



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20250771MN000000E730

क	फ़ाइलसंख्या FILE NO.	S/49-07/ CUS/KDL/24-25
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-017-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.07.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	OIO No. KDL/ADJ/AC/208/SD/2024 dated 18.03.2024 passed by the Assistant Commissioner of Customs, Customs House, Kandla.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	11.07.2025
छ	अपीलकर्तकानामवपता NAME AND ADDRESS OF THE APPELLANT AND RESPONDENT :	M/s. Shriji Overseas (IEC No: AKFPJ4349C), Shed No.302,332 and 344, A-I Type, Phase-I, KASEZ, Gandhidham, Kutch – 370 230.

1.	यहप्रतिसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै. 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.

	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.	
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :	
	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)	कोर्टफीएक्ट, 1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहजारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016

5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-
	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहज़ाररूपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररूपए.
(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,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहैं,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- (क) शेकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) 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.

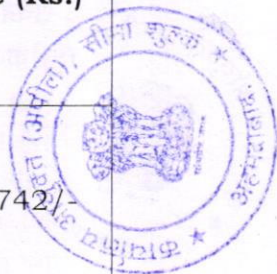


**ORDER-IN-APPEAL**

M/s. Shriji Overseas (IEC No: AKFPJ4349C), Shed No.302,332 and 344, A-I Type, Phase-I, KASEZ, Gandhidham, Kutch – 370 230 (hereinafter referred to as ‘the appellant’) have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. KDL/ADJ/AC/208/SD/2024 dated 18.03.2024 (hereinafter referred to as the “impugned order”) issued by The Assistant Commissioner of Customs, Customs House, Kandla (hereinafter referred to as the “adjudicating authority”).

2. Facts of the case, in brief, are that the appellant were having valid Letter of Approval (LoA) No. 30/2020-21 dated 10.12.2020 issued vide F.No. KAEZ/IA/30/2020-21 by the Development Commissioner, KASEZ (RUD-1) under Section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as a SEZ Unit and carry out authorized operations of manufacturing & warehousing services activity and had filed 01 Bill of Entry for Import of Plastic Goods on behalf of their Client namely M/s. Sanicera Shipping and Export Pvt. Ltd. (Importer) for warehousing purpose at their SEZ Unit. The details of the said imported goods are given below for reference:

Description of Goods	BOE No.& Date	Container No.	Gross Weight (Kg.)	Assessable Value (Rs.)
HMWPE OFFCUTS AND NO OTHER PLASTICS	1007587/09.06.2021	TCNU6730763	18,740	4,43,742/-



2.1 Further, as per the intelligence received by the KASEZ officers that certain dutiable goods/prohibited goods which were allegedly mis-declared were lying inside the SEZ Unit premises and the SEZ Unit was engaged in certain unauthorized operations, officers of KASEZ Customs visited the unit premises for examining the subject goods which appeared to be different from the declared goods - HMWPE OFFCUTS AND NO OTHER PLASTICS in Bill of Entry (HSN Code 39201011). Further, samples drawn were sent to CIPET Ahmedabad laboratory under TM No 3903 dated 23.08.2023 which on result specified that flakes were of material i.e. “HDPE Material/Plastic” and the size of the material did not bring the goods under the category of HDPE REGRIND Plastic. Further, the investigation proceedings revealed that the import cargo was Plastic Waste/Scrap (Restricted Goods) and the same could not be considered as goods falling under CTH 3920 as declared in Bill of Entry. It

appeared that the SEZ Unit had mis-declared CTH as 39201011 in their Bill of Entry instead of correct classification 3915 9090. The goods classifiable under CTH: 3915 were restricted and were permissible for import in SEZ by manufacturing Units operating as Plastic Recycling Unit in SEZ only through valid permission granted under Rule 18 of SEZ Rules, 2006.

2.2 Further, it appeared that the attempt to import the impugned goods by appellant was in violation of the restrictions imposed under Public Notice No. 392/92-97 dated 01.01.1997 issued by DGFT and the goods appeared to fall under the ambit of "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962.

2.3 After the completion of investigation, the appellant and the importer were called upon to Show Cause as to why

### **In respect of Appellant**

- a. The classification of 18,740 kg of the imported goods declared as "HMWPE OFFCUTS AND NO OTHER PLASTICS" under Customs Tariff Item 39201011 of the Customs Tariff Act, 1975, in the Bill of Entry should not be rejected and re-classified as "Plastic Waste/Scrap" under Customs Tariff item 3915 9090;
- b. The mis-declared goods valued at Rs. 4,43,742/- should not be held liable for confiscation under section 111(d), 111(f), 111(m) and 111(o) of the Customs Act, 1962;
- c. Penalty under Section 112 / 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.



### **In respect of importer/DTA client (M/s Sanicera Shipping and Export Pvt. Ltd)**

- a. The classification of 18,740 kg of the imported goods declared as "HMWPE OFFCUTS AND NO OTHER PLASTICS" under Customs Tariff Item 39201011 of the Customs Tariff Act, 1975, in the Bill of Entry should not be rejected and re-classified as "Plastic Waste/Scrap" under Customs Tariff item 3915 9090;
- b. The mis-declared goods valued at Rs. 4,43,742/- should not be held liable for confiscation under section 111(d), 111(f), 111(m) and 111(o) of the Customs Act, 1962;

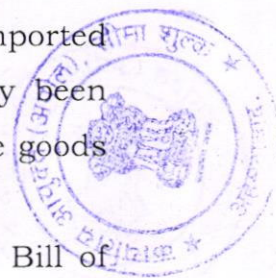
c. Penalty under Section 112 / 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

3. Further, the adjudicating authority vide the impugned order dropped the proceedings initiated against the DTA client/importer i.e. M/s Sanicera Shipping and Export Pvt. Ltd citing them as not the owner of the seized goods and passed the orders against the appellant as follows:

- (i) Ordered for absolute confiscation of seized goods valued at Rs. 4,43,742/- under section 111(d) and 111(o) of the Customs Act, 1962.
- (ii) Imposed penalty of Rs. 4,43,742/- under Section 112(a)(i) of the Customs Act, 1962.
- (iii) Imposed penalty of Rs. 4,50,000/- under Section 114AA of the Customs Act, 1962.

4. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds:

- That the order of absolute confiscation under Section 111(d) and 111(o) of the Customs Act, 1962 is improper, as the seized goods were not available in the SEZ unit at the time of seizure. The goods imported under Bill of Entry No. 1007587 dated 09.06.2021 had already been removed to DTA on 26.11.2022 and thus could not have been the goods seized on 14.06.2023.
- That the goods seized on 14.06.2023 were mistakenly linked to Bill of Entry No. 1007587, whereas they actually pertained to Bill of Entry No. 1007930 dated 16.06.2021. This error occurred due to an unintentional mistake by the unit's authorized representative during the Panchnama proceedings.
- That the goods imported under the correct Bill of Entry No. 1007930 dated 16.06.2021 are still lying in the SEZ unit and are available for verification. This supports the appellant's claim that the seizure was linked to the wrong consignment.
- That the adjudicating authority failed to consider the appellant's letter dated 22.02.2024 submitted to the Deputy Commissioner, KASEZ, which clearly pointed out the error regarding the bill of entry and clarified the actual facts.
- That the classification dispute arising from the test report should not have led to absolute confiscation and penalties, especially when the



goods under the relevant bill of entry are available and open for verification.

- That the penalty under Section 114AA is not legally sustainable, as there was no intentional submission of false or incorrect documents. The mistake was bona fide and not with any intent to deceive or misrepresent.

### **PERSONAL HEARING**

5. Shri Rajvardhan Jha, Proprietor appeared on 18.06.2025 for personal hearing and he reiterated the submissions made in the appeal memorandum.

### **DISCUSSION & FINDINGS**

6. I have gone through the appeal memorandum filed by the appellant department, records of the case and submissions made during personal hearing. The main contention in the appeal is that the impugned order of absolute confiscation and penalties has been erroneously passed based on incorrect facts, particularly the wrong identification of the bill of entry. However, the department has stated that the appellant has violated the condition of LOA leading to the confiscation of the goods and penalties. Therefore, the main issue to be decided in the present case is that whether impugned order confiscating the impugned goods under section 111(d) and 111(o) of the Customs Act, 1962, imposing penalties under Section 112a(ii) and 114AA of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise

6.1. Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 13.05.2024 against the impugned order dated 18.03.2024 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

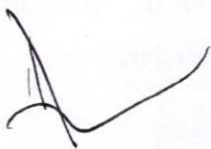
6.2 I find that the appellant has contended that the adjudicating authority has proceeded on the basis that the goods seized under Panchnama dated 14.06.2023 pertain to Bill of Entry No. 1007587 dated 09.06.2021, which were actually have already been cleared into the DTA to their DTA client. Further, the appellant vide his letter dated 22.02.2024 stated that the correct consignment under seizure was actually imported under Bill of Entry No. 1007930 dated 16.06.2021, and that the impugned BOE number was mistakenly furnished by the authorized representative during the seizure

proceedings and the goods under BOE 1007930 were still physically present in the SEZ premises and available for verification.

Since, an important issue in this case revolves around the identification of the goods under seizure and the Bill of Entry (BOE) number to which they are linked. It is observed from the impugned order itself that the adjudicating authority has acknowledged that the goods seized from the premises of the SEZ unit on 14.06.2023 could not have been the goods imported under BOE No. 1007587 dated 09.06.2021, as those goods had already been cleared into the Domestic Tariff Area (DTA) for home consumption vide DTA BOE No. 2013866 dated 26.11.2022. This means that those goods were no longer available in the SEZ premises as on the date of seizure i.e. 14.06.2023. Further, it is also observed that the adjudicating authority has admitted the fact that the goods imported under impugned BOE had already been cleared in to DTA to their DTA client and accordingly dropped the proceedings against the DTA client.

6.3 The appellant, on the other hand, had clarified through their letter dated 22.02.2024 addressed to the KASEZ authorities that the goods under seizure were actually imported under BOE No. 1007930 dated 16.06.2021 and the incorrect BOE number was furnished inadvertently by the authorised representative during the Panchnama proceedings, which the appellant later rectified in writing, well before the issuance of the adjudication order. Further, the appellant has affirmed that the goods imported under BOE No. 1007930 are still lying within the SEZ premises, and have not been removed or cleared into DTA. They are readily available for inspection or verification by any customs authority. This position has not been rebutted by the Department, nor has any verification been undertaken post clarification to contest this factual submission. In view of the above, I find that the confiscation of the goods under Section 111(d) and Section 111(o) of the Customs Act, 1962 is not maintainable since the impugned goods imported vide impugned BOE and goods placed under seizure vide Panchnama are not related.

6.4 Further, the appellant has contended that the penalties imposed under Sections 112(a)(i) and 114AA are unjustified, as they are based on an incorrect BOE reference. The error was bonafide and unintentional, with no evidence of deliberate mis-declaration or intent to evade duty. Since the goods under the correct BOE remain in the SEZ and are available for verification, the essential ingredients for imposing penalties are not met, accordingly, the penalties are liable to be set aside.



In view of the above, I am of the considered view that confiscation of the imported goods in the impugned order is not legally sustainable under Section 111(d) and 111(o) of the Customs Act, 1962. Since the primary condition, i.e. confiscation of goods, to impose penalties under provisions of the Customs Act, 1962, is not sustained, therefore, the impugned order imposing penalty under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 on the appellant are also liable to be set aside.

7. In view of the above discussion, I set aside the impugned order and appeal of the appellant is allowed with consequential relief, if any.



F. No. S/49-07/CUS/KDL/24-25

2675



(AMIT GUPTA)


COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD

Dated: 11.07.2025

By Registered Post A.D.

M/s. Shriji Overseas,  
Shed No.302,332 and 344, A-I Type, Phase-I,  
KASEZ, Gandhidham,  
Kutch - 370 230

सत्यापित/ATTESTED

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

**Copy to:**

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs, Kandla.
3. The Assistant Commissioner of Customs, Customs House, Kandla.
4. Guard File.