



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
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DIN - 20250671MN000000F9B5

क	फाइल संख्या FILE NO.	S/49-128/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-050-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	02.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/RK/141/2023-24 dated 11.08.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Meenu Rathore Office No. 1862, 2nd Floor, Astha Complex, Plot No. 17, Ward 7/B, Gurukul, Gandhidham- 370 201



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods 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।
(ब)	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/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए 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, केंद्रीय 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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केंद्रीय 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
सीमाशुल्क, केंद्रीय 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 रुपए या उससे कम हो तो एक हजार रुपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	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.				
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



ORDER-IN-APPEAL

Appeal has been filed by M/s. Meenu Rathore, Office No. 1862, 2nd Floor, Astha Complex, Plot No. 17, Ward 7/B, Gurukul, Gandhidham- 370 201 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/RK/141/2023-24 dated 11.08.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant on being authorized by M/s Lucky Trading, Flat No. BM2, Dilkush Baug, Ansal Industrial Estate, GTK Road, New Delhi - 110 033 (hereinafter referred to as "Exporter") filed a Shipping Bill No. 2804484 dated 23.05.2020 on behalf of the exporter for export of "Polished Vitrified Tiles, Terracotta Parking Floor Tiles, Bathroom Tape and Faucets and Sample of Steel Sink and Drain Cover" valued at Rs. 13,62,850/-. The said goods were stuffed in factory stuffed containers No. MSKU5777616 and CAIU6139274 sealed with Line Seal No. M L-IN2726082, M L-IN2726062 and E-Seal Number SPPL01118892, SPPL01118891 respectively and exported through Mundra Port to Tema, Ghana. M/s Maersk Line India Pvt. Ltd., PD Plaza, 1 Floor, Plot No. 03, Sector-9A, Tagore Road, Gandhidham 370 201 (hereinafter referred to as "Shipping Line") was involved in the export of above said goods as shipping line.

2.1 As per the said shipping bill and packing list in respect of cargo, 55077 KGS (Total 2925 PKG) of said goods were stuffed in the said containers. Further the said containers were gated in on 23.05.2020 and Shipping Bill / Goods was registered in ICES on 23.05.2020 and the same was selected for Check Packet. Said containers were boarded on Vessel "M. V. LEONIDIO Voy: 021W" (hereinafter referred to as the "Vessel") on 25.05.2020 without Let Export Order and the Vessel sailed on 25.05.2020. Thus, the said containers were loaded on vessel without completing prescribed Customs procedures as stipulated under the provision of Section 51 of the Customs Act, 1962.

2.2 The Exporter vide letter Dated 08.04.2021, submitted that said containers had been stuffed for export from Mundra to Tema, Ghana, were gated in for export at Mundra on 23.05.2020, there was Saturday, Sunday and Public



Holiday (Eid) and on the container number MSKU5777616 was selected for examination / check packet. Their CB contacted the Shipping Line for placement of said container for examination. On 26th May they were informed by Shipping Line that both the Containers had been loaded on nominated vessel on 25.05.2020 due to the oversight of Surveyor of Maersk Shipping Line as he put the containers in the list of updated list to be exported on assumption that Shipping Bill has already been submitted. No confirmation was provided to the Shipping Line by their CB as they were waiting for Let Export Order from Customs. Eventually both the containers were loaded in the vessel and sailed from Mundra on 25.05.2020; further submitted that, their CB had filed the documents for export following all the procedure; after getting check packet order, the shipping line and terminal were immediately informed to start the process for examination; in no communication between them, their CB and Shipping Line, did they ask for containers to be loaded in the nominated vessel; it is assumed that owing to reduced work force due to COVID 19, consecutive holidays and festival, the oversight occurred at the end of Shipping Line; the said containers were brought back to origin as per the orders of the Customs; moreover, they submitted that cargo was found as declared in the examination after brought back to origin. Further they requested to take lenient view and decide the matter.

2.3 The Appellant vide letter dated 23.03.2021, interalia, submitted that they had already inwarded an intimation letter to the Customs on 04.06.2020 informing the facts related with subject matter of containers loaded on vessel on 25.05.2020 without shipping bill LEO, wherein they as well as exporter had clarified the facts and events related with said shipment. In this connection they informed that said 2 X 20 Ft. containers has been stuffed for export shipment from Mundra to Tema, Ghana for which Shipping Bill has been filed for Export clearance from Mundra Port.

2.4 Further, both the containers were gated in for export at Mundra on 23.05.2020, Container Number MSKU 5777616 has been selected and called for Customs Examination, they have been informed Shipping Line and Terminal for allowing placement for Customs Examination. In the mean time, on 26.05.2020, they were informed by Shipping Line, that, both the containers have been loaded on nominated vessel on 25.05.2020 which sailed on 25.05.2020, as a result of oversight occurred from Surveyor end, Customs Examination of said container could not be completed and LEO could not be obtained for said Shipping Bill for



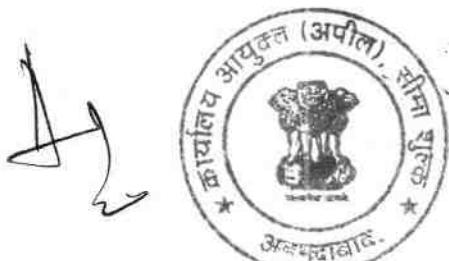
both the containers, and as a result the said shipment containers were returned back to Mundra. Hence as the said shipment could not be effected and it was brought back to Mundra and keeping in view of their clarification; they put forth the fact that, they had filed the said Shipping Bill for intended export and for completion of Customs Procedures, they had also informed Shipping Line and Terminal for placement of container to be examined by Custom in time, but due to oversight occurred from line surveyor end, said containers were being loaded earlier on vessel before the placement request was being received. Hence as said shipment lying at Mundra was to be exported back, they requested to do the needful for allowing LEO to be granted for the said Shipping Bill.

2.5 Shipping Line vide their letter Dated 28.05.2020, interalia, informed that, the said containers discharge at MICT on Vessel which was wrongly loaded from Mundra to Tema, Ghana on Dated 25.05.2020 without examination and now the containers are returned back to vessel Rhone Maersk 038E Gateway IGM No. 2265621 Dated 23.10.2020. Further, SIIB, Customs, Mundra has written letter Dated 10.03.2021 to M/s Lucky Trading and letter Dated 21.04.2021 to M/s Maersk Line India Pvt. Ltd., regarding to submit in the matter.

2.6 Said goods were examined on 05.03.2021 and were found as per the description but the Exporter Name and Importer Name mentioned on the Boxes in Container No. MSKU 5777616 do not match with the declared details. Also MRP, were mentioned on the blue coloured boxes of Taps and Faucets found in Container No. CAIU6139274. Also there is a difference in CFS weight and declared Weight. Since the Goods were loaded on Vessel without LEO were liable for Confiscation as per the provisions of Section 113(g) of the Customs Act, 1962, were placed under Seizure on 05.03.2021.

2.7 Exporter vide letter Dated 19.05.2021 requested for Provisional Release of the Goods covered under Shipping Bill and the same were allowed conditionally.

2.8 Section 40 of the Customs Act, 1962, envisages obligations on the person in charge of conveyance to not permit the loading of Export Goods at Custom Station unless the shipping bill duly passed by Custom Officer has been handed over to them by the Exporter / CB, therefore the person in charge of conveyance by permitting of export of the said containers without LEO has



contravened the provisions and failed to discharge their duty in as much as they allowed the export of said container without verifying the LEO / permission from proper officer and thereby Shipping Line failed to follow the procedures of Export of Self Sealed Containers and had contravened the provisions of Section 40 of the Customs Act, 1962 and are liable for penal action as per Section 114 (iii) of Customs Act, 1962.

2.9 Exporter, has failed to discharge their duties in as much as omission / mistake on their part has resulted in illegal / improper loading of the said container on vessel from Mundra without obtaining LEO from proper officer, thereby they failed to follow the prescribed procedures for export of the Goods. It is their responsibility to ensure proper co-ordination with all agencies for proper Export, also failed to convey proper direction to the shipping line which resulted in loading of the said containers on the Vessel without issuance of the LEO from proper officer, from the said act of omission and commission rendered themselves liable for penal action as per the Provisions of Section 114 (iii) of Customs Act, 1962.

2.10 Customs Broker, interalia, failed to discharge their duties in as much as mistake on their part has resulted in illegal / improper loading of the said containers on Vessel from Mundra Port without LEO from proper officer. It is overall responsibility to ensure proper coordination with all agencies for proper export; CB failed to convey to proper direction to the shipping line which resulted in loading of the said containers on the vessel without approval of the proper officer; for the said act of omission and commission rendered themselves penal action as per the provisions of Section 114 (iii) of the Customs Act, 1962.

2.11 In view of the foregoing para, it is evident that the Exporter, Appellant and Shipping Line failed to follow the prescribed procedure for self-sealed containers and goods were loaded on to the Vessel without any Order (LEO), clearance and loading of the said goods for exportation, as per the Customs Act, 1962, accordingly the same was liable for confiscation as per the provisions of the Customs Act, 1962.

2.12 In view of the above observation, a Show Cause Notice under F.No.S/DP-97/ROB/MAERSK/CHM/20-21 dated 30.11.202 was issued to the exporter i.e M/s. Lucky Trading, New Delhi 110 033, proposing, as to why:



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- (i) The said goods i.e. "Polished Vitrified Tiles, Teracotta Parking Floor Tiles, Bathroom Tape and Faucets and Sample of Steel Sink and Drain Cover" valued at Rs.13,62,850/- stuffed in said containers covered under Shipping Bill NO. 2804484 Dated 23.05.2020 which has been loaded on vessel on 25.05.2020 without obtaining Let Export Order from Customs and without following proper procedure should not be confiscated under Section 113 (g) of the Customs Act, 1962.
- (ii) Penalty should not be imposed under Section 114 (iii) of Customs Act, 1962.
- (iii) Bank Guarantee and Bonds executed at the time of Provisional release of seized goods should not be encashed and enforced respectively.

Further, the Appellant i.e M/s. Meenu Rathore, Office NO. 1862, Aashta Complex, Plot No. 17, Ward 7/B, Gandhidham, was called upon to show cause as to why penalty should not be imposed upon them as per provisions of Sections 114 (iii) of the Customs Act, 1962.

Further, Ms. Maersk Line India Pvt. Ltd., 1t Floor, PD Plaza, Plot No. 3, Ward 9/A. Gandhidham was called upon to show cause as to why penalty should not be imposed upon them as per provisions of Sections 114 (iii) of the Customs Act, 1962.

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

- i. He ordered to confiscate the said goods i.e. "Polished Vitrified Tiles, Teracotta Parking Floor Tiles, Bathroom Tape and Faucets and Sample of Steel Sink and Drain Cover" valued at Rs.13,62,850/- stuffed in said containers covered under Shipping Bill No. 2804484 Dated 23.05.2020 which has been loaded on vessel on 25.05.2020 without obtaining Let Export Order from Customs and without following proper procedure under Section 113 (g) of the Customs Act, 1962.
- ii. The goods mentioned in (i) above, has already been released provisionally. However, he gave an option to redeem the goods in lieu of confiscation under provisions of Section 125 of the Customs Act, 1962 on payment of Redemption Fine of Rs.2,00,000/- (Rupees Two Lacs Only).
- iii. He imposed penalty of Rs.2,00,000/- (Rupees Two Lacs Only) under Section 114 (iii) of Customs Act, 1962 on the exporter.



- iv. He imposed penalty of Rs.2,00,000/- (Rupees Two Lacs Only) under Section 114 (iii) of Customs Act, 1962 on the Appellant M/s Meenu Rathore, Office no. 1862, Aastha Complex, Plot no. 17, Ward 7/B, Gandhidham.
- v. He imposed penalty of Rs.50,000/- (Rupees Fifty Thousand Only) under Section 114 (iii) of Customs Act, 1962 on Ms. Maersk Line India Pvt. Ltd., 1t Floor, PD Plaza, Plot No. 3, Ward 9/A. Gandhidham

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 submitted that Adjudicating Authority has erred in imposing penalty on the Appellant even after holding that it was Shipping Line's failure to verify Let Export Order. Moreover, it is a matter of record that the Appellant had only provided the Shipping Bill numbers to the Shipping Line and had not provided any document showing Let Export Order giving a go ahead to load the containers pending Let Export Order by the Customs officer. On this basis, the Appellant hereby say and submit that they are not liable penalty under Section 114 (iii) of Customs Act, 1962 for the fault of the Shipping Line.

3.2 The Appellant submitted that Adjudicating Authority has erred in failing to follow the settled law that no penalty under Section 114 (iii) can be levied without establishing mens rea. In as much as no evidence of mens rea on the part of Appellant is pinpointed, the impugned order imposing penalty on the Appellant is liable to be quashed and set aside.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 27.12.2024 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal. Due to change in Appellate Authority, fresh Personal hearing was held on 20.05.2025. Shri Vikas Mehta, Consultant, appeared for hearing representing the Appellant. He had reiterated the submissions made in the appeal memorandum.



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 Appellants in their appeal. The Appellant has filed the present appeal on 20.10.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 11.08.2023 as 23.08.2023. Hence, 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 challan dtd 29.09.2023 towards payment of Rs.15,000/- equivalent to 7.5% of the penalty imposed i.e Rs. 2,00,000/- in the impugned order. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

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

- i. Whether the penalty imposed on M/s. Meenu Rathore under Section 114(iii) of the Customs Act, 1962, is sustainable in the absence of mens rea on their part.
- ii. Whether the Appellant, as a Customs Broker, can be held liable for the operational oversight of the Shipping Line in loading goods without a Let Export Order.

5.2 Firstly, I take up the issue whether the penalty imposed on M/s. Meenu Rathore under Section 114(iii) of the Customs Act, 1962, is sustainable in the absence of mens rea on their part. Section 114(iii) of the Customs Act, 1962, provides for a penalty on "*any person 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 113, or abets the doing or omission of such an act.*" While the section does not explicitly use the term mens rea, the legal jurisprudence, particularly for penal provisions, often requires the presence of a guilty mind or deliberate intention unless the statute clearly dispenses with it.

5.3 The Hon'ble Supreme Court in Hindustan Steel Ltd. v/s State of Orissa, 1978 (2) ELT (J159) (S.C.), laid down a fundamental principle that "an



order imposing penalty for failure to carry out a statutory obligation is a civil obligation. But a penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation." This principle has been consistently applied by various High Courts and the CESTAT in customs and excise matters.

5.4 In the present case, the adjudicating authority has not brought on record any evidence to suggest that the Appellant, M/s. Meenu Rathore, acted with any deliberate intention to violate the law or abet the improper export. The facts clearly indicate that the Appellant had filed the Shipping Bill and had duly informed the Shipping Line about the requirement for Customs examination. The lapse occurred at the end of the Shipping Line, which admitted its oversight. There is no finding in the impugned order that the Customs Broker was aware that the goods would be loaded without an LEO or that they actively conspired in such an act. The adjudicating authority's finding that the CB "failed to convey proper direction to the shipping line" appears to be an oversimplification and an attempt to attribute responsibility without establishing a direct link to a deliberate act or omission on the CB's part with mens rea.

5.5 The CESTAT, in numerous judgments, has held that penalties under Section 114(iii) are not imposable in the absence of mens rea. For instance, in Commissioner of Customs, Mumbai vs. S.K. Enterprises, 2007 (218) ELT 165 (Tri. - Mumbai), it was held that for imposing penalty under Section 114, mens rea is essential. Similarly, in Commissioner of Customs, Chennai vs. M/s. S.M. Exports, 2018 (364) ELT 648 (Tri. - Chennai), it was observed that in cases where the Customs Broker acted on the instructions of the exporter and there was no evidence of their knowledge or active involvement in any misdeclaration or illegal activity, penalty under Section 114 was not sustainable.

5.6 Given that the Shipping Line explicitly admitted their oversight and there is no evidence of the Appellant's deliberate intention or knowledge of the improper loading, the imposition of penalty on M/s. Meenu Rathore under Section 114(iii) is not justified.

5.7 Now I come to the issue whether the Appellant, as a Customs Broker, can be held liable for the operational oversight of the Shipping Line in loading goods without a Let Export Order. The role of a Customs Broker is defined under the Customs Brokers Licensing Regulations, 2018 (CBLR, 2018).



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Their primary responsibilities include preparing and filing documents, representing clients before Customs, and ensuring compliance with Customs procedures. While they are expected to exercise due diligence, their control over the physical operations of carriers and terminal operators is limited.

5.8 In the present case, the Appellant had fulfilled their obligation by filing the Shipping Bill and informing the Shipping Line about the requirement for Customs examination. The failure to obtain the "Let Export Order" before loading the containers was an operational lapse on the part of the Shipping Line, which they themselves acknowledged. Section 40 of the Customs Act, 1962, clearly places the obligation on "the person in charge of a conveyance" (i.e., the Shipping Line/Vessel Master) not to permit the loading of export goods unless a shipping bill, duly passed by the proper officer, has been handed over to them by the exporter. This statutory obligation directly rests with the Shipping Line. The adjudicating authority's finding that the Customs Broker also "failed to convey proper direction to the shipping line" is not supported by the facts, as the Appellant had indeed communicated the need for examination. The subsequent loading without LEO was a direct operational failure of the Shipping Line's surveyor. Holding the Customs Broker equally liable for an operational lapse that was beyond their direct control and for which another party has taken responsibility, without establishing any mens rea or active abetment, would be an undue extension of their liability.

5.9 The CESTAT in M/s. Balaji Logistics vs. Commissioner of Customs, Mundra, 2019 (368) ELT 345 (Tri. - Ahmd.) held that a Customs Broker cannot be penalized for the actions of other entities in the supply chain unless their direct involvement or mens rea is proven. The primary responsibility for ensuring compliance with loading procedures rests with the carrier. Therefore, considering the distinct roles and responsibilities, and the admitted operational oversight by the Shipping Line, the Appellant, M/s. Meenu Rathore, cannot be held liable for the improper export of goods without a Let Export Order.

6. In view of the detailed discussions and findings above, I pass the following order:

(i) I hold that the penalty of Rs. 2,00,000/- imposed on M/s. Meenu Rathore under Section 114(iii) of the Customs Act, 1962, vide Order-in-Original No. MCH/ADC/RK/141/2023-24 dated 11.08.2023, is not



sustainable due to the absence of established mens rea and the primary operational responsibility lying with the Shipping Line.

(ii) Consequently, the penalty imposed on the Appellant is hereby set aside.

The appeal filed by M/s. Meenu Rathore is hereby allowed.



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

F. No. S/49-128/CUS/MUN/2023-24

1146

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

Date: 02.06.2025

By Registered post A.D/E-Mail

To,
M/s. Meenu Rathore
Office No. 1862, 2nd Floor,
Astha Complex, Plot No. 17,
Ward 7/B, Gurukul, Gandhidham- 370 201.

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.