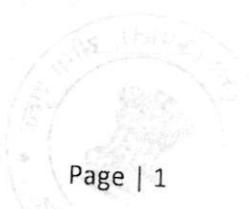




## सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281  
DIN – 20250671MN000011691F

क	फ़ाइलसंख्या FILE NO.	S/49-457/CUS/AHD/23-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-068-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	05.06.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. 45/DC/ACC/OIO/Ford/23-24 dated 19.01.2024 passed by The Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	05.06.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	M/s Ford India Private Limited, Revenue Survey No. 6, Village North Kotpura, Taluka Sanand, Ahmedabad – 382170.
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेदीजातीहैजिनकेनामयहजारीकियागया है। This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरस्चिव/संयुक्तस्चिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते 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.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरेनगएमालयाउसगन्तव्यस्थानपरउत्तरेजानेकेलिएअपेक्षितमालउत्तरेनजानेपरयाउसगन्तव्यस्थानपरउत्तरेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.	
(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.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसके अन्तर्गतउसकीजांचकीजाएगी 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 केअधीननिर्धारितकिएगएनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां, यदिशुल्क,मांगागयाव्याज,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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशरोआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकते 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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारा वा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, BahumaliBhavan, 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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो;पाचहजाररुपए	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.	
(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,जहांशुल्कयाशुल्कएवंदंडविवादमेहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेहै,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 Ford India Private Limited, Revenue Survey No. 6, Village North Kotpura, Taluka Sanand, Ahmedabad – 382170 (hereinafter referred to as “the Appellant”) have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. 45/DC/ACC/OIO/Ford/23-24 dated 19.01.2024 (hereinafter referred to as the “impugned order”) issued by The Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as the “adjudicating authority”).

2. Briefly stated, facts of the case are that the appellant is engaged in the manufacture and sale of engines for motor cars and imports various parts and components required to manufacture its final product which is engine. They had imported the goods viz. "7 pieces of Motorized Spindles" from M/s. Ford Motor Company of Southern Africa (Pty) Ltd., South Africa, for repair purpose (Re-export Shipment) vide Bill of Entry No.7286967 dated 29.01.2022 under payment of Customs duty. Further, out of 7 pieces of Motorised Spindles, 3 pieces were re-exported, for which the Let Export Order was given on 19.04.2022, under claim of drawback under Section 74 of the Customs Act, 1962 vide Shipping Bill, the details of which are as under:

Shipping Bill No. and date	Export Invoice No. and date	Date of Let export order	Amount of Drawback Claim
9679740 Dt: 13.04.2022	IN005573/2021-22 Dtd: 08.02.2022	19.04.2022	Rs. 17,95,352.25/- (85% of the Import duty paid Rs. 21,12,179.10/-)

3. Further, the appellant claimed the refund of drawback on 20.10.2022 which was 184 days from the date of Let Export Order. Further, the adjudicating authority rejected the drawback claim on the limitations under the provisions of Section 74 of the Customs Act, 1962 and vide Para 4 of the impugned order stated that “*The time limit for filling of such drawback claim has been prescribed under Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. As per the said rules the drawback claim is to be filed within three months from the date of 'LET EXPORT ORDER'. In this case, the Let Export Order was given on 19.04.2022 and the drawback claim has been*



filed on 20.10.2022. The time limit for filling of drawback claim under Section-74 of Customs has been prescribed under Rule-5 of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995: Further, Circular No.13/2010 dated.24.06.2010 issued under F. No.609/51/2010-DBK has been issued by board for prescription of time limit for filing Drawback application."

4. Being aggrieved with the impugned order, the appellant have filed the present appeal and mainly contended the following:

- That there was an inadvertent delay by Appellant while submitting claim of the duty drawback. There was no malafide intention of delay of 184 days in filing the refund application.
- That their plant was sold to another Entity during this period & the appellant was in the process of vacating the document storage room to a temporary facility causing misplacement of file records & it took some time for the appellant to retrieve relevant documents to file the application.
- That the appellant had requested for condonation for delay & paid necessary charges to consider condonation within The Commissioner discretionary limit.
- They have relied upon the case law as under:

- a. M/s Carl Zeiss India (Bangalore) Private Limited Vs Commissioner of Customs (Appeals), Bangalore wherein the Hon'ble Principal Commissioner disposed the case in the favor of the appellant stating the following:

*"That the applicants therefore submit that the duty drawback claim should not be rejected based on procedural lapses. As far as all the documents to prove the main conditions of the drawback claim are fulfilled, drawback claim should not be rejected as it is beneficial to the assessee."*

*"Government notes that the original sanctioning Authority and the Appellate Authority have rejected the claim merely on the basis of the claims being hit by limitation of time and not on the merits of the case."*

### **PERSONAL HEARING**

5. Shri Uday Kulkarni, Deputy Manager Taxation, Shri D. Dhandayudhapani, Deputy Manager - IMG Customs, Shri Shukla Girish, IMG Customs attended the personal hearing on 13.05.2025 in virtual mode on

*A.12*

behalf of the Appellant. They reiterated the submission made in the appeal memorandum.

### **DISCUSSION & FINDINGS**

6. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The main contention in the appeal is that the refund of duty drawback claim shall be allowed irrespective of the time. The department contention is that the refund of duty drawback claim is not eligible under the provisions of Section 74 of the Customs Act, 1962. Therefore, the main issues to be decided in present appeal is whether the impugned order rejecting the refund of duty drawback under Section 74 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 28.03.2024 against the impugned order dated 19.01.2024 received by the appellant on 31.01.2024 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.2 It is observed from the impugned order that the appellant had submitted the duty drawback claim refund of Rs.17,95,352.25/- on 20.10.2022 for which the Let Export Order was given on 19.04.2022. Further, the drawback claim had been filed on the re-export of the imported goods under Section 74 of the Customs Act, 1962 and the relevant portion of the same is reproduced as below:

#### ***“74. Drawback allowable on re-export of duty-paid goods.***

....

(3) *[The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may-*

a) *provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;*

b) *specify the goods which shall be deemed to be not capable of being easily identified; and*



c) **provide for the manner and the time within which a claim for payment of drawback is to be filed.]**

Further, the time limit to file a duty drawback claim has been prescribed under Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, wherein it is mentioned that the drawback claim is to be filed within three months from the date of "LET EXPORT ORDER". The relevant portion of the same is reproduced below:

**"5. Manner and time of claiming drawback on goods exported other than by post.**

(1) *A claim for drawback under these rules shall be filed in the form at Annexure II within three months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 is made by proper officer of customs :*

i. *Provided that the [Assistant Commissioner of Customs or Deputy Commissioner of Customs], as the case may be, may extend the aforesaid period of three months by a period of three months and that the Principal Commissioner or Commissioner of Customs, as the case may be, may further extend the period by a period of six months;*

6.2.1 From the perusal of the above, it is observed that the Assistant/ Deputy Commissioner of Customs may extend the timelines by three months and Principal Commissioner or Commissioner of Customs may extend the timelines by another six months. In the instant case, the appellant had filed the claim after 184 days of the LEO and they had requested the application for condonation of delay before the Principal Commissioner which was declined with the reason found as not genuine and sufficient to extend the timelines. Therefore, the drawback refund claim filed under Section 74 of the Customs Act, 1962, read with Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, is clearly barred by limitation. As per Rule 5(1), a claim for drawback must be filed within three months from the date of re-export, extendable by a further period of three months upon sufficient cause being shown. In the present case, the claim has been lodged beyond the maximum permissible period of six months, and in the absence of any provision for further condonation of delay, the same is not maintainable in law. It is a settled legal principle that the limitation prescribed under the statute is mandatory and must be strictly construed. Accordingly, the claim is liable to be rejected solely on the ground of being time-barred.

*—A.12*

7. In view of the above discussion, I do not find any infirmity with the impugned order and reject the appeal filed by the appellant.



F. Nos. S/49-457/CUS/AHD/23-24

सत्यापित/ATTTESTED

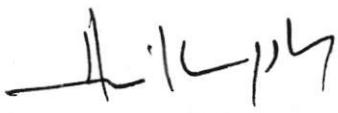
आधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील्स), अहमदाबाद  
CUSTOMS (APPEALS), AHMEDABAD

1273

By Registered Post A.D.

To,

M/s Ford India Private Limited,  
Revenue Survey No. 6,  
Village North Kotpura, Taluka Sanand,  
Ahmedabad – 382170



(AMIT GUPTA)

COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD

Dated – 05.06.2025

**Copy to:**

- 1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
- 2. The Pr. Commissioner of Customs, Customs Ahmedabad.
- 3. The Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
- 4. Guard File.