



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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DIN - 20250571MN000031893A

क	फ़ाइल संख्या FILE NO.	S/49-57/CUS/MUN/2023-24
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-CUSTOM-000-APP-030-25-26
	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	23.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/MK/06/2023-24 dated 13.04.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	23.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Rupesh Kumar & Sons (IEC-1511002131), Opp. Carpet City, Shardapuri, Bhadohi-221401 (UP)

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)	बैगें 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 जाने पर या उस गन्तव्य स्थान पर गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए : The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd 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 हजार 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 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 हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो: दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील :- अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

Appeal has been filed by M/s. Rupesh Kumar & Sons (IEC-1511002131), Opp. Carpet City, Shardapuri, Bhadohi-221401 (UP) (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/06/2023-24 dated 13.04.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Customs Broker, M/s. Sadguru International on behalf of appellant filed Bill of Entry No. 6767760 dated 21.12.2021 for import of goods, declared as 'Raw Wool Carpet Grade Wool 32 Micron above (Not Carded and Combed)' falling under CTH 51012900. The goods were stuffed in container No. CAXU9380034 and Country of Origin (COO) was declared as SYRIA.

2.1 An information was received indicating that the above container had originated from Pakistan. Further, it was revealed that the container has been transhipped at UAE (EXP reshipped to vessel). Thus, the goods imported into India actually originated in Pakistan. Accordingly, the country of origin declared by the importer is incorrect. The details of bill of entry are as under:

BE No & date	Description of Goods	Qty (kgs)	Unit price per Kg (in Rs.)	Declared Value (in Rs.)
6571790 dated 67.12.2021	Raw Wool Carpet Grade Wool 32 Micron above (Not Carded and Combed) CTH 5101900	23580	Rs. 97.432 (1.2629 USD) (USD=77.15 INR)	23,23,310

The appellant filed the said Bill of Entry under MEIS Script having license no.1519017367 dated 12.05.2021 as per provisions of Customs Notification no. 24/2015-Customs dated 08.04.2015.

2.2 Acting on the above intelligence, Officers of the Special Intelligence & Investigation Branch (SIIB) intercepted the container No. CAXU9380034 covered by the said Bill of Entry at Saurashtra CFS, Mundra for examination. The goods were examined under Panchnama dated 23.12.2021, drawn at Saurashtra CFS, Mundra. During the examination, it was observed that the imported goods are 'Raw Wool' as per visual inspection. As per Surveyor's tally

sheet, the quantity of the goods was 140 Bales. As per weighment slip bearing no. WB/Slip/00123099/21-22 dated 22.12.2021 provided by M/s. Saurashtra CFS, the net weight of the goods was found 23830 Kgs.

2.3 In order to investigate the case, load port documents were asked from shipping line vide letter dated 28.12.2021. Shipping line vide letter dated 06.01.2022 submitted the load port documents i.e. (a) Bill of Lading, (b) consignee copy issued by Dubai Customs. The consignee copy issued by Dubai Customs on 12.12.2021 specifies country of origin "PK" at serial number 24 of the said document and it also specifies Total Bales 140, weight equal to 23720 Kgs and same container no. CAXU9380034. Hence, it was confirmed that imported goods were of Pakistan Origin.

2.4 Whereas, vide Notification 5/2019-Customs dated 16.02.2019, In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 98060000 has been inserted for All goods originating in or exported from the Islamic Republic of Pakistan, which attracts 200% BCD.

2.5 In view of the examination of the goods under Panchnama dated 25.12.2021, to seek clarification in the matter, Summons was issued to the appellant on 10.01.2022. In response to Summons dated 10.01.2022, a statement of Shri Pratyush Baranwal, Partner of M/s. Rupesh Kumar & Sons was recorded on 09.02.2022 wherein;

- On being asked about the import made vide bill of entry no. 6767760 dated 21.12.2021, Shri Pratyush Baranwal replied that they ordered the goods "Raw Wool" from supplier i.e. M/s Arabian House General Trading LLC, Al Ras Market, Deira, Dubai-UAE-PO Box-64660. He stated that supplier gave them all the documents that proved that the goods were of Syrian Origin.
- On being asked about the Dubai Customs Documents received from Shipping Line vide letter dated 06.01.2022 specifies country of Origin is Pakistan because country of origin is shown as "PK" in Dubai customs Documents, he submitted that they were supplied all documents wherein goods are of Syrian Origin and he don't know how the goods received by them are sent from Pakistan.



- On being asked about that all goods originating in or exported from Islamic Republic of Pakistan attract Standard Rate of Duty @ 200%, he stated that he was not aware of this fact and their customs Broker informed them that goods of Pakistan Origin attract Standard Rate of Duty @ 200%.
- On being asked about dispose-of the duty liability arising out of import of "Raw Wool" from Islamic Republic of Pakistan, he stated that they did not intend to take the delivery of the said goods and expressed the willingness to re-export the goods to foreign supplier.

2.6 Further, vide letter dated 11.07.2022, the appellant further submitted that;

- They have imported the goods Raw Wool from M/s. Arabian House General Trading LLC. It had Syrian origin as per indent, Health Certificate & Certificate of origin.
- That they requested that the goods may be allowed for re-export and requested that they don't want any show cause/ Personal Hearing.

2.7 In light of the documents submitted by the Shipping Line i.e. Dubai Customs consignee copy, it is very clear that the Container No. CAXU9380034 with same goods & quantity i.e. 140 bales is shipped from Pakistan. Whereas, the UAE based consignee has shipped these goods from Jebel Ali, UAE Port to Mundra Port to the Importer. The importer, at the time of filing of Bill of Entry submitted a copy of Certificate of Origin No. 02186 dated 21.11.2021 issued by Federation of Syrian Chambers of Agriculture, Syria. Importer also submitted Health & Origin Certificate for Animals, Animal Products & Medical Compounds by Syrian Arab Republic, Ministry of Agriculture and Agrarian Reform.

2.8 In view of the above discussed facts, it appeared that the goods i.e. Raw Wool Carpet Grade Wool 32 Micron above (Not Carded and Combed) covered under the Bill of entry number 6767760 dated 21.12.2021 with declared COO as SYRIA were originated from Pakistan and initially shipped from Karachi Port, Pakistan to Jebel Ali Port, UAE. Thereafter, the same goods with same Container have been shipped by the supplier to Consignee M/s. Rupesh Kumar & Sons.

Handwritten signature/initials.

2.9 Vide Notification 5/2019-Customs dated 16.02.2019, In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 98060000 has been inserted for All goods originating in or exported from the Islamic Republic of Pakistan, which attracts 200% BCD. Accordingly, the imported goods i.e. Raw Wool Carpet Grade Wool 32 Micron above (Not Carded and Combed) appears to be rightly classifiable under CTH 98060000 and attracts duties as BCD @ 200% & SWS @ 10%. The duty calculation on the said imported goods is as under: -

Table-A

BE No. & date	Description of Goods	Qty (kgs)	Unit price per Kg (in Rs.)	Declared Value (in Rs.)	Duty payable (in Rs.)
38767760 dated 21.12.2021	Raw Wool Carpet Grade Wool 32 Micron above (Not Carded and Combed)	23580	Rs. 97.432 (1.2629 USD) (USD=77.15 INR)	2323310	6449509

2.10 It appeared that in terms of Section 46(4) of the Customs Act, 1962, the importer, while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry. Further, in terms of Section 46(4A), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.

2.11 The impugned Bill of Entry was self-assessed by the appellant in terms of Section 17(1) of the Customs Act, 1962. If the goods are of SYRIA Origin the goods attracted BCD @2.5%, however, the goods appear to be Pakistan Origin, therefore, the imported goods shall attract BCD@ 200% with applicable SWS @ 10% & IGST 18%.

2.12 From the above discussed facts and statutory provisions, it appeared that the imported goods i.e. "Raw Wool Carpet Grade" Classified under CTH 51012900 have originated from Pakistan and is accordingly classifiable under CTH 98060000 which attract higher rate of BCD@ 200% with applicable SWS @ 10% & IGST 18%. Therefore, the said goods appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962. The total duty payable as in Table-A above amounting to Rs. 64,49,509/- (BCD@200%; SWS@10% & IGST@18%) as per notification no. 05/2019-Customs dated 16.02.2019, is required to be recovered from the importer under the Customs

Act, 1962.

2.13 In view of the above observation, a Show Cause Notice under F. No. S/43-17/Inv. Rupesh Kumar/SIIB/CHM/2021-22 16.02.2023 was issued to the Appellant proposing, as to why:

- i. Classification of 23580 kgs. of "Raw Wool Carpet Grade 32 Micron Above (Not Carded or Combed)" under Chapter Tariff Heading No. 51012900, imported under BoE No. 6767760 dated 21.12.2021 having BL No. SNFJEAMUN211b002 dated 16.12.2021 and Invoice No. 2186 dated 09.12.2021 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.
- ii. 23580 kgs. of "Raw wool Carpet Grade 32 Micron Above (Not Carded or Combed)" imported under BoE No. 6767760 dated 21.12.2021 valued at Rs.2323310/- (Rupees Twenty-Three Lakhs Twenty-three Thousand Three Hundred Ten Only) should not be confiscated under Section 111 (m) of the Customs Act, 1962.
- iii. Penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962.

2.14 Consequently the adjudicating authority passed a impugned speaking order wherein the adjudicating authority ordered as under :-

- (1) She rejected the declared CTH 5101;900 of 23580 Kgs. Of "Raw Wool Carpet Grade 32 Micron above (Not Carded or Combed)" and order to re-determine the same to CTH 98060000.
- (2) She ordered for confiscation of the goods imported y de Bill of Entry No. 6767760 dated 21.12.2021 having assessable value of Rs.23,23,310/- (Rupees Twenty-Three Lakhs Twenty-three Thousand Three Hundred Ten Only) under Section 111(m) of the Customs Act, 1962. However, she gave an option to the appellant to redeem the confiscated goods on payment of redemption fine of Rs. 2,00,000/- (Rupees Two Lac only) under Section 125 of the Customs Act, 1962 for re-export purpose.
- (3) She imposed a penalty of Rs.5,00,000/- (Rs. Five Lac Only) on the appellant M/s. Rupesh Kumar & Sons under Section 112(a) of the Customs Act, 1962.

(4) She imposed a penalty of Rs.5,00,000/- (Rs. Five Lac Only) on the appellant M/s. Rupesh Kumar & Sons under Section 114AA of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant is a partnership firm established in the year 2011. The appellant is in the business of manufacturing, importing and exporting of the carpets. The appellant imports raw material and convert it into threads and then manufacture carpets which are sold in the local markets as well as exported in the overseas market. The appellant sometime also imports carpets and sell them in the local market.

3.2 The appellant had imported carpet grade raw wool through Arabian House Oriental Trading LLC. It is stated that the exporter had shared a Certificate of Origin with our Custom House Agent viz M/s Sadguru International (CHA) which states that the Country of Origin is Syria. The said COO was issued by Federation of Syrian Chambers of Agrilculture, Lattakia Chamber of Agriculture and the said COO was issued on 21.11.2021 and was endorsed by the Federation of Syrian Chambers of Agrilculture, Lattakia Chamber of Agriculture. It is stated that all such relevant documents were shared by the exporters with their CHA and us through courier FalExpress dispatched on 28.11.2021. It is further stated that CHA and they received following documents from the exporter: -

1. Invoice
2. Packing List
3. Copy of BL.
4. Copy of Certificate of Origin
5. All company registration related papers
6. Health Certificate.

3.3 The CHA thereafter filed Bill of Entry No. 6767760 dated 21.12.2021 in which the Country of Origin was declared to be Syria and Bill of Lading date and Bill of Lading number was mentioned in BOE filed by the CHA. The said import was made under Merchandise Export from India Scheme license no.

1519017367. The total assessable value was declared to be Rs.23,23,310/- and duty of Rs. 5,808/-. The subject goods were dispatched in container bearing no. CAXU9380034.

3.4 Thereafter, an information was received indicating that the container covered under subject Bill of Entry had originated from Pakistan and thus the officers of SIIB intercepted the container in question and the goods were examined under the Panchnama dated 23.12.2021 drawn at Saurashtra CFS, Mundra. During the examination it was found that the goods were corresponding to declaration made in BL and BOE filed by the CHA and no discrepancies were found. Thereafter, it is the case of the respondent-authorities that the shipping lines was asked to share certain documents vide letter dated 28.12.2021 and in their reply dated 06.01.2022, the shipping line shared the load port documents i.e. (a) BL (b) consignee copy issued to Dubai Customs. The consignee copy, as per the respondent-authorities indicates that the goods were originated from Pakistan.


3.5 Thereafter summons dated 10.01.2022 was issued to the appellant, in response to which the Shri Pratyush Baranwal (partner of the importer) remained present on 09.02.2022 and his statement was recorded, wherein Shri Pratyush Baranwal explicitly stated the following: -

- That the goods were order from supplier situated in UAE and the details of Supplier were also shared. The same are again reproduced hereunder for ready reference: -
- Arabina House General Trading LLC, AL Ras Market, Deira, Dubai-UAE PO Box-644660.
- That BE of entry was filed by CHA and the documents related to import viz Commercial Invoice, Packing List, BL and COO certificate (couriered directly to CHA);
- That the importer does not wish to take delivery of goods and the partner also stated that they have asked the bank to return the papers to supplier as he has delivered different goods as were ordered.

3.6 Thereafter, the appellant vide letter dated 11.07.2022 expressed their desire to re-export the goods. Thereafter a show cause notice dated 16.02.2023 came to be issued which was served upon the importer.

3.7 The impugned order is passed in total breach of natural justice and the application of adjournment and request for personal hearing which was mailed on 10.04.2023. That the said application is totally brushed aside. That as per master circular dated 10.03.2017 personal hearing should be given at least three times, which has not been adhered in the instant case. It is further trite that circular is binding upon department officers

3.8 The impugned SCN did not contemplate to levy of penalty under section 114AA of the Act and levy of redemption fine under section 125 of the Act for the purpose of re-export. The levy of penalty under section 114AA of the Act and levy of redemption fine under section 125 of the Act for the purpose of re-export was not even proposed in the corrigendum dated 17.03.2023. Confirming such penalty and redemption fine without there being a proposal is totally in breach of natural justice.



The Adjudicating Authority erred in invoking Section 111(m) for holding the goods liable to confiscation. It is submitted that the goods are not liable to confiscation as Section 111(m) has no application in the present case. The Bill of Entry contained a correct description and valuation of the goods, the invoice stamped by foreign supplier and COO certificated stamped by Federation of Syrian Chamber of Agriculture. There is no evidence with the department indicating fabrication or impropriety in the documents submitted by the importer. Any discrepancy between the declaration made in BOE cannot be considered as misdeclaration and does not warrant confiscation of the imported goods if due weightage is given to the fact that importer had sought for first check by the customs before assessment and clearance of goods. The importer has made declaration and entry upon the basis of the COO certificate provided by the exporter and had there been a malafide intention the appellant would not have rejected the goods and asked the bank to return the papers. It is stated that the appellant has not paid the exporter and it establishes the bonafides of the appellant. That the appellant has no reason to doubt about the authenticity of the COO certificate provided by the exporter.

3.10 The Adjudicating Authority have lost sight of the fact that the appellant would have nothing to gain out of such misdeclaration as the appellant has a MEIS license and is armed with import license of the carpet grade raw wool. The goods are not confiscated due act or omission on part of the appellant as true and full disclosure as per the documents available during the time of

making declaration and filing BOE was made.

3.11 At this juncture it would be pertinent to note that the SCN never proposed to levy penalty under section 114AA of the Act or to levy a redemption fine under section 125. Thereafter a corrigendum dated 17.03.2023 to SCN dated was issued proposing changes in dated and certain typographical errors which crept in and in the corrigendum also there was no proposal to levy penalty under section 114AA of the Customs Act, 1962.

PERSONAL HEARING:

4. A personal hearing was granted to the appellant on 24.01.2025 following the principles of natural justice wherein Shri Hiren J Trivedi, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal and also filed additional submissions wherein he placed reliance on following judgments of jurisdictional Tribunal, wherein it has been held the no penalty can be imposed on importer for misdeclaration of Country of Origin:

- Amglo Resources Pvt. Ltd. Versus Commissioner Of Central Excise & Service Tax, Valsad, (2023) 4 Centax 21 (Tri.-Ahmd)
- Rajkamal Industrial Pvt. Ltd. Versus Commissioner Of Customs, (2024) 16 Centax 245 (Tri.-Ahmd)
- Malas Fruit Products Versus Commissioner Of Customs, Mundra
- Aspam Petronergy Pvt. Ltd. Versus Commissioner Of Customs, Kandla

Consequently due to change in the Appellate Authority, fresh personal hearing was granted to the appellant on 14.05.2025 following the principles of natural justice wherein Shri Hiren J Trivedi, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal and also placed reliance on the additional submissions filed earlier.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner of Customs, Mundra and the defense put forth by the appellants in their appeal.

5.1 On going through the material on record, I find that following issues are required to be decided in the present appeals which are as follows:

- i. Whether the speaking order passed by the Adjudicating Authority has followed the principles of natural justice or otherwise.
- ii. Whether the Confiscation of goods under Section 111(m) of the Customs Act, 1962 ordered by the adjudicating authority in the impugned order, in the facts and circumstances of the case is legal and proper or otherwise.
- iii. Whether the Redemption Fine of Rs. 2,00,000/- under Section 125 of the Customs Act, 1962 imposed by the Adjudicating authority in the impugned order in the facts and circumstances of the case is legal and proper or otherwise.
- iv. Whether penalty of Rs.5,00,000/- (Rs. Five Lac Only) imposed on the appellant M/s. Rupesh Kumar & Sons in the impugned order under Section 112(a) of the Customs Act, 1962 in the facts and circumstances of the case is legal and proper or otherwise.

Whether penalty of Rs.3,00,000/- (Rs. Three Lac Only) imposed on the appellant M/s. Rupesh Kumar & Sons in the impugned order under Section 114AA of the Customs Act, 1962 in the facts and circumstances of the case is legal and proper or otherwise.

5.2 Firstly, I take up the issue whether the speaking order passed by the Adjudicating Authority has followed the principles of natural justice or otherwise. It is observed that the appellant claims the impugned order violated natural justice due to inadequate personal hearing opportunities, citing the master circular dated 10.03.2017. While the circular recommends three hearings, the SCN process provided the appellant opportunities to respond, including a written reply and a statement by Shri Pratyush Baranwal on 09.02.2022. The request for adjournment on 10.04.2023 was followed by the OIO issuance, but the appellant had waived the SCN and hearing on 17.03.2023. It is observed that the appellant had himself waived off the rights for personal hearing vide their letter dated 17.03.2023.

It is observed that the procedural lapses do not invalidate orders if substantive rights are not prejudiced. Here, the appellant's substantive

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arguments were considered and their submissions have been considered and does not warrant overturning the order. The absence of a personal hearing does not vitiate the process, as the appellant was actively engaged through written queries and responses. Thus, the impugned order adhered to the principles of natural justice, providing notice, opportunity to respond, and a reasoned decision.

5.4 Now I come to the issue regarding the Confiscation Under Section 111(m) done by the Adjudicating authority in the impugned order. Section 111(m) of the Customs Act, 1962, allows confiscation of goods not corresponding to the entry made in the Bill of Entry. The appellant declared the country of origin as Syria, supported by a COO, but Dubai Customs documents and shipping records confirmed Pakistan as the origin. The significant duty difference (2.5% vs. 200% BCD) suggests an intent to evade duty. The appellant's claim of good faith, evidenced by requesting a first check, is undermined by their failure to verify the COO's authenticity, especially given the availability of contradictory shipping evidence. It is well-settled that even if the declaration is based on documents from the supplier, it is the importer's responsibility under self-assessment to ensure correctness of data, including origin. Relevant portion of the rules are reproduced here under:

Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

...

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

5.5 It is observed that under Customs Administration of Rules of Origin under Trade Agreements Rules (CAROTAR), 2020, effective from 21 September 2020, importers claiming preferential duty rates must exercise due diligence to ensure goods meet origin criteria (CAROTAR 2020). Rule 4(a) requires possession of Form I information, detailing production processes and origin criteria, and Rule 4(c) mandates reasonable care in verifying accuracy. Relevant portion of the

rules are reproduced here under:

Rule 4. Origin related information to be possessed by importer-

The importer claiming preferential rate of duty shall-

(a) *possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.*

(b) *keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.*

(c) *exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents*



The appellant's reliance on the COO without further inquiry, despite accessible shipping documents, likely constitutes a failure to comply with CAROTAR, 2020. Thus, the goods were correctly confiscated under Section 111(m).

5.6 Now I come to the issue regarding the Redemption Fine under Section 125 of the Customs Act, 1962 imposed by the Adjudicating authority in the impugned order. As observed in the above paras, it is seen that the goods are correctly confiscated under Section 111(m) of the Customs Act, 1962. The redemption fine of Rs. 2,00,000/- is justified as the goods were liable to confiscation. Section 125 allows fines in lieu of confiscation, and the amount is proportionate to the duty evaded. Hence, I uphold the same.

5.7.1 Coming to the issue of penalty imposed under Section 112(a) of the Customs Act, 1962, it is observed that the appellant has relied upon Tribunal decision in case of *Amglo Resources Pvt. Ltd. Versus Commissioner Of Central Excise & Service Tax, Valsad*, (2023) 4 Centax 21 (Tri. Ahmd). In this regard, it is observed that in the said case the importer paid full duty without claiming preferential rates, and the goods were imported after implementation of CAROTAR, 2020. Here, the appellant claimed a 2.5% BCD, evading 200% BCD. Further, the cited case involved import from Iran where import was freely

permitted whereas in instant case the import is from Pakistan which attracts higher rate of duty under specific notification and hence distinguishable. In case of Rajkamal Industrial Pvt. Ltd. Versus Commissioner Of Customs, (2024) 16 Centax 245 (Tri.-Ahmd), no financial benefit was derived, and the misdeclaration was technical. In contrast, the duty difference in the present case is substantial, and CAROTAR, 2020, applies. In the instant case, the objective was duty evasion, and false documentation was used.

5.7.2 Further, it is observed that the appellant has relied upon *Malas Fruit Products Versus Commissioner Of Customs, Mundra* wherein the judgement is focused on unverified value addition allegations, not applicable to clear evidence of origin misdeclaration. In case of *Aspam Petronergy Pvt. Ltd. Versus Commissioner Of Customs, Kandla* as relied upon by the appellant, no preferential duty was claimed, unlike this case where the appellant sought a lower duty rate. Thus, it is observed that the judgements relied upon by the appellant are based on factual findings unique to that importer and shipment and are not squarely applicable in instant case. In view of the same, I find that the penalty imposed on the appellant under Section 112(a) of the Customs Act, 1962 is justified and is accordingly upheld.

5.8 With regard to penalty imposed on the appellant under Section 114AA of the Customs Act, 1962, I find that there was no proposal of imposition of penalty on the appellant under Section 114AA of the said Act either in the Show Cause Notice dated 16.02.2022 or the corrigendum to the said Show Cause Notice. Hence, the imposition of penalty in the impugned order is legally not sustainable and is accordingly set aside.

6. In view of the above discussions, I modify the impugned order to the extent as discussed in para 5.8 above and order as under :-

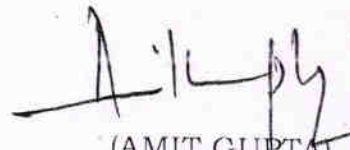
- (1) Confiscation of goods under Section 111(m) of the Customs Act, 1962 is upheld.
- (2) Redemption fine of Rs. 2,00,000/- under Section 125 of the Customs Act, 1962 is upheld.
- (3) Penalty of Rs. 5,00,000/- imposed under Section 112(a) of the Customs Act, 1962 is upheld.




- (4) Penalty of Rs. 3,00,000/- imposed under Section 114AA of the Customs Act, 1962 is set aside.

7. Accordingly, the appeal filed by the appellant is partly rejected and partly allowed in above terms.




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

F. No. S/49-57/CUS/MUN/2023-24/22

Date: 23.05.2025

By Registered post A.D/E-Mail

To,

1. M/s. Rupesh Kumar & Sons (IEC-1511002131),
Opp. Carpet City,
Shardapuri, Bhadohi-221401 (UP).
2. Shri Hiren J Trivedi/Krutarth K Pandya
710, Dream Rise, Nr. Hetarth Party Plot,
Sola-Science City, Ahmedabad-380060
(E-Mail-cahirentrivedi@gmail.com).

सत्यापित/ATTESTED

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

Copy to:

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

TESTIMONY ATTESTED
SUPERVISOR
CUSTOMS (APPELLANT) ALMEDA