



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
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DIN - 20250571MN000000A16C

क	फ़ाइल संख्या FILE NO.	S/49-60/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-CUSTM-000-APP-021-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	08.05.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/18/ADC/MK/2023-24, dated 28.04.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shree Maa Jagdamba Traders (IEC No.-GSYPS2605M) Plot No. 71 & 72, Khetarpal Nagar, Gandhidham-370110

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)	बैगेंज 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 ब्रापसी 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 रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, 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.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच 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 है, 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

M/s Shree Maa Jagdamba Traders (IEC No.-GSYPS2605M) Plot No. 71 & 72, Khetarpal Nagar, Gandhidham-370110 (hereinafter referred to as the 'Appellant') have filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original bearing No. MCH/18/ADC/MK/2023-24, dated 28.04.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed Bill of Entry No. 3331409 dated 16.11.2022 for clearance of 27960 Kgs of goods declared as "Shikakai & Arecanut" having an assessable value of Rs. 58,52,910.78 through their Customs Broker M/s SRV Shipping, (CHA-ADLFS0369JCH001). The details of the Bill of Entry are as under in Table-I.

Table-I

Sr No.	Bill of Entry No. & Date	Item Description	Quantity (In Kgs)	Declared Assessable Value (in INR)
1	3331409 dated 16.11.2022	Shikakai	20220	10,96,638.98
		Arecanut	7740	47,56,271.80
		Total	27960	58,52,910.78

2.1 Specific intelligence was developed by the Special Intelligence and Investigation Branch (hereinafter referred to as "SIIB") revealed that the Appellant resorted to mis-declaration in terms of quantity of goods covered by Bill of Entry No. 3331409 dated 16.11.2022 (hereinafter referred to as the impugned Bill of Entry). The Appellant availed the benefit of Sr. No. 1 of Notification No. 096/2008 dated 13.08.2008 in respect of item no. 1 i.e. Shikakai

and Sr 14(a) of Notification No. 096/2008 dated 13.08.2008 for item No. 2 i.e. Arecanut with an intention to evade appropriate Customs Duty. M/s SRV Shipping, (hereinafter referred to as Custom Broker) filed the impugned Bill of entry on behalf of the Importer.

2.2 Based on the above intelligence, Officers of the SIIB intercepted the container No. EITU1179701 covered by the said bill of entry at TG CFS, Mundra for examination. A detailed examination of the imported goods was carried out in presence of representative of CHA and CFS vide Examination Report dated 26.11.2022. During the examination it was observed that quantity of goods was found different from the declared. Quantity found during examination is as per Table - II below:

Table-II

Sr. No.	Description Item	No. of PP Bags declared in Invoice & Packing List	No. of PP Bags found during examination	Weight if each PP Bag (in Kgs)	Total Weight
1	Arecanut	258 Bags (30 Kgs each) (30*258=7740 Kgs)	179	85	15215 Kgs
2	Arecanut	--	79	30	2370Kgs
3	Shikakai	337 Bags (60 Kgs each) (60*337 = 20220 Kgs.)	60	89	5340 Kgs
4	Shikakai	--	248	20	4960 Kgs
Total				Arecanut	17585 Kgs
				Shikakai	10300 Kgs

On perusal of the above table it appeared that quantity of Arecanuts declared as 7740 Kgs. and quantity found during examination was 17585 Kgs., thus 9845 Kgs. of Arecanut were found in excess. Further, quantity of Shikakai was declared as 20220 Kgs. However, during examination 10,300 Kgs. Shikakai were found, thus, 9920 Kgs of Shikakai were found short.

2.3. The DGFT vide their Notification No. 20/2015-20 dated 25.07.2018 amended the import policy of Areca Nuts under CTH 080280, the relevant portion of which is as under:

Exim Code	Item Description	Policy	Revised Policy	Existing Policy Conditions	Revised Policy Conditions
	Areca Nuts:				
08028090	Other	Free	Prohibited	Provided CIF value is Rs. 251/- and above per Kilogram.	However, import is free if CIF value is Rs.251/- and above per Kilogram

Para 2 of the aforesaid notification further states:

"2. Effect of this Notification Import of arecanut over and above CIF 251/ per kilogram is free and Import below CIF 251/ is prohibited."

2.4 The examination of goods revealed that the Appellant had mis-declared the quantity of Arecanuts to avoid the applicable duty thereon and also the excess quantity of Arecanuts was not declared in the impugned Bill of Entry. Arecanut is freely importable if CIF Price are Rs. 251/- per Kg. and above. However, the Appellant did not declare the same thus the excess quantity of Arecanut was considered as prohibited. As the goods were prohibited and mis-declared in terms of quantity as well, therefore, the same were liable for confiscation under Section 111(d), 111(1) & 111(m) of the Customs Act, 1962. Further, declared quantity of Shikakai and Arecanut were imported to cover up the excess quantity of undeclared Arecanut, therefore, the same are liable for confiscation under Section 119 of the Customs Act, 1962. As the goods imported vide impugned Bill of Entry having declared Assessable Value of Rs. 58,52,911/- were liable for confiscation under Section 111(d), 111(1), 111(m) & 119 of the Customs Act, 1962, accordingly, the goods were seized vide Seizure Memo dated 08.02.2023.

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2.5 During the investigation, summons dated 08.12.2022, 22.12.2022 and 16.01.2023 were issued to the Appellant for recording statement but he did not appear for the same. The Appellant vide his letters received on 29.12.2022 and 17.01.2023 requested for extension of time and for allowing his son for statement. Thereafter the statement of his son Shri Surendra Singh was recorded on 30.01.2023 wherein he interalia submitted; that they had ordered for the quantity for which they had filed the Bill of Entry No. 3331409 dated 16.11.2022; that the supplier vide E-Mail dated 17.11.2022 informed that excess quantity was sent and he asked for return of cargo; that the Appellant imported excess quantity of Arecanut due to mis-handling of cargo at supplier's end and that they want to re-export the entire cargo as it is not their purchase order; that they are ready to pay fine and penalty as imposed by the adjudicating authority; that they do not want any Show Cause Notice and Personal Hearing in this matter .

2.6 Further the statement of Shri Rajesh Kumar Jain, Partner, M/s. SRV Shipping i.e. Customs Broker was also recorded on 21.02.2023 wherein he interalia submitted; that their employee who handles the documentation work had filed the Bill of Entry No. 3331409 dated 16.11.2022; that on being asked about the excess quantity of Areca Nut, he submitted that they were not aware about the same; that they had filed the aforesaid Bill of Entry on the basis of documents received through mail and original documents received through courier.

The investigation concluded that the Appellant was involved in mis-declaring the goods and hence rendering the same liable for confiscation under Section 111(d), 111(1), 111(m) & 119 of the Customs Act, 1962. Further the Appellant also appeared liable for penal action under Section 112(a)(i) of the Customs Act, 1962. Also, to show lesser quantity of Arecanut relevant documents were manipulated and submitted to the Customs for clearance of the same, hence the Appellant appeared liable to penalty under Section 114AA of the Customs Act, 1962

2.08 The Appellant submitted a letter dated 27.03.2023 and requested for re-export of the entire goods imported vide Bill of Entry No. 3331409 dated 16.11.2022 as the same is not as per their purchase order Further, they requested not to issue show cause notice and personal hearing in the matter. In view of the same, the adjudicating authority decided the matter on the basis of the Investigation report issued vide F.No. S/43-205/Arecanut/SIIB-F/CHM/22-

23 dated 23.02.2023 issued by the Deputy Commissioner of Customs, SIIB, Mundra as under :-

- 1) It was ordered to confiscate goods imported vide Bill of Entry No. 3331409 dated 16.11.2022 having assessable value of Rs. 1,13,58,488 under Section 113(3), 111(1), 111(m) and 119 of the Customs Act, 1962. However, the adjudicating authority gave an option to the Appellant to redeem the confiscated goods on payment of redemption fine of Rs. 5,00,000/- under Section 125 of the Customs Act, 1962 for re-export purpose only.
- 2) Imposed a penalty of Rs. 10,00,000/- and Rs. 20,00,000/- on the Appellant under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 respectively.
- 3) The adjudicating authority also permitted the Appellant to re-export the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted as under :-

- They had placed a purchase order vide No. SMJT/001/22-23 dated 10.08.2022 with M/s Unique Friends Group Co. Ltd, No.21, Ground Floor, Daw Thein Tin Road, Mingalar Taung Nyunt TSP, Yangon Region Myanmar for importing 20 220 MTs of Shikakai at the rate of US\$ 640 per Metric tonne aggregating to a value of US\$12,940.80 and 7740 MTs of areca nut, at the rate of US\$ 3300 per MTs, aggregating to a value of US\$ 25,542. The said order had been accepted by the supplier and they duly attested the purchase order. Thereafter, the supplier had executed a sale Contract No. UFG/090/2022 dated 19.08.2022 for the said quantity of shikakai and areca nut. Copy of the purchase order and sale contract are attached.
- The supplier had shipped the consignment and had also issued

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commercial invoice, packing list, bill of lading, country of origin certificate, FTA Certificate, Phytosanitary Certificate etc., and on the basis of the same, the Appellant had filled the Bill of Entry on 16/11/2022 through their Customs Broker. All the aforementioned documents are attached.

- That on 17/11/2022, the supplier had sent following mail to the Appellant informing that due to an error on the part of the manager the cargo had been dispatched.
- On 26.11.2022, when the cargo was examined, it was noticed that it contained cargo as mentioned in the Table A of impugned order. The appellant had vide e-mail dated 27.11.2022, communicated to the supplier the discrepancies noticed on physical examination of the cargo.
- The supplier had admitted his mistake and vide telcon dated 29.11.2022 and requested the Appellant to return the cargo or make full payment for the goods. The Appellant vide his mail dated 29.11.2022, informed the supplier that he was not in a position to bear the cost and make payment of duty, and agreed to return the cargo as and when released by the authorities.

The appellant was a bonafide importer and there was a mishandling at the end of the supplier's manager which resulted in improperly loading the cargo that resulted in excess receipt of areca nuts and a shortage in the quantity of shikakai. The supplier had owned up his mistake apologized and expressed their readiness to receive the goods back and replace.

- The Appellant had, therefore no knowledge of improper shipping of the cargo and such an improper shipping occurred due to the operational failure at suppliers end, as admitted by them. The excess and shortage occurred outside the contract signed and therefore, it was not intentional on the part of either the supplier or the Appellant as the Appellant was under no obligation to make payment for any commodity received excess in quantity than ordered, and also for short supply. The supplier also will not benefit in any way in committing a dispatch error as he would be losing out in the sale
- The appellant wanted to follow best international practice of business and



did not want a loss of credibility for domestic importers and therefore agreed to the supplier to send back the cargo and sought replacement which the supplier agreed.

- The Appellant therefore, vide letter dated Nil requested permission to return the cargo and adjudicate the case without SCN as the appellant had been incurring heavy loss in the form of CFS charges, demurrage and ground rent etc. The appellant had also requested to take into consideration the bonafide nature of the mistake and that it had happened without the knowledge of the importer while adjudicating the matter.
- The matter had been adjudicated but the learned adjudicating authority failed to appreciate the bonafide character of the error but concluded that the mismatch in quantity was a design to avoid payment of applicable duties which is far from the truth in view of the facts narrated above.
- The finding of the learned adjudicating authority that by not properly declaring the cargo, the appellant had violated the provisions of section 46 of the customs Act, 1962 is also incorrect as the appellant had filed the bill of entry on the strength of his purchase order, contract executed and other shipping documents, viz, B/L, Packing List, Invoice, duty exemption certificate etc, received from the supplier. The appellant had no reason to disbelieve the veracity of any of these documents and it was not logical for him to suspect that the supplier would not exercise due diligence in dispatch of the cargo causing financial loss to the supplier himself than anyone else.
- The learned adjudicating authority failed to appreciate the bonafides of error on the part of the supplier and the innocence of the importer while holding that the excess quantity of areca nuts i.e. 9845 kgs. was not declared in the bill of entry to avoid applicable duty thereon. The Applicant had no reason to suspect that the cargo in question would not be examined and since areca nut being a sensitive commodity and being imported under concessional rate there were every reason for him to assume that the cargo would be subjected to examination and no prudent person would indulge in under declaration of cargo in such a likely hood of physical examination. The Learned adjudicating authority had made this observation without any documentary or oral evidence but merely on the basis of suspicion.



surmises and conjectures which are no evidence under law

- According to import export policy, areca nuts are classified under exim code 08028090 are prohibited for export if the CIF value declared is less than Rs.251 per kg. The purchase order was placed for a quantity of 7740 kgs. for an aggregate value of US\$ 25542.00 with an average value of US\$ 3.3 per kg. The import exchange rate for US\$ at the material time vide Notification No. 92/2022-Customs (N.T.), dated 3rd November, 2022 (and as recorded in the bill of entry) was Rs.83.80, and accordingly, the per kilo rate of areca nut is Rs.273.9 per kg.
- No evidence had been adduced to show the valuation of the excess quantity of areca nut found as being below Rs. 251 per kilogram to treat them as prohibited cargo. The excess quantity is not found to have been any different in quality in order to consider its value below what has been already declared in the invoice for similar kind of areca nut. The areca nut being of same quality for the excess quantity too, the value has to be the same as declared in the invoice, logically. No investigation has been carried out separately on the value of areca nuts and therefore without cogent reason and reliable evidence arbitrarily the goods cannot be treated as prohibited and the goods are not liable for confiscation on the ground of import policy of prohibition.

Confiscation under Section 111(d) of the Customs Act is inapplicable as there was no prohibition on importation of shikakai and the areca nut imported is valued at the rate of Rs.273.9 kgs., much above the threshold value of Rs 251 to attract the provision of prohibition. According to Section 111(d), any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force are liable for confiscation under this provision. There is however, no evidence to substantiate that the value of the areca nut imported is less than Rs 251 per kg to attract the policy of prohibition.

- Penalty under the aforementioned section of law had been incorrectly imposed since there existed no prohibition on the areca nuts imported which is in the value range of Rs 2739 per kg.



➤ In this regard, reliance is placed on the following case laws:-

- Hindustan Steel Ltd. v. State of Orissa 1978 (2) E.L.T (J 159) (S.C.) = 1970 (1) SCR 753
- Akbar Badruddin Jiwani Versus Collector Of Customs reported in 1990 (47) E.L.T. 161 (S.C.).
- Commissioner Of Customs (Import) Versus Trinetra Impex Pvt. Ltd. 2020 (372) E.L.T 332 (Del.)

➤ The adjudicating authority failed to appreciate the facts in correct perspective and without any tangible evidence, but placing reliance upon suspicion held that the declared quantity of shikakai and areca nut were imported to cover up the excess quantity of undeclared areca nut and therefore goods are liable for confiscation under section 119 of the Customs Act, 1962. There is no oral or documentary evidence to support the aforementioned findings of the adjudicating authority. Further, according to section 119 of the Customs Act, 1962, any goods used for concealing smuggled goods shall also be liable to confiscation. According to section 2(39) of the Customs Act, smuggling, in relation to any goods, means any act or omission which will render such goods liable for confiscation under section 111 or section 113. In the instant case, there has been a bonafide admitted error on the part of the supplier for which the appellant was not at all responsible. The Appellant acted under bonafide belief that the goods are according to the purchase order and the sale contract executed with the foreign supplier. Since the error was bonafide, no part of any good is used as camouflage to another kind of goods. In this case, both the items of cargo were declared duly but in terms of quantity, there was a mismatch which was admitted by the supplier as to have occurred inadvertently at the hands of the supplier's agent. Penalty imposed under Section 114AA is not sustainable in the absence of mens rea.

➤ The adjudicating authority erred in holding that the appellant by showing lesser quantity of areca nut had manipulated relevant documents submitted to customs for clearance of the same, and were therefore liable



for penalty under Section 114AA of the Act. As it had been explained above, the quantity mismatch was contrary to the instrument of purchase i.e. the purchase order given by the appellant and the contract executed by the supplier. The appellant had matched the documents received from the supplier and found them in order and in agreement with the contract. The veracity of none of the documents issued by the supplier had been questioned in the show cause notice or by the adjudicating authority to arrive at this conclusion as to have been manipulated by the appellant. Therefore, the conclusion drawn by the learned adjudicating authority that the appellant manipulated the documents are not factually and logically correct. Therefore, no penalty under section 114AA could be legally imposed upon the appellant. Section 114AA runs as below 16.2 Further, mens rea is a basic ingredient to impose penalty under this section. There is no oral or documentary evidence substantiating mens rea of the Appellant in the supplier mis declaring the cargo on account of an inadvertent error of their godown manager. The supplier admitted the error on their part and agreed to replace the entire consignment. Hence, penalty in the absence of mens rea, the penalty imposed on the Appellant under this section is not legally correct.



Following case laws are relied upon in this regard.

- Ingram Micro India P. Ltd. Versus C.C., Air Cargo Complex (I), New Delhi 2019 (369) E.L.T. 1668 (Tri Del.) thus:
- Janki Dass Rice Mills Versus Commissioner Of Customs, Mundra in (2023) 2 Centax 141 (Tri.-Ahmd),
- Bansal Fine Foods Pvt. Ltd. Versus Commissioner Of Customs, Mundra in (2023) 5 Centax 109 (Tri.-Ahmd).
- Villavarayar & Sons Versus Commissioner Of Customs, Tuticorin 2018 (359) E.L.T. 197 (Tri. Chennai).
- Commissioner Of Customs (Import) Versus Trinetra Impex Pvt. Ltd. 2020 (372) E.L.T 332 (Del.)
- Hindustan Steel Ltd. v. State of Orissa 1978 (2) E.L.T (J 159) (S.C.) 1970 (1) SCR 753-observed that -

- The order in original, vide para No. 17.4, permitted to re-export the goods on payment of redemption fine and penalty and other charges as applicable as ordered therein. The Hon'ble Supreme Court of India in

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Siemens Limited Versus Collector Of Customs 1999 (113) E.L.T. 776 (S.C.) ordered to refund the redemption fine paid, since the goods had been re-exported. Similarly, the Apex Court in Commissioner v. Guru Ispat Ltd. 2003 (157) E.L.T A87 (S.C). dismissed appeal against the order of the Appellate Tribunal reported in 2003 (151) E.L.T 384 (Tri. Kolkata) which held that re-export of goods is allowed without redemption fine and penalty when the goods are wrongly shipped by the foreign supplier and there is no mala fide on the parts of assessee, as they took immediate steps on detection of wrong-shipment

➤ Reliance is placed on the following case laws in this regard:

- Selvam Industries Ltd. Versus Commissioner of Customs, Tuticorin 2021 (377) E.L.T 458 (Tri. Chennai)
- Padia Sales Corporation v.C.C. reported in 1992 (61) B.L.T 90 (Tribunal)
- Kenda Farben India Pvt. Ltd. Versus Commissioner of Customs, Noida reported in 2019 (369) E.L.T 1225 (Tri. All.).

PERSONAL HEARING:

4. A personal hearing was granted to the Appellant on 27.01.2025 following the principles of natural justice wherein Shri Gervasis Thomas, Advocate appeared on behalf of the Appellant. He reiterated the submissions made in the appeal. He also informed vide Email dated 27.01.2025 that the Appellant had also filed SCA No. 15189/2023 before Hon'ble High Court of Gujarat for modifying the impugned order for allowing re-export the goods on payment of redemption fine only without insisting on payment of penalty as the appeal against the said order is already filed before the Appellate Authority. It is further informed that the relief sought by them was granted by the Hon'ble High Court vide its order dated 20.09.2023 wherein the Hon'ble Court has not made any opinion on the merits of the case which is subjudice before the Appellate Authority. He also attached a copy of the said order.

4.1 Due to change in Appellate Authority, fresh personal hearing was granted to the Appellant on 24.04.2025. Shri Gervasis Thomas, Advocate appeared on behalf of the Appellant. He reiterated the submissions made earlier.



DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 26.06.2023. In the Form C.A.-1, the Appellant has not mentioned date of communication of the Order-In-Original dated 28.04.2023 issued on 02.05.2023. However, considering the period between date of issue of impugned order i.e 02.05.2023 and the date of filing appeal i.e 26.06.2023, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the TR-6/GAR7 Challan No.1923 dated 26.06.2023 towards payment of pre-deposit of Rs.2,25,000/- calculated @7.5% of the disputed amount of penalty i.e Rs.30,00,000/-, under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal.

5.1 On going through the material available on record, I find that following issues are to be decided in the instant appeal:-

- i. Whether the impugned order wherein the adjudicating authority has ordered for confiscation of the goods imported under Bill of Entry No. 33314098, dated 16.11.2022 having assessable value of Rs. 113,58,488/- under Section 111(d), 111(l), 111(m) and 119 of the Customs Act, 1962 and imposition of redemption fine of Rs. 5,00,000/- under Section 125 of the said Act for re-export, in the facts and circumstances of the case, is legal and proper or otherwise.
- ii. Whether the impugned order wherein the adjudicating authority has imposed penalty of Rs. 10,00,000/- under Section 112(a)(i) and Rs. 20,00,000/- under Section 114AA of the Customs Act, 1962 and penalty of 37,66,041 and Rs. 2,02,403/- on Appellant under Section 114A of the said Act, in the facts and circumstances of the case, is legal and proper or otherwise.

5.2 Firstly, I take up the issue of confiscation of goods and redemption fine imposed in the impugned order. It is observed that on the basis of intelligence,



the officers of the SIIB intercepted the container No. EITU1179701 covered by the impugned Bill of Entry at TG CFS, Mundra for examination. A detailed examination of the imported goods was carried out in presence of representative of CHA and CFS vide Examination Report dated 26.11.2022. During the examination, it was observed that quantity of goods was found different from the declared in the impugned Bill of Entry dated 16.11.2022, the details of which are as per Table - II above. It is not under dispute that there was mis-declaration on the part of the Appellant in the quantity of Arecanuts as well as shikakai and also the excess quantity of Arecanuts was not declared in the impugned Bill of Entry. The Appellant has contended that the said discrepancy occurred due to wrong dispatch of goods by the supplier. It is further submitted by the Appellant that they received an Email dated 17.11.2022 from the supplier informing about the said discrepancy. However, from the records, it is observed that after receipt of the above mail from the supplier, the Appellant has not come forward to disclose about the discrepancy to the concerned Customs Authority until the Examination of goods which took place after 10 days on 26.11.2022 i.e after 10 days of filing the Bill of Entry i.e 16.11.2022. Even if it is considered a bonafide mistake, the supplier should have E-Mailed to the Appellant before filing of Bill of Entry. This was not done intentionally to check whether the goods could have been cleared from RMS. Hence the submission of the Appellant to justify the discrepancy is legally not sustainable. The investigations have established that the goods were prohibited and mis-declared in terms of quantity as well and therefore, the same were held liable for confiscation under Section 111(d), 111(1) & 111(m) of the Customs Act, 1962. The legal provisions of Section 111(d), 111(1) & 111(m) are as under:-

SECTION 111. Confiscation of improperly imported goods, etc.

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

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(1) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54,

It is observed that during the examination 7740 Kgs of Arecanut were found in excess the which was not declared by the Appellant and hence the excess quantity of Arecanut was considered as prohibited. As per DGFT Notification No. 20/2015-20 dated 25.07.2018, Arecanut is freely importable if CIF Price are Rs. 251/- per Kg. and above. As the goods were prohibited and mis-declared in terms of quantity as well, therefore, the same were correctly held liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.

Further, declared quantity of Shikakai and Arecanut were imported to cover up the excess quantity of undeclared Arecanut, therefore, the same were also are liable for confiscation under Section 119 of the Customs Act, 1962. The legal provision of Section 119 of the Customs Act, 1962 is as under :-



SECTION 119. Confiscation of goods used for concealing smuggled goods. Any goods used for concealing smuggled goods shall also be liable to confiscation."

It is observed that the actual quantity of Shikakai and Arecanut were not as per declared quantity and upon investigation it was found that the same was done to cover up the excess quantity of Arecanut since the total weight of consignment was almost same as per the declaration. Hence the Shikakai and Arecanut used to cover the excess quantity of Arecanut were rightly held liable for confiscation under Section 119 of the Customs Act, 1962.

As regards the imposition of redemption fine of Rs.5,00,000/- under Section 125 of the Customs Act, 1962, the provision under Section 125 of the Customs Act, 1962 is as under :-

SECTION 125. Option to pay fine in lieu of confiscation. —

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such

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goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed] :

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. — For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

The above provisions of Section 125 of the Customs Act, 1962 provides for option to pay fine in lieu of confiscation and stipulates that the fine shall not exceed the market value of the goods confiscated less duty chargeable thereon. The quantum of redemption fine is with in discretion of the adjudicating authority. Further imposition of redemption fine has been justified by the adjudicating authority in the impugned order after examining the facts and circumstances of the case. Hence I find that the redemption fine imposed by the adjudicating authority is legal and proper and is therefore upheld.

5.2 Now I come to the second issue i.e. imposition of penalty under Section 112(a) (i) and Section 114AA of Customs Act, 1962, I refer to these penal provisions which are reproduced as under :-

“ 112. Penalty for improper importation of goods, etc- Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;"

In the present case the Appellant was found to be involved in misdeclaration of goods as detailed in Table-II above and accordingly the impugned goods were liable for confiscation as discussed above. Hence the penalty of Rs.10,00,000/- under Section 112(a)(i) of the Customs Act, 1962 has been rightly imposed by the adjudicating authority and the same is upheld.

5.2.1 The provisions of Section 114AA of the Customs Act, 1962 are as under :-

"114AA. Penalty for use of false and incorrect material.—

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

It is observed during investigation that the Appellant had attempted to clear the imported goods by making false and incorrect document as the quantity of goods was misdeclared. From the above provision, it is observed that the Adjudicating authority had the discretion of imposing penalty under upto five times the value of goods under Section 114AA of the Customs Act, 1962. In view of the same, I find that the penalty of Rs. 20,00,000/- under Section 114AA of the Customs Act, 1962 imposed on Appellant is appropriate and accordingly I uphold the same.

5.3 The Appellant submitted that penalty in absence of mens rea imposed on the Appellant is not legally correct. However, it is a settled issue that Section 112(a) of Customs Act applies on a strict liability concept. It does not require any mens rea. Once the goods are held liable for confiscation under Section 111, any person who *inter alia* acquires possession of any goods or is in any



way concerned in carrying, removing, depositing, harbouring or deals with any goods which he knows or has reason to believe are liable for confiscation under Section 111 of the Customs Act, is liable to a penalty under Section 112(a) of the Customs Act, 1962. However, from the available records, it is observed that during the investigation as well as during adjudication, the Appellant has not disputed the misdeclaration of goods which rendered the said goods liable for confiscation.

5.4 Reliance is placed on the following case laws for justification of redemption fine under Section 125 of the Customs Act, 1962 and penalty imposed under Section 112(a)(i) as well as Section 114AA of the said Act.

- (i) Order dated. 07.06.2024 of The Hon'ble Chennai Tribunal in Customs Appeal No. 40256 of 2023 in case of M/s. Scania Commercial Vehicles India Pvt Ltd Vs. Commissioner of Customs wherein Hon'ble tribunal held as under :-

"16. -----Confiscated goods can be redeemed either for home consumption/ warehousing or for export only on payment of a fine. I find that the impugned order is legal and proper and no interference in the discretion exercised by the Proper Officer is called for. The Hon'ble Supreme Court in its judgement in Duncan Industries Ltd. and Anr Vs. Union of India [AIR 2006SC 3699/2006(3)SCC 129] held as under ;

"We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the Courts to interfere in minute details, except on grounds of malafides or extreme arbitrariness. Interference should be only within very narrow limit, such as , where there is a clear violation of a statue or a constitutional provision, or extreme arbitrariness in the Wednesbury sense."

"18. A penalty is the result of a breach of statutory duty. The main object behind the imposition of penalty is deterrence. Re-export of the goods does not cure the breach of statutory duty already committed. While a fine is imposed on the redemption of offending goods imported in breach of law, a penalty is levied on a person responsible for the breach of statutory duty. No interference should ordinarily be made by an appellate body , in the discretionary order passed by a lower authority, just because another view might be possible, except on grounds of malafides or extreme arbitrariness. No such ground has been made out in this case. Hence this plea also does not have any merit and is rejected."

20. --- In this regards, I propose to examine the Larger Bench decision in the case of Hemant Bhai R. Patel (supra), cited by Revenue, which is binding on a Bench of lesser strength. The question examined was that when re-export is permitted no redemption fine can be

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imposed, which is the same issue involved here.

The Larger Bench of this Tribunal answered the question as under; "Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above."

Judicial discipline requires that we follow the judgement of the Larger Bench. The appellant's plea is hence rejected."

- (ii) Hughes Network Systems India Ltd Vs Commr of Cus (Import & General), New Delhi, reported in 2024(388)ELT 594(Del) wherein Hon'ble High Court held as under :

" 28. Section 112(a) of Customs Act also applies on a strict liability concept. It does not require any mens rea. Section 112(a) of the Customs Act may be contrasted with the provisions of Section 112(b) of the Customs Act. It is clear that for Section 112(a) to be applicable, no mens rea is required whereas for Section 112(b) to be applicable mens rea or knowledge is required. The expression used in Section 112(b) is "dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111". Section 112(b) imposes an obligation on the authorities to establish mens rea and/or knowledge.

29. In the case of the appellants, Section 112(a) of Customs Act has been applied which really is in the nature of absolute liability. Section 112(a) of the Customs Act read with Section 111 clearly shows that the goods were liable to confiscation and for redemption thereof fine was to be imposed and further penalty liable to be imposed on the appellants.

30. Reference may also be held to provisions of Section 114AA of the Customs Act which reads as under :

"114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

31. Section 114AA provides for penalty for use of false and incorrect material. Knowing and intentional use of false or incorrect material



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makes a person liable to penalty not exceeding five times the value of goods.

32. When Section 112(a)(i) of the Customs Act is contrasted with Section 114AA it further establishes that where mens rea is established for use of false and incorrect material, the penalty could be five times the value of the goods. On the other hand penalty for improper importation of goods under Section 112(a) is not to exceed the value of the goods.

33. In the instant case, had the authorities applied Section 114AA, the penalty could have been upto five times the value of the Goods.

34. Reference may also be held to Section 125 of the Customs Act which provides for option to pay fine in lieu of confiscation and stipulates that the fine shall not exceed the market value of the goods confiscated less duty chargeable thereon.

35. In the instant case, the value of the goods imported were 3.13 crores and the redemption fine imposed is Rs. 60 Lakhs which is nearly 19% of the value of the goods and the fine imposed is Rs. 15 Lakhs on each of the appellants which translates to about 4.75% (totalling to 9.5%) of the value of the goods.

36. As we have held the confiscation of the goods under Section 111 and imposition of penalty under Section 112(a) of the Act are on a strict liability principal, the question of law

"Did the Tribunal fall into error in concluding that the appellants/assesseees that the appellants/assesseees were culpable and/or were liable to the penalty imposed under Section 112 of the Customs Act and that the goods were liable for confiscation, in the circumstances of the case?"

is answered in favour of the department/respondent and against the assesseees.

37. With regard to the submissions made by Learned Counsel for the appellants that the quantum of redemption fine and penalty imposed is harsh and excessive, we of the view that the same is within the discretionary powers of the authorities. Discretion has been exercised by the Commissioner of Customs of imposing penalty and fine and said discretion having been upheld by the Tribunal, does not give rise to a question of law, leave alone a substantial question of law and is a pure question of fact.

38. Be that as it may, as noticed hereinabove the redemption fine as well as penalty imposed could have been upto the value of the goods i.e. Rs. 3.13 crores, whereas in the instant case, the redemption fine imposed is about 19% and the penalty on both the appellants cumulatively amounts to about 9.5% of the value of the goods.

39. We hold that the discretion has been judicially exercised by the Commissioner of Customs and even on facts of the case, does not warrant any interference.

40. Reliance placed by Learned Counsel for the appellants on the judgment in the case of Akbar Badrudin Giwani (supra) is misplaced, for the reason that we have found that the discretion in the instant case has been exercised judicially by the Commissioner of Customs.

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41. In Akbar Badrudin Giwani (supra), the Supreme Court also considered the proportionality of conduct vis-a-vis the quantum of penalty. In the present case the Commissioner of Customs could have imposed redemption fine and penalty each of 100% of the value of the goods but has restricted the redemption fine to 19% and penalty to 9.5%. We find that discretion has been judicially exercised and in fact has been exercised in favour of the appellants by not imposing a harsh or excessive penalty.

42. Similarly, the decision in the case of Jain Exports Pvt. Ltd. (supra) also does not further the case of the appellants. In Jain Exports Pvt. Ltd. (supra), this Court has referred to the judgment of the Supreme Court in Chairman, SEBI v. Shriram Mutual Fund - 2006 (5) SCC 361 wherein the Supreme Court has held that once contravention is established then the penalty has to follow and only quantum of penalty is discretionary. As noticed in Chairman Sebi (supra), in the present case discretion has been exercised by the adjudicating officer by imposition of lesser penalty than what could have been imposed under the provisions of the Customs Act."

6. In light of discussions made above and judicial pronouncements cited above, the impugned order dated 28.04.2023 is upheld and warrants no interference. The appeal filed by the appellant is hereby rejected.



A. L. Gupta
(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-60/CUS/MUN/2023-24

Date: 08.05.2025

By Registered post A.D/E-Mail
To,
M/s Shree Maa Jagdamba Traders
(IEC No.-GSYPS2605M)
Plot No. 71 & 72, Khetarpal Nagar,
Gandhidham-370110

सत्यापित/ATTESTED
[Signature]
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.

