सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

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

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250471MN000051085B

क	फ़ाइलसंख्या FILE NO.	S/49-314/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-004-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.04.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	16/CUS-REF/2024-25, dated 04.04.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	29.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Shree Sai Baba Ship Breaking Co., Plot No. 10, Ship Recycling Yard, Alang, Dist – Bhavnagar.

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

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ / **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s Shree Sai Baba Ship Breaking Co., Plot No. 10, Ship Recycling Yard, Alang, Dist – Bhavnagar (hereinafter referred to as "the appellant") have filed an appeal in terms of Section 128 of the Customs Act, 1962 against the Order-in-Original No. 16/CUS-REF/2024-25, dated 04.04.2024 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, having their Ship Recycling Yard at Plot No. 10, Ship Recycling Yard, Alang, Dist – Bhavnagar, had imported one vessel MT ALFA KARADENIZ for breaking up/recycling and filed Bill of Entry No. 6743124, dated 11.06.2018 under Section 46 of the Customs Act, 1962. They had self-assessed the goods viz. Vessels for breaking under CTH 89.08, Bunkers under CTH 27.10 & Consumables under CTH 98.05 and paid the assessed customs duty.

2.1 There were some dispute with regard to assessment of customs duty on the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/outside the engine room of the vessel. The appellant claimed that Fuel and Oil contained in Bunker Tanks inside/outside the engine room of the vessel was to be assessed to duty under CTSH 89.08 along with the vessel. The Department was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH i.e., Chapter 27. Thereafter, the subject Bill of Entry was assessed provisionally for want of original documents.

2.2 Further, Hon'ble CESTAT, Ahmedabad, vide its Order No. A/11792-11851/2022, dated 17.10.2022/01.12.2022 had held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. Further, in view of the aforesaid order of the Hon'ble CESTAT, the Assistant Commissioner, Customs Division, Bhavnagar vide Final Assessment Order No. 250/2470628/SBY/2023-24, dated 01.11.2023 held that Bunker Tanks containing oil are to treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under Para 2(b) of Circular No 37/96 – Cus, dated 03.07.1996. The Bill of Entry was finally assessed vide Final Assessment Order No. 250/2470628/SBY/2023-24, dated 01.11.2023 passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claim which was decided vide the impugned order.

2.3 The adjudicating authority on preliminary scrutiny of the refund claim observed that the refund application was not accompanied with the documentary evidence in support of the appellant's claim that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant was requested vide letter dated 05.03.2024 to submit the necessary documentary evidence that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant has submitted a copy of certificate issued by C.A. M/s Shah Sanghavi & Co. dated 12.02.2024 wherein it is stated that incidence of customs duty paid on Bunker (Oil and fuels) have not been passed on to any other person. The appellant was also requested vide letter dated 05.03.2024 to produce C. A. Certificate in the format provided along with the documentary evidence to verify that the refund amount claimed were shown as 'amount receivable' in the books of account and that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant has not submitted any reply.

2.4 The adjudicating authority found that when the element of any duty paid on any goods is debited to Purchase Account which is forming part of the Profit & Loss Account, as a cardinal accounting principles, the said element of duty becomes a part of the cost of the goods. As such, whenever such goods are sold at a later stage to the buyers/ customers, the Sales Price fetched for such goods is considered as inclusive of the element of duty paid thereon such goods. Accordingly, here in the case, it was observed that the incidence of Customs duty paid at the time of import of goods is passed on to the buyers/ customers at the time of its sales in the form of Sales Price. The adjudicating authority also observed that once the amount of Customs Duty paid is debited as cost to purchase under Profit & Loss Account and non-fulfillment of obligatory condition of Section 28C would be sufficient enough to conclude that Sales Price of the goods bear entire Customs Duty paid on such goods. Under such circumstances, the grant of refund of Customs Duty would tantamount to receipt of refund of customs duty from customers as well as from exchequer, which will get the claimant unjustly enriched. Thereafter, the adjudicating authority relying upon the Final Order No. A/30122-30123/2023, dated 01.06.2023 passed by the Hon'ble CESTAT, Hyderabad in the case of Sachdev Overseas Fitness Pvt. Ltd & Nityasach Fitness Pvt. Ltdhassanctioned the refund claim of Rs. 1,47,860/- in terms of Section 27 of the Customs Act, 1962 and credited the same to the consumer welfare fund.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal contending as under;

- The act of crediting the sanctioned refund amount in to the so called Consumer Welfare Fund of the department is not genuine and correct. The appellant had sold out the disputed stock of bunkers at very less price prevailing at the time and sale/ removal of disputed bunkers and too, before starting of hot breaking activities upon the vessel under reference. The appellant had sold out the disputed stock of bunker under cover of various Sales Invoices which had been issued at the very less price than considered the same at the time of provisional assessment of the bill of entry. Thus in the present case the question of importing the concept of as to why the sanctioned refund amount should not credited in to the Consumer Welfare Fund, is not coming in to picture.
- The whole purchase price of the ship under reference had never been increased decreased at any stage i.e. either at the time of Provisional Assessment or making the Final Assessment on the very ground that the purchase price/transaction value as considered by the department had not either decreased or increased so far as the transaction of the vessel under reference has been made in US Dollar as agreed upon in the above referred MOA. The sanctioned refund claim has been wrongfully credited in to the so called Welfare Fund.
- The ground considered for crediting in to the Welfare Fund appears to have been consider/taken in pursuance of the respective assessed to Income Tax Return. This Income Tax Return has no direct nexus with the crediting such sanctioned refund amount in to the so called Welfare Fund. The appellant had sold out the disputed stock of bunker at very low price and this price has direct nexus with the crediting such sanctioned refund amount in the above Welfare Fund. This Welfare Fund has a special character in understating of concept of crediting in to so called Welfare Fund and having no nexus with the present refund claim for this contention the appellant fully apprised that in the present case, the concept of crediting such sanctioned refund amount appears not to have been true, correct and genuine but imported without any authority of law. This gross Income Tax value is nothing but pertaining to Commercial Business carried out by the Appellant in or in relation to the ends of sales of such goods in the open market.
- The department had also erred in making provisional assessment by wrongfully converting such value of the bunker in US Dollar at the time of making provisional assessment and accordingly no nexus with the calculation of such refund amount and this calculation in Rupees was also inclusive of the purchased price of the ship. This price in US Dollar appears to have been wrongfully considered in making credit of the

sanction refund amount to the Welfare Fund read with such concept of transaction value. From these submissions, it is clear that the appellant had not collected the incidence of duty from such purchaser of the disputed stock of bunkers which had been started to sale in to the local market after fulfilling the provisions of Section 46 of the Customs Act, 1962. Therefore, the act of Adjudicating Authority in crediting the sanctioned refund amount in to the so called Welfare Fund is not true correct and proper but to be set aside.

- Further, the appellant submitted that the appointed Chartered Accountant has clearly certified vide certificate dated 05.02.2024 that no such incidence of Customs duty has been passed on to the buyer under the refund claim under reference read with provisions of Section 27(2) of the Customs Act, 1962. In this regard the appellant relied upon the various settled case laws wherein the concerned authority has clearly held that "in such cases", the question of unjust enrichment" does not arise.

  (i) 2015 (327) ELT 13 (Mad); Commissioner of C. Ex., Chennai-I,

  (ii) 2017 (348) ELT 537 (Tri. -Chennai); Mennekes Electric India P. Ltd. v/s Commissioner of Cus., Chennai-II

  (iii) 2018 (360) ELT A204 (Bom.); Commissioner v/s Tata Motors Ltd

  (iv) 2020 (371) ELT 542 (Chan); Gaurav Enterprises v/s Commissioner of Customs Amritsar

  (v) 2022 (60) G.S.T.L. 48 (Del); Rambagh Palace Hotel Pvt. Ltd. v/s Commissioner ofC. Ex. & GST, Jaipur

  (vi) 2013 (294) E. L. T. 320 (Tri- Bang.) in case of VXL Instruments Ltd. v/s Commissioner of Customs, Banglore

  (vii) 2015 (317) E.L.T. 637 (Tri. Del) in case of Business Overseas Corporation v/s C. C. (Import & General), New Delhi

  (viii) 2017 (48) S. T. R. 298 (Del) in case of Munch Food Products Ltd. v/s Commissioner

- In view of the above stated grounds of appeal it is clearly establish that in the present case, the question of invoking the concept of unjust enrichment does not arise. Therefore, the sanctioned refund amount has wrongfully credited in to the so called Consumer Welfare Fund/Account.

PERSONAL HEARING

4. Personal hearing in the matter were scheduled on 12.03.2025, 24.03.2025 and 04.04.2025. However, the appellant vide letter dated 20.03.2025 and 27.03.2025 submitted written submission and requested that the appeal may be decided keeping the submission on record.

DEFENSE SUBMISSIONS

The appellant vide written submission dated 20.03.2025 submitted that:

- The adjudicating authority has correctly and legally ordered that "I sanction refund of Rs. 1,47,860/- in terms of provisions of Section 27 of the Customs Act, 196....."
- From the above Order Portions, it has clearly been held by the Adjudicating Authority has correctly and legally sanction the refund claim of Rs. 1,47,860/-under section 27 of Customs Act, 1962.
- Thus it has been clearly held that the refund has been sanctioned to the Appellant. No further sub provision i.e. sub section 2, sub section 3 etc. of the section 27 appears not to have been statutorily been disclosed therein. Therefore, the concept/order passed with regard to so called "crediting the sanctioned refund amount in to the Consumer Welfare fund is not proper, correct and legal on the very ground such "Omission appears to have been found on record in as much as no specific order under which circumstances/facts of the case etc have been ordered to the credit to the sanctioned refund amount in to the so called Consumer Welfare Fund. Therefore, the impugned order appears not to have been found true, correct and legal.
- The Appellant is enclosing here with photo copies of sales invoices of disputed oil MGO, LDO, Fuel oil. As found as remaining stock of bunker lying on board of the vessel at the time of unloading/beaching of the vessel, imported for breaking purpose. On perusing these sales invoices, it has been clearly found that your appellant had sold out the disputed stock of bunker in to the local market at very less price/cost than the "transaction Value determined /taken/considered at the time of making provisional assessment of customs duty of the ship under reference.
- Therefore, in view of the above submission, the appellant pray to allow this appeal by way of passing appropriate order so far as wrongfully Ordered to credit in to the so called Consumer Welfare fund in as much as no specific provision of law has been disclosing under which Ordered to credit in to so called Consumer Welfare Fund.

DISCUSSION & FINDINGS

5. I have carefully perused the submissions and before going into the merits of the case, it is observed that the date of communication of the

impugned order is 05.04.2024 and the present appeal was filed on 02.09.2024, i.e., after 150 days. The appellant has not filed any application for condonation of delay. In this regard, I have gone through the provision of limitations for filing an appeal as specified under Section 128(1) of the Customs Act, 1962. The same is reproduced hereunder:

"SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]"

5.1 As per the legal provisions under Section 128 of the Customs Act, 1962, the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.3 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises – [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court had, while interpreting the Section 35 of the Central Excise Act, 1944, which is pari materia to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para is reproduced below:

"8. *The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the*

Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

5.4 The above view was reiterated by the Hon'ble Supreme Court in Amchong Tea Estate [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of Ramesh Vasantbhai Bhojani – [2017 (357) E.L.T. 63 (Guj.)] and Hon'ble Tribunal Bangalore in the case of Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG] took a similar view while dealing with Section 128 of the Customs Act, 1962.

5.5 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be filed within 90 days, including the condonable period of 30 days as provided in the statute, and the Commissioner (Appeals) is not empowered to condone any delay beyond 30 days.

5.6 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the order.I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962.Hence, the same is held to be time barred.

6. In view of above, I reject appeal on the grounds of limitation without going into the merits of the case.

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

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