attempted to be loaded on any vessel without the permission of the proper officer under Section 51 of the Act. In the present case, the goods were found to be loaded without the supervision of proper officer and without any examination or granting of LEO by the proper officer which clearly makes the goods liable for confiscation under the provisions of Section 113 (f) and 113 (g) of the Act.

7.2. On the other hand, the Respondent No. 2 has submitted that their Customs Broker representative Shri Kamlesh Lodhari on arrival of cargo in trucks had intimated to the proper officer on his mobile number and further requested for the examination of the goods in respect of various Shipping Bills on 18.10.2022, 22.10.2022 and 23.10.2022, to which the said officer had agreed for examination on 24.10.2022 and the Proper Officer after examination of goods had orally granted permission as per prevailing practice to load the goods on respective vessels. Therefore, loading of the goods was started under supervision of the proper officer of the Customs. These exercises were done as per Para 8.6 of Chapter 1 and Para 18,19,20,21 and 22 of Chapter 3 of the CBEC's Customs

Manual except endorsement of "Shipped on Board" on Shipping Bills in EDI systems by the officer but definitely with oral orders. Furthermore, the respondent has emphasized on WhatsApp chat messages and CCTV footage to support the claim that the examination of goods was conducted by the proper officer.

7.3 It is observed that the contentions raised by the Respondents, as cited in the foregoing paragraph, were not brought forth or contested during the course of the adjudication proceedings. Furthermore, it is noted that, during the said proceedings, the Custom Broker cum Shipping Agent on behalf of the Respondent No. 01 & Respondent No. 02 expressly waived the requirement of issuance of a Show Cause Notice as well as the opportunity for a personal hearing. Consequently, the impugned order was passed by the adjudicating authority on the basis of facts available on record.

7.4 In view of the foregoing, and given that the contentions now raised by the respondents were neither submitted to nor considered by the adjudicating authority, as is evident from the findings recorded in the impugned order, I am of the considered opinion that the contentions raised by the Respondents, as noted in the preceding paragraph, require examination by the adjudicating authority on the principles of natural justice.

8. In view of the foregoing, the matter is hereby remanded to the Adjudicating Authority for fresh adjudication without going into the merits of the case, with a direction to duly consider the contentions raised by the Respondents during the course of the appellate proceedings and pass speaking order following principles of natural justice.



Akhilesh Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals),
 Customs, Ahmedabad

F.No. S/49-02,03,04/CA-2/CUS/JMN/2022-23
 By Registered Post A.D
 To,

Date: 11.04.2025

1. The Additional Commissioner,
 Customs (P), Jamnagar, Seema Shulk Bhavan,
 Jamnagar – Rajkot Highway, Jamnagar.
2. M/s Green Exim, 707, Basera Heights,
 Fatehabad Road, Agra, Uttar Pradesh – 282006
3. M/s Ruchi Agricom India Pvt. Ltd.,
 408, Geetansh Class of Pearl, K 48-49,
 Income Tax Colony, Durgapur, Tonk Road,
 Jaipur – 302018

सत्यापित/ATTESTED
Akhilesh Kumar
 अधीक्षक/SUPERINTENDENT
 सीमा शुल्क (अपील्स), अहमदाबाद
 CUSTOMS (APPEALS), AHMEDABAD

4. M/s Omkar Shipping, Ganar Quarter, Port Area,
Bunder Road, Porbandar, Gujarat.



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House,
Ahmedabad.

2. The Principal Commissioner of Customs, Custom (P), Jamnagar.

3. The Deputy/Assistant Commissioner of Customs, Custom Division,
Porbandar

4. Guard File.

